

**FACT SHEET FOR NDPDES PERMIT
NDR04-0000**

**GENERAL PERMIT FOR STORMWATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

DATE OF THIS FACT SHEET – FEBRUARY 2016

INTRODUCTION

The Federal Clean Water Act (CWA, 1972, and later amendments in 1977, 1981, and 1987, etc.) established water quality goals for the navigable (surface) waters of the United States. One mechanism for achieving the goals of the CWA is the National Pollutant Discharge Elimination System (NPDES), which the US Environmental Protection Agency (EPA) has oversight authority. In 1975, the State of North Dakota was delegated primacy of the NPDES program by EPA. The North Dakota Department of Health (NDDoH), hereafter referred to as “department”, has been designated the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251, et seq.], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of the act and similar federal acts. The department’s authority and obligations for the wastewater discharge permit program is in the NDAC 33-16 (North Dakota Administrative Code) which was promulgated pursuant to NDCC chapter 61-28 (North Dakota Century Code). The department uses North Dakota Pollutant Discharge Elimination System (NDPDES) as its permitting title.

The following rules or regulations apply to NDPDES permits:

- Procedures the department follows for issuing NDPDES permits (NDAC chapter 33-16-01),
- Standards of Quality for Waters of the State (NDAC chapter 33-16-02.1).

These rules require any treatment facility operator to obtain an NDPDES permit before discharging wastewater to state waters. They also define the basis for limits on each discharge and for other requirements imposed by the permit.

According to the North Dakota Administrative Code (NDAC) section 33-16-01-08, the department must prepare a draft permit and accompanying fact sheet, and make it available for public review. The department must also publish an announcement (public notice) during a period of thirty days, informing the public where a draft permit may be obtained and where comments regarding the draft permit may be sent (NDAC chapter 33-16-01-07). For more information regarding preparing and submitting comments about the fact sheet and permit, please see **Appendix A – Public Involvement**. Following the public comment period, the department may make changes to the draft NDPDES permit. The department will summarize the responses to comments and changes to the permit in **Appendix C - Response to Comments**.

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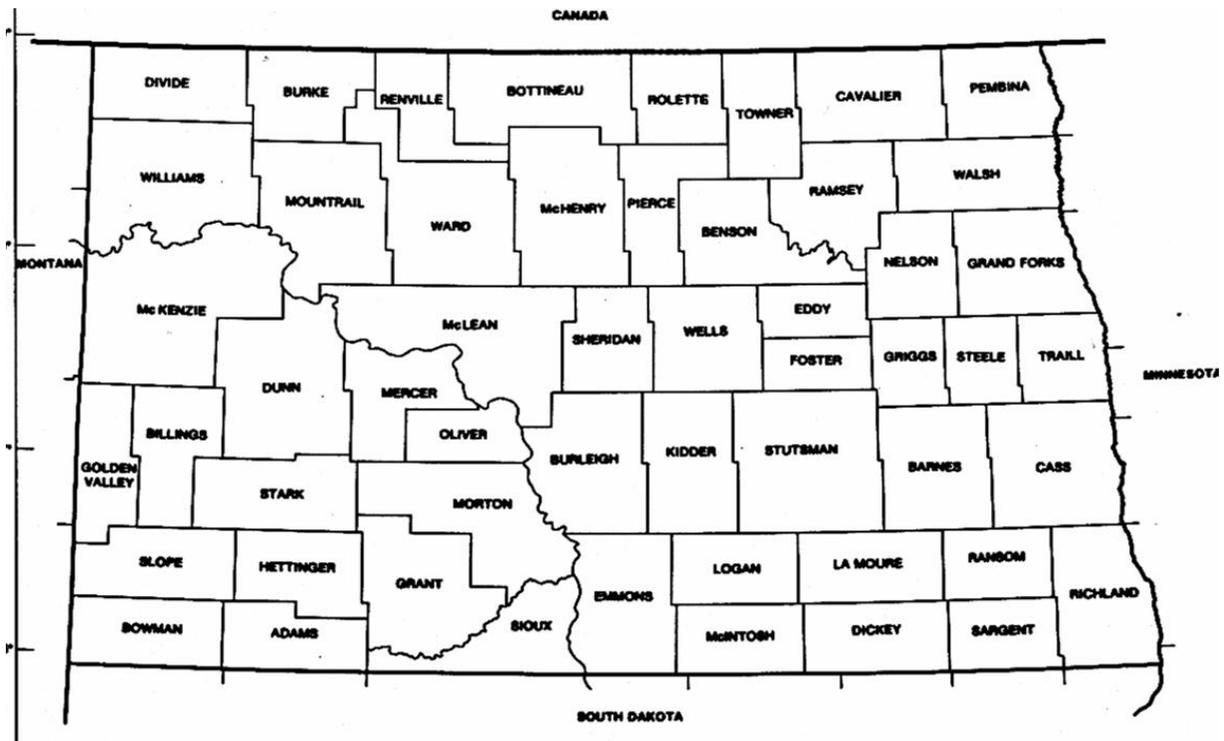
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BACKGROUND INFORMATION

General Information

Permit Number:	NDR04-0000
Permit Type:	General Permit, Renewal
Type of Treatment:	Best Available Technology Economically Achievable (BAT); Best Professional Judgment (BPJ); and Best Management Practices (BMPs)
Discharge Location:	Waters of the State of North Dakota

Figure 1 – Photograph of the State of North Dakota



General permits provide a streamline means to cover a large number of facilities that are subject to the regulations pertaining to small Municipal Separate Storm Sewer Systems (MS4s). These facilities are subject to the requirements of Section 402 of the Clean Water Act, as enforced by the NDPDES permitting program. In addition, the general permit process places less of an administrative burden on the issuing authority than the individual permitting process. The general permits require baseline control practices aimed at minimizing the impact of stormwater discharges to waters of the state. Individual permits may be developed to address specific water quality concerns if necessary.

The present general permit issued for stormwater discharges from small MS4s expired March 31, 2014. The initial general permit was issued in response to the EPA’s Stormwater “Phase II” Final Rule published on December 8, 1999 (64 FR68722). The rule requires the department, as the delegated permitting authority, to issue permits for discharges from certain small MS4s.

The primary goal of this permit is to restore and maintain the chemical, physical, and biological integrity of waters of the state to the extent practicable through the implementation of management practices applied to urban stormwater runoff. This permit reflects the phase II rule in requiring regulated MS4s to develop management practices to reduce pollutants in stormwater from the MS4. The minimum requirements for controlling pollutants in stormwater are outlined in a MS4 Program which regulated MS4s must develop. The MS4 Program consists of six minimum control measures (MCM) which include: public education, public participation, illicit discharge elimination, construction site runoff controls, post-construction stormwater management, and pollution prevention for municipal operations.

The storm sewer systems covered by this permit primarily consist of the systems or portions of systems located within a census defined urbanized area (UA). The systems designated based on UA are referred to as “automatic” designations. In 2002, 14 MS4s in the state were regulated based on the UA criteria. Four additional systems were regulated based on the mandatory review specified in the rules for cities with populations greater than 10,000. Additional information on the designation process for regulation by the permit and possible future designations is provided in the department’s policy document titled, Designation Criteria for Small MS4s. One additional system would be regulated under this permit based on the 2010 census defined UA. The 19 MS4s regulated by this permit are identified in Tables 1 and 2.

Table 1: Regulated Small MS4s Located in Urbanized Areas

	Fargo/Moorhead	Grand Forks	Bismarck/Mandan
Cities	Fargo West Fargo Horace	Grand Forks	Bismarck Mandan Lincoln
Counties (Parts located in UA or contributing to regulated city)	Cass	Grand Forks	Burleigh Morton
Public Facilities	North Dakota State University	University of North Dakota	Bismarck State College
	North Dakota Department of Transportation		

Table 2: Regulated Small MS4s Based on Designation Criteria

City	Population (1990)
Minot	36,567
Dickinson	16,010
Jamestown	15,527
Williston	12,512

SIGNIFICANT PERMIT CHANGES

The following additions or changes to this general permit were made:

1. The program name for the required best management practices and stormwater control measures was changed from “Stormwater Management Program” (SWMP) to “Municipal Separate Storm Sewer System Program” (MS4 Program). The change was made to address to distinguish the stormwater pollution prevention requirements of the MS4 Program from the stormwater quantity management requirements of SWMPs established by cities.
2. The permit requires a stormwater pollution prevention plan (SWPPP) for all MS4 owned and operated facilities unless the facility is covered by an existing NDPDES permit or can claim the requirements similar to a “no-exposure” facility. The SWPPP requirements are the same as those found in the state’s Industrial Stormwater General Permit and are found in Appendix 2. “No-exposure” requirements were added as Appendix 3.
3. The permit requires industrial facilities such as landfills, land application sites, and facilities with coal pile runoff to conduct sampling of stormwater runoff. The sampling requirements are the same as those found in the state’s Industrial Stormwater General Permit and are found in Appendix 4 and 5.
4. The post-construction control measure section was revised to require post-construction features for pollutant reductions from new development and re-development areas. The requirements are outlined in Appendix 1 of the permit. The magnitude of storm events and runoff volume for planning a water quality component for post-construction controls also were revised to clarify the design requirement.
5. The storm sewer system map was moved to a separate section of the permit.
6. The language for each MCM was expanded to provide more detail about the requirements of each MCM.
7. The permit includes additional information required for the annual report as well as electronic submittal requirements of the annual report. The changes were made to accommodate the federal electronic reporting requirements.

COVERAGE UNDER THIS PERMIT

Applicability of General Permit

Under this general permit, authorization to discharge relatively uncontaminated stormwater from small MS4s to the waters of the state of North Dakota may be granted. The permit is not intended for discharges from industrial activities or construction disturbances unless otherwise specified. These activities will be covered under separate general permits, NDR05-0000 for industrial activities; NDR32-0000 for mining, extraction or paving material preparation activities; and NDR10-0000 for construction activities. This permit applies to discharges composed (either

in whole or in part) of stormwater from small MS4s as defined in Title 40 of the Code of Federal Regulations (CFR), Part 122.26(b)(16), and designated under 40 CFR 122.32(a)(1) & (a)(2).

Discharges Not Covered

There are other types of discharges which may not be appropriately regulated through this permit and other limitations on what activities this permit can authorize. As such, the following discharges are not eligible for coverage under this permit:

- This permit does not authorize discharges other than stormwater and allowable non-stormwater sources. A separate NPDES permit may be required for the discharge of wastewater.
- This permit does not authorize the discharge of stormwater when a separate NPDES permit is required for these activities. For example, while stormwater from industrial activity or construction activity may be discharged from a MS4 with authorized stormwater discharges, this permit does not replace or satisfy any other permits required for those discharges.
- Authorization under this permit applies only to the storm sewer system (or portions of a system) operated by the MS4 and described in the application. Authorization under this permit does not cover other regulated MS4s operated within or connected to the MS4.
- This permit does not authorize the discharge of stormwater from new or expanded MS4 discharges unless the following requirements are met:
 - A new or expanded MS4 discharge must be constructed and operated in accordance with the conditions of this permit. A review may be required under the antidegradation procedures outlined in the North Dakota Standards of Quality for Waters of the State (NDAC 33-16-02.1-02(2)(c)) for new or expanded sources of pollution that result in significant effects on the quality or use of a receiving water. Unless otherwise directed by the department a review is not required for new or expanded MS4 sources developed in accordance with this permit.
 - This permit does not replace or satisfy any environmental review requirements, such as the National Environmental Policy Act (NEPA). Permittees must complete any environmental review required by law, including any required environmental assessment work sheets or environmental impact statements, federal environmental review, or other required review.
 - This permit does not replace or satisfy any review requirements for discharges whose direct, indirect, interrelated, interconnected, or independent impacts would jeopardize a listed threatened or endangered species or adversely modify a designated critical habitat. Permittees must conduct any required review and coordinate with appropriate agencies for projects with the potential of affecting threatened or endangered species, or critical habitat.
 - This permit does not replace or satisfy any review requirements for historic or archeological sites, for discharges that adversely affect properties listed (or eligible for listing) in the National Register of Historic Places or affecting known or discovered

archeological sites. Permittees must comply with National Historic Preservation Act and conduct all required review and coordination related to historic preservation – including significant anthropological sites and any burial sites – with the appropriate agency(s).

Request for Authorization

Facilities covered under the present permit shall be retained, provided a satisfactory request was made under the renotification provisions of the permit. If deemed necessary, the department may require the submittal of a new notice of intent or application. The application shall contain the following information:

- The street address and the name of the owner, agency, or person with operational control of the MS4;
- The name, address, and telephone number of the contact responsible for permit compliance;
- A brief description of the extent of the MS4;
- The name or general description of the water body(s), or other MS4s, that receive stormwater from the MS4;
- The location of MS4 owned and operated facilities and open spaces;
- The location and description of systems operated by other public entities within the MS4;
- A summary of the MS4 Program as outlined in the permit.

Alternative Permit Coverage and Notice of Termination

The department, by written notification only, may require any person authorized by this permit to apply for and either obtain an individual NDPDES permit or seek coverage under an alternative NDPDES general permit. Any person covered by this general permit may request to be excluded from such coverage by applying for an individual NDPDES permit.

When an individual NDPDES permit is issued to a person otherwise subject to this permit, the applicability of the permit to the individual permittee is automatically terminated upon the effective date of the individual permit or the date of approval for coverage under the alternative general permit.

Special Conditions

As this is a general permit for stormwater discharges, it must be identified that certain discharges are prohibited for coverage under this permit. Should process waste waters or other non-stormwater sources be combined with the stormwater discharge, the non-stormwater source must be in compliance with an appropriate NDPDES permit specifically for the non-stormwater discharge. The department will on a case-by-case basis consider allowing certain non-stormwater discharges to be operated under the conditions of this permit. Non-stormwater

discharges that may be considered for coverage under this permit would be limited to those identified, or sufficiently similar to those identified, in similar general permits. Such discharges include, but not limited to, fire hydrant flushing, potable water line flushings, infrequent building washdowns if detergents or other compounds are not used, or uncontaminated foundation drains.

MUNICIPAL SEPARATE STORM SEWER SYSTEM PROGRAM

Permittees must develop, implement and enforce a MS4 Program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP) to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The SWMP will consist of a combination of Best Management Practices (BMPs), including education, maintenance, control techniques, system design and engineering methods, and such other provisions as determined to be appropriate, to meet the minimum requirements of this permit.

The MS4 Program must address the six minimum control measures outlined in 40 CFR 122.34. The permit includes the minimum controls identified for the six control measures. The Minimum Control Measures are:

1. Public education and outreach;
2. Public participation/involvement;
3. Illicit discharge detection and elimination;
4. Construction site runoff control;
5. Post-construction runoff control; and
6. Pollution prevention/good housekeeping for municipal operations.

Implementation of one or more of the minimum measures may be shared between entities. The rule provides that a facility may cooperate on all or part of the MS4 Program developed by another entity (40 CFR 122.35). This option is particularly beneficial for operators that serve low populations, have limited resources, or are adjacent to a regulated MS4. The facility will remain responsible for compliance with the permit within their jurisdiction. The agreement outlining such an arrangement must be maintained as part of the MS4 Program.

The MS4 Program must include BMPs that control or reduce pollutants as appropriate for a community. In the development of BMPs for the MS4 Program, operators must consider the sources of pollutants, and the potentially polluting activities being conducted in the watershed. For each minimum control measure, there must be a description of the BMPs for the measure, responsible department in charge, an implementation schedule and measurable goals that will be used to determine the success or benefits of the BMPs.

ADDITIONAL PERMIT CONDITIONS

Industrial Activities

Stormwater discharges from industrial activities operated by the permittee may be covered by this permit provided the permittee develops and implements a SWPP plan for each of the

industrial facilities. Typical industrial stormwater discharges operated by municipalities are transportation facilities, wastewater treatment facilities with design flows of 1.0 million gallons per day and waste handling facilities. The MS4 permittee may obtain a separate permit for the industrial activities within the area covered by their MS4. If a MS4 does not obtain coverage under a separate permit for industrial stormwater discharges, they must develop a SWPPP as outlined in appendix 2 of the proposed MS4 permit. The SWPPP requirements are the same as those found in the state's general permit for industrial stormwater discharges.

Monitoring Reports and Expiration Date

An annual report, on the implementation of the MS4 Program shall be submitted by March 31 of each year, or on another date if established by the department. The reporting period is intended to follow calendar years. However slight adjustments to fit the other obligations of the municipality will be accepted.

The proposed expiration date for this permit is March 31, 2021. The expiration date may be adjusted depending on the actual effective date for the final permit. The permit term will not exceed 5 years.

DESIGNATION CRITERIA – SYSTEMS REGULATED

A description of regulated MS4s and designation criteria for North Dakota is provided in a separate department policy document. The policy document is not being changed as part of the permit renewal. The criteria in the document reflect that required by the phase II rule. The rule directs the state to require permits for certain entities located in urbanized areas and develop designation criteria that would be applied to MS4s outside an urbanized area. The rationale for the discretionary parts of the criteria are noted in this fact sheet.

The phase II rule includes four provisions for designating a small MS4 for regulation and thus subject to permit coverage. A system can be designated as a "regulated" small MS4 by any of the following:

1. Automatic designation, small MS4s located within the boundaries of a Census Bureau-defined Urbanized Area based on the latest decennial census;
2. Potential designation by permit authority, small MS4s that are located outside of UAs determined to result in or have the potential to result in significant water quality impacts;
3. Contributes to an interconnected regulated MS4, small MS4s that contribute substantially to pollutant loadings of a physically interconnected MS4 regulated by the NPDES stormwater program; or
4. Petition for designation, small MS4s may be designated following a final determination by the department on a petition, or request, for designation.

Small MS4s located in a UA are automatically designated at 40 CFR 122.32. The definition for small MS4 includes systems serving state or federal complexes such as colleges and highways in addition to the typical municipal entities such as cities and towns. The definition also

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GENERAL PERMIT FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
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indicates that a small MS4 is a system owned by a public body having jurisdiction over the disposal of stormwater and other wastes. A reference list of governmental entities located within an urbanized area is provided in appendix 6 of the preamble to the phase II rule. The list identifies several townships in North Dakota as potentially operating MS4s subject to automatic coverage. The department is not requiring permits from the townships on the list, or the others that are partly in UAs but were not listed. In North Dakota townships are not normally associated with the organization and operation of sewer systems. While townships normally construct and maintain roads within their boundaries, the North Dakota Century Code (NDCC Chapt. 58-12-05) indicates that township road superintendents are, by virtue of their position, deputies of the county superintendent. The century code chapter pertaining to townships (NDCC Chapt. 58) does not elaborate on any other duties regarding the operation of sewer systems.

The department did not require permit applications for systems serving state or federal complexes (such as colleges, military facilities, prisons, etc.) in UA's unless it was determined to have population greater than 1000. While the smaller facilities could have piping and other conveyances to drain stormwater, the stormwater is generally routed to a city system. In regard to small public facilities, the preamble to the rule indicated that the permit authority would have to use its best judgment in permitting based on the nature of the facility and its stormwater conveyance system (64 FR 68749). The permit authority should also consider whether the public complex cooperates with its municipality's efforts to implement their stormwater management program. Since the city (or county) is in the best position to identify the extent of its jurisdiction and cooperation by a public complex, the department will rely on the city's (or county's) judgment and require permits for facilities that are identified as not cooperating with the local stormwater program.

The Phase II Final Rule requires the department as the permitting authority to develop a set of designation criteria and apply them to MS4s outside of urbanized areas (40 CFR 123.35[b]). The rule required the evaluation of MS4s serving a population of at least 10,000 and with a population density of at least 1,000 people per square mile prior to December 9, 2002 (40 CFR 123.35[b][2]&[3]). All cities with a population of 10,000 or greater have been designated for coverage.

The designation criteria takes into consideration the factors outlined in the Phase II rule (40 CFR 123.35[b][1]). The factors to be considered in making designations are the municipality's population, the receiving water sensitivity, proximity to a UA, and potential pollutant contribution to a water body. The department can apply the criteria to make additional designations, as appropriate, at any time.

The department granted waivers for several very small MS4's located in the Fargo area. The incorporated towns of Briarwood, Frontier, Prairie Rose and North River were granted waivers for populations well under 1000 people and limited growth potential. The department intends to renew the waivers as part of the permit renewal. The city of Lincoln located in the Bismarck UA is the smallest city regulated by this permit. Lincoln had a population of 1730 based on the 1990 census and did not meet the criteria for waivers as specified in the rule for places with populations of more than 1000 people

SURFACE WATER QUALITY-BASED EFFLUENT LIMITS

The North Dakota State Water Quality Standards (NDAC Chapter 33-16-02.1) are designed to protect existing water quality and preserve the beneficial uses of North Dakota's surface waters. Wastewater discharge permits must include conditions that ensure the discharge will meet the surface water quality standards. Water quality-based effluent limits may be based on an individual waste load allocation or on a waste load allocation developed during a basin wide total maximum daily load (TMDL) study. TMDLs result from a scientific study of the water body and are developed in order to reduce pollution from all sources.

Numerical Criteria for the Protection of Aquatic Life and Recreation

Numerical water quality criteria are listed in the water quality standards for surface waters (NDAC Chapter 33-16-02.1). They specify the maximum levels of pollutants allowed in receiving water to protect aquatic life and recreation in and on the water. NDDH uses numerical criteria along with chemical and physical data for the wastewater and receiving water to derive the effluent limits in the discharge permit. When surface water quality-based limits are more stringent or potentially more stringent than technology-based limits, the discharge must meet the water quality-based limits.

Numerical Criteria for the Protection of Human Health

The U.S. EPA has published numeric water quality criteria for the protection of human health that are applicable to dischargers. These criteria are designed to protect humans from exposure to pollutants linked to cancer and other diseases, based on consuming fish and shellfish and drinking contaminated surface waters. The Water Quality Standards also include radionuclide criteria to protect humans from the effects of radioactive substances.

Narrative Criteria

Narrative water quality criteria (NDAC Chapter 33-16-02.1-08) limit concentrations of pollutants from exceeding applicable standards of the receiving waters. NDDH adopted a narrative biological goal solely to provide an additional assessment method that can be used to identify impaired surface waters.

Antidegradation

The purpose of North Dakota's Antidegradation Policy (NDAC Chapter 33-16-02.1(Appendix IV)) is to:

- Provide all waters of the state one of three levels of antidegradation protection.
- Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.

NDDH's fact sheet demonstrates that the existing and designated uses of the receiving water will be protected under the conditions of the proposed permit.

Mixing Zones

NDDH's WQS contain a Mixing Zone and Dilution Policy and Implementation Procedure, NDAC Chapter 33-16-02.1 (Appendix III). This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA

The effluent limitation and benchmark concentrations in the permit reflect the conditions of the EPA Multi-Sector General Permit (MSGP-2008). Water quality based limits may be imposed on discharges covered by this permit through the implementation of a TMDL allocation. In addition, a facility covered by this permit may be required to obtain an individual permit based on site specific water quality based limitations.

MONITORING REQUIREMENTS

NDDH requires monitoring, recording, and reporting (NDAC Chapter 33-16-01-(21-23) and 40 CFR 122.41) to verify that the treatment process is functioning correctly and that the discharge complies with the permit's limits.

TEST PROCEDURES

The collection and transportation of all samples shall conform to EPA preservation techniques and holding times. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount.

PERMIT ISSUANCE PROCEDURES

Permit Modifications

The department may modify, revoke and reissue, or terminate this permit for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned

changes or anticipated noncompliance does not stay any permit condition. The department also may modify this permit to comply with new or amended state or federal regulations.

Proposed Permit Issuance

This proposed permit meets all statutory requirements for the department to authorize a stormwater discharge. The permit includes limits and conditions to protect human health and aquatic life, and the beneficial uses of waters of the State of North Dakota. The department proposes to issue this permit for a term of five (5) years.

Any request to retain coverage under a renewal of this permit shall be made in writing to the department at least 15 days prior to the expiration date of this permit. Typically the department provides permit holders with renewal or renotification instructions when a new permit has been drafted. Upon request by the department, a new Notice of Intent shall be submitted.

APPENDIX A – PUBLIC INVOLVEMENT INFORMATION

The department proposes to reissue a general permit for stormwater discharges associated with small Municipal Separate Storm Sewer Systems. The permit includes the use of best management practices, the development of a MS4 Program, monitoring requirements and other conditions. This fact sheet describes the facility and department's reasons for requiring permit conditions.

The department will place a 30-day Public Notice on **February 22, 2016** in the **Bismarck Tribune**, the official newspaper of the capital city, and in **Regional Papers** throughout the state to inform the public and to invite comment on the proposed draft North Dakota Pollutant Discharge Elimination System permit and fact sheet. The notice will also be mailed to the department's Public Notice mailing list.

The Notice –

- Tells where copies of the draft Permit and Fact Sheet are available for public evaluation.
- Offers to provide assistance to accommodate special needs.
- Urges people to submit their comments before the end of the comment period.
- Informs the public that if there is significant interest, a public hearing will be scheduled.

You may obtain further information from department by telephone, 701.328.5210 or by writing to the address listed below.

North Dakota Department of Health
Division of Water Quality
918 East Divide Avenue, 4th Floor
Bismarck, ND 58501

The primary authors of this permit and fact sheet are Dallas Grossman, Patricia Omlid, Daune Sandvick, and Dan Weber.

**North Dakota Department of Health Public Notice
Issue of an NDPDES Permit**

Public Notice Date: 2/22/2016 Public Notice Number: ND-2016-010

Purpose of Public Notice

The Department intends to issue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

Permit Information

Application Date: 10/1/2015 Application Number: NDR04

Applicant Name: Small Municipal Seperate Storm Sewer Systems (MS4s)

Mailing Address: ND Dept of Health, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947

Telephone Number: 701.328.5242

Proposed Permit Expiration Date: 3/31/2021

Description

The Department proposes to reissue NDPDES General Permit NDR04-0000 to authorize the discharge of stormwater from small Municipal Separate Storm Sewer Systems (MS4). The permit applies to MS4s in North Dakota that are regulated pursuant to 40 CFR 122.26. MS4s covered by this permit are located in census defined urbanized areas and cities with a population of at least 10,000. The Department may authorize other small MS4s based on criteria outlined in the Phase II Federal Stormwater Rule. The general permit requires a stormwater management program to reduce pollutants in stormwater discharges from a MS4, and includes minimum control measures as identified in 40 CFR 122.34.

MS4s included in the renewal are: Bismarck City of, Bismarck State College, Burleigh County (Urbanized Area), Cass County (Urbanized Area), Dickinson City of, Fargo City of, Grand Forks City of, Grand Forks County (Urbanized Area), Horace City of, Jamestown City of, Lincoln City of, Mandan City of, Minot City of, Morton County (Urbanized Area), ND Dept. of Transportation (Urbanized Area), NE State University, University of ND, West Fargo City of, and Williston City of.

Tentative Determinations

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCAA will be protected.

Information Requests and Public Comments

Copies of the application, draft permit, and related documents are available for review. Comments or requests should be directed to the ND Dept of Health, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947 or by calling 701.328.5210.

All comments received by March 22, 2016 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

APPENDIX B – GLOSSARY

DEFINITIONS Standard Permit BP 2013.12.31

1. “**Act**” means the Clean Water Act.
2. “**Average monthly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
3. “**Average weekly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
4. “**Best management practices**” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. “**Bypass**” means the intentional diversion of waste streams from any portion of a treatment facility.
6. “**Composite**” sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
7. “**Daily discharge**” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
8. “**Department**” means the North Dakota Department of Health, Division of Water Quality.
9. “**DMR**” means discharge monitoring report.
10. “**EPA**” means the United States Environmental Protection Agency.
11. “**Geometric mean**” means the n th root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.
12. “**Grab**” for monitoring requirements, means a single “dip and take” sample collected at a representative point in the discharge stream.

13. “**Instantaneous**” for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.
14. “**Maximum daily discharge limitation**” means the highest allowable “daily discharge.”
15. “**Salmonid**” means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.
16. “**Sanitary Sewer Overflows (SSO)**” means untreated or partially treated sewage overflows from a sanitary sewer collection system.
17. “**Severe property damage**” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
18. “**Total drain**” means the total volume of effluent discharged.
19. “**Upset**” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

DEFINITION Permit Specific

1. “**Common plan of development or sale**” means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, e.g., a housing development of five ¼ - acre lots (40 CFR 122.26(b)(15)(i)).
2. “**Expanded source of pollutants**” means any changes in volume, quality, location, or any other factor that results in increased pollutant loading from a regulated discharge source which would have significant permanent effects on waters of the state.
3. “**General permit**” means a permit issued under NDAC 33-16-01 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.

4. **“Maximum extent practicable”** or **“MEP”** is the statutory standard that establishes the level of pollutant reductions that an owner or operator of regulated MS4s must achieve. The USEPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. The USEPA envisions application of the MEP standard as an iterative process.
5. **“Municipal separate storm sewer system”** or **“MS4”** means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
 - Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management Agency under section 208 of the CWA that discharges to waters of the United States;
 - Designed or used for collecting or conveying stormwater;
 - Which is not a combined sewer; and
 - Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.
6. **“NPDES”** means National Pollutant Discharge Elimination System and includes the authorized state program.
7. **“New development”** means construction activities that create new impervious surface.
8. **“New source of pollutants”** means a discharge that started after the effective date of this permit.
9. **“Notice of Intent”** as referenced in the US EPA documents is synonymous with the term “permit application” for the purposes of this permit.
10. **“Other regulatory mechanism”** means any legally enforceable document, such as a contract or other agreement that has penalties such as withholding payments, fines or other measures to prevent non-compliance.
11. **“Operator”** means the person with primary operational control and legal responsibility for the municipal separate storm sewer system.

12. **“Outfall”** means the point where a municipal separate storm sewer system discharges from a pipe, ditch, or other discrete conveyance to receiving waters, or other municipal separate storm sewer systems. It does not include diffuse runoff or conveyances, which connect segments of the same stream or other water systems.
13. **“Owner”** means the person that owns the municipal separate storm sewer system.
14. **“Person”** means the state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity, including, but not limited to, association, commission or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation, or other entity.
15. **“Physical alteration”** means the dredging, filling, draining, or permanent inundating of a wetland. Restoring a degraded wetland by reestablishing its hydrology is not a physical alteration.
16. **“Redevelopment”** refers to alterations of a property that change the “footprint” of a site or building in such a way that results in the disturbance of equal to or greater than one acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts and offer no new opportunity for stormwater controls.
17. **“Small municipal separate storm sewer system”** or **“small MS4”** means all separate storm sewers that are:
 - Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.
 - Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to 40 CFR 122.26 paragraphs (b)(4) and (b)(7) of, or designated under paragraph (a)(1)(v).
 - This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.
18. **“Stormwater”** means stormwater runoff, snowmelt runoff, surface runoff and drainage.

19. **“Stormwater discharge associated with construction activity”** means discharge of stormwater from construction activities; including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre. Construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
20. **“Stormwater associated with industrial activity”** means stormwater runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR 122.26(b)(14). Industrial facilities (including industrial facilities that are federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)-(xi)) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this subsection:
- (i) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under Category (xi) of this paragraph);
 - (ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28, 29, 30, 311, 32, 33, 3441, 373;
 - (iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by products or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;
 - (iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;
 - (v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;
 - (vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;
 - (vii) Steam electric power generating facilities, including coal handling sites;
 - (viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42, 44 and 45 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) - (vii) or (ix) - (xi) of this subsection are associated with industrial activity;

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- (ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;
- (x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;
- (xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25.

21. **“Total Maximum Daily Load”** or **“TMDL”** is the process established by the USEPA for the allocation of pollutant loads, including stormwater, to a particular water body or reach of a water body.
22. **“Uncontaminated ground water infiltration** (as defined at 40 CFR 35.2005(20))” means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.
23. **“Waters of the State”** means any and all surface waters that are contained in or flow in or through the state of North Dakota as defined in NDCC 61-28-02. This definition includes all water courses, even if they are usually dry.

APPENDIX C – RESPONSE TO COMMENTS

Comments were received from the City of Bismarck, City of West Fargo, and North Dakota Department of Transportation.

City of Bismarck

COMMENT:

Paragraph 6. Pollution Prevention for Municipal Operations states 2) “At a minimum, inspect 20 percent of MS4 outfalls, pipes, ditches, snow disposal areas, sediment basins, and ponds each year on a rotating basis with all items inspected before the expiration of this permit. Document inspection findings such as sediment accumulation, algae growth, color, odor, and other signs of pollution. In addition, document any observable non-storm water discharge that may be present.”

We are requesting clarification of what “20 percent of MS4 ... pipes” means. Does this mean that we would need to inspect 20 percent of the miles of pipe with video cameras?

This would place substantial burden on the system and we question what this requirement will accomplish for the cost. Currently the City of Bismarck owns 160 miles of pipe (2014), or 32 miles to do annually. Our televising crew averages seven, 350’ – 400’ runs/day; this would be two people for 60 working days. This would be on top of the already existing 20% of 1000 outfalls, 15 miles of ditches, and 80 ponds we own.

Instead of the requirement of the 20% inspection of our pipe, we recommend televising only the areas where the city has identified a problem.

RESPONSE:

The department received additional comments regarding the inspection of 20 percent of storm sewer system pipes and ditches on an annual basis and its impact and benefit. The department reconsidered the impact and benefit of the requirement, and removed the language requiring 20 percent of MS4 pipes and ditches to be inspected from Part IV(F)(6)(d)(2) of the finalized permit, and fact sheet. The department kept the requirement to inspect 20 percent of all outfalls, snow disposal areas, sediment basins, and ponds each year. The department believes having adequate procedures for storm sewer system cleaning and maintenance as required in Part IV(F)(6)(f) of the finalized permit will be sufficient to justify removing the language from the finalized permit.

City of West Fargo

COMMENT #1:

- 1. Funding sources along with appropriation of funds assigned to each minimum control measure.**

Comment: The City of West Fargo draws from multiple departments including, engineering, police, public works and fire for compliance of our MS4 permit. Including the appropriation of funds from each department on each item seems irrelevant to the compliance of the MS4 permit. If the minimum control measures are being met, what relevance is the cost?

RESPONSE #1:

The department reviewed the applicability of identifying the funding source assigned to each minimum control measure along with appropriation of funds in the application. The requirement applies when a small MS4 with a program that is different than the program outlined in 40 CFR 122.34 applies for an individual permit, or chooses to be a co-permittee with a large or medium MS4. Since the finalized permit is a general permit for small MS4s, language referring to funding sources and appropriation of funds was removed from Part II(B) and IV(F) of the finalized permit, and the fact sheet.

COMMENT #2:

- 2. At a minimum, inspect 20 percent of MS4 outfalls, pipes, ditches, snow disposal areas, sediment basins and ponds each year on a rotating basis with all items inspected before the expiration of the permit.**

Comment: The City of West Fargo does a substantial amount of public utility inspections throughout the year. As per terms of the previous MS4 permit, all ponds, outfalls, ditches, sediment basins and snow sites are currently inspected. To include pipes in this inspection requirement would be a huge financial strain on both, the already set 2016 budget and workload for operators. In 2014 the City of West Fargo had approximately 200 miles of storm sewer, this would require an additional 40 miles of storm sewer inspections to comply with the permit. The city has always used the outfall inspections as indicators of problems/issues with the system and/or pipes.

RESPONSE #2:

The department received additional comments regarding the inspection of 20 percent of storm sewer system pipes and ditches on an annual basis and its impact and benefit. The department reconsidered the impact and benefit of the requirement, and removed the language requiring 20 percent of MS4 pipes and ditches to be inspected from Part IV(F)(6)(d)(2) of the finalized permit, and fact sheet. The department kept the requirement to inspect 20 percent of all outfalls, snow disposal areas, sediment basins, and ponds each year. The department believes having adequate procedures for storm sewer system cleaning and maintenance as required in Part IV(F)(6)(f) of the finalized permit will be sufficient to justify removing the language from the finalized permit.

North Dakota Department of Transportation

COMMENT #1:

Section II.A.4 – page 12

To require the DOT to issue a complete list of all water bodies that receive stormwater is infeasible. The area covered by the DOT's MS4 permit is not simply one urban area. Include an exemption for the DOT.

RESPONSE #1:

The department does not believe it is infeasible for the DOT to compile a list of all water bodies that receive stormwater from the regulated portion of the DOT's MS4. The list is limited to water bodies located in regulated MS4 areas (i.e., Bismarck, Mandan, Lincoln, Dickinson, Williston, Minot, Jamestown, Grand Forks, Fargo, and West Fargo). The list also is limited to water bodies located within the regulated MS4 areas of Burleigh, Cass, and Grand Forks County. The requirement to list each water body that receives stormwater from an MS4 has been a requirement of previous MS4 general permit applications.

COMMENT #2:

Section II.B.3 – page 12

This requirement appears to allow the NDDoH to regulate the permittees' funding and the appropriation of those funds. Please remove this requirement from this section and all other sections of the permit.

RESPONSE #2:

The department reviewed the applicability of identifying the funding source assigned to each minimum control measure along with appropriation of funds in the application. The requirement applies when a small MS4 with a program that is different than the program outlined in 40 CFR 122.34 applies for an individual permit, or chooses to be a co-permittee with a large or medium MS4. Since the finalized permit is a general permit for small MS4s, language referring to funding sources and appropriation of funds was removed from Part II(B) and IV(F) of the finalized permit, and the fact sheet.

COMMENT #3:

Section IV.C – page 13

It is the responsibility of the NDDoH through the 303(d) program to identify the sensitivity of the Waters of the State. The MS4s should not be required to do this for the NDDoH. Please remove.

RESPONSE #3:

The department does not expect permittees to identify impaired bodies of water in lieu of the department's 303(d) program. To eliminate confusion, the department made the following change to the finalized permit.

The language in Part IV(C) read:

“The MS4 Program must identify the pollutants of concern in stormwater discharges from the MS4, sources of pollutants, potential polluting activities, and sensitivity of the receiving waters....”

The language in Part IV(C) now reads:

“The MS4 Program must identify the pollutants of concern in stormwater discharges from the MS4, sources of pollutants, and potential polluting activities....”

Changing the language will not affect the conditions of the permit. Part III.C – Section 303(d) Listings and Total Maximum Daily Load (TMDL) requires permittees to adjust the MS4 Program if the MS4 discharges to an impaired water body or a water body with a waste load allocation set for stormwater sources. The fact sheet also was updated to reflect this change.

COMMENT #4:

Section IV.E – page 13

The NDDOT is not a localized MS4. Most of the facilities we install are owned and maintained by other MS4s or non regulated communities. The NDDOT should be exempt from this requirement as the maps created by the other MS4 communities already include all of the items listed for the systems we install. Add a statement to the permit allowing us this exemption.

RESPONSE #4:

As provided in 40 CFR 122.34(b)(3)(ii)(A), permittees must “[d]evelop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;...”

The department does not believe the NDDOT should be exempt from developing a map of the regulated MS4 storm sewer system. Maps are limited to areas located in the regulated MS4 areas (i.e., Bismarck, Mandan, Lincoln, Dickinson, Williston, Minot, Jamestown, Grand Forks, Fargo, and West Fargo). Maps also are limited to areas located within the regulated MS4 areas of Burleigh, Cass, and Grand Forks County. The requirement to develop a map of the storm sewer system was part of previous MS4 general permits.

COMMENT #5:

Section IV.F – page 14

See the comment above regarding Section II.B.3, funding.

RESPONSE #5:

The department reviewed the applicability of identifying the funding source assigned to each minimum control measure along with appropriation of funds in the application. The requirement applies when a small MS4 with a program that is different than the program outlined in 40 CFR 122.34 applies for an individual permit, or chooses to be a co-permittee with a large or medium MS4. Since the finalized permit is a general permit for small MS4s, language referring to funding sources and appropriation of funds was removed from Part II(B) and IV(F) of the finalized permit, and the fact sheet.

COMMENT #6:

Section IV.F.1.d – page 14

Last sentence: recommend that “or” be changed to “and”. Require that other MS4s approve the use of their stormwater education program.

RESPONSE #6:

The department does not intend to change the language in the finalized permit. The department does not believe changing “or” to “and” will significantly change the intent of the sentence.

The department will not include a requirement to have an MS4 receive approval for the use of another MS4’s education program from the other MS4. The department believes it is the responsibility of the MS4 to decide how education programs are made available for others to use.

COMMENT #7:

Section IV.F.2.d – page 15

List the State public notice requirements or provide a citation in the permit of where they can be found. Remove this if there are no requirements at this time.

RESPONSE #7:

As provided in 40 CFR 122.34(b)(2)(i), permittees “...must, at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/ participation program.” Public notice requirements may be found in different agency, state, or federal rules, or may not be required at all. Permittees are encouraged to follow their specific requirements when issuing a public notice.

COMMENT #8:

Section IV.F.3 – page 15

The DOT does not have the authority to enforce a program without legislative action granting us legal authority according to the Century Code. Include an exemption for the DOT.

RESPONSE #8:

As provided in 40 CFR 122.34(b)(3)(i), permittees "...must develop, implement and enforce a program to detect and eliminate illicit discharges...into your small MS4." In addition in accordance with 40 CFR 122.34(b)(3)(ii)(B), permittees must "[t]o the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, other regulatory mechanism, non-stormwater discharges into your storm sewer system and implement appropriate enforcement procedures and actions..."

The permit requires permittees to implement enforcement procedures and actions capable of removing an illicit discharge or dumping. An example of an enforcement action or procedure for a permittee that does not have legal authority to enforce applicable rules would be for the permittee to outline in its MS4 Program the fact that the permittee does not have the legal authority to take an enforcement action but would forward the action to an appropriate entity for further enforcement action.

COMMENT #9:

Section IV.F.3.f – page 15

Rising groundwater cannot be controlled. Please remove.

Uncontaminated groundwater infiltration by definition is not considered a significant source of pollutants. If this was meant to say "contaminated", this, again, cannot be controlled should be removed.

RESPONSE #9:

As provided in 40 CFR 122.34(b)(3)(iii), permittees "...must address the following categories of non-stormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4:...rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)),..." The department will keep these items in the permit since they are considered illicit discharges but not a significant source of pollutants.

COMMENT #10:

Section IV.F.4 – page 16

Please see comment regarding Section IV.F.3, authority to enforce.

RESPONSE #10:

As provided in 40 CFR 122.34(b)(4)(i), permittees "...must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to you small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more...."

In addition in accordance with 40 CFR 122.34(b)(4)(ii), a permittees program must include:

- (A) "An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;
- (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
- (C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
- ...
- (F) Procedures for site inspection and enforcement of control measures."

The permit requires permittees to implement enforcement procedures and actions capable of requiring construction activity within the MS4 to implement erosion and sediment controls, stabilization requirements, and other BMPs. An example of an enforcement action or procedure for a permittee that does not have legal authority to enforce applicable rules would be for the permittee to outline erosion and sediment control, stabilization requirements, and other BMPs in contractual documents. Another example would be for the permittee to outline in its MS4 Program the fact that the permittee does not have the legal authority to take an enforcement action but would forward the action to an appropriate entity for further enforcement action.

COMMENT #11:

Section IV.F.5.b – page 17

Add "with increased impervious surface" to the first sentence.

RESPONSE #11:

The department does not believe it is necessary to add "with increased impervious surface" to the sentence, "Develop, implement, and document strategies that use structural and non-structural BMPs to reduce the discharge of pollutants from new development and redevelopment projects."

"New development" is defined as construction activities that create new impervious surface.
"Redevelopment" is defined as alterations of a property that change the "footprint" of a site or

building in such a way that results in the disturbance of equal to or greater than one acre of land. The term “redevelopment” is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts and offer no new opportunity for stormwater controls.

The department interprets “new development” to mean there must be an increase in impervious surface and it must be related to construction activity and not routine maintenance activity. “Redevelopment” may include a decrease in impervious surface, but also must include a change to the footprint of the previous property.

COMMENT #12:

Section IV.F.6.d.2 – page 18

Please remove “pipes, ditches”. These are not major contributors to pollutants and were not included in the previous permit. Limit to the definition of “outfall”.

RESPONSE #12:

The department received additional comments regarding the inspection of 20 percent of storm sewer system pipes and ditches on an annual basis and its impact and benefit. The department reconsidered the impact and benefit of the requirement, and removed the language requiring 20 percent of MS4 pipes and ditches to be inspected from Part IV(F)(6)(d)(2) of the finalized permit, and fact sheet. The department kept the requirement to inspect 20 percent of all outfalls, snow disposal areas, sediment basins, and ponds each year. The department believes having adequate procedures for storm sewer system cleaning and maintenance as required in Part IV(F)(6)(f) of the finalized permit will be sufficient to justify removing the language from the finalized permit.

COMMENT #13:

Section IV.F.6.e.2 – page 18

Please remove “annually” and include language from previous permit.

RESPONSE #13:

The language in Part IV(F)(6)(e)(2) read:

“...Remove litter and accumulated sand from snow disposal sites annually.”

The language in Part IV(C) now reads:

“...Remove litter and accumulated sand from snow disposal sites as needed to control pollutants from the site.”

Changing the language will not affect the conditions of the permit.

COMMENT #14:

Section IV.F.6.f – page 19

Remove “mowing”. This is not a significant source of pollution.

RESPONSE #14:

The department does not believe it is necessary to remove “mowing” from the sentence, “Written procedures for park and golf course maintenance, mowing operations, roadway cleaning and maintenance, fertilizer and pesticide application, and storm sewer system cleaning and maintenance....”

Mowing operations can be a significant source of pollution if not appropriately managed. Clippings that are blown into streets may wash down storm drains to waters of the state, elevating nutrient loadings and decreasing the oxygen content through decay. Clippings on the surface of the water also block sunlight from reaching underwater vegetation. Mowing procedures that prevent clippings from entering storm drains or surface waters are an appropriate means of controlling pollution from mowing operations.

COMMENT #15:

Section V.C.8 – page 20

Remove “government”. The permittee is allowed to partner with a private entity so this requirement is not correct.

RESPONSE #15:

The department does not believe it is necessary to remove “government” from the sentence, “The responsible government entity for each permit component.”

As published in the Volume 80, Number 204 of the Federal Register-Rules and Regulations (October 22, 2015), page 64144, each MS4 permit component must identify the responsible government entity as cited in 40 CFR 122.34(g)(3)(i) and (v), 122.35(a), and 122.42(c). The department interprets this to mean the government entity of the permittee that is responsible for ensuring a particular permit component is met.

COMMENT #16:

Section V.D – page 20

Remove “or another date set by the department” or add “whichever is later”.

RESPONSE #16:

The department does not believe it is necessary to change the sentence, “Annual reports must be submitted to the department by March 31, or another date set by the department, for each year of the permit term.” The department does not intend to assign a date earlier than March 31 of each year during the implementation of this permit. The language is meant to allow for a later submittal date established by the department and permittee.