

RESPONSE TO COMMENTS – MUNICIPAL STORMWATER REGULATION PROGRAM

Tier A Municipal Stormwater General Permit – NJ0141852 (Tier A Permit)

Tier B Municipal Stormwater General Permit – NJ0141861 (Tier B Permit)

Public Complex Stormwater General Permit – NJ0141879 (Public Complex Permit)

Highway Agency Stormwater General Permit – NJ0141887 (Highway Permit)

The New Jersey Department of Environmental Protection (Department or NJPDEP) accepted comments on drafts of these four general permits through April 7, 2003. The Department also held three public hearings on the four draft general permits. The hearings were held on the following dates and locations: February 13, 2003, Morris County Frelinghuysen Arboretum, Morristown, New Jersey; February 20, 2003, Collingswood Senior Community Center, Collingswood, New Jersey; and February 25, 2003, Department headquarters building, Trenton, New Jersey.

Concurrently with the Department's issuance of these final four general permits, the Department is promulgating amendments to the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A. These general permits are not part of the NJPDES rules. However, comments that the Department determined to be on both the NJPDES rule proposal and the drafts of one or more of these general permits are addressed (along with other comments on the NJPDES rule proposal) in the Summary of Public Comments and Agency Responses in the notice of adoption for amendments to the NJPDES rules published in the February 2, 2004 issue of the New Jersey Register. That Summary is by reference part of the response to comments document for these general permits. Comments that the Department determined to be on the draft NJPDES general permits rather than on the rule proposal are addressed below. The following persons timely submitted such comments in writing and/or made such comments orally at one or more of the public hearings.

List of Commenters:

1. Mary Arnold, Citizen
Morristown, New Jersey
2. David N. Baker, Director
Department of Public Works
Village of Ridgewood
3. Joseph F. Beckmeyer, P.E., Chief Engineer
Jersey City Municipal Utilities Authority
4. John J. Dunne, Mayor
Borough of Madison
5. Abigail Fair, Water Resource Specialist
Association of New Jersey Environmental Commissions

6. William P. Farrell, Jr., P.E., PP,
Acting Middletown Township Engineer
Township of Middletown
7. Gene Feyl, Mayor
Township of Denville
8. George D. Fosdick, Mayor
Village of Ridgefield Park
9. Howarth C. Gilmore, City Engineer
City of Summit
10. Douglas L. Guthrie, Sr., Superintendent
Monmouth County Mosquito Extermination Commission
11. Matthew S. Halpin
New Jersey Society of Municipal Engineers
12. George S. Hawkins, Chairman
New Jersey Council of Watershed Associations
13. Thomas Henshaw, Township Manager
Galloway Township
14. Katrie Hillman, MCWRA Secretary
Monmouth County Water Resources Association
15. Melissa L. Hopp, Vice President of Administrative Services
Camden County College
16. John Kellogg, Director
Hunterdon County Planning Board
17. Bertrand N. Kendall, Borough Administrator
Borough of Glen Rock
18. Jerry L. Kilby, P.E., C.M.E.
City Engineer
City of Atlantic City
19. Elizabeth H. Kiss, Municipal Clerk
Township of East Brunswick
20. Michael A. Kobylarz, P.E., P.P., C.M.E.
Township Engineer/Director of Public Works
Township of Roxbury

21. David R. Kochel, Township Manager
Township of Ocean (Monmouth County)
22. Gary MacQueen, Chairman
Lebanon Township Planning Board
23. Joan D. Moreland, CMC
Borough Clerk
Borough of Haddon Heights
24. Peter S. Palmer, Freeholder Director
The Board of Chosen Freeholders of the County of Somerset
25. Paul E. Pogorzelski, P.E., Township Engineer
Township of Hopewell (Mercer County)
26. James Quinn, Mayor
City of Millville
27. Richard J. Raczynski, P.E., Chief Engineer
New Jersey Turnpike Authority
28. Mary Pat Robbie, Director, Department of Resource Conservation
Burlington County Board of Chosen Freeholders
29. Gray Russell, Environmental Outreach Coordinator
Township of Montclair
30. Ryan J. Scerbo
DeCotiis, FitzPatrick, Cole & Wisler, L.L.P.
General Counsel to the New Jersey Highway Authority
31. Katherine Smith
Moorestown Environmental Advisory Committee
32. Phillip Sweeney, Chief
Point and Non-Point Source Control Section
Water Programs Branch
Division of Environmental Planning and Protection
United States Environmental Protection Agency – Region II
33. Jeff Tittel, Director
Sierra Club

34. Robert Vogel, Borough Engineer
Madison Borough
35. Terence Vogt, P.E., P.P., C.M.E.
Senior Associate
Remington and Vernick Engineers
36. A. Jerome Walnut, Chairman
Ocean County Environmental Agency
37. Cindy Zipf, Executive Director - Clean Ocean Action
Kirstin McPolin, Water Policy Analyst - Clean Ocean Action
Tim Dillington, Executive Director, American Littoral Society
Brian Hegarty, President – Shark River Cleanup Coalition, Inc.
Larrell Brown, President, Alliance for a Living Ocean
William deCamp, Jr., President – Save Barnegat Bay
John Weber, Chapter Chairman, Surfrider Foundation, Jersey Shore Chapter
Richard Lee, National Board of Directors Member and NJ Regional Treasurer – Surfers’
Environmental Alliance, Santa Cruz, CA and Long Branch, NJ
Edward J. Dlugosz, Director and Environmental Education Chairperson – Monmouth County
Friends of Clearwater and Chairman – Eatontown Environmental Commission

In addition to the timely submitted comments, the Department received letters dated or postmarked after the close of the comment period. Because these letters were submitted after the close of the comment period, the Department has not summarized them below, or listed the names of the senders above.

The timely submitted comments and the Department’s responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. COMMENT: The United States Environmental Protection Agency (USEPA) requests that the Department provide preliminary draft copies of the forms intended for use for Requests for Authorization (RFA) and Annual Reporting. (32)

RESPONSE: The Department has provided USEPA a copy of the final RFA forms. The RFA represents a formal acceptance of the terms of the general permit. Because the specific pollution control information is contained in the general permit itself, rather than in the RFA, the RFA forms are very short and require minimal information. The Department has also provided USEPA a preliminary draft copy of the Annual Report form for the Tier A Permit, and will provide USEPA draft copies of the Annual Report forms for the Highway, Public Complex, and Tier B Permits once those forms have been completed.

2. COMMENT: Specifically exclude effluent reuse as a non-stormwater discharge authorized by the general permits in Part I, Section A.2.c. (37)

RESPONSE: The Department does not want to prohibit in the general permits the discharge of effluent reuse water used for irrigation water or sidewalk, driveway and street washwater from a small municipal separate storm sewer system (small MS4), if that use was specifically approved in a NJPDES permit issued by the Department's Division of Water Quality. Please note that NJPDES permits are issued for wastewater reuse through the Bureau of Point Source Permitting within the Division of Water Quality and any comments regarding the appropriateness of the wastewater reuse should be made during the public comment period for that specific NJPDES permit.

3. COMMENT: Add an additional condition to Part I, Section A.3.a that allows the Department to "Deny authorization." (37)

Pursuant to N.J.A.C. 7:14A-25.2, a NJPDES permit is required for certain stormwater discharges. The operating entities for those discharges shall apply for a NJPDES permit. The Department may issue authorization to discharge under a general permit or issue an individual permit for the discharge. If the Department denies a request for authorization for a particular general permit, the Department should direct the applicant to apply for another NJPDES permit, so that the requirement in N.J.A.C. 7:14A-25.2 can be satisfied. That is why the Authorization section of the general permits provides for the following options:

- i. Issue notification of authorization under this permit, in which case, authorization is deemed effective the first day of the following month of the date of the notification of authorization;
- ii. Deny authorization under this permit and require submittal of an application for an individual permit; or
- iii. Deny authorization under this permit and require submittal of an RFA for another general permit.

4. COMMENT: Part I, Section B.4.a of the Tier A Permit should also require that the Request for Authorization include a "A map showing the boundaries of any "combined sewer area" that the Tier A Municipality wants to exclude from the Stormwater Program under Part I, Section E. A "combined sewer area" is an area that is excluded because all stormwater discharges that are from that area (and operated by the municipality) are discharges to combined (or sanitary) sewer systems." (37)

RESPONSE: It is unnecessary for a map of combined sewer areas to be included in a Tier A Municipality's RFA. Under Attachment A of the Tier A Permit, if a Tier A Municipality wants to exclude an area of the municipality served by combined sewers from the stormwater program, it must prepare a map as part of its Stormwater Pollution Prevention Plan which must be completed 12 months from the effective date of permit authorization.

5. COMMENT: Revise Part I, Section J.1.a of the Tier A Permit (and similar sections of the other general permits) to require the regulated entity to submit the Stormwater Pollution Prevention Plan (SPPP) to the owner of and operating entity for any municipal separate storm sewer (MS4) that receives discharges from the regulated entity's MS4. (37)

RESPONSE: The Department does not believe that many neighboring MS4s would have interest in receiving copies of other regulated entities' SPPPs. No entities that own or operate MS4s have

requested that the draft permits be changed in this regard. The Department does want to reserve the right for neighboring MS4s to obtain upon request a copy of the SPPP, and the language in the permits satisfies that need.

6. COMMENT: Areas serviced by combined sewer systems should be excluded from the requirements of the general permits since these areas are regulated under the general permit for Combined Sewer Systems. (8)

RESPONSE: Attachment A (“Contents of the Stormwater Pollution Prevention Plan”) of the Tier A, Highway, and Public Complex Permits, and Part I, Section B.4 of the Tier B Permit, specifically allow municipalities, Highway Agencies, and Public Complexes to exclude any “combined sewer area” from their stormwater programs. A map showing the boundaries of the combined sewer area must be included in the SPPP (or, in the case of the Tier B Permit, in the RFA), so the Department can identify those areas specifically excluded from the program.

7. COMMENT: This commenter expresses concern that the maps required with the Request for Authorization for the Public Complex Stormwater General Permit may not be available or obtainable within the timeframe required for the RFA submission. The commenter suggests that the Department extend the submission deadline for RFAs if the maps are not available. (15)

RESPONSE: The Department agrees in part with this comment and has changed the Public Complex Permit as issued final to address the concerns. The final permit only requires a US Geological Survey topographical map with the boundaries of the Public Complex marked distinctly on the map instead of the requirement in the draft permit for the RFA to include a map showing the boundaries of the Public Complex including the locations and names of buildings within the Public Complex and the location of any maintenance facilities. US Geological Survey topographical maps are readily available and it should be fairly simple to outline only the boundaries of the Public Complex. A map with the locations and names of buildings within the Public Complex and the location of any maintenance facilities will be required as part of the Public Complex’s SPPP which must be completed 12 months from the effective date of permit authorization.

8. COMMENT: Many items are already addressed in other legislation rules, e.g., salt shed, underground tank protection, drain inlet cleaning schedule, etc. (7)

RESPONSE: The Department has reconsidered the provisions regarding underground fuel storage tank protection in the Tier A, Highway, and Public Complex Permits, and determined that such protection is governed by N.J.S.A. 58:10A-21 et seq. and the Department’s Underground Storage Tanks rules at N.J.A.C. 7:14B, and should not also be governed by those provisions. Accordingly, the Department has changed Part I, Section F.8.b (“Fueling Operations”) and Attachment D of the Tier A, Highway, and Public Complex Permits as issued final to delete those provisions.

The Department is unaware of other environmental regulations that address the requirement for indoor storage of salt deicing materials or any requirement for mandatory storm drain inlet cleaning. Regulated entities do not need to repeat in their SPPP the text of other regulation, requirement or law. Regulated entities may simply cross reference the applicable regulation, requirement or law in their SPPP. The permit requirements are not intended to be inappropriately duplicative.

9. COMMENT: This commenter states that some activities required by the general permits may also need permits from other Department programs and other regulatory agencies. The commenter also states that enforcement actions should not be taken for noncompliance caused by delays in getting other required permits. (10)

RESPONSE: Part I, Section H.2.a.i. of the Tier A Permit allows a six-month extension to the deadlines contained in an implementation schedule for any of the SBRs if the Tier A Municipality submits a written request for such extension, at least 30 days prior to the deadline, establishing to the Department's satisfaction that the Federal, State and local permits and approvals necessary for the construction of best management practices could not with due diligence be obtained within the time period set forth in the permit. The same provision appears in the Highway Permit and the Public Complex Permit. Enforcement actions will not be taken for delays in procuring required permits if these provisions are met.

10. COMMENT: Nine commenters stated that the implementation schedules contained in the general permits are generally too aggressive and require too much to be completed in the first 12 months. The commenters request extensions to the implementation schedules to allow for planning and budgeting and also request greater flexibility within the schedules. (5, 7, 8, 9, 10, 13, 14, 15, 16, 19, 22)

RESPONSE: The Department has extended certain implementation schedules in the Tier A, Highway, and Public Complex Permits as issued final to periods greater than 12 months to allow for better planning and budgeting, and to lessen the initial costs of the program. Specifically, the Department has extended the implementation schedule for the following SBRs in the Tier A Municipal Stormwater General Permit from completing 12 months from the effective date of permit authorization (EDPA) and ongoing to completing 18 months from the EDPA and ongoing: Pet Waste Ordinance, Litter Ordinance, Improper Waste Disposal Ordinance, Wildlife Feeding Ordinance, Yard Waste Ordinance/Collection Program, Ordinance Prohibiting Illicit Connections, Road Erosion Control Maintenance, and Outfall Pipe Stream Scouring Remediation.

The Department has extended the implementation schedule for the following SBRs in the Highway Agency Stormwater General Permit from completing 12 months from the EDPA and ongoing to completing 18 months from the EDPA and ongoing: Pet Waste Control, Wildlife Feeding Control, Prohibiting Illicit Connections, Road Erosion Control Maintenance, and Outfall Pipe Stream Scouring Remediation.

The Department has extended the implementation schedule for the following SBRs in the Public Complex Stormwater General Permit from completing 12 months from the EDPA and ongoing to completing 18 months from the EDPA and ongoing: Pet Waste Control, Litter Control, Improper Waste Disposal Control, Wildlife Feeding Control, Prohibiting Illicit Connections, Road Erosion Control Maintenance, and Outfall Pipe Stream Scouring Remediation.

In addition, the Department has changed the Illicit Connection and MS4 Outfall Pipe Mapping SBR contained in the Tier A, Highway, and Public Complex Permits as issued final to allow for greater flexibility in implementation. Specifically, the general permits as issued final allow the permittee to divide the municipality, MS4, or Public Complex, as appropriate, into two (2) sectors

rather than four (4) quadrants for the purposes of MS4 outfall pipe mapping. The permittee is then required to map the MS4 outfall pipes in one sector within 36 months from the EDPA and to map all MS4 outfall pipes within 60 months from the EDPA.

11. COMMENT: Two (2) commenters believe there is some ambiguity in the phrasing of some of the implementation schedules contained in the Tier A Municipal Stormwater General Permit. Specifically they question whether the Department intends for municipalities to develop certain programs by 12 months from the EDPA, or initiate planning of the program by 12 months from the EDPA. (11, 35)

RESPONSE: The Department believes that some of the confusion may result from the commenters relying on the Tier A Matrix developed by the Department rather than actually referring to the draft permit for the specific language. The Department, however, has clarified each implementation schedule in each general permit as issued final to prevent any potential confusion. The Department intended that programs are to be fully developed by the date contained in the implementation schedule and at that time, the programs would then be implemented going forward.

12. COMMENT: The commenters believe the Statewide Basic Requirements contained in the draft general permits should be prioritized to emphasize the direct improvement of water quality and to better use limited finances available to regulated entities. (10, 14)

RESPONSE: The Department agrees with the commenters and believes that it has prioritized the permit requirements in an attempt to provide the biggest environmental “bang for the buck.” The Department has prioritized the educational requirements (including storm drain inlet labeling) because they are likely to be among the less expensive permit requirements, and because the Department will be providing most of the educational content. In addition, watershed organizations will also be able to provide assistance to municipalities in implementing the educational components of the permit. The Department has also prioritized street sweeping, stormwater facility maintenance (in particular, catch basin cleaning), the illicit connection elimination program, and storm drain inlet retrofitting since it believes that these SBRs provide a large environmental benefit. The Department has extended the implementation schedule for the adoption and enforcement of a number of ordinances required by the Tier A, Highway, and Public Complex Permits from 12 months to 18 months (see response to comment 10 above) to provide for additional time, to allow better budgeting, and to lessen the initial costs of the program.

13. COMMENT: The commenter believes the Post-Construction Stormwater Management in New Development and Redevelopment SBR contained in the Tier A Permit should state that it only applies to applications for new development and redevelopment projects made to the municipality after a certain date. (21)

RESPONSE: This SBR requires compliance with the Stormwater Management rules (N.J.A.C. 7:8), either expressly or through requirements incorporated in the Residential Site Improvement Standards (RSIS) at N.J.A.C. 5:21-7.5. The Department proposed to repeal and replace the Stormwater Management rules under a rule proposal published in the January 6, 2003 issue of the New Jersey Register (35 N.J.R. 119(a)).

Under a separate rule proposal published in the September 15, 2003 issue of the New Jersey Register (35 N.J.R. 4220(a)), the Department re-proposed the definition of “major development” in the then-pending Stormwater Management rule proposal, and also proposed a new applicability section, N.J.A.C. 7:8-1.6. The Department re-proposed the definition and the new applicability section (a “grandfathering” provision) to clarify the Department’s intent regarding the applicability of the new Stormwater Management rules to major development. Among the issues addressed in the September 15, 2003 proposal is grandfathering of projects based on their stage in the approval process under the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 et seq. The Department has responded to comments regarding this issue in the adoption of N.J.A.C. 7:8 published in the February 2, 2004 issue of the New Jersey Register.

At N.J.S.A. 40:55D-49, preliminary approval under the MLUL (but not the submission of an application) confers upon the applicant certain rights that are not eliminated by Department rules or permits, including the Tier A Permit. However, N.J.S.A. 40:55D-49 does not prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety.

The Department believes that the applicability of ordinances and RSIS provisions referenced in this SBR to applications made on various dates should not be addressed in the Tier A Permit, but should be governed by N.J.A.C. 7:8-1.6, RSIS operative dates or grace periods (see the rule proposal published in the September 2, 2003 New Jersey Register at 35 N.J.R. 3981(a)), N.J.S.A. 40:55D-49 and -52, and established legal principles applicable to municipalities and other governmental entities (the “time-of-decision rule” and recognized exceptions to that rule). The Department further notes that under the Tier A Permit implementation schedule for this SBR, the municipal stormwater control ordinance required by this SBR might not take effect until many months after the EDPA, but municipalities must ensure upon the EDPA that any residential development or redevelopment projects that are subject to the RSIS for stormwater management comply with those standards.

13A. COMMENT: This commenter states that the municipal planning board is concerned that adequate time is not being offered to prepare the stormwater management plan required by the Department. (22)

RESPONSE: The Department first notes that it has clarified the Post-Construction Stormwater Management in New Development and Redevelopment SBR in the Tier A and Tier B Permits as issued final by requiring the municipal stormwater management plan (or amendments thereto) and the municipal stormwater control ordinance(s) to be adopted, reexamined, and implemented “in accordance with N.J.A.C. 7:8-4” rather than “in accordance with N.J.A.C. 7:8.” This change makes it clear that new N.J.A.C. 7:8-4, rather than repealed N.J.A.C. 7:8, applies to this plan and ordinance.

The Tier A and Tier B Permits require municipalities to adopt a municipal stormwater management plan in accordance with N.J.A.C. 7:8-4 within 12 months of the effective date of permit authorization. This implementation schedule helps to ensure that municipalities throughout the State move forward in implementing important design and performance standards in the new Stormwater Management rules at N.J.A.C. 7:8-5.

As discussed in the responses to Comments 335 through 341 in the notice of adoption for the Stormwater Management rules (N.J.A.C. 7:8) published in the February 2, 2004 issue of the New Jersey Register, the Department is providing guidance material in the form of a model stormwater management plan, model stormwater control ordinance, and the New Jersey Stormwater Best Management Practices Manual (BMP Manual) to enable efficient implementation of municipal stormwater management requirements, including the requirement to prepare the municipal stormwater management plan. The Department will provide a copy of the model plan and ordinance and the BMP Manual to all municipalities. In addition, the Department has provided and will continue to provide training to local officials. The Department believes that with this guidance and training, municipalities will be able to prepare and adopt a municipal stormwater management plan within the deadline in the permits.

13B. COMMENT: This commenter states that it is the Department's intent to encourage the development of regional stormwater management plans, yet permits issued to municipalities pursuant to N.J.A.C. 7:14A-25 provide no incentive to participate in that process since they must prepare a municipal stormwater management plan within one year of the date of permit issuance. A municipality must then incur additional expense in amending their municipal plan if a regional plan is later approved. It is suggested by the commenter that municipalities that elect to participate in regional planning be granted an extension of time to complete their municipal stormwater management plan. (28)

RESPONSE: The Department encourages the development of regional stormwater management plans by, for example, offering funds, as available, for their development. However, the regional stormwater management planning process may take considerably more time to complete than municipal stormwater management plans. The Tier A and Tier B Permits require municipalities to adopt a municipal stormwater management plan in accordance with N.J.A.C. 7:8-4 within 12 months of the effective date of permit authorization. This implementation schedule ensures that municipalities throughout the State move forward in implementing important new design and performance standards in N.J.A.C. 7:8-5. Allowing for extensions to participate in a regional plan may considerably delay the process of implementing improved control of stormwater runoff from new development and redevelopment projects.

14. COMMENT: Two (2) commenters requested that retrofitting of existing storm drain inlets required by the Tier A Municipal Stormwater General Permit be limited to commercial areas, or to reconstruction rather than repaving, repairing, reconstruction or alterations of road surfaces. (17, 21)

RESPONSE: A significant amount of solid and floatable materials (e.g., trash) found in surface waters (e.g., rivers, lakes, bays and the ocean) is conveyed through storm drain inlets along roadways and at other locations in the State. The design standard for storm drain inlets contained in Attachment C of the Tier A, Highway, and Public Complex Permits will reduce the delivery of these materials to the State's waters by reducing the size of each individual clear space in both the curb opening and the horizontal grate. Floatable materials are highly visible and pose a significant threat to both marine mammals and birds. Solids from streets load receiving waters with sediment, often containing toxic elements from leaking vehicle fluids and wearing parts (tires, brake pads, and brake rotors and drums). Data from Clean Ocean Action's 2002 Beach Sweep indicate that 221,472 individual pieces of waste material were collected from New Jersey beaches. Nearly 67 per cent of those materials collected were

plastic. While the design standard for storm drain inlets will not significantly reduce the amount of sediment discharged to surface water, the design standard should significantly reduce the amount of many solid and floatable materials. Other SBRs contained in the permits, specifically street sweeping and stormwater facility maintenance, will target, among other things, the reduction of the discharge of solids and sediment in stormwater discharges.

In initial discussions the Department contemplated requiring the retrofitting of all storm drain inlets within the first five-year permit cycle. After discussions with the Municipal Stormwater Advisory Group and others in the regulated community, the Department agreed to the more flexible language that appears in the general permits. While the requirement in the permits to retrofit existing storm drain inlets during repaving, repairing, reconstruction or alterations of streets won't ensure that all storm drains are retrofitted in 5 years, it will ensure that eventually, all storm drain inlets are retrofitted (unless they meet one of the exemptions provided). The Department therefore did not further reduce the storm drain inlet retrofitting requirement by limiting it to commercial areas or reconstruction projects.

15. COMMENT: These commenters raised general concerns that the design standard for storm drain inlets for both new construction and retrofitting, contained in Attachment C of the draft general permits, would alter hydraulic operation and result in increased street flooding. (8, 11, 25, 30)

RESPONSE: Design standards for storm drain inlets for both new construction and retrofitting in Attachment C of the Tier A, Public Complex, and Highway Permits contain exemptions to the design standard in situations where the design standard would cause inadequate hydraulic performance (e.g., flooding). Specifically, Attachment C allows for the review agency (the Public Complex, Highway Agency, or Tier A Municipality, not the Department) to exempt individual storm drain inlets from the standard for the grate and/or curb opening if the design standard would cause inadequate hydraulic performance. In new development and redevelopment projects the review agency needs to consider whether the inadequate hydraulic performance could be overcome by additional or larger storm drain inlets that do meet the design standard. Since the design standard for storm drain inlets does contain an exemption for hydraulic performance, the Department does not believe increased flooding should be an issue if the regulated entities use due diligence in reviewing their own retrofitting and reviewing both their own and private developers' installation of storm drain inlets in new development and redevelopment projects.

16. COMMENT: This commenter believes that the storm drain inlet design standard contained in Attachment C of the general permits should have been subject to a pilot program of field testing prior to Statewide implementation to prevent the need to spend money in the future to correct street flooding problems caused by the design standard. (8)

RESPONSE: The design standard contained in Attachment C of the Tier A, Public Complex and Highway Permits allows use of a New Jersey Department of Transportation design that is currently being installed and used throughout the State. In addition the design standard contains a hydraulic performance exemption as explained in response to comment 15 above.

17. COMMENT: This commenter states that:

No existing foundry offers a casting that meet the requirement of maximum curb openings of 7 square inch clear space and 2 inch across one dimension nor do any revised hydraulic capacity charts exist and that the words “or best available technology” should be inserted in the standard.

The term “(in)adequate hydraulic performance” should be defined to include the words “i.e. (in)capable of collecting the surface water runoff tributary to it for an appropriate design storm (by calculation showing the existing (un)modified inlet capacity is sufficient). Where expansion of the collection system is practicable to address floatable removal standards, further modifications must be anticipated in the general infrastructure improvement plan.”

Adequate hydraulic performance should not be limited to “sag points.”

It will be important to require hydraulic capacity charts in a certification requirement for castings.

A clarification of the need for the double standard is requested where meeting the “Curb Opening” standard should be sufficient. The standard of 0.5 inch bar screening will not be applicable for overland runoff, does not comprise an achievable exemption, and should be deleted.

A third alternative design exemption should be included. “Where any regional device or combination of devices between outfalls or culverts can be shown to limit the occurrence of floatables in accordance with the “Curb Opening” standard and have demonstrated adequate hydraulic performance.” (4)

RESPONSE: The comment incorrectly described the curb-opening inlet design standard in Attachment C of the draft Tier A, Public Complex and Highway Permits (and in Attachment A of the draft Tier B Permit). That standard did not require maximum curb openings of 7 square inch clear space **and** 2 inch across one dimension (emphasis added). However, the Department has clarified this standard in these permits as issued final to read: “Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two or more clear spaces) shall have an area of no more than seven (7.0) square inches, or be no greater than two (2.0) inches across the smallest dimension.” This change makes it clear that if the curb opening has a single clear space that is, for example, no greater than two inches across the smallest dimension (a curb opening design already in common use), that curb opening does **not** have to be divided into individual clear spaces.

The curb-opening inlet design standard is not a radical departure from many existing curb openings being used throughout the State, and is based on a design currently in common use by the New Jersey Department of Transportation. Castings that meet this standard are currently produced by major foundries. Revised hydraulic capacity charts are not necessary because basic design principles for determining adequate hydraulic performance are well established. In addition, because castings that meet the curb opening design standard do exist, the term “or best available technology” does not need to be added to the curb opening design standard language. The Department does not believe that any substantial change is required in engineering calculations, or that any certification requirement is needed.

The Department does not agree with the commenter that the permit should require the municipality or private contractor to provide calculations showing adequate hydraulic capacity or inadequate hydraulic capacity. The Department wants to give the review agency (in most cases the municipality) flexibility in determining what is adequate hydraulic performance. If the review agency believes, using protocol the agency chooses, that the storm drain inlet design standard would cause inadequate hydraulic performance, then the agency may deviate from the standard.

The Department agrees with part of the comment and has changed the hydraulic performance exemptions in Attachment C of the Tier A, Public Complex and Highway Permits (and in Attachment A of the Tier B Permit) as issued final to remove reference to “sag points.” A hydraulic performance exemption can now be claimed by the review agency for new development and redevelopment projects at any location where the review agency determines that the design standard would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets that meet the standards, and for retrofitting of existing storm drain inlets at any location where the review agency determines that this standard would cause inadequate hydraulic performance.

The Department provides Alternative Device Exemptions in Attachment C of the Tier A, Public Complex and Highway Permits (and in Attachment A of the Tier B Permit) that exempt the regulated entity from meeting the storm drain inlet design standard, for both new development and retrofitting, if the stormwater flows are ultimately conveyed to a treatment device designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through a rectangular space four and five-eighths inches long and one and one-half inches wide (this option does not apply for outfall netting facilities) or a bar screen having a bar spacing of 0.5 inches. This treatment device could be, but does not have to be, a regional device or combination of devices.

The option of preventing delivery of all solid and floatable materials that could not pass through a bar screen having a bar spacing of 0.5 inches (“bar screening option”) is consistent with Solids/Floatables control measures in the Department’s existing Combined Sewer Overflow (CSO) program, which addresses overland runoff as well as sanitary sewage discharged into and through combined sewers (see the CSO General Permit available from the Department’s Division of Water Quality website at www.state.nj.us/dep/dwq). It would be inconsistent for the Department not to accept, for separate storm sewer discharges, devices that the Department accepts for these CSO control measures. The Department does not believe this creates a “double standard” as the commenter suggests, but actually provides consistency between the Municipal Stormwater Regulation Program and the Department’s CSO program, which regulates some of the same municipalities that are regulated in the Municipal Stormwater Regulation Program. If the design standards for grates and curb-opening inlets are met, then the Alternative Device Exemptions including the bar screening option do not apply. For these reasons, the Department does not agree with the commenter that the bar screening option should be deleted.

The Department also does not agree with the commenter’s proposed addition to the Alternative Device Exemptions, because it would not control stormwater collected by grates in pavement and other ground surfaces, and would be significantly less protective than the Department’s storm drain inlet design standard and the two Alternative Device Exemptions provided in the permits.

The Department has corrected Part I, Section F.7.b.1 in the Tier A, Public Complex and Highway Permits to refer to “Exemptions” rather than to “Conditions Where Standard Does Not Apply.”

18. COMMENT: The commenter stated in oral testimony that municipal funds might be better spent on other ways of controlling nonpoint pollution rather than storm drain inlet retrofitting. The commenter also stated that additional information would be provided in formal written comments. (34)

RESPONSE: The Department did receive additional written comments from the Mayor of the Borough of Madison, however those comments did not expand on other ways municipal funds could be spent to better control nonpoint pollution. Therefore the Department can only address the commenter’s concern regarding storm drain inlet retrofitting. A significant amount of solid and floatable materials (e.g., trash) found in surface waters (e.g., rivers, lakes, bays and the ocean) is conveyed through storm drain inlets along roadways and at other locations in the State. The design standard for storm drain inlets contained in Attachment C of the Tier A Permit will reduce the delivery of these materials to the State’s waters by reducing the size of each individual clear space in both the curb opening and the horizontal grate. Floatable materials are highly visible and pose a significant threat to both marine mammals and birds. The Department believes that the retrofitting requirement of the Tier A Permit coupled with the design standard in Attachment C is a cost effective way of controlling certain solid and floatable materials.

19. COMMENT: The commenter states that while most storm drain inlet grates probably conform to the new requirements, the need to change the “curb piece” on all resurfacing projects will be an economic hardship for a questionable environmental benefit. (9)

RESPONSE: The Tier A, Public Complex and Highway Permits do not require that regulated entities change the curb piece on all resurfacing projects. The permits require the retrofitting of existing storm drain inlets to meet the standard contained in Attachment C of the permit. This could be accomplished by replacing the curb piece as suggested by the commenter, but may also be accomplished through simpler and less expensive retrofitting. The curb opening could be made to meet the standard by affixing a steel plate or bar that reduces the size of the curb opening to no greater than 2” across the smallest dimension. These retrofits have already been done in some municipalities and examples (pictures) were shown at the Department’s three regional workshops for municipal officials held on May 29 (Newark), June 11 (Glassboro), and June 18, 2003 (New Brunswick). Additionally, information on less expensive retrofitting options will be discussed in the Department’s Guidance Document, which will be made available to each regulated entity.

20. COMMENT: The commenter states that she supports the storm drain inlet retrofitting requirement, that it is a good start, not terribly onerous, and should keep floatables out of the waters of the State. The commenter believes that storm inlet retrofitting will become another element of municipalities’ repaving schedule and that many municipalities probably already started retrofitting for bicycle safety. The commenter also states that from an environmentalist perspective, the Department should have taken a step further and required retrofitting with a storm interceptor (commercially available manufactured treatment device). She believes that this would have resulted in improved water quality, but from a practical perspective, realizes that it is unlikely to happen. (1)

RESPONSE: The Department acknowledges the commenter's support of the storm drain inlet retrofitting requirement. The Department's view, after consultation with local and regional planners and stormwater managers, is that extensive structural retrofits of small MS4s should not be implemented before completion of regional analysis and planning.

21. COMMENT: Two commenters state that they conduct road resurfacing activities on a regular basis in accordance with an established budget. The storm drain inlet retrofitting requirement could increase the costs of resurfacing, with one commenter estimating by as much as 50 to 100 percent. Costs would further increase in those locations where retrofitting would require additional construction activities and possible roadway expansion to prevent flooding. Since flooding cannot be tolerated under any circumstance, the commenter requests that the provision be eliminated entirely, or at least in those instances that would require significant construction and/or the expenditure of significant funds. (27, 30)

RESPONSE: The Highway, Tier A, and Public Complex Permits do not require that regulated entities replace storm drain inlets during all resurfacing projects. The permits require the retrofitting of existing storm drain inlets to meet the standard contained in Attachment C of the permit. This could be accomplished by replacing the storm drain inlet or can be accomplished through simpler and less expensive retrofitting, as discussed in the response to Comment 19 above. In addition, the design standard in Attachment C has an exemption in situations where the design standard would cause inadequate hydraulic performance (e.g., flooding). Specifically, Attachment C allows for the review agency (the Public Complex, Highway Agency, or Tier A Municipality, not the Department) to exempt individual storm drain inlets from the standard for the grate and/or curb opening if the design standard would cause inadequate hydraulic performance. Based on the above, the Department does not agree that complying with the retrofitting requirement would increase resurfacing costs by 50 to 100 percent, or that retrofitting would require additional construction activities and possible roadway expansion to prevent flooding.

The Department also notes that it has changed the "Storm Drain Inlets" SBR in these permits as issued final to provide that the retrofitting requirement is not triggered by repair of individual potholes.

22. COMMENT: The commenter suggests that an aggressive road sweeping, litter control, and trash/debris cleanup should warrant an exemption from the storm drain inlet retrofitting requirement in the Highway Agency Stormwater General Permit. If such an exemption is not included, then the implementation schedule should be extended to a minimum of 24 months from the effective date of permit authorization. In addition, the commenter seeks the extension of the implementation schedule to provide sufficient time to deal with major resurfacing projects in planning and nearing construction. (27)

RESPONSE: Unlike road sweeping, litter control, and trash/debris cleanup activities, which for the most part occur only periodically, and which may vary from year to year because of budget or personnel changes, storm drain inlet retrofitting results in a passive and essentially permanent means of preventing the delivery of certain solid and floatable materials to the State's waters. In regard to the magnitude and costs of such retrofitting, see the responses to Comments 19 and 21 above. The Department has changed Attachment C in the Highway, Public Complex, and Tier A Permits as issued

final to add an exemption for storm drain inlet retrofitting that excludes repaving, repairing, reconstruction or alterations projects that began construction prior to March 3, 2004, and projects that were awarded bid prior to March 3, 2004.

23. COMMENT: The commenter states that the installation of storm drain inlets meeting the design standards listed in the draft permit would increase the cost of the Authority's construction and provide only limited benefits. (27)

RESPONSE: The design standard contained in Attachment C of the Tier A, Public Complex and Highway Permits (and in Attachment A of the Tier B Permit) is based on a design, used by the New Jersey Department of Transportation, which is currently being installed and used throughout the State.

24. COMMENT: The commenter states that the draft Tier A Permit includes a design standard for storm drain inlet curb openings that each clear space shall have an area of no more than 7 square inches, or be no greater than 2 inches across the smallest dimension. The Jersey City Municipal Utilities Authority (JCMUA) standard curb piece has openings which are 3 inches wide and 3 inches high with the top of the opening being rounded. The JCMUA has been utilizing this catch basin design as its standard for 10 years for both the combined and separate areas of Jersey City with very good success. The commenter requests that the standard be modified to allow the JCMUA design. (3)

RESPONSE: First it should be noted that the storm drain inlet design standard in Attachment C of the Tier A, Public Complex and Highway Permits applies only to storm drains that are part of (or discharge into) MS4s, and does not apply to storm drains that discharge into combined sewers. The Department has changed Attachment C of these permits as issued final to add an exemption for storm drain inlet retrofitting stating that existing curb-opening inlets do not need to be retrofitted if each individual clear space in the curb opening has an area of no more than nine (9.0) square inches. This change exempts JCMUA or any other regulated entity from having to retrofit such curb openings during repaving, repairing, reconstruction or alterations. It is important to note that such regulated entities must still comply with the curb-opening inlet design standard in Attachment C with respect to new development or redevelopment projects, and to existing curb-opening inlets that do not qualify for this exemption.

25. COMMENT: One commenter believes that fertilizer/pesticide education is already established under the Pesticide Licensing Program and appears to be a redundant program. In addition most municipalities have minimized application and sought organic alternatives because of shrinking funding.

Another commenter states that pesticides and fertilizers may be needed in farm areas and difficult to control in private applications.

A third commenter believes the better public education will help encourage better management of fertilizers and pesticides and prevent the dumping of these things down storm drains. (2, 7, 33)

RESPONSE: The Federal Insecticide, Fungicide and Rodenticide Act of 1972 (FIFRA) required each state to set up a program to certify users of pesticides. The New Jersey Department of Environmental Protection began its Pesticide Control Program (PCP) in 1975. State regulations for

pesticide control (N.J.A.C. 7:30) set forth the requirements of the program. This certification program is designed to facilitate, demonstrate, and maintain an acceptable competency in the safe use of pesticides by certified pesticide applicators within New Jersey. However the Pesticide Control Program and its enabling regulations do not require providing education to the public on the proper application and use of pesticides and fertilizers or their alternatives. The Department agrees and recognizes that education is an important step in preventing nonpoint source (NPS) pollution and reducing both nutrients and pesticides in stormwater runoff. It is important to note that the Tier A and Tier B Permits only require public education and do not control, or require the municipality to control, commercial or private applications.

26. COMMENT: One commenter states that their Agency views public outreach and education as critical to better managing ordinary things, such as lawn care, pet waste, and trash, and is pleased to see a stronger emphasis placed on NPS pollution prevention public education.

Another commenter states that their township is currently labeling storm drain inlets with the assistance of Boy Scouts as part of an education campaign. (29, 36)

RESPONSE: The Department agrees that public education and outreach is an important part in improving stormwater quality, and acknowledges the commenter's support. In addition, the Department recommends that educational activities like storm drain labeling be done with local volunteers like the Boy Scouts or Girl Scouts, and applauds the commenter's township for being proactive.

27. COMMENT: The commenter expresses a general dissatisfaction with the permit requirement for an educational "annual event" and questions why it is a permit requirement. The commenter also questions whether Storm Drain Labeling is required if the catch basins act as seepage pits and discharge into the ground. (17)

RESPONSE: The Department believes that public education and outreach is an important part improving stormwater quality and believes the annual event is a low cost and effective way for municipalities to reach their residents. The annual event may be part of an existing event (e.g., 4th of July celebration, Earth Day) already conducted by the municipality or may be part of a larger event conducted by another entity in the area (e.g., Agriculture Field Day at Rutgers University, County Fair) as long as residents are welcome to attend. Additional information and suggestions about the annual event will be included in the Department's guidance document. The Department retained the "annual event" requirement in the general permits.

The stormwater general permits make no distinction in the requirement to label storm drain inlets regardless of whether the stormwater discharges to the surface waters or groundwaters of the State. The dumping of deleterious substances, such as motor oil, has a negative impact on both surface waters and groundwaters. The Department recommends that in instances where a storm drain discharges to groundwater, the regulated entity label the basin with an appropriate message like "No Dumping, Drains to Groundwater" or other similar message. Additional information and suggestions about storm drain inlet labeling will be included in the Department's guidance document.

28. COMMENT: The commenter states that a standardized labeling protocol should be developed in the permit for use throughout the State (type of label and how they are to be affixed). (21)

RESPONSE: The Department considered with this issue when it developed the general permits and wanted to develop a standard label for use throughout the State. However, many municipalities, counties and watershed organizations have already begun the process of storm drain inlet labeling. The Department did not want to require those proactive entities to go back and re-label storm drain inlets. In addition, it is important to realize that the education aspect of the act of labeling the storm drain inlets is at least as important as the message itself. That is why the Department strongly recommends that regulated entities coordinate with youth groups to make them part of the process. They learn about the environment, clean water and nonpoint pollution as part of the storm drain inlet labeling activity. The Department will be providing specific information in its guidance document regarding storm drain inlet labeling including suggested messages and how to coordinate the activity.

29. COMMENT: The commenter states that ordinances regarding pet waste, litter and wildlife feeding are already enforced by the Health Department. The Health Department will require additional personnel for enforcement and to assure compliance. (7)

RESPONSE: Municipalities with existing municipal ordinances that meet the minimum standard contained in the Tier A Permit do not need to do anything other than enforce their municipal ordinance. This enforcement may be accomplished through local Code Enforcement Officers, the Board of Health and local police, or combination thereof. Dependent of each municipality's existing staff, some municipalities may find that they need to hire additional personnel to enforce ordinances or to comply with other aspects of the general permits.

30. COMMENT: The commenter states that if the intent of the Pet Waste Ordinance is to require pet owners to properly dispose of their pet's solid waste in their own backyard, that this would be unenforceable and/or an invasion of privacy. (9)

RESPONSE: To address this comment and clarify other aspects of the Pet Waste Ordinance SBR, the Department has changed the minimum standard in the Tier A Permit as issued final as follows:

"Minimum Standard – Tier A Municipalities shall adopt and enforce an ordinance that requires pet owners or their keepers to immediately and properly dispose of their pet's solid waste deposited on any property, public or private, not owned or possessed by that person..."

The Department has also clarified the minimum standard for the Pet Waste Control SBR in the Highway and Public Complex Permits as issued final to regulate pet "keepers" as well as owners, to require that removal of pet waste for proper disposal occur "immediately," and to make it clear that rest areas, service areas, and Public Complex property are places from which "deposited" pet waste is to be properly disposed (not places where proper disposal must occur).

31. COMMENT: The commenter states that the Statewide recycling program has already established proper handling and disposal guidelines that the municipality is currently following and therefore the general permit requirements are redundant. (34)

RESPONSE: The Tier A Municipal Stormwater General Permit includes a Statewide Basic Requirement (SBR) for Waste Disposal Education. This SBR requires as part of a local public education program that Tier A Municipalities distribute information to residents and businesses within the municipality regarding the identification, proper handling and proper disposal of wastes and the hazards associated with illicit connections and improper disposal of waste. The subject matter of this educational requirement is broader than that of State or municipal recycling programs. In addition, the permit requirement is mandated by United States Environmental Protection Agency (USEPA) regulations and is, more specifically, based on one of the six minimum control measures that are required to be included in a municipality's stormwater program (see 40 C.F.R. 122.34(b)(3)(ii)(D)). Additional information regarding waste disposal education will be included in the Tier A Municipal Stormwater General Permit guidance document.

32. COMMENT: One commenter states that although the municipality currently has an ordinance restricting the feeding of geese, would they be required to adopt one restricting the feeding of all wild animals, including birds? A second commenter requests that the wildlife feeding ordinance should contain either an inclusion or exclusion for bird feeders. (7, 21)

RESPONSE: The Tier A Permit requires a Wildlife Feeding Ordinance that prohibits the feeding in any public park or on any other property owned or operated by the Tier A Municipality of any wildlife (excluding confined animals, for example, wildlife confined in zoos, parks, or rehabilitation centers or unconfined wildlife at environmental education centers). Therefore, a municipality that has an ordinance that only prohibits the feeding of geese must amend the ordinance to prohibit the feeding of any wildlife (including birds) on such property with exclusions noted above. As also noted above, however, the Wildlife Feeding Ordinance required by the permit is limited to the feeding of wildlife in any public park or on any other property owned or operated by the Tier A Municipality. With that in mind, a bird feeder in any public park or on any other property owned or operated by the Tier A Municipality (excluding environmental education centers) would be in violation of the ordinance. However, a bird feeder located on property not owned or operated by the Tier A Municipality (e.g., a private residence) would not be in violation of the ordinance. The Department has not added an inclusion or exclusion for bird feeders in the Wildlife Feeding Ordinance language because undomesticated birds are clearly "wildlife," and because feeding of such birds should be regulated in the same manner as feeding of other wildlife.

The Department has changed the Wildlife Feeding Ordinance or Wildlife Feeding Control SBRs in the Tier A, Highway, and Public Complex Permits as issued final by adding "unconfined wildlife at environmental education centers" to the kinds of wildlife that are outside the scope of these SBRs. This change recognizes that feeding of this unconfined wildlife can serve a valid educational purpose.

33. COMMENT: One commenter stated that the Yard Waste Ordinance/Collection Program SBR places an extreme burden on both homeowners and municipalities to establish a strict schedule, and that the residents would be burdened with storage problems between pickups.

Another commenter suggests that the Department strengthen this SBR by including a requirement that no yard waste be disposed of in a public stormwater easement or within 10 feet of a public yard drain. Changes in ownership frequently result in inadvertent grading or composting that blocks these

swales. The ordinance should also prohibit landscape contractors from dispersing waste into streets with leaf blowers. (5, 21)

RESPONSE: The Department has changed the Yard Waste Ordinance/Collection Program SBR in the Tier A Permit as issued final to reduce burdens on municipalities and residents. Whereas the SBR in the draft permit allowed municipalities, as one of two options, to adopt and enforce an ordinance that prohibits “placing yard wastes in the street,” the SBR in the permit as issued final allows municipalities, as one of two options, to adopt and enforce an ordinance that prohibits “placing non-containerized yard wastes in the street.” If municipalities pass such an ordinance they may pick up containerized yard waste at whatever frequency or schedule they choose, and residents may place containerized yard waste in the street instead of storing yard waste.

Also, whereas the second option in the draft permit (the yard waste collection and disposal program) provided that all non-containerized yard wastes “may be placed at the curb one week prior to the collection,” the yard waste collection and disposal program in the permit prohibits all non-containerized yard wastes “from being placed at the curb or along the street more than seven (7) days prior to scheduled collection.” These changes reduce the strictness of the schedule by preventing any interpretation that yard waste must be placed at the curb exactly one week (and not a shorter period) prior to collection, and by requiring residents to know only the scheduled date of collection (not the actual date of collection, which might be earlier or later). (A similar change was made in the Vegetative Waste SBR in the Public Complex Permit as issued final.)

The Department further notes that delayed performance of a scheduled monthly or other pickup does not necessarily result in noncompliance with yard waste collection program requirements. If, for example, pickup was scheduled for October 5 but is delayed until any other date in October for any reason, the requirement for monthly yard waste pickup in October has still been met. The requirements for pickup once in the spring and on “as needed” basis for the rest of the year (excluding October through December) also do not impose a strict schedule on municipalities. The requirement for pickup once in the spring can be met at any time in the spring, and the minimum standard expressly states that “the frequency of the ‘as needed’ pickups shall be determined at the discretion of the Tier A Municipality.”

This SBR is justifiable from an environmental standpoint, because it substantially reduces nutrients and solids loads to receiving waters. Even with the above mentioned changes to this SBR, however, this SBR may still prove to be challenging for Tier A Municipalities to implement from a public acceptability standpoint, because it directly impacts and inconveniences residents. To avoid increasing burdens on municipalities and residents, and because determining where a public stormwater easement begins or ends would be difficult for residents, the Department has declined to expand this SBR to include public stormwater easements or public yard drains. If blockage of such easements or drains by yard waste is known to be problem in a particular municipality, that municipality can at its discretion include such easements or drains in its ordinance. Grading is not a yard waste issue and is outside the scope of this SBR.

If a municipality chooses to adopt and enforce an ordinance that prohibits placing non-containerized yard wastes in the street, as opposed to developing the yard waste collection and disposal program, the ordinance would prohibit landscape contractors, or anyone else for that matter, from

blowing yard waste into the street with leaf blowers. If a municipality instead chooses to develop a yard waste collection and disposal program, then placement by landscape contractors of yard waste in the street for collection should not be regulated differently than placement by others of yard waste in the street for collection.

34. COMMENT: This commenter asks for the Department's definition of "containerized" as used in the Yard Waste Ordinance/Collection Program SBR and asks whether municipalities have to incur additional costs to buy buckets. (35)

RESPONSE: As it relates to the Yard Waste Ordinance/Collection Program SBR, "containerized" is intended to mean a trash can, bucket, bag or other vessel, that prevents the yard waste from spilling or blowing out into the street and coming into contact with stormwater. The Yard Waste Ordinance/Collection Program SBR does not require a municipality to supply residents with buckets or any other type of container for yard waste.

35. COMMENT: This commenter states that composting is impractical and that residents historically complain about neighbors composting piles and associated odors. (7)

RESPONSE: The Yard Waste Ordinance/Collection Program SBR does not require that residents compost their yard waste. The SBR only requires that the Tier A Municipality distribute information to residents as part of the Local Public Education Program regarding home composting and yard waste recycling. The Department intends to provide Tier A Municipalities with information sheets on home composting and yard waste recycling as part of the Tier A Municipal Stormwater Guidance Document. These information sheets would help residents properly manage their compost piles for optimum efficiency and output. A properly constructed and managed compost pile does not cause objectionable odors. In addition composting has many environmental benefits such as recycling yard waste, keeping yard waste off the streets, and reducing waste volume sent to landfills.

36. COMMENT: The commenter feels that the Department should review the requirement that yard waste be picked up monthly between October and December. The commenter believes that expanding the leaf pickups to monthly during the fall season is not cost efficient and would result in limited improvement to water quality. (6)

RESPONSE: The proper disposal of yard waste, including the especially large number of leaves in the fall, helps ensure that this waste does not end up in our storm sewer systems. When leaves and other yard waste are placed in the street and allowed to wash into storm drains, there can be several detrimental effects. Excess leaves and grass clippings clog stormwater infrastructure, contributing to street flooding and requiring extra maintenance from municipal public works departments. In addition, leaves and grass clippings that enter surface water bodies from the stormwater collection system add extra nutrients, remove oxygen through the decomposition process, and cause increased eutrophication, harming aquatic populations. In addition, leaves piled in the street during the fall months can create a safety hazard for drivers and pedestrians. The Department believes that a properly implemented yard waste collection program will help mitigate the detrimental effects of yard waste accumulating in the street and will result in improved water quality. Therefore the Department retained the language that requires monthly pickups of yard waste October through December, one pickup in the spring, and pickup on an "as needed" basis the rest of the year. Tier A Municipalities also have the option of

adopting and enforcing an ordinance prohibiting the placing of non-containerized yard waste in the street. If municipalities pass such an ordinance they may pick up containerized yard waste at whatever frequency or schedule they choose.

37. COMMENT: The commenter believes there should be an exception in the Yard Waste Ordinance/Collection Program SBR that extends the amount of time a municipality has to pick up yard waste resulting from major storms where local, county, State or Federally entities declare an emergency. (21)

RESPONSE: The Department has not included an exemption of the yard waste collection program requirements when an emergency is declared but will use its enforcement discretion in such instances. The Department also notes that delayed performance of a scheduled pickup does not necessarily result in noncompliance with these requirements. If, for example, pickup was scheduled for October 5 but is delayed until any other date in October because of a declared emergency or some other reason, the requirement for monthly yard waste pickup in October has still been met. There are probably very few major storm emergencies that should prevent monthly pickups of yard waste October through December, one pickup in the spring, and pickup on an “as needed” basis the remainder of the year.

38. COMMENT: The commenter believes the Yard Waste Ordinance/Collection Program SBR should be limited to the 10 foot buffer from storm sewers and that in November and December it may not be practical to pick up brush monthly when all manpower resources are devoted to leaf collection. (21)

RESPONSE: The Department believes there are significant environmental benefits from the implementation of the Yard Waste Ordinance/Collection Program SBR (see the response to Comment 36 above) that would be jeopardized if the Department only required the 10 foot setback of yard waste to storm drain inlets. The Department expects that its example ordinances for this SBR will define “yard waste” as “leaves and grass clippings.” Tier A Municipalities will have the discretion as to whether they will consider any kind of brush to be considered “yard waste.” Tier A Municipalities also have the option of adopting and enforcing an ordinance prohibiting the placing of non-containerized yard waste in the street. If municipalities pass such an ordinance they may pick up containerized yard waste at whatever frequency or schedule they choose.

39. COMMENT: Two commenters ask if an illicit connection is found as part of an illicit connection elimination investigation, is there a mandatory timetable to implement repairs? (11, 35)

RESPONSE: In the Tier A Stormwater General Permit, Part I, Section F.6 and Attachment B set forth the requirements for detecting, investigating, and eliminating illicit connections. In accordance with Attachment B, when an illicit connection is detected, Tier A Municipalities shall cite the responsible party for violation of the municipal ordinance that prohibits illicit connections (under Part I, Section F.6, Tier A Municipalities must pass an ordinance prohibiting illicit connection to the MS4 within 18 months from the effective date of permit authorization) and give the responsible party thirty (30) days to cease the prohibited non-stormwater discharge. When a responsible party fails to eliminate the discharge, Tier A Municipalities shall take the necessary steps to enforce their ordinance, including court action. In such instances the Department shall be notified by written correspondence so it is aware of any pending action and is able to provide assistance if needed. Part I, Section F.6 requires that all illicit connections found and subject to the ordinance prohibiting illicit connections

must be eliminated within six (6) months of the discovery. The phrase “and subject to the ordinance prohibiting illicit connections” was added in the Tier A Permit as issued final to clarify which illicit connections are subject to this requirement.

In the draft Tier A Permit, Part I, Section F.6 specified that “if an illicit connection cannot be located or is found to emanate from an adjacent MS4 operated by a separate entity, Tier A Municipalities must submit to the Department a written explanation detailing the results of the investigation.” In this section as issued final, the Department changed this language to read: “if an illicit connection cannot be located or is found to emanate from *another public entity*, Tier A Municipalities must submit to the Department a written explanation detailing the results of the investigation *and notify that public entity*.” This change recognizes that an illicit connection from another public entity may or may not be from a MS4, and that this other public entity should receive prompt notification so that this other public entity can initiate its own investigation or corrective action. Depending on the nature of this other public entity, this other public entity may or may not be subject to the ordinance prohibiting illicit connections. The Department also added this language at the end of Attachment B in this permit as issued final.

Under Part I, Section F.6 and Attachment B of the Highway Agency and Public Complex Stormwater General Permits, the Highway Agency or Public Complex is only responsible for eliminating illicit connections that are found to be emanating from its own operations. In those cases, the Highway Agency or Public Complex has six months to eliminate the illicit connection from when it is discovered. If the illicit connection is found to emanate from another entity, the Highway Agency or Public Complex must submit to the Department a written explanation detailing the results of the investigation. The Department’s enforcement personnel will then investigate the discharge from that point forward. If the illicit connection is found by the Highway Agency or Public Complex to emanate from another public entity, the Highway Agency or Public Complex shall also notify that entity. The requirement for the Highway Agency or Public Complex to cite the “responsible party” and give it 30 days to cease the non-stormwater discharge was deleted.

40. COMMENT: One commenter states that the outfall pipe mapping implementation schedule is the only Statewide Basic Requirement (SBR) that has a reasonable schedule. A second commenter states that the Illicit Connection Elimination and MS4 Outfall Pipe Mapping SBR should be less burdensome on the manpower resources of the municipality and that an overly burdensome regulation will result in less compliance. (9, 21)

RESPONSE: The Department recognizes that the outfall pipe mapping requirement is a major undertaking and has phased its implementation over a 60 month period. The long implementation schedule is one way the Department can attempt to reduce the burden on a regulated entity by spreading the work and costs out over a longer time frame. For the Tier A, Highway, and Public Complex Permits, the Department cannot exceed the 60 month implementation schedule as USEPA regulations require that regulated entities fully implement their stormwater program within five years from the date of permit issuance (40 C.F.R. 123.35(e); see also 40 C.F.R. 122.34(a)). In addition Department policy is that NJPDES permits shall not contain compliance schedules longer than the five year permit duration allowed under N.J.A.C. 7:14A-2.7.

However, the Department has changed the Illicit Connection and MS4 Outfall Pipe Mapping SBR in the Tier A, Highway, and Public Complex Permits as issued final to allow for greater flexibility in implementation. Specifically, the general permits as issued final allow the regulated entity to divide the municipality, MS4, or Public Complex, as appropriate, into two (2) sectors rather than four (4) quadrants for the purposes of MS4 outfall pipe mapping. The regulated entity is then required to map the MS4 outfall pipes in one sector within 36 months from the EDPA and to map all MS4 outfall pipes within 60 months from the EDPA.

In regard to the first commenter's general dissatisfaction with other implementation schedules contained in the general permits, the Department recognizes that the draft Tier A, Highway, and Public Complex Permits required the implementation of many SBRs within 12 months from the effective date of permit authorization. The Department has extended certain implementation schedules in these general permits as issued final to periods greater than 12 months to allow for better planning and budgeting, and to lessen the initial costs of the program. See the response to Comment 10 above for details.

As far as the work of the Illicit Connection Elimination and MS4 Outfall Pipe Mapping SBR itself being burdensome, the Department does not have much latitude. This SBR is based on one of the six minimum control measures mandated by USEPA (40 C.F.R. 122.34(b)(3); see also 40 C.F.R. 122.26(b)(2) and the discussion of "Illicit connection" at 35 N.J.R. 172). The procedures in the Tier A, Highway, and Public Complex Permits for detecting, investigating, and eliminating illicit connections are based on USEPA guidance and studies. The work of detecting and eliminating illicit connections can be extensive but is required by USEPA mandate and provides for significant environmental benefit.

41. COMMENT: The stormwater mapping, MS4 outfall pipe mapping, and illicit connection identification requirements put the cart before the horse. Most stormwater systems are not identified on consolidated mapping. The stormwater systems must be mapped first, which will identify the outfall pipes. The outfall pipes can be identified by USGS coordinates during the mapping process. The illicit connections and outfall scouring can then be researched. Large systems will require more time to identify and map. The time period for completion cannot be established by a simple four-quadrant method. The availability of engineering consultants and surveyors will be the limiting factor. The time period should be established by the number of USGS quadrants or parts thereof within the municipality. The remediation and abatement will be difficult to implement in densely developed areas and will require additional time to develop viable solutions. The mapping should be completed first before identifying solutions. (2)

RESPONSE: The Tier A, Highway, and Public Complex Permits only require permittees to develop a map showing the location of the end of all MS4 outfall pipes that are operated by the permittee and that discharge within the permittee's jurisdiction to a surface water body. These permits do not require the mapping of stormwater systems. The stormwater systems do not need to be mapped first in order to identify the outfall pipes. Permittees may locate outfall pipes by simply performing stream walks or through other investigations. The Department does recommend that permittees inspect outfall pipes for illicit connections and outfall pipe scouring while mapping outfall pipes, rather than after the mapping process is completed. However, the mapping does not need to be completed prior to beginning the illicit connection detection program or inspecting for stream scouring.

The Department recognizes that many regulated entities have not yet mapped their ends of their outfall pipes. The Department has changed the Illicit Connection and MS4 Outfall Pipe Mapping SBR in the Tier A, Highway, and Public Complex Permits as issued final to allow for greater flexibility in implementation. Specifically, the general permits as issued final allow the permittee to divide the municipality, MS4, or Public Complex, as appropriate, into two (2) sectors rather than four (4) quadrants for the purposes of MS4 outfall pipe mapping. The permittee is then required to map the MS4 outfall pipes in one sector within 36 months from the EDPA and to map all MS4 outfall pipes within 60 months from the EDPA. A permittee can map its outfall pipes on a more aggressive schedule as long as the permittee meets the minimum requirement.

The Department agrees that outfall pipes can be identified by USGS coordinates, but only requires mapping of the outfall pipes on a tax map prepared pursuant to N.J.A.C. 18:23A or on another map drawn to equal or more detailed scale. A municipality regulated under the Sewage Infrastructure Improvement Act (SIIA) regulations (N.J.A.C. 7:22A) may at its option use a preliminary or final map prepared pursuant to those regulations.

Because the Tier A, Highway, and Public Complex Permits do not require the mapping of stormwater systems, because the Department has changed these permits to allow for greater flexibility in implementation as discussed above, and because outfall pipes can be mapped on tax maps or on maps prepared pursuant to N.J.A.C. 7:22A, the Department does not believe that the availability of engineering consultants and surveyors will be the limiting factor. The Department also does not agree that USGS quadrants offer a better way of establishing the time period for completion of this SBR. A USGS quadrant might include a whole municipality with many outfall pipes, or might instead include very few of a municipality's outfall pipes.

In regard to the time available to remediate and abate illicit connections, the Department notes that although permittees are required to have developed and begun implementing a program to detect and eliminate illicit connections within 18 months from the EDPA, an initial physical inspection of all outfall pipes for illicit connections is not required until 60 months from the EDPA. In regard to difficulties in remediating and abating outfall pipe stream scouring, see the response to Comment 49 below.

42. COMMENT: One commenter stated that municipalities should do street cleaning within one week after snow melt as it removes a substantial source of pollutants to our waterways. Nine commenters stated that the requirement to sweep certain streets after each storm where deicing materials have been applied within one week of complete snowmelt, and within one week of any leaf collection is onerous for reasons including increased costs resulting from additional equipment purchase, increased manpower needed to meet the requirement, potential impracticability due to weather conditions in winter, and the use by many sweepers of water, which may cause hazardous conditions if it freezes during winter months. (2, 5, 6, 7, 9, 12, 17, 21, 23, 31)

RESPONSE: The Department agrees with the first commenter that a requirement to sweep streets after snow melt would provide potential environmental benefits. A requirement to sweep streets after leaf collections would also provide potential environmental benefits. However, based on the other concerns regarding street sweeping expressed in this comment and in the Summary of Public

Comments and Agency Responses in the notice of adoption for amendments to the NJPDES rules published in the February 2, 2004 issue of the New Jersey Register, the Department has changed the Tier A, Highway, and Public Complex Permits as issued final by deleting requirements for street sweeping after leaf collection and the application of deicing materials, and by qualifying street sweeping requirements with the phrase, “weather and street surface conditions permitting.”

43. COMMENT: One commenter states that the requirement for monthly street sweeping on roads and highways with a posted speed limit of 35 miles per hour or less in predominantly non-residential areas, will require a significant capital expenditure in new equipment and additional staffing for the municipal Public Works Department. The commenter suggests that the advantages of the proposed street sweeping be evaluated to determine if they are cost effective and would achieve significant improvements in water quality. (6)

RESPONSE: The Street Sweeping SBR in the draft Tier A Permit had a more restrictive description of what types of streets need to be swept monthly than the comment states. However, as a result of comments, the Department has changed the draft Tier A Permit as issued final to restrict further what streets need to be swept monthly, in order to reduce the financial burden on municipalities, and to attempt to target those areas that need sweeping most often, providing the greatest environmental benefit. Specifically, the Street Sweeping SBR in the Tier A Permit as issued final requires Tier A Municipalities to “sweep all municipally owned or operated curbed streets (including roads or highways) with storm drains that have a posted speed limit of 35 mph or less (excluding all entrance and exit ramps) in predominantly *commercial* areas at a minimum of once per month, weather and street surface conditions permitting” (emphasis added).

Similarly, the Department has changed the draft Highway Permit as issued final to limit some street sweeping requirements to certain streets in predominantly commercial areas. In addition, the Department changed that permit as issued final to require Highway Agencies other than County Highway Agencies to sweep all rest areas, service areas, maintenance yards, and all curbed streets (including roads or highways) that they own or operate with storm drains that have a posted speed limit of 35 mph or less (excluding all entrance and exit ramps), in predominantly commercial areas, at a minimum of once per quarter, weather and street surface conditions permitting. All remaining streets (including roads or highways) that they own or operate shall be swept at a minimum of once every two years. Based on discussions with the New Jersey Department of Transportation, the NJDEP believes that for streets operated by these agencies, the combination of sweeping certain streets in predominantly commercial areas once per quarter and sweeping all remaining streets once every two years is more cost-effective than sweeping certain streets in predominantly commercial areas monthly.

44. COMMENT: Three commenters ask the Department for the testing and disposal requirements for street sweepings and whether the Department’s Guidance (updated November, 2002) is mandatory. (11, 18, 35)

RESPONSE: The general permits do not, and more specifically, the Street Sweeping SBR does not, discuss testing and disposal requirements for street sweepings. Street sweepings shall be handled and disposed of in a lawful manner. The disposal of street sweepings is regulated by the Department’s Division of Solid and Hazardous Waste, Bureau of Resource Recovery & Technical Programs. The most recent guidance entitled **GUIDANCE DOCUMENT FOR THE MANAGEMENT OF**

STREET SWEEPINGS AND OTHER ROAD CLEANUP MATERIALS (updated 11/19/2002) may be found at <http://www.state.nj.us/dep/dshw/rrtp/sweeping.htm>. Additional questions regarding the handling and disposal of street sweepings should be directed to the Division of Solid and Hazardous Waste, Bureau of Resource Recovery & Technical Programs.

45. COMMENT: One commenter states that the Department should provide designated disposal sites and provide for testing of street sweeping materials and other debris generated from the implementation of Solids and Floatable Controls (Part I, Section F.7 of the Tier A Municipal Stormwater General Permit). In addition the commenter states that blanket permits should be issued by the Department to perform this work and that all fees should be waived. (21)

RESPONSE: The Department has developed the Municipal Stormwater Regulation Program and has issued four (4) general permits to implement USEPA's Phase II regulations. These Federal rules mandate certain minimum control measures to protect water quality. For example, the Federal rules require permittees to develop and implement "an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations." (40 C.F.R. 122.34(b)(6)). The Federal rules list more specific means of achieving this goal, including "controls for reducing or eliminating the discharge of pollutants from streets, roads, and highways," and "requirements to reduce floatables and other pollutants discharged from municipal separate storm sewers." These correspond to certain SBRs in the Tier A, Highway, and Public Complex Permits, such as requirements for street sweeping and catch basin cleaning.

As a result of the implementation of these SBRs, regulated entities may collect materials (street sweepings, catch basin cleanout residuals, and other solid wastes) that require proper disposal. Many of these regulated entities already collect such materials because they already perform activities such as street sweeping and catch basin cleaning. The Department will provide guidance on proper disposal of the materials, but is not responsible for providing testing or disposal sites for the materials. Guidance documents that will be issued with permit authorizations will contain specific information on testing and proper disposal. In addition, a list of available disposal sites and testing facilities are available through the Division of Solid and Hazardous Waste (DSHW), (609) 984-6985. The DSHW also has a guidance document **GUIDANCE DOCUMENT FOR THE MANAGEMENT OF STREET SWEEPINGS AND OTHER ROAD CLEANUP MATERIALS** available at <http://www.state.nj.us/dep/dshw/rrtp/bud.htm>.

Many permits issued by the Department may require the permittee to undertake activities that need another permit or approval, whether Federal, State or local. As an example, a NJPDES discharge permit may require treatment of a waste prior to discharge. In that scenario a treatment system may need to be designed and constructed. A separate Treatment Works Approval would then be required pursuant to N.J.A.C. 7:14A-22, in addition to any local approvals. This situation is analogous. The four (4) municipal stormwater general permits may require the permittee to undertake certain activities that need additional permits. It is the regulated entity's responsibility for securing such permits as necessary and paying any permit fees. The Department pursuant to Part I, Section H.2.i of the Tier A Permit (similar language is contained in the Highway and Public Complex Permits) may grant a six-month extension to any deadline contained in a SBR if the Tier A Municipality establishes that the delay was a result of obtaining Federal, State or local permits or approvals (see permit for specific requirements concerning this extension).

46. COMMENT: One commenter stated that the 12 month implementation schedule for the Road Erosion Control Maintenance program was insufficient. The commenter also stated that a specific inspection and maintenance frequency is not indicated for the Road Erosion Control Maintenance program. The commenter also stated that the draft permit does not differentiate between shoulders, embankments, ditches and soils owned by the New Jersey Turnpike Authority from those owned by others. In addition the draft permit does not distinguish between erosion caused by the Authority and erosion due to unrelated causes. (27)

RESPONSE: The Department recognizes that the draft Highway, Tier A, and Public Complex Permits required the implementation of many SBRs within 12 months from the EDPA. The Department has extended certain implementation schedules in these general permits as issued final to periods greater than 12 months to allow for better planning and budgeting, and to lessen the initial costs of the program. See the response to Comment 10 above for details. For the Road Erosion Control SBR, the implementation schedule in these permits was extended from 12 months from the EDPA (draft permits) to 18 months from the EDPA (final permits).

In addition, the Department has, in these general permits as issued final, changed other wording in this implementation schedule to clarify what is required by 18 months from the EDPA. Whereas the draft permits stated that within 12 months from the EDPA, permittees “shall comply with the Roadside Erosion Control Maintenance minimum standard,” the final permits state that within 18 months from the EDPA, permittees “shall have developed and begun implementing a roadside erosion control maintenance program in accordance with the minimum standard.” This change makes it more clear that even for correction and repair of existing erosion, implementation of this program does not have to be completed within 18 months from the EDPA.

Where existing erosion is widespread, the Department does not expect that this program will result in the repair of all such erosion in the initial five-year permit term. Rather, the Department expects this program to include an ongoing, good faith effort to accomplish such repair, which may not be completed until many years after the initial permit term.

No specific inspection and maintenance schedule is required by the Road Erosion Control SBR. The Department believes that the permittees should determine the frequency of their own inspections and maintenance. Based on inspections, areas found to need repair or maintenance should be noted and prioritized. Repairs should be completed as funds and manpower become available.

The Highway Permit (similar language is in both the Tier A and Public Complex Permits) specifically states that “Highway Agencies shall develop a roadside erosion control maintenance program to identify and repair erosion along streets (including roads or highways) operated by the Highway Agency...” This language clearly limits this maintenance program to the identification and repair of erosion along streets (including roads or highways) operated by the Highway Agency, in this case, the Authority. The Highway Agency does not need to repair erosion along streets that are not operated by that Agency. In addition, the Department interprets the words “shoulders, embankments, ditches and soils along these streets” in the Highway Permit to be limited to shoulders, embankments, ditches and soils for which the Highway Agency has, alone or along with other persons, primary management and operational decision-making authority (see the N.J.A.C. 7:14A-1.2 definition of

“operating entity”). Erosion along shoulders, embankments, ditches and soils for which the Highway Agency has such authority contributes to sediment discharge from the Highway Agency’s small MS4, is generally caused at least in part by the condition of land operated by the Highway Agency and by runoff from the Highway Agency’s street, and is properly controlled under the Highway Permit.

47. COMMENT: One commenter stated that the 12 month timetable to develop and begin implementing an outfall pipe stream scouring detection remediation and maintenance program is insufficient, and recommends that the timetable be increased to 24 months. (27)

RESPONSE: The Department has extended certain implementation schedules in the Highway, Tier A, and Public Complex Permits as issued final to periods greater than 12 months to allow for better planning and budgeting, and to lessen the initial costs of the program. See the response to Comment 10 above for details. For the Outfall Pipe Stream Scouring Remediation SBR, the implementation schedule in these permits was extended from 12 months from the EDPA (draft permits) to 18 months from the EDPA (final permits). The Department believes that 18 months provides adequate time for permittees to develop and begin implementing an outfall pipe stream scouring detection, remediation and maintenance program. The Department notes in this regard that permittees may “begin implementing” this program simply by beginning the process of detecting such scouring in accordance with the developed program. Permittees are not required to begin repairs within 18 months from the EDPA.

48. COMMENT: Three commenters asked if there were mandatory timetables to implement repairs regarding the Outfall Pipe Stream Scouring Remediation SBR. (11, 18, 35)

RESPONSE: The Department first notes that as discussed in the response to Comment 47 above, the Department has extended the implementation schedule for this SBR in the Tier A, Highway, and Public Complex Permits as issued final to 18 months from the EDPA. This implementation schedule states that within 18 months from the EDPA, permittees “shall have developed and begun implementing an outfall pipe stream scouring detection, remediation and maintenance program. This program shall identify and prioritize all stormwater outfall pipes needing repairs, and then schedule and complete the repairs.” The repairs themselves do not have to be completed within 18 months of the EDPA, and the general permits do not specify timetables or deadlines for making such repairs. As noted above, it is the permittee’s responsibility to schedule and complete the repairs. See also the response to Comment 49 below.

Where existing scouring is widespread, the Department does not expect that this program will result in the repair of all such scouring in the initial five-year permit term. Rather, the Department expects this program to include an ongoing, good faith effort to accomplish such repair, which may not be completed until many years after the initial permit term. The Department also notes that this program applies to locations where there is active scouring, but not to locations where scouring occurred in the past, but has now ceased.

49. COMMENT: One commenter stated that the Outfall Pipe Stream Scouring Remediation SBR is difficult to implement because of private property concerns and wetlands and stream encroachment regulations. (7)

RESPONSE: Tier A Municipalities, Highway Agencies and Public Complexes only have to repair localized stream and stream bank scouring located on property operated by the permittee in the vicinity of outfall pipes operated by the permittee. The Department is attempting to streamline the process for getting wetlands and stream encroachment permits needed to repair localized stream and stream bank scouring. The Department is aware that substantial time may be required to obtain these permits, which is one of the reasons why the Tier A, Highway, and Public Complex Permits do not specify deadlines for completing repairs. Access and the need for permits/approvals may be considered when a permittee prioritizes and schedules repairs.

50. COMMENT: Two commenters asked if the outfall pipe stream scouring detection, remediation and maintenance program applied to ocean outfalls. (11, 18)

RESPONSE: The Outfall Pipe Stream Scouring Remediation SBR only applies to “localized stream and stream bank scouring in the vicinity of outfall pipes” and does not apply to outfall pipes that discharge into the ocean or into any other waterways that are not streams. For purposes of this SBR, a “stream” may be perennial or intermittent, may be tidal or non-tidal, and may be called, for example, a “river,” “brook,” “creek,” “run,” “branch,” “kill,” or “ditch,” or may have no name.

51. COMMENT: The New Jersey Turnpike Authority uses three sided uncovered bins to stockpile sand and requests clarification of the 50-foot setback requirement. Is the 50-foot setback measured from the open side of the bin? In addition, the commenter recommends modifying the sand storage requirement to include “sand or similar materials.” (27)

RESPONSE: The Department intends that for three sided uncovered bins, the 50-foot setback from any storm sewer inlet, ditch, or other stormwater conveyance channels, and surface water bodies, is measured from the open side of the bin. It is important to note that if the sand is covered the 50-foot setback is not required.

Without additional information, it is inappropriate for the Department to change the permit to allow the outside and uncovered storage of “similar materials.” Other similar materials commonly used in de-icing applications include cinders, which are easily transported by stormwater runoff. So without further information regarding what types of materials are considered “similar materials,” the Department limits uncovered outside storage of deicing materials to sand, provided the 50-foot setback is met.

52. COMMENT: One commenter states that 36 months is a more reasonable time frame to comply with the equipment and vehicle washing requirement. (2)

53. COMMENT: One commenter states that vehicle washing is already tightly regulated and questions why it is a permit requirement since entities are not washing oil or hydraulic fluid down the storm drain. (17)

54. COMMENT: One commenter states that vehicle wash water reclamation systems are impractical and costly. (7)

55. COMMENT: In regard to the exemption listed in the Equipment and Vehicle Washing SBR for rinsing of vehicles used to spread de-icing materials, the SBR indicates that water from these operations may be discharged provided that clean water was used to rinse the vehicle, and only exterior and exposed equipment is rinsed. A Department representative stated in conversation that rinse water from these operations would not be exempt from the requirements of this SBR. The commenter requests clarification of this point.

In addition, the commenter proposes to allow washing of equipment and vehicles with clean water, with no soap or other cleaning agents, followed by treatment with an oil/water separator and a grit separator prior to discharge. The commenter also proposed an increase in the implementation schedule to a minimum of 60 months to evaluate, design and build the necessary vehicle wash and water treatment facilities. (27)

RESPONSE TO COMMENTS 52 through 55: The Department has changed the Tier A, Highway, and Public Complex Permits as issued final by deleting provisions concerning equipment and vehicle washing at maintenance yards. However, discharge to small MS4s of equipment and vehicle washwater from maintenance yards (except for washwater from rinsing of certain deicing and beach maintenance vehicles and equipment as authorized in these permits) may be unlawful under the Water Pollution Control Act unless a separate NJPDES permit is obtained for such discharge.

The Equipment and Vehicle Washing SBR in the draft Tier A, Highway, and Public Complex Permits listed two “Exceptions” as follows:

“Exceptions – The rinsing of the following equipment with clean water is permitted:

- Beach maintenance equipment immediately following their use for their intended purposes; and
- Equipment used in the application of salt and deicing materials immediately following salt and deicing material applications. Prior to rinsing with clean water, all residual salt and deicing materials must be removed from equipment and vehicles to the maximum extent practicable using dry cleaning methods (e.g., shoveling and sweeping). Recovered materials are to be returned to storage for reuse or properly discarded.

Rinsing of equipment in the above situations is limited to exterior, undercarriage, and exposed parts and does not apply to engines or other enclosed machinery.”

As noted above, the Department has deleted this SBR from these permits as issued final. However, the Department also changed these permits (and the Tier B Permit) as issued final by adding flows from rinsing of such equipment to the list of “non-stormwater discharges” authorized by Part I, Section A.2 of these permits.

If the Department were to issue a NJPDES permit for discharge of other equipment and vehicle washwater treated with an oil/water separator and a grit separator (or another treatment system(s)), it should be a separate NJPDES permit issued through the Department’s Bureau of Point Source Permitting. As part of the permitting process, discharge sampling requirements and numeric effluent

limitations may be developed, and the regulated entity may need to engineer the treatment system(s) to meet permit effluent limitations.

56. COMMENT: In the “Annual Report and Certification” provision of the Tier A, Tier B, Highway, and Public Complex Permits, the language should be changed from “Submit an Annual Report” to “Submit an Annual Report and Certification.” (37)

RESPONSE: The Certification is part of the Annual Report and the suggested clarification would prevent any confusion. Therefore the Department agrees with the comment, and has included this change in the general permits as issued final.

57. COMMENT: Three commenters state that listed in the proposed Statewide Basic Requirements are several references to annual reporting for MS4 compliance. Is there a summary of all proposed annual reporting requirements? Where are the annual reports submitted?

Another commenter stated that there are too many annual certifications required in the general permits. (7, 11, 18, 35)

RESPONSE: Each Statewide Basic Requirement (SBR) and associated Best Management Practice (BMP) in the Tier A, Tier B, Highway, and Public Complex Permits includes a minimum standard, measurable goal, and implementation schedule. Each measurable goal requires some type of reporting back to the Department on the status of compliance with the SBR. This reporting is accomplished by the annual submission of an Annual Report and Certification. As stated in each general permit, the Annual Report and Certification shall be submitted on a form provided by the Department. The Annual Report and Certification will be a “checklist” type form to simplify reporting for the permittees and review by the Department. Although permittees need to keep records throughout the year (to simplify completing the Annual Report and Certification), it is not anticipated that completing the Annual Report and Certification will be time consuming, difficult, or costly. The Annual Report and Certification form will also indicate the address of where to submit the form.

58. COMMENT: The commenter supports the Department’s requirement in the draft general permits for catch basins to be cleaned at least once per year. The commenter requests that the Department require the permittee to coordinate the timing of catch basin cleaning with their local mosquito control agency. Mosquito control agencies often put slow-release, environmentally sensitive pesticides in catch basins to control mosquito larvae. Obviously, these cannot work if vacuumed up or flushed out of the basins. (10)

RESPONSE: The Department acknowledges the commenter’s support. Because permittees may sometimes have to clean catch basins on short notice (to abate severe street flooding, for example), the Department has not changed the permits as the commenter suggests. However, the Tier A, Highway Agency, and Public Complex Permit guidance documents will recommend that permittees coordinate the timing of catch basin cleaning with the local mosquito control agency where possible.

59. COMMENT: In addition to annual catch basin cleaning, proposed Stormwater Facility Maintenance requirements also indicate that “at a minimum, in addition, municipalities must annually inspect, certify, and/or maintain all “regulated” facilities, including detention basins, filter strips,

riparian buffers, infiltration trenches, sand filters, constructed wetlands, wet basins, bioretention systems, low flow bypasses and stormwater conveyances, “as required to ensure operation of stormwater (facilities).” Please elaborate. Specifically, does this include municipal and private facilities? Businesses? Private associations? Other? What leverage does the municipality have in enforcing non-municipal stormwater facility compliance? What liability does a municipality have if private stormwater facilities are not in compliance? (11, 18, 35)

RESPONSE: The Stormwater Facility Maintenance SBR minimum standard in Part I, Section F.7.c of the Tier A Permit states:

“Tier A Municipalities shall develop and implement a stormwater facility maintenance program for cleaning and maintenance of all stormwater facilities **operated by the Tier A Municipality**. Stormwater facilities include, but are not limited to: catch basins, detention basins, filter strips, riparian buffers, infiltration trenches, sand filters, constructed wetlands, wet basins, bioretention systems, low flow bypasses, and stormwater conveyances. The stormwater facility maintenance must be performed as required to ensure the proper function and operation of the stormwater facility. Tier A Municipalities shall also clean all catch basins annually to remove accumulated sediment, trash and debris.”
[emphasis added]

Under this SBR, therefore, Tier A Municipalities are only responsible for cleaning and maintenance of stormwater facilities **operated by the Tier A Municipality**. These facilities do not include any stormwater facilities that are operated by private businesses, private associations, or other private or public entities, and that are not operated by the Tier A Municipality. Under this SBR, Tier A Municipalities are not responsible for taking any enforcement action regarding stormwater facilities that these municipalities do not operate, and have no liability for such facilities.

The Department also notes, however, that this Stormwater Facility Maintenance SBR is not to be confused with N.J.A.C.7:14A-25.6(b)3i and the Post-Construction Stormwater Management in New Development and Redevelopment SBR in Part I, Section F.3 of the Tier A Permit, which require Tier A Municipalities to develop, implement and enforce a program to address new development and redevelopment projects. This program shall, among other things, ensure adequate long-term operation and maintenance of BMPs for such projects, including BMPs on certain property not owned or operated by the municipality. See the response to Comment 316 in the notice of adoption for amendments to the NJPDES rules published in the February 2, 2004 issue of the New Jersey Register. If a Tier A Municipality operates a stormwater facility in order to comply with that “Post-Construction” SBR (or for any other reason), then the Stormwater Facility Maintenance SBR applies to that facility (unless no small MS4 is involved).

60. COMMENT: One commenter stated that the Stormwater Facility Maintenance SBR requires all catch basins to be cleaned on a yearly basis. Due to the total number of basins in Roxbury Township, the commenter proposes that 25 per cent of the basins be cleaned on a yearly basis.

A second commenter stated that Haddon Heights Borough has no means of vacuuming out inlets for cleaning purposes. The Borough will have to either purchase a vacuum unit, contract the work out, or have an agreement with another town to assist the Borough. (20, 23)

RESPONSE: The Department believes that there is a direct environmental benefit from annual catch basin cleaning. Therefore the Department has not changed the draft permit requirement. Significant amounts of floatables and debris, including sediment, solids and grit containing petroleum hydrocarbons and metals, accumulate in catch basins. During major storm events these materials are re-suspended and are discharged to the waters of the State. The annual inspection and cleaning of catch basins has a direct environmental benefit by ensuring that these materials are removed on a regular basis. The annual inspections and cleaning may require the purchase of additional equipment, the contracting out of services or the decision to share services with neighboring municipalities. The initial cleaning of catch basins may be a major undertaking if these stormwater facilities have been ignored in the past. However, if a municipality already has an aggressive catch basin cleaning program, the annual cleaning program may only result in a minor increase over existing maintenance. In addition, as other permit requirements are implemented, specifically storm drain inlet retrofitting and street sweeping, municipalities should find that less material accumulates in the catch basins. Lastly, it should be noted that if the inspection of the catch basin determines that there is no appreciable amount of material in the catch basin, then cleaning is not required.

61. COMMENT: One commenter stated that stormwater facilities maintenance schedules are already in place by the municipality's Department of Public Works. (7)

RESPONSE: The Department believes that most municipalities have some type of stormwater facility maintenance schedule in place. Tier A Municipalities must ensure that existing schedules meet the Stormwater Facility Maintenance SBR in the Tier A Permit, and if the schedules do not, revise the schedules accordingly.

62. COMMENT: One commenter stated that many towns already do cleaning and maintenance of stormwater facilities depending on their priorities. The cleaning is probably done as needed and after a call to the Department of Public Works, and without maps or record keeping. (17)

RESPONSE: See the responses to Comments 45, 57, 60, and 61 above. The Department also notes that the SBRs in the Tier A Permit do not require municipalities to map any stormwater facilities other than the ends of outfall pipes.

63. COMMENT: The Stormwater Regulations, RSIS, and the NJPDES Regulations seem to be in conflict with one another when it comes to designating recharge or conveyance piping systems in municipal streets. The RSIS allow for narrow cartways and thus narrow right-of-ways. The Stormwater Regulations promote the use of grassed swales to reduce pollutants and total suspended solids, however, the NJPDES Regulations require that all catch basins be cleaned once per year. To meet all three criteria is difficult, land consuming, and impractical when designing recharge systems. The catch basins need to be located near paved surface for access for cleaning equipment. However, the regulations' requirement of running the stormwater through a grassed swale promotes the location of stormwater systems distant from right-of-ways, which require either excessively large right-of-ways

or easements on private properties. Does the Department have any practical solutions for these conflicts? (26)

RESPONSE: The Department first notes that the requirement to clean certain catch basins annually is not set forth in the NJPDES rules, but is a specific element of the Stormwater Facility Maintenance SBR in the Tier A Permit. The Department agrees that the RSIS right-of-way widths may not be sufficient when using vegetated conveyance such as grassed swales, but the RSIS provide the option for the municipality and the developer to agree to exceed standards, in N.J.A.C. 5:21-3.6. In addition, where conflict exists between the Department's stormwater requirements and the RSIS, the Department standards control. (See the responses to Comments 190 through 199 and 207 in the notice of adoption for the Stormwater Management rules (N.J.A.C. 7:8) published in the February 2, 2004 issue of the New Jersey Register.)

The Department assumes that what the commenter means by "Stormwater Regulations" is the Stormwater Management rules at N.J.A.C. 7:8. Although the new Stormwater Management rules do not specifically require that catch basins be cleaned annually, those rules do require maintenance of stormwater management measures, including catch basins. All stormwater management measures that are subject to the design and performance standards established in N.J.A.C. 7:8-5 must be cleaned and otherwise maintained to be consistent with those rules, regardless of whether those facilities are operated by a private or public entity (see N.J.A.C. 7:8-5.2(b) and 5.8). The purpose of vegetated conveyances along roadways is to minimize the direct discharge of stormwater across or through connected impervious cover to waters of the State. The Department recommends that catch basins be located for ease of maintenance, but also seeks projects designed to minimize impervious cover and maximize vegetative cover and conveyance systems. As stated in the above mentioned response to Comment 207, projects should be designed as practicable to achieve both objectives.

The Department further notes that as discussed in the response to Comment 59 above, the Stormwater Facility Maintenance SBR is limited to stormwater facilities operated by the Tier A Municipality. Therefore, this SBR does not require the Tier A Municipality to clean catch basins that the municipality does not operate. (However, the Post-Construction Stormwater Management in New Development and Redevelopment SBR in the Tier A Permit requires Tier A Municipalities to ensure adequate long-term operation and maintenance of BMPs for new development and redevelopment projects, including BMPs on certain property not owned or operated by the municipality.)

The Department also notes that many grass swales are designed to parallel the road surface. The grass swales discharge stormwater into catch basins. These catch basins are typically located along or near the roadway and require no large additional expanse of land or right-of-way. This design does not inhibit cleaning of the catch basins, and still likely complies with the design and performance standards established in the Stormwater Management rules.

64. COMMENT: One commenter stated that the Fueling Operations SBR, as written, addresses aboveground storage tank (AST) and underground storage tank (UST) fueling systems. A Department representative indicated in conversation that the SBR would also apply to non-fuel AST and UST systems such as tanks containing waste motor oil, anti-freeze, and heating oil. This point is not clear in the draft permit. Clarification is requested. (27)

RESPONSE: The Fueling Operations SBR only addresses fuel products (fuel oil, gasoline, and diesel fuel). However the Good Housekeeping SBR requires that all containers (fuel products or not) be labeled, kept in good condition, and tightly closed when not in use. Containers stored outdoors must be covered and placed on spill platforms or graded and/or bermed to prevent run-through of stormwater. In addition, spill clean-up materials must be on hand and spills must be cleaned up immediately. Also, as discussed in the response to Comments 65 through 68 below, the Department has changed the Fueling Operations SBR and Attachment D of the Tier A, Highway, and Public Complex Permits as issued final to delete certain provisions regarding aboveground and underground storage tanks.

65. COMMENT: The commenter states that the SBR, as written, requires retrofitting of above ground storage tanks (ASTs) and underground storage tanks (USTs) with visible gauges and high alarms to prevent overfilling. The commenter requests clarification on whether electronic inventory management systems would fulfill the visible gauge requirement in the Fueling Operations SBR. (27)

66. COMMENT: One commenter asked that the Highway Permit be changed so that USTs meeting the State requirements for secondary containment, release detection, and corrosion protection are exempt from the five-year integrity testing requirement. (27)

67. COMMENT: One commenter stated that current Federal and State UST regulations already cover the SBR's requirements for USTs for an emergency plan, overfill protection, vapor recovery, leak detection, inspection compliance, mapping and testing. This is a redundant application. (2)

68. COMMENT: One commenter stated that the Fueling Operations SBR requires integrity testing every five years for ASTs and USTs. However, integrity testing should not be necessary provided that the ASTs and USTs comply with applicable Federal, State, and local requirements for design, construction, and release detection. The same commenter asked that the Highway Permit be changed to exempt shop-fabricated ASTs from the five-year integrity test requirement. The entire shop-fabricated AST can be readily inspected for leaks. Such an exemption would bring the draft permit into agreement with the SPCC rules, which do not require integrity testing for shop-fabricated ASTs. (27)

RESPONSE TO COMMENTS 65 through 68: The Department has reconsidered certain provisions regarding aboveground and underground fuel storage tanks in the Highway, Tier A, and Public Complex Permits. The Department has determined that regulation of fuel storage tanks is governed by statutes and rules such as N.J.S.A. 58:10A-21 et seq., the Department's Underground Storage Tanks rules at N.J.A.C. 7:14B, Department rules entitled "Discharges of Petroleum and other Hazardous Substances" (N.J.A.C. 7:1E), and 40 C.F.R. 112, and should not also be governed by those provisions.

Accordingly, the Department has changed Part I, Section F.8.b ("Fueling Operations") and Attachment D of the Highway, Tier A, and Public Complex Permits as issued final to delete the following provisions in the draft permits:

- The requirements in Part I, Section F.8.b, to "develop and implement a program for the inspection and maintenance of storage tanks, associated piping, and fuel pumps, if applicable"

(minimum standard); certify annually that “regular inspections and maintenance are being performed.” (measurable goal); and “begin the inspection/maintenance program” (implementation).

- In Attachment D, items d. and e. under “2. Fueling,” and the requirement for “monthly inspections” under “6. Inspections.” The requirement under “6. Inspections” that “Any equipment, tanks, pumps, piping and fuel dispensing equipment found to be leaking or in disrepair must immediately be repaired or replaced” was relocated to item d. under “2. Fueling.”

69. COMMENT: One commenter stated that it had previously suggested at meetings between the various State transportation agencies and the Department that the Department might like to see a brief stormwater education message on the back of toll tickets. The New Jersey Highway Authority does not use toll tickets and very few commuters request toll receipts. Further, as the Authority, and many other transportation agencies, are moving towards electronic tolling, the use of toll tickets does not seem like a viable method for public education. The Authority requests that the Department develop a guidance document describing other acceptable methods of public education. (30)

RESPONSE: There is no requirement in the Highway Permit to put an educational message on toll tickets or toll receipts. The Local Public Education requirement in the draft Highway Permit would have required Highway Agencies to distribute information sheets in any form (e.g., calendars, brochures, signs, sheets, booklets) by locating these information sheets at rest areas, service areas and “along appropriate areas with substantial pedestrian traffic” along the Highway Agency’s small MS4. The Department has changed the language in this permit as issued final to only require Highway Agencies to provide information material in any form (e.g., calendars, brochures, signs, sheets, booklets) by locating this material at rest areas and service areas located along the Highway Agency’s small MS4. This change simplifies this SBR by eliminating its references to “information sheets” and the need to interpret the phrase “appropriate areas with substantial pedestrian traffic.” The Department is developing a guidance document for the Highway Permit, which will be issued with the Highway Agencies’ permit authorization and will contain information to be used to comply with the local public education requirement.

70. COMMENT: The Storm Drain Labeling SBR in the Highway Permit requires Highway Agencies to label all storm drains located in rest areas, service areas, maintenance facilities and areas of substantial pedestrian traffic. The New Jersey Turnpike Authority operates 15 service areas, 11 maintenance facilities, and 26 toll facilities. These facilities include hundreds of storm drains that would require labeling. Labeling the storm drains and maintaining the labels would impose significant additional work and costs on the authority. The goal could be achieved more economically by posting signs at service areas and other areas with substantial non-employee pedestrian traffic. (27)

RESPONSE: The Department first notes that it has clarified this SBR in the Highway, Tier A, Tier B, and Public Complex Permits as issued final by changing the SBR name from “Storm Drain Labeling” to “Storm Drain Inlet Labeling,” by changing all references to storm drain labeling to references to storm drain inlet labeling, and by correcting a sentence in each permit that incorrectly referred to storm sewer labeling.

The Department realizes that the implementation of various SBRs contained in the Highway Permit may require additional work and increased costs. There is no specific reference to toll facilities in this SBR. The draft Highway Permit would have required Highway Agencies to label “storm drains located at rest areas, service areas, maintenance facilities, and areas with substantial pedestrian traffic.” The Department has changed the language in this permit as issued final to require storm drain inlet labeling at “rest areas, service areas, maintenance facilities, and storm drain inlets along streets with sidewalks.” This change simplifies this SBR by eliminating the need to interpret the phrase “areas with substantial pedestrian traffic.”

The Department believes that the labeling of the storm drain inlets is more effective than posting of signs because an individual will see the label prior to actually dumping a waste into the storm drain inlet. The label is more effective in alerting people that the storm drain discharges directly to waters of the State and is not a “sewer” that receives treatment. The message is not limited to the public but also should reach employees. That is why the SBR includes storm drain inlets located at maintenance facilities. These storm drain inlet labels supplement the employee training required by the permit. The Department realizes that due to the size of many Highway Agency storm drainage systems, requiring the labeling of all the storm drain inlets located in the highway MS4 would be impractical. That is why the Department specifically tried to limit the labeling requirement to locations where the Department expects the greatest environmental benefit.

71. COMMENT: One commenter stated that the Pet Waste Control and Wildlife Feeding Control SBRs in the Highway Permit would require adoption and enforcement of regulatory mechanisms to require pet owners to properly dispose of their pet's solid waste, and to prohibit feeding wildlife on property owned and operated by the New Jersey Turnpike Authority. The Authority is not an enforcement agency and should not be responsible for monitoring and enforcing a pet waste control regulation and a wildlife feeding control regulation. Eliminate the portion of the SBRs requiring enforcement of the regulatory mechanism. The State and/or local police should handle enforcement. (27)

RESPONSE: A Pet Waste Control SBR and a Wildlife Feeding Control SBR cannot be effective if there is no enforcement mechanism. The Highway Permit requires Highway Agencies to adopt and enforce these regulatory mechanisms “to the extent allowable under law.” If a Highway Agency is not allowed under law to enforce a regulatory mechanism, then it is not required to enforce that mechanism.

The Department does not expect the New Jersey Turnpike Authority or any other Highway Agency that does not have its own police force to do its own enforcement. Such Highway Agencies should instead rely on the State and/or local police, depending on the location, to provide enforcement. In addition, it would not be practical of the Department to expect enforcement of these SBRs to be heavy handed. It will be more effective for Highway Agencies to stress the educational aspect of the Pet Waste Control SBR by providing adequate signage regarding the requirement and to encourage compliance by providing bags to facilitate picking up the pet waste and dedicated waste containers for proper disposal, and to stress the educational aspect of the Wildlife Feeding Control SBR by providing adequate signage regarding the requirement.

72. COMMENT: One commenter stated that the Litter Control SBR in the Highway Permit would require adoption and enforcement of a regulatory mechanisms regarding litter control, or enforcement of the existing State litter statute (N.J.S.A. 13:1E-99.3). The existing State litter statute already regulates this issue, and the New Jersey Turnpike Authority is not an enforcement agency and should not be responsible for adoption, monitoring or enforcing a redundant regulatory mechanism. The Litter Control SBR should be eliminated from the permit. Sufficient protection can be provided through the existing statute, the Local Public Education SBR, and enforcement by State and/or local police. (27)

RESPONSE: The Department agrees with the commenter and has changed the Highway Permit as issued final to delete the Litter Control SBR (and the reference to Litter Control in the Employee Training SBR). The existing State litter statute (N.J.S.A. 13:1E-99.3) applies to all the roads in the State and is enforced there by the State police and municipalities. Having this SBR in the Highway Permit provides little or no additional environmental benefit. The Litter Control SBR remains in the Tier A and Public Complex Permits. Tier A Municipalities can enforce the existing State litter statute, and also have the ability to adopt and enforce their own local ordinance. Public Complexes regulate activities at their facilities, but generally do not have the authority to enforce the existing State litter statute, and must adopt other regulatory mechanisms to prohibit littering at their facilities.

73. COMMENT: As discussed in more detail in comments summarized in the notice of adoption for amendments to the NJPDES rules published in the February 2, 2004 issue of the New Jersey Register, the NJPDES rules and general permits must require the Department to create a central website to list all approved stormwater general permit authorizations and post subsequent information submitted (see Comment 87), and must provide for more Department oversight of permits. In the Highway Permit, therefore, add a requirement to the Litter Pick Up Program minimum standard to “submit such records to DEP for posting on a central website.” (37)

RESPONSE: Because the measurable goal for the Litter Pick Up Program SBR expressly requires Highway Agencies to “report dates of roadside clean ups and estimates of trash and debris collected,” and because this information will be part of the Annual Report submitted by Highway Agencies to the Department, it is unnecessary to change the minimum standard to require submission to the Department of the records in question. In regard to making information submitted to the Department available to the public on a central Departmental website, see the response to Comment 87 in the notice of adoption for amendments to the NJPDES rules.

The Department has changed this SBR in the Highway Permit as issued final by replacing “litter receptacles located at rest areas, service areas, and areas with substantial pedestrian traffic” with “litter receptacles owned and operated by the Highway Agency including those located at rest areas and service areas.” This change strengthens this SBR by requiring regular collection of refuse from additional litter receptacles owned and operated by the Highway Agency, and also simplifies this SBR by eliminating the need to interpret the phrase “areas with substantial pedestrian traffic.”

74. COMMENT: Two commenters stated that there appears to be a typographical error in N.J.A.C. 7:14A-25.6(b)5. The words “Public Complexes” should be changed to “Highway Agencies” in Part I, Section F.5.d.ii of the draft Highway Permit. (11, 24)

RESPONSE: The Department has corrected what is now Part I, Section .F.5.c.ii the Highway Permit, as issued final, to replace the erroneous reference to “Public Complexes” with the correct reference “Highway Agencies.” (As noted in the response to Comment 327 in the notice of adoption for amendments to the NJPDES rules published in the February 2, 2004 issue of the New Jersey Register, N.J.A.C. 7:14A-25.6(b)5 is correct.)

75. COMMENT: One commenter said the Improper Waste Disposal SBR in the Highway Permit would require adoption and enforcement of regulatory mechanisms to prohibit spilling, dumping, or disposal of materials other than stormwater into the New Jersey Turnpike Authority's MS4. The Authority is not an enforcement agency and should not be responsible for monitoring and enforcing an improper waste control regulation. Eliminate the portion of this SBR requiring enforcement of the regulatory mechanism. Enforcement should be by State and/or local police. (27)

RESPONSE: The Department has changed the Improper Waste Disposal Control SBR in the Highway Permit as issued final so that the Highway Agency is only required, to the extent allowable under law, to adopt and enforce an appropriate regulatory mechanism prohibiting **the Highway Agency and its employees** from the improper spilling, dumping, or disposal of materials other than stormwater into the Highway Agency's small MS4. The Department believes that Highway Agencies generally have the authority to regulate the conduct at their own facilities of their own employees and contractors. This regulatory mechanism may be a written rule, policy, or regulation (as allowed by law). This rule, policy, or regulation needs to be discussed during employee training required by the Highway Permit. If an employee or contractor hired by the Highway Agency violates the regulatory mechanism, then the Highway Agency must take appropriate action. If the Highway Agency observes anyone other than the Highway Agency and its employees improperly disposing of waste into the Highway Agency's MS4, then the Highway Agency shall report the incident to the Department's Action Hotline at 1-877-WARNDEP (1-877-927-6337). The Department will then investigate the incident and/or refer it to other proper authorities.

In addition, in a related action, the Department has changed the Improper Waste Disposal SBR in the Public Complex Permit as issued final so that the Public Complex is only required to adopt and enforce an appropriate regulatory mechanism prohibiting the Public Complex users and the Public Complexes employees from the improper spilling, dumping, or disposal of materials other than stormwater into the Public Complex's small MS4. If the Public Complex observes someone else (for example, a trespasser) violating the regulatory mechanism, the Public Complex shall report the incident to the Department's Action Hotline (877-WARNDEP).

76. COMMENT: This commenter stated that the Illicit Connection and MS4 Outfall Pipe Mapping SBR would require development of a storm sewer outfall pipe map showing the locations of all of the thousands of outfall pipes that are operated by the New Jersey Turnpike Authority and that discharge to a surface water body, and the locations and names of all surface water bodies receiving discharges. Complete maps of all storm sewer systems are not available, which means that many outfall pipes would have to be located in the field. The implementation schedule for mapping the storm sewer outfalls should allow Highway Agencies with large numbers of outfalls to submit an alternative schedule, provided that all the mapping is completed within 60 months from the effective date of permit authorization. (27)

RESPONSE: The Department has changed the schedule for outfall pipe mapping in the Highway, Tier A, and Public Complex Permits as issued final to allow for greater flexibility in implementation. See the response to Comment 10 above for details. The revised schedule provides sufficient flexibility to permittees (without requiring the Department to review alternative schedules), while still ensuring that some mapping is completed within 36 months from the EDPA.

77. COMMENT: One commenter stated that the New Jersey Highway Authority understands the purpose of the Illicit Connection Elimination SBR, but is uncertain of its ultimate implications. The Authority is willing to implement and enforce a program to detect and eliminate any illicit connections to its stormwater collection system located within the boundaries of its properties. However, should the Authority detect an illicit connection, the source of which is determined to be located outside of the Authority's right-of-way, the Authority does not believe that it has jurisdiction to eliminate illicit connections outside its property boundaries. The Authority is willing to inform the Department of any apparent illicit connections discovered while complying with this requirement. The Authority requests that the Department develop additional language to be added indicating that the permittee's responsibility to eliminate illicit connections ends at the bounds of its property through which the MS4 runs.

A second commenter stated that the Illicit Connection Elimination SBR in the Highway Permit would require development and implementation of a program to detect and eliminate illicit connections to stormwater drainage systems. At a minimum, the program would require an initial physical inspection of all outfall pipes for evidence of dry-weather flows. Outfall pipes where dry-weather flow is confirmed or suspected would require additional investigation. If dry-weather flows are identified, it is not clear why the New Jersey Turnpike Authority should be responsible for investigation and elimination of possible illicit connections that it did not authorize. In addition "upstream" investigations to identify sources of illicit connections may not be feasible. In many cases, the source may be located on property not owned by the Authority, and, therefore, not accessible for inspection. The Authority is not an enforcement agency and should not be responsible for enforcing a regulatory mechanism prohibiting illicit connections. This SBR should be modified to require notification of the Department when evidence of an illicit connection is discovered. The Department should be responsible for enforcement of any regulatory mechanisms regarding illicit connections. (27, 30)

RESPONSE: The Department acknowledges that to the best of its knowledge, Highway Agencies (and Public Complexes) do not have the authority to investigate and take enforcement actions concerning illicit connections that emanate from outside their properties. (In contrast, a municipality generally has authority to investigate and take enforcement action concerning illicit connections that emanate from outside property owned or leased by the municipality, if the illicit connection emanates from a location within the political boundaries of the municipality.) The Department has therefore changed Part I, Section F.6 and Attachment B of the Highway and Public Complex Permits as issued final so that the Highway Agency or Public Complex is only responsible for enforcing and eliminating illicit connections that are found to be emanating from its own operations. If the illicit connection is found to emanate from another entity, the Highway Agency or Public Complex must submit to the Department a written explanation detailing the results of the investigation. The Department's enforcement personnel will then investigate the discharge from that point forward. If the illicit connection is found by the Highway Agency or Public Complex to emanate from another public entity, the Highway Agency or Public Complex shall also notify that entity.

78. COMMENT: The Stormwater Facility Maintenance SBR in the Highway Permit requires the development and implementation of a stormwater facility maintenance program that includes the cleaning and maintenance of all stormwater facilities owned and operated by the Highway Agency. The New Jersey Turnpike Authority currently performs daily roadway inspections in each maintenance district and a full maintenance inspection of all Authority facilities annually. Maintenance and cleaning of stormwater facilities is performed as needed based on the inspections and reports of problems. The Authority is currently ensuring the proper maintenance and operation of its stormwater facilities. The Stormwater Facility Maintenance SBR allows for an alternate schedule for catch basin cleaning if the permit holder is “unable” to clean catch basins annually. The final SBR should allow an alternate catch basin cleaning schedule based on the frequency of cleaning that is actually necessary as determined by the permittee’s maintenance inspections. Also, considering the size of the Authority’s stormwater drainage system, the implementation schedule for this SBR should be extended to a minimum of 24 months from the EDPA to allow for sufficient time for preparation of an appropriate plan and assembly of necessary records. (27)

RESPONSE: Based on the description of the New Jersey Turnpike Authority’s existing stormwater maintenance program contained in the comment, and assuming that this program is adequate to ensure the proper function and operation of the stormwater facilities, the Authority already essentially complies with the Stormwater Facility Maintenance SBR minimum standard. The Department would prefer the annual cleaning of all catch basins to minimize the potential discharge of solid and floatable materials, but realizes due to the size of many Highway Agencies’ MS4s that it may not be feasible. The minimum standard provides that if the Highway Agency is unable to clean all catch basins annually, the Highway Agency must provide, as part of its SPPP, a justification and detailed schedule for less frequent cleaning. The Department also notes that if the inspection of the catch basin determines that there is no appreciable amount of material in the catch basin, then cleaning is not required.

In addition, the Department has, in the Highway, Tier A, and Public Complex Permits as issued final, changed the implementation schedule for the Stormwater Facility Maintenance SBR to clarify what is required by 12 months from the EDPA. Whereas the draft permits stated that within 12 months from the EDPA, permittees “shall have **fully implemented** a stormwater facility maintenance program in accordance with the minimum standard” the final permits state that within 12 months from the EDPA, permittees “shall have **developed and begun implementing** a stormwater facility maintenance program in accordance with the minimum standard.” This change makes it clear that implementation of this program, including maintenance of necessary records, does not have to begin until 12 months from the EDPA.

The Department believes that an extension of time beyond 12 months is not warranted for this SBR, and that 12 months from EDPA should be adequate. This belief is supported by the above mentioned change to the implementation schedule, and by the fact that the Authority appears to already have a maintenance program that essentially complies with the minimum standard.

79. COMMENT: One commenter states that the Roadside Vegetation Management SBR in the Highway Permit allows the use of herbicides only in areas where it is not practical to mow. Examples of such areas listed in the draft Highway Permit include areas around guardrails, sign posts, and

telephone poles. There are many other areas that may be impractical to mow, such as steep slopes, wooded areas, around various obstructions, and on rough, wet or soft ground. There also may be specific times or weather conditions when mowing would be impractical in an area that could, at other times be mowed. Mowing may also not be practical or efficient way of controlling the growth of certain types of vegetation in some situations. The commenter requests that the Department expand the list of examples where the use of herbicides is permitted. (27)

RESPONSE: Because herbicide use is an environmental problem, the Department does not advocate the widespread use of herbicides as a way of controlling the growth of vegetation, and the Highway Permit limits herbicide use along the Highway Agency's MS4. The permit only allows the use of herbicides in areas where it is not practical to mow, and then further limits the application to a two foot radius (as discussed below) around such structures. While the examples given in the SBR are not intended to be an exhaustive list, the intent is to limit herbicide use to a small area around structures like signs, poles, guard rails and other obstructions, and to not allow herbicides to be applied to large expanses like wooded areas, ditches, swales, wet areas, or steep slopes. The Department is challenging Highway Agencies to develop ways of dealing with vegetation control other than the application of herbicides over large areas. These alternatives include the use of wildflowers, natural vegetation, alternative landscaping methods, and drainage improvement projects. The Department has therefore not expanded the list of examples, and believes that this response to comment further clarifies the intent of the SBR. However, the Department has changed this SBR in the Highway Permit as issued final by expanding the radius where herbicide may be applied around structures from one foot to two feet, because of concerns that around some structures, it may not be practical to mow within a radius of two feet.

80. COMMENT: The Fueling Operations SBR in the Highway Permit requires the development and implementation of standard operating procedures (SOPs) for vehicle fueling and for receiving of bulk fuel deliveries. The New Jersey Turnpike Authority owns underground storage tanks (USTs) located at its service areas, but the USTs are operated on concession by private companies. In addition, aboveground tank (AST) fueling systems owned and operated by contractors may be present on Authority property. A Department representative stated that the permit holder would be responsible for all tank systems located on its property. The draft permit is not clear on this point and clarification is requested. (27)

RESPONSE: The Highway Agency may be an "operating entity" for these USTs and ASTs even though these USTs are also operated by private companies and these ASTs are also operated (or owned) by contractors. As defined at N.J.A.C. 7:14A-1.2, an "operating entity" is any "person" (as broadly defined at N.J.A.C. 7:14A-1.2) "who alone or along with other persons has primary management and operational decision making authority over any part of a facility." If the Highway Agency, through contract, agreement, regulation, or otherwise, shares such decision making authority over these USTs and/or ASTs (by providing oversight of environmental management, for example), the Highway Agency is considered to be one of the "operating entities." As part of the contract or agreement with the private company or other private contractor, or by regulation, the Highway Agency can require compliance with fueling SOPs (also see the discussion of private contractors further below in this response). The Fueling Operations SBR and other permit conditions extend to all parts of the facility that contribute stormwater to the Highway Agency's MS4, and for which the Highway Agency is an "operating entity."

The Department also notes that as discussed in the response to Comments 65 through 68 above, the Department has changed the Fueling Operations SBR and Attachment D of the Highway, Tier A, and Public Complex Permits as issued final to delete certain provisions regarding aboveground and underground storage tanks.

To further address the issue of private contractors, the Department has changed Part I, Section E of the Highway, Tier A, Tier B, and Public Complex Permits by adding language which provides that for any projects or activities which the permittee contracts out to private contractors after the EDPA, the awarded contract must require the contractor to conduct projects or activities in a manner that complies with the permittee's SPPP (or stormwater program, in the case of the Tier B Permit) and the permit's conditions. This language also provides that the permittee is responsible for any violations of this permit resulting from a contractor's noncompliance. This change should help to make contractor's aware of the permittee's SPPP or stormwater program, and to prevent permit violations due to contractor noncompliance.

OTHER PROVISIONS CHANGED IN THE FINAL PERMIT

Discussed below are provisions of the draft permits that have been changed in the final permits, excluding changes that are discussed in the Department's responses summarized above.

1. The Department has changed Part I, Section A.2.b.i of the Public Complex Permit to clarify that when applied to colleges and universities, the term "Public Complex" is limited to a "campus," and thus does not apply to locations, such as isolated field stations and research farms, that are not commonly referred to as a "campus" or as part of a "campus." Such locations generally have few employees and students, and are not similar to college and university campuses. The Department has also corrected "on weekday" to "on weekdays" in Part I, Section A.2.b.ii of this permit. This change and correction are consistent with the Department's modification and correction upon adoption to N.J.A.C. 7:14A-25.2(a)2, and with use of the phrase "college or university campus" elsewhere in Part I, Section A.2.b.
2. The Department has changed Part I, Section A.2.b.1 of the Highway Permit to clarify the first sentence by listing "rest area" as another example of a location that is part of a "highway or other thoroughfare." This clarification is consistent with the Department's clarification upon adoption to N.J.A.C. 7:14A-25.2(a)3, and with other express references to "rest areas" in this permit as issued draft and final.
3. The Department has changed Part I, Section A.2.c of the Highway and Public Complex Permits to provide that on a case-by-case basis, the Department may also use these permits to authorize stormwater discharges from certain additional municipal separate storm sewers owned or operated by a county, State, interstate, Federal, or other agency (except a Tier A Municipality) at a thoroughfare or facility, even if those municipal separate storm sewers are not part of a "small municipal separate storm sewer system" as defined at N.J.A.C. 7:14A-1.2. The Department has also changed Part I, Section B.4.a.ii of the Public Complex Permit to recognize that the Public Complex might be an agency that is not county, State, interstate, or Federal. These changes enable the Department to make

these permits available for additional municipal separate storm sewers and agencies that may in the future be the subject of special determinations and/or designations under N.J.A.C. 7:14A-24.2(a)7, 24.2(a)9, and/or 25.2(a)4. These changes are also consistent with the Department's correction upon adoption to paragraph 4 of the N.J.A.C. 7:14A-1.2 definition of "small municipal separate storm sewer system."

4. The Department has changed Part I, Section A.2 of the Tier A, Tier B, Highway, and Public Complex Permits by inserting "After the Effective Date of Permit Authorization (EDPA)," before "the permit authorizes the following new and existing non-stormwater discharges ..." This change makes it more clear that these permits do not authorize such discharges from any entity until that entity obtains authorization under the permit.

5. The Department has changed the lists of authorized non-stormwater discharges in Part I, Section A.2 of the Tier A, Tier B, Highway, and Public Complex Permits by replacing "diverted spring flows" with "diverted stream flows." This change is consistent with use of the phrase "diverted stream flows" in 40 C.F.R. 122.34(b)(3)(iii). In the Tier B Permit, the Department also changed this list by deleting "dechlorinated" before "residential swimming pool discharges." This change makes the Tier B Permit consistent with the draft and final Tier A, Highway, and Public Complex Permits, and with the Department's discussions in 2002 with the Municipal Stormwater Advisory Group.

6. The Department has changed the Tier A, Tier B, Highway, and Public Complex Permits by inserting "areawide or Statewide" before "Water Quality Management Plan" or "WQM Plan" throughout these permits. This change excludes WQM plan provisions that exist only in a "county WQM plan" (as defined at N.J.A.C. 7:15-1.5) from the scope of all references in these permits to "Water Quality Management Plan" or "WQM Plan." In regard to Additional Measures, this change is consistent with the Department's changes upon adoption to N.J.A.C. 7:14A-25.6(a)2 and (e) and 25.8(e). More broadly, this change is consistent with the N.J.A.C. 7:15-1.5 definition of "adoption," which is limited to adoption of areawide WQM plans or the Statewide WQM plan (or amendments or revisions thereof), and with N.J.A.C. 7:15-2.2(e)3, which provides that "consistency of projects and activities with county WQM plans shall be required under N.J.A.C. 7:15-3.1 or 3.2, only to the extent that county WQM plans or components thereof are adopted into areawide WQM plans pursuant to N.J.A.C. 7:15-3.4 or 3.5." Although county WQM plans are "water quality management plans" as defined in N.J.A.C. 7:14A-1.2, county WQM plans are not subject to the WQM plan amendment procedures in N.J.A.C. 7:15-3.4, including procedures for public involvement and State oversight.

7. In regard to stormwater discharges not authorized by the Tier A, Tier B, Highway, and Public Complex Permits, the Department has changed Part I, Section A.5.c of these permits by adding the statement that the permittee "does not have to implement measures contained in this NJPDES permit for stormwater discharges at facilities owned or operated" by that permittee "that are regulated under a separate NJPDES stormwater permit authorizing those discharges." This statement clarifies the relationship between the Tier A, Tier B, Highway, and Public Complex Permits and other NJPDES stormwater permits.

8. In regard to the deadline to submit the RFA for existing discharges, the Department has changed Part I, Section B.1.a of the Tier A, Tier B, Highway, and Public Complex Permits by substituting "March 3, 2004" for "March 10, 2003 or 30 days after the effective date of N.J.A.C. 7:14A-24 and 25,

whichever is later.” Similarly, in regard to the deadline to apply for a NJPDES permit for “stormwater discharge associated with industrial activity,” the Department has changed Part I, Section A.5.a.i of the Tier A, Tier B, Highway, and Public Complex Permits by substituting “March 3, 2004” for “March 10, 2003 or [insert the date 30 days from the effective date of N.J.A.C. 7:14A-24], whichever is later.” March 3, 2004 is 30 days after February 2, 2004, which is the effective date of N.J.A.C. 7:14A-24 and 25.

In regard to the deadline to submit the RFA for a new discharge, the Department has changed Part I, Section B.2.a of these permits by replacing “the effective date of this permit” with “March 3, 2004,” which is the effective date of these permits. The Department made a similar change in the first sentence of Part I, Section I.1 of these permits (“Standard Conditions”).

In addition, the Department has corrected Part I, Section B.2.a of the Public Complex Permit to recognize an increase in the number of residents as a reason why an existing facility may become a Public Complex. This correction is consistent with the descriptions of “public complex” at N.J.A.C. 7:14A-25.2(a)2 and in Part I, Section A.2.b of this permit.

9. The Department has changed Part I, Section B.3.ii of the Highway Permit by replacing “the Department may choose to issue multiple authorizations under this permit to a Highway Agency for administrative purposes, although the Highway Agency submitted a single RFA” with “the Department may choose to issue single or multiple authorizations under this permit to a Highway Agency regardless of whether the Highway Agency submitted a single or multiple RFAs.” This change gives the Department more flexibility to issue single or multiple authorizations (in order to coordinate such authorizations with the Department’s enforcement regions, for example).

10. In regard to the contents of the RFA, the Department has changed Part I, Section B.4 of the Tier A, Tier B, Highway, and Public Complex Permits by requiring identification of a Stormwater Program Coordinator (rather than a “duly authorized representative”) who will submit any reports or certifications required by these permits, and to whom the Department shall send all correspondence concerning these permits. In addition, the Department has changed Part I, Section E.2.a.i of the Tier A, Highway, and Public Complex Permits to require the Stormwater Program Coordinator (rather than the “duly authorized representative”) to retain the SPPP. The term Stormwater Program Coordinator better indicates the stormwater-related functions performed by this person under these permits.

The Department has also changed Part I, Section B.4 of the Highway and Public Complex Permits to require the RFA for these permits to also include “a list of other NJPDES Stormwater Permits held” by the Highway Agency or Public Complex, respectively. This list will help the Department to administer Part I, Section A.5 of these permits, and identify other NJPDES Stormwater Permits that may need to be revoked or modified.

11. The Department has changed the definitions of “small municipal separate storm sewer system” and “stormwater” in Part I, Section C of the Tier A, Tier B, Highway, and Public Complex Permits for consistency with the Department’s corrections and clarifications upon adoption to the N.J.A.C. 7:14A-1.2 definitions of these terms. In addition, the Department has moved the definition of “solid and floatable materials” from the Post-Construction Stormwater Management in New Development and

Redevelopment SBR in Part I, Section F of these permits into Part I, Section C of these permits (“Definitions”), in order to consolidate definitions in one section.

12. In regard to sharing of responsibilities, the Department has changed Part I, Section D of the Tier A, Highway, and Public Complex Permits to refer to “nonprofit” as well as “governmental” and “private” entities. The Department has also clarified this section of the Highway and Public Complex Permits to provide that any agreement by the other entity to implement the measure must be in writing. These changes are consistent with the Department’s clarifications upon adoption to N.J.A.C. 7:14A-25.7(a). In addition, the Department has changed Part I, Section D.1.c of the Tier B Permit by deleting the words “and shall also note this reliance in the municipality’s SPPP” because the Tier B Permit does not require a SPPP.

13. The Department has changed the Post-Construction Stormwater Management in New Development and Redevelopment SBR in Part I, Section F of the Tier A and Tier B Permits by adding “(including any exception, waiver, or special area standard that was approved under N.J.A.C. 5:21-3)” after “Ensure that any residential development and redevelopment projects that are subject to the Residential Site Improvement Standards for stormwater management (N.J.A.C. 5:21-7) comply with those standards.” This change is consistent with the Department’s revision upon adoption to N.J.A.C. 7:14A-25.6(b)3iv(1).

14. The Department has also changed this “Post-Construction” SBR in the Tier A and Tier B Permits by providing that the storm drain inlet design standards shall be enforced through the stormwater control ordinance(s) or a separate ordinance.

15. The Department has changed the Post-Construction Stormwater Management in New Development and Redevelopment SBR in Part I, Section F.3 of the Highway and Public Complex Permits by adding language which provides that projects that do not require any Department permits under the Flood Hazard Area Control Act, Freshwater Wetlands Protection Act, Coastal Area Facility Review Act, or Waterfront and Harbor Facilities Act are not considered “new development or redevelopment projects” if construction began prior to the implementation deadline for this SBR, or if the projects went to bid or had right-of-way authorization prior to the date on which the permittee received authorization under these permits (right-of-way authorization is mentioned in the Highway Permit language only). See the response to Comment 312 in the notice of adoption for amendments to the NJPDES rules published in the February 2, 2004 issue of the New Jersey Register.

16. The Department has changed Part I, Section F.4 of the Tier A Permit and Part I, Section F.3 of the Tier B Permit by replacing the requirement for annual distribution of multiple public education information sheets with a requirement for duplication and annual mailing (or other means of delivery) of the informational brochure provided by the Department. This “informational brochure” is the “single information document” mentioned in the response to Comment 141 in the notice of adoption for amendments to the NJPDES rules published in the February 2, 2004 issue of the New Jersey Register.

17. As another of the changes to simplify the Local Public Education SBR in the general permits, the Department has changed Part I, Section F.4 of the Public Complex Permit by replacing the requirement for annual distribution of multiple public education information sheets with a requirement for

duplication and annual mailing (or other means of delivery) of the informational brochure provided by the Department, and by limiting this requirement to colleges, universities, and military bases. All other Public Complexes provide the “Local Public Education Program” through employee training under Section F.9. (In regard to the Highway Permit, see the response to Comment 69 above.)

18. To further simplify public education requirements, the Department has changed the Tier A, Tier B, Highway, and Public Complex Permits by consolidating, under “Local Public Education Program,” education requirements that in the draft permits were under such separate headings as “Stormwater/Nonpoint Source Education,” “Fertilizer/Pesticide Education,” “Waste Disposal Education,” “Litter Ordinance,” and “Wildlife Feeding Ordinance.”

19. The Department has changed the Storm Drain Inlet Labeling SBR in Part I, Section F in the Tier A and Tier B Permits to limit labeling requirements to storm drain inlets that are along municipal streets with sidewalks, or that are within plazas, parking areas, or maintenance yards operated by the municipality. The Department has changed the Storm Drain Inlet Labeling SBR in Part I, Section F.4.b in the Public Complex Permit to limit labeling requirements to storm drain inlets within the Public Complex that are along streets with sidewalks, or that are within plazas, parking areas, or maintenance yards operated by the Public Complex. See the responses to Comments 136-140 and 141 in the notice of adoption for amendments to the NJPDES rules published in the February 2, 2004 issue of the New Jersey Register.

20. The Department has clarified the minimum standard for Storm Sewer Outfall Pipe Mapping in the Tier A, Highway, and Public Complex Permits (Part I, Section F.6.a.i) by eliminating the phrase “map the outfalls,” and by rearranging and rephrasing some sentences to make it more clear that the permittee has to develop only one map (called for short the “outfall pipe map”) showing the required information.

21. The Department has changed the Maintenance Yard Operations SBR (Part I, Section F.8) in the Tier A, Highway, and Public Complex Permits by changing its full title from “Maintenance Yard Operations (including Ancillary Operations)” to “Maintenance Yard Operations (including maintenance activities at Ancillary Operations),” or, in the Highway Permit, from “Maintenance Yard Operations (including Service Areas, and Ancillary Operations)” to “Maintenance Yard Operations (including Maintenance Activities at Service Areas, and Ancillary Operations).” The Department has also made a corresponding change in the first sentence of Attachment D in the Tier A, Highway, and Public Complex Permits (“Required Practices for Fueling Operations, Vehicle Maintenance, and Good Housekeeping SBRs”). These changes clarify that insofar as this SBR and Attachment D apply to “ancillary operations” (for example, impound yards, solid waste transfer stations, mobile fueling), they apply only to maintenance activities at ancillary operations.

22. The Department has changed the De-Icing Material Storage SBR (Part I, Section F.8.a) in the Tier A, Highway, and Public Complex Permits by adding the requirement that the permanent structure have an impermeable floor, in order to reduce the risk of groundwater contamination under the structure.

23. The Department has changed the Employee Training SBR (Part I, Section F.9) in the Tier A, Highway, and Public Complex Permits by adding references to wildlife feeding control, the Yard Waste Ordinance (Tier A Permit only), and the permittee’s own construction activity and

development/redevelopment projects. This change is consistent with N.J.A.C. 7:14A-25.6(b)8 (including its reference to new construction and land disturbances) and should help permittees to comply with the other permit requirements concerning wildlife feeding control and yard waste.

24. In regard to deadlines and certifications, the Department has changed Part I, Section H.1.a in the Tier A, Highway, and Public Complex Permits by deleting the language requiring the permittee to “certify in the Annual Report and Certification” the date that the SPPP was completed and/or the status of its preparation. This language is unnecessary because Part I, Section H.3.a in these permits requires the Annual Report to summarize “the status of compliance” with these permits, including the requirement in these permits for a SPPP.

In addition, the Department has changed Part I, Section H.1.b in the Tier A, Highway, and Public Complex Permits by replacing the requirement that the SPPP be “retained at the facility” with a requirement that the SPPP be retained by the Tier A Municipality, Highway Agency, or Public Complex, respectively. This change recognizes that the “facility” is an entire MS4 and that the SPPP is more appropriately retained at, for example, a permittee administration building.

25. Also in regard to deadlines and certifications, the Department has changed Part I, Section H.2.a.i in the Tier A, Highway, and Public Complex Permits by adding the Division of Water Quality address to which any requests for a six-month extension shall be sent.

26. In regard to the deadline to submit the first Annual Report and Certification, the Department has changed Part I, Section H.3.b of the Tier A Permit by substituting “May 2, 2005” for “[insert the date 425 days from the effective date of the permit].” May 2, 2005 is 425 days after March 3, 2004, which is the effective date of the Tier A Permit. In addition, the Department has changed Part I, Section H.3.b of the Highway and Public Complex Permits and Part I, Section H.2.b of the Tier B Permit by substituting “July 1, 2005” for “[insert the date 485 days from the effective date of the permit].” July 1, 2005 is 485 days after March 3, 2004, which is the effective date of these permits.

27. The Department has clarified Part I, Section I of the Tier A, Tier B, Highway, and Public Complex Permits (“Standard Conditions”) by moving information about how to purchase the NJPDES rules into a separate Section I.5.

28. The Department has changed Attachment A (“Contents of the Stormwater Pollution Prevention Plan”) in the Tier A, Highway, and Public Complex Permits by requiring the “Description of Required Best Management Practices” to also “include any special diagrams required by the permit (i.e., Storm Drain Inlet Labeling and Illicit Connection Elimination and MS4 Outfall Pipe Mapping).” This change does not expand the actual contents of the SPPP, because the requirements that the SPPP include any of these special diagrams (the diagram showing the two sectors for outfall pipe mapping and, where applicable, the map of two sectors for storm drain inlet labeling) are established in Part I, Section F.

The Department has also simplified the “Description of Required Best Management Practices” in Attachment A in these permits by replacing “each Additional Measure (AM) required by the ... Permit or consequent modifications to the permit” with “each Additional Measure (AM), if any, required by the ... Permit.” At present, none of these permits require any AMs, and if future modifications to the permit require any AMs, those AMs will be “required by the ... Permit.” In addition, the Department

has also simplified Attachment A in these permits by condensing some of the language under “Identifying Areas Served by Combined Sewer.”

29. The Department has also changed the Tier A, Highway, and Public Complex Permits by moving Inventory Requirements for Maintenance Yard Operations from Attachment A to Attachment D. The list of materials or machinery must still be made part of the SPPP, but the specific description of this list is more appropriately grouped with other maintenance yard provisions in Attachment D. In addition, the Department has changed the Good Housekeeping Practices SBR in the Tier A, Highway, and Public Complex Permits by clarifying that the permittees must implement good housekeeping procedures for all materials or machinery listed in the Inventory Requirements for Maintenance Yard Operations prepared in accordance with Attachment D. The Department has also clarified the Good Housekeeping Practices SBR in the Highway Permit by noting that “maintenance yard operations” include maintenance activities at Service Areas.

30. The Department has clarified the first paragraph (under “Detection”) of Attachment B (“Procedures for Detecting, Investigating, and Eliminating Illicit Connections”) in the Tier A, Highway, and Public Complex Permits by replacing “a municipal separate storm sewer system” with references to the Tier A Municipality’s, Highway Agency’s, or Public Complex’s small MS4, respectively, and by replacing “NJPDES permit for discharges from that system” with references to the Tier A Permit, Highway Permit, or Public Complex Permit, respectively. These changes should make the description of “illicit connection” in Attachment B of these permits easier to understand.

The Department has changed the second paragraph of Attachment B in these permits (also under “Detection”) by replacing “natural waters (spring water and groundwater infiltration)” with “natural waters (e.g., spring water and groundwater infiltration).” This change recognizes that spring waters and waters from groundwater infiltration are only examples of “natural waters” (another example is stream water).

The Department has also changed Attachment B in these permits by specifying (under “Investigation”) that if the source of a non-stormwater discharge is found to be a non-stormwater discharge authorized under Part I, Section A.2 (rather than “if the source is conclusively found to be natural groundwater infiltration or a stream piped underground”), no further action is required. This change recognizes that Part I, Section A.2 authorizes many non-stormwater discharges besides natural groundwater infiltration or a stream piped underground.

In addition, the Department has changed Attachment B in these permits by requiring (also under “Investigation”) that investigations to observe an intermittent non-stormwater discharge when it is flowing be documented in the Department’s Illicit Connection Inspection Report form. This change will help permittees to demonstrate, and the Department to check, compliance with the requirement for such investigations, and will also result in information about such discharges being recorded for future reference.

31. The Department has changed Attachment C in the Tier A, Highway, and Public Complex Permits and Attachment A in the Tier B Permit (“Design Standard - Storm Drain Inlets”) by adding a “Historic Places Exemption” where “the Department determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:4-7.2(c), that action to meet this standard is an undertaking that constitutes

an encroachment or will damage or destroy the New Jersey Register listed historic property.” In addition, the Department changed Part I, Section J.2 of these permits (“Other Laws”) to list also the New Jersey Register of Historic Places Rules (N.J.A.C. 7:4). These changes are a result of concerns previously expressed by a State Highway Agency and more recent consultation with the Department’s Historic Preservation Office, and eliminates the burden on the permittee to continue to seek authorization or consent for such action, which also in some instances might not be granted.

32. The Department has changed one of the “Fueling” practices in Attachment D in the Tier A, Highway, and Public Complex Permits by deleting the requirement to post “the name and phone number of the owner or operator of the facility,” and by revising this practice to read: “Clearly post, in a prominent area of the facility, instructions for safe operation of fueling equipment, and appropriate contact information for the person(s) responsible for spill response.” The practice as revised is more useful for purposes of facilitating prompt spill response. The Department has also clarified Attachment D in the these permits by splitting “Good Housekeeping/Vehicle Maintenance” practices into separate “Vehicle Maintenance” and “General Good Housekeeping” practices.

33. The Department has changed Attachment D in the Tier A, Highway, and Public Complex Permits by adding “Interim Seasonal Tarping” practices under “Good Housekeeping Practices for Salt and De-Icing Material Handling.” These practices clarify these permits by identifying specific dates and interim storage measures for the “seasonal tarping” discussed in the De-Icing Material Storage SBR in these permits (Part I, Section F.8.A). The Department has also clarified these “Good Housekeeping Practices for Salt and De-Icing Material Handling” in the Highway and Public Complex Permits by changing “Municipal Maintenance Yard Operations” to “Maintenance Yard Operations.”

34. The Department has made a number of minor changes to correct grammatical, typographical, or other errors, or to clarify the permits.