

New Jersey Department of Environmental Protection
Division of Watershed & Land Management
Bureau of NJPDES Stormwater Permitting and Water Quality Management

RESPONSE TO COMMENTS

Comments were received on the draft NJPDES Master General Permit No. NJ0141852 issued on July 28, 2022. The 45-day public comment period began on August 1, 2022, when the Public Notice was published in the Atlantic City Press. The Public Notice was also published in the Star-Ledger, and The Times on August 3, 2022. The public comment period ended on September 20, 2022, at the close of the Public Hearing on the draft permit. The following person[s] commented during the public comment period:

1. Environmental Protection Agency in a letter dated September 16th, 2022.
2. Frank Russo, Township Engineer, Pequannock Township, in an email dated September 19th, 2022.
3. Adele Starrs, Mayor, Knowlton Township, in a letter dated September 20th, 2022.
4. Frank Marshall, Esq., Associate General Counsel, on behalf of the New Jersey State League of Municipalities, in a letter dated September 20th, 2022.
5. Michael Pisauo Jr., Esq, Policy Director, in a letter dated September 20th, 2022, on behalf of:
 - The American Littoral Society;
 - Association of New Jersey Environmental Commissions;
 - Pinelands Preservation Alliance;
 - Delaware Riverkeeper Network;
 - Environment New Jersey;
 - Raritan Headwaters Association;
 - Bergen Save the Watershed Action Network (SWAN);
 - NY/NJ Baykeeper;
 - Passaic River Coalition;
 - Great Egg Harbor Watershed Association;
 - Deal Lake Watershed Alliance;
 - Lower Raritan Watershed Partnership;
 - Musconetcong Watershed Association;
 - Whale Pond Brook Watershed Association;
 - Highlands Coalition;
 - Save Barnegat Bay;
 - Clean Water Action;
 - Hackensack Riverkeeper;
 - New Jersey League of Conservation Voters;
 - Great Swamp Watershed Association; and
 - The Watershed Institute.

6. Jason Gabloff, Township Administrator, Mendham Township in an email dated September 20th, 2022.
7. Bruce Graham, P.E., P.P., CME, CPWM, Borough Engineer/Stormwater Coordinator, Woodbine Borough, in a letter dated September 20th, 2022.
8. Joseph Vuich, PE, PP, CME, Senior Professional Engineer, Van Cleef Engineering, on behalf of the Town of Clinton in a letter dated September 20th, 2022.
9. Lindsey Sigmund, PP, AICP, Program Manager, New Jersey Future, in a letter dated September 20th, 2022.
10. Grant Lucking, Chief Operating Officer, New Jersey Builders Association, in a letter dated September 20th, 2022.
11. Andrew Fillippi, P.E., Sewer Engineer, Princeton, in a letter dated September 20th, 2022.
12. Larry Plevier, PE, CME, Township Engineer and Stormwater Program Coordinator, Clinton Township in a letter dated September 20th, 2022.
13. Kenneth Shine, DBIA, CFM, Pennoni a letter dated September 19th, 2022.
14. Gregory Polyniak, PE, PP, CME, CPWM, Vice President, Neglia on behalf of Rockleigh Borough in a letter dated September 16th, 2022.
15. Sean Elwell, Mayor, Elsinboro Township, in a letter dated September 11th, 2022.
16. William Minervini in a letter dated September 15th, 2022.
17. Zachary Klein, Esq., Associate, Parker McCay P.A. on behalf of Springfield Township of Burlington County, in a letter dated September 20th, 2022.
18. Zachary Klein, Esq., Associate, Parker McCay P.A. on behalf of Wrightstown Borough, in a letter dated September 20th, 2022.
19. Zachary Klein, Esq., Associate, Parker McCay P.A. on behalf of Chesterfield Township, in a letter dated September 20th, 2022.
20. Lori Nienstedt, RMC, MBA, Municipal Clerk, Administrator, Frankford Township, in a letter dated September 20th, 2022.
21. Amanda Lobban, RMC, Municipal Clerk, Sandyston Township, in a letter dated September 20th, 2022.
22. Melissa Fackler, Clerk Administrator, Pilesgrove Township, in a letter dated September 15th, 2022.
23. John Morgan, Mayor, Andover Borough, during the public hearing session held on September 20th, 2022
24. Michael Pisauro Jr., Policy Director, The Watershed Institute, on behalf of himself during the public hearing session held on September 20th, 2022.
25. Sandra Blick, Environmental Engineer, New Jersey Department of Transportation during the public hearing session held on September 20th, 2022.
26. Paul Ferriero, Municipal Engineer, Ferriero Engineering, during the public hearing session held on September 20th, 2022.
27. Lindsey Sigmund, PP, AICP, Program Manager, New Jersey Future during the public hearing session held on September 20th, 2022.
28. Joseph Vuich, PE, PP, CME, Van Cleef Engineering Associates, LLC, on behalf of himself during the public hearing session held on September 20th, 2022.
29. Allison McLeod, New Jersey League of Conservation Voters, during the public hearing session held on September 20th, 2022.

30. Nancy Wohlleb, Professional Engineer, Mott MacDonald Engineering, during the public hearing session held on September 20th, 2022.

Tier B Reassignment Comments

1. COMMENT:

We support the Department's decision to discontinue the Tier B permit and reassign the Tier B municipalities to Tier A. As noted in the reassignment, Federal regulations require this upgrade where there are discharges into impaired waters, waters with TMDLs, etc. [5]

2. COMMENT:

Despite our rejection to being reassigned to Tier A with all of the resulting additional compliance requirements, the Borough does commend the Department for its efforts to improve water quality throughout the State. It is apparent from the extensive information provided with the July 1st letter as well as the draft permit renewal document that considerable time has been spent studying this matter. The July 1st letter, however, came as a complete surprise and the anticipated timelines for both adoption and implementation do not provide us with sufficient time to fully study or plan for its impact. It is surprising that the Borough and presumably the other Tier B Municipalities were not consulted early on for input relative to this proposed "sea change" in the rules as they apply to the existing Tier B's. That solicitation for input did not occur and now the Tier Bs are being lumped in with the rest of the municipalities in the State, using one set of rules that provide little relief for small municipalities. Based on the above, the Borough submits that implementation of this draft Tier A Permit for reassigned Tier B municipalities is premature and should be deferred to allow further discussion between the Tier Bs and the Department. While it may be that ultimately the Borough and many, if not all, of the Tier Bs are reassigned, implementation as presently proposed will very likely result in towns being unable to comply and could subject them to enforcement action with associated fines. That is a totally counterproductive result that does nothing to improve water quality. [7]

3. COMMENT:

Springfield Township of Burlington County ("Springfield" or "the Township") is one of the municipalities that is slated for reassignment from Tier B to Tier A under the new MS4 permitting scheme that the Department has proposed. With a population of 3,245 according to the 2020 Census and a municipal budget of \$4.3 million, complying with the annual requirements of a Tier A municipality will have a significant impact on the Township and its ability to operate. The Township objects to its reassignment from Tier B to Tier A based on the Tier assignment language in the NJPDES rules at N.J.A.C. § 7:14A-25.3(a).

In brief, the Tier A designation is for more densely municipalities in coastal areas, while Tier B is for more rural and non-coastal areas. The Township is consequently inapt for reassignment from Tier B to Tier A for the reasons set forth below.

- First, the Township is not located entirely or partially within an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census or a subsequent and superseding Decennial Census, and the Township does not have a population of at least

1,000 within an urbanized area as determined by the 2000 Census or any subsequent Decennial Census;

- Second, the most recent United States Census (2020) found that the Township's population is 3,245 people, with a corresponding population density of 110.5 people per square mile;
- Third, the Township is not one of the "Affected Municipalities" enumerated in N.J.A.C. § 7:22A Appendix A, nor does it have a stormwater sewer system that discharged directly into the salt waters of Monmouth, Ocean, Atlantic, or Cape May counties;
- Fourth, the Township has not requested a Tier A assignment from the Department; and
- Fifth, the location and size of the discharge from the Township has not materially changed since the Township first received its Tier B assignment in 2004.

In fact, the Department exclusively relies on limited discretion afforded by to N.J.A.C. § 7:14A-25.3(a)(1)(v) to terminate the very existence of Tier B for MS4 permitting purposes in New Jersey ("N.J.") and reassign the Township and all 100 other Tier B NJ municipalities to Tier A. By doing so, the Department is disregarding all of the quantifiable and tangible Tier A qualification criteria that it has promulgated in favor of a sweeping overhaul that fails to consider the unique characteristics that distinguish the Township from those municipalities worthy of Tier A designation. The Township is unquestionably rural, non-coastal (i.e., does not discharge into the waters of Monmouth, Ocean, Atlantic, or Cape May counties), uninterested in requesting assignment to Tier A, and has not experienced a change in location or size of discharge since 2004 that would justify reassignment from Tier B to Tier A. Consequently, the Department should withdraw that draft Tier A NJPDES Master General Permit (NJ0141085) that it issued on July 28, 2022, and instead re-issue the draft Tier A NJPDES Master General Permit alongside a draft Tier B NJPDES Master General Permit that will allow the Township's current MS4 designation and operations remain in place. [17]

4. COMMENT:

Wrightstown Borough of Burlington County ("Wrightstown" or "the Borough") is one of the municipalities that is slated for reassignment from Tier B to Tier A under the new MS4 permitting scheme that the Department has proposed. With a population of 546 according to the 2020 Census and a municipal budget of \$1.25 million, complying with the annual requirements of a Tier A municipality will have a significant impact on the Township and its ability to operate. The Township objects to its reassignment from Tier B to Tier A based on the Tier assignment language in the NJPDES rules at N.J.A.C. § 7:14A-25.3(a).

In brief, the Tier A designation is for more densely municipalities in coastal areas, while Tier B is for more rural and non-coastal areas. The Borough is consequently inapt for reassignment from Tier B to Tier A for the reasons set forth below.

- First, the Borough is not located entirely or partially within an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census or a subsequent and superseding Decennial Census, and the Borough does not have a population of at least 1,000 within an urbanized area as determined by the 2000 Census or any subsequent Decennial Census;
- Second, the most recent United States Census (2020) found that the Borough's population is 546 people, with a corresponding population density of 295.1 people per square mile;

- Third, the Borough is not one of the “Affected Municipalities” enumerated in N.J.A.C. § 7:22A Appendix A, nor does it have a stormwater sewer system that discharged directly into the salt waters of Monmouth, Ocean, Atlantic, or Cape May counties;
- Fourth, the Borough has not requested a Tier A assignment from the Department; and
- Fifth, the location and size of the discharge from the Borough has not materially changed since the Borough first received its Tier B assignment in 2004.

In fact, the Department exclusively relies on limited discretion afforded by to N.J.A.C. § 7:14A-25.3(a)(1)(v) to terminate the very existence of Tier B for MS4 permitting purposes in New Jersey (“N.J.”) and reassign the Township and all 100 other Tier B NJ municipalities to Tier A. By doing so, the Department is disregarding all of the quantifiable and tangible Tier A qualification criteria that it has promulgated in favor of a sweeping overhaul that fails to consider the unique characteristics that distinguish the Township from those municipalities worthy of Tier A designation. The Township is unquestionably rural, non-coastal (i.e., does not discharge into the waters of Monmouth, Ocean, Atlantic, or Cape May counties), uninterested in requesting assignment to Tier A, and has not experienced a change in location or size of discharge since 2004 that would justify reassignment from Tier B to Tier A. Consequently, the Department should withdraw that draft Tier A NJPDES Master General Permit (NJ0141085) that it issued on July 28, 2022, and instead re-issue the draft Tier A NJPDES Master General Permit alongside a draft Tier B NJPDES Master General Permit that will allow the Township’s current MS4 designation and operations remain in place. [18]

5. COMMENT:

Chesterfield Township of Burlington County (“Chesterfield” or “the Township”) is one of the municipalities that is slated for reassignment from Tier B to Tier A under the new MS4 permitting scheme that the Department has proposed. With a population of 9,567 according to the 2020 Census and a municipal budget of \$5.8 million, complying with the annual requirements of a Tier A municipality will have a significant impact on the Township and its ability to operate. The Township objects to its reassignment from Tier B to Tier A based on the Tier assignment language in the NJPDES rules at N.J.A.C. § 7:14A-25.3(a).

In brief, the Tier A designation is for more densely municipalities in coastal areas, while Tier B is for more rural and non-coastal areas. The Borough is consequently inapt for reassignment from Tier B to Tier A for the reasons set forth below.

- First, the Township is not located entirely or partially within an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census or a subsequent and superseding Decennial Census, and the Township does not have a population of at least 1,000 within an urbanized area as determined by the 2000 Census or any subsequent Decennial Census;
- Second, the most recent United States Census (2020) found that the Township’s population is 9,567 people, with a corresponding population density of 449.2 people per square mile;
- Third, the Township is not one of the “Affected Municipalities” enumerated in N.J.A.C. § 7:22A Appendix A, nor does it have a stormwater sewer system that discharged directly into the salt waters of Monmouth, Ocean, Atlantic, or Cape May counties;

- Fourth, the Township has not requested a Tier A assignment from the Department; and
- Fifth, the location and size of the discharge from the Township has not materially changed since the Township first received its Tier B assignment in 2004.

In fact, the Department exclusively relies on limited discretion afforded by to N.J.A.C. § 7:14A-25.3(a)(1)(v) to terminate the very existence of Tier B for MS4 permitting purposes in New Jersey (“N.J.”) and reassign the Township and all 100 other Tier B NJ municipalities to Tier A. By doing so, the Department is disregarding all of the quantifiable and tangible Tier A qualification criteria that it has promulgated in favor of a sweeping overhaul that fails to consider the unique characteristics that distinguish the Township from those municipalities worthy of Tier A designation. The Township is unquestionably rural, non-coastal (i.e., does not discharge into the waters of Monmouth, Ocean, Atlantic, or Cape May counties), uninterested in requesting assignment to Tier A, and has not experienced a change in location or size of discharge since 2004 that would justify reassignment from Tier B to Tier A. Consequently, the Department should withdraw that draft Tier A NJPDES Master General Permit (NJ0141085) that it issued on July 28, 2022, and instead re-issue the draft Tier A NJPDES Master General Permit alongside a draft Tier B NJPDES Master General Permit that will allow the Township’s current MS4 designation and operations remain in place. [19]

6. COMMENT:

The Township of Frankford passed a municipal resolution in opposition of the Tier B to Tier A reassignment(s) stating that:

- compliance with the Tier A permit is far costlier and more onerous than a Tier B permit;
- the Tier B designation was specifically created for municipalities that are located in more rural areas and non-coastal regions, while Tier A designation was created for municipalities that are located within more densely populated areas of the state or along or near the coast;
- the existing tier designations makes logical sense, as the costly and onerous compliance required for municipalities designated for Tier A is necessitated by the population densities and environmental concerns of Tier A municipalities;
- the existing tier designations makes logical sense also for municipalities designated as Tier B, as Tier B municipalities generally do not have the population densities and environmental concerns of their Tier A counterparts;
- many municipalities currently designated as Tier B simply do not have the resources to comply with Tier A designation, unlike their Tier A counterparts;
- the State, however well-intentioned in its actions, continues to saddle municipalities with additional responsibilities via its unfunded mandates;
- these reassignments will result in a redistribution of these municipalities’ limited resources, away from their crucial government functions;
- the Township wholeheartedly supports taking action to better protect and improve the quality of its own waterways, as well as waterways throughout the State;
- the Township simply views that NJDEP’s Reassignment Plan as a costly, unfair, and ineffectual approach to improving the wellbeing of the State’s waterways. [20]

7. COMMENT:

The Township of Sandyston passed a municipal resolution in opposition of the Tier B to Tier A reassignment(s) stating that:

- compliance with the Tier A permit is far costlier and more onerous than a Tier B permit;
- the Tier B designation was specifically created for municipalities that are located in more rural areas and non-coastal regions, while Tier A designation was created for municipalities that are located within more densely populated areas of the state or along or near the coast;
- the existing tier designations makes logical sense, as the costly and onerous compliance required for municipalities designated for Tier A is necessitated by the population densities and environmental concerns of Tier A municipalities;
- the existing tier designations makes logical sense also for municipalities designated as Tier B, as Tier B municipalities generally do not have the population densities and environmental concerns of their Tier A counterparts;
- many municipalities currently designated as Tier B simply do not have the resources to comply with Tier A designation, unlike their Tier A counterparts;
- the State, however well-intentioned in its actions, continues to saddle municipalities with additional responsibilities via its unfunded mandates;
- these reassignments will result in a redistribution of these municipalities' limited resources, away from their crucial government functions;
- the Township wholeheartedly supports taking action to better protect and improve the quality of its own waterways, as well as waterways throughout the State;
- the Township simply views that NJDEP's Reassignment Plan as a costly, unfair, and ineffectual approach to improving the wellbeing of the State's waterways. [21]

8. COMMENT:

I'd like to say that Andover Borough opposes the change from Tier B to Tier A for the following reasons: Andover Borough has experienced a 20-percent decrease in population over the last few decades, diminishing any increased population, in fact. Andover Borough has very little billable property left, approximately five percent of total, which will have little effect on stormwater. No new streets or roads have been built in the last three decades, so no additional impacts from streets. The rail line that used to pass through the Borough has been torn up and is now a trail, eliminating hazards from that system. More than 25 percent of land in Andover Borough has been preserved as Green Acres or State Park land over the last two decades and then that deduction in land disturbance. The Kymers Brook that feeds the Pequest River was designated a C1 stream several years ago, indicating its purity, which is continuing. The Borough contracts for our stormwater program coordinator, we have no DPW staff to perform any of the new or enhanced tasks required by the proposed Tier A regulations and consider this re-designation to Tier A an unfunded mandate. So, transitioning to Tier A MS4 will be a financial burden to the Borough with no conceivable benefit to the public at large. And just a couple other comments about Andover Borough. We're small. We have about 1.6 square miles, which is about a thousand acres, less than 600 residents, and a total municipal budget of around \$600,000 year. When we have to start sweeping our streets three times a year or whatever, all the other information that's going to have to be provided by our contract with our engineer, it's going to put a significant burden on what we

can do with the Borough funds. That's just some additional comments for you to consider. Thank you. [23]

9. COMMENT:

Tier B communities really do need additional resources. They have not had to do a full menu of items. So, providing a relief valve for additional technical resources to help them get up to speed and comply with this permit is important. We know that water quality is a regional approach, it's not one Tier A versus Tier B community, it's all communities working together. So, I really encourage the Department, I'm heartened to see that they're doing it, but really give some thought. [24]

10. COMMENT:

While the Department indicated that it intends to make grant monies available to municipalities to aid in the transition, no details have been provided on when, how much and what the process will be to obtain those grant monies or whether there will even be adequate funds to distribute throughout the State on an ongoing basis. Without these funding details and based on the historical track record of prior funding under this program, it has to be assumed that budgets will need to be increased to cover a significant portion of the costs to implement the requirements. Some of the more significant costs to be incurred relate to but are not limited to preparation of storm water maps; retrofitting of storm drain inlets; street sweeping (i.e.- purchase of equipment and/or shared services, if possible); enhanced training; and preparation/implementation of a watershed improvement plan. The Borough does not have the in-house resources to undertake these tasks and would therefore need to outsource them or hire new employees to comply. Obviously, that comes at a significant new budgetary expense which is a particular problem for Woodbine. The Borough is a highly distressed community (ranked the 9th most distressed in the State) and is considered an Overburdened Community under NJ's Environmental Justice Law with a large percentage of minority and low-income households. As such, any increase in taxes to cover implementation of these requirements will have a substantial financial impact on these households, who can ill afford it. [7]

11. COMMENT:

We need to look at the reassignment of Tier Bs, the dissolution of the Tier B program, and all permittees now being under one roof with one set of rules and determine where it's appropriate for Tier Bs to be relieved of some of their responsibilities. How they're going to be incorporated into the program distinctly by Tier A only. If perhaps by an individual permit, which was an option afforded to them which does not exist currently in our existing structure of permits. And, you know, where the rules need to bend to accommodate and promote the success of the program overall. [28]

12. COMMENT:

I just want to reiterate and reinforce that the opportunity of this five-year permit to be a reset for everybody. And I think it's important that we don't over-strain the relationship between the Department and the permittees based on the pressures felt from the federal government. It's obvious that there's a history of 20 years of permitting and moving the ball forward. It's been somewhat successful, but very deficient in the other aspects. No one feels the pressures of that more than the Department of Environmental Protection. In so much as it's evident in the actions

you had to take with the reassignment of the Tier Bs, a program that's been established for 18 years and needs to be removed from a subset of our permitting program, to roll them in at this time because of incongruences with the CFRs and our regulations at the state level. It's a process that can be painful and it's a process that needs a lot of respect. And I think we're going to miss the target if we don't utilize this five-year permit as a reset. There are opportunities for growth in the permit and growth in regulations, but we have to be careful that the permit does not overregulate anybody new in the Tier Bs and unduly burdens as well existing permittees, because we do have over 60 percent of the permit citations being modified or new at this time. [28]

RESPONSE 1-12:

The Department acknowledges the commenter's support of the Tier B reassignments.

The Department also understands other commenters' concerns regarding the Tier B reassignments; however, the Department determined that all of these reassignments were necessary to address degraded water quality in those municipalities, as well as to address the increase in population to over 1,000 in the urbanized areas of 11 municipalities as a result of the 2010 Census. The reassignment of those municipalities whose population increased to over 1,000 in the 2010 Census is a very clear and specific state and federal regulatory requirement under the MS4 program, as is the requirement to reassign those municipalities due to water quality impairments through special designations, as noted in the NJPDES MS4 stormwater regulations at N.J.A.C. 7:14A- 25.3(a)1.i and v, which states;

All municipalities are assigned to either Tier A or to Tier B as follows:

1. An entire municipality is assigned to Tier A if that municipality:
 - i. Is located entirely or partially within an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census or a subsequent and superseding Decennial Census, and has a population of at least 1,000 within an urbanized area as determined by that Census;
 - v. Operates a stormwater discharge(s) identified under N.J.A.C. 7:14A-25.2(a)4 (special designations), provided that the Department determines that such identification warrants assignment of the municipality to Tier A. In making this determination, the Department may consider the following with respect to the identified stormwater discharge(s) and to other stormwater discharge(s) from small MS4(s), if any, operated by the municipality: the location or size of the discharge from the small MS4(s), the quantity and nature of pollutants reaching the water of the State, the quality of the receiving waters, or other relevant factors.

The Department mailed the notices of these reassignments to all 101 Tier B municipalities on July 1, 2022, in which the general rationale, as well as the municipally specific details, for the reassignments was described. It had become increasingly apparent to the Department in recent years that proper stormwater management was and is critical to the protection of public health, safety, and the environment. Stormwater discharges transport pollutants to our waterways, which degrade the overall quality of those waters and may limit the ability of our residents to recreate in those waters, can result in beach closures, increase the costs of drinking water treatment, and

negatively impact aquatic life. Further, those impacts on aquatic life, such as fish and shellfish, may render certain areas unsuitable for harvesting or consumption.

In fact, every one of the 101 Tier B permittees discharges stormwater containing pollutants from their municipality to surface waters of the state that have levels of those stormwater related pollutants that exceed the regulatory Surface Water Quality Criteria thresholds. These waters are considered impaired when those thresholds are exceeded. Approximately 90% of all waters in the State are impaired for at least one pollutant and it is estimated that up to 60% of the State's existing water quality pollution is attributable to stormwater. Moreover, inadequate, or poorly managed stormwater infrastructure, can exacerbate the flooding resulting from intense storm events. The significance of this issue, and the imminent threat it presents, was most recently reinforced by the remnants of Tropical Storm Ida, which struck New Jersey on September 1, 2021, causing widespread devastation to communities, homes, infrastructure, public buildings and private businesses, with much of this flooding without proximity to waterbodies and directly attributable to poor stormwater management. Tragically, this resulted in the loss of thirty lives.

Despite the Department understanding of the commenters' concerns regarding the reassignments, the Department's evaluation and subsequent determination to reassign municipalities that were designated as Tier B to Tier A is a separate action from this permit renewal. The notices of reassignment afforded those municipalities the opportunity to request an adjudicatory hearing on the reassignment. The Department will continue to work with the former Tier B permittees that requested hearings on their reassignment through the adjudicatory hearing process.

Additionally, the request for the Department to withdraw this Tier A MS4 permit renewal and re-issue it along with a Tier B MS4 permit renewal is inapplicable as the issuance of this Tier A MS4 permit renewal would need to occur at this time regardless of whether or not the Tier B MS4 was being renewed.

Please also refer to RESPONSE TO COMMENTS 18-25 for additional information regarding resources developed by the Department to assist permittees with permit compliance and funding, and RESPONSE TO COMMENTS 26-34 for information regarding unfunded mandates.

No changes have been made to the final permit as a result of these comments.

General Comments

13. COMMENT:

We are generally supportive of the updates to the proposed permit. As previously noted, we support the improvements in this permit over the 2018 permit. In particular, we support the addition of following components:

- Dedicated webpage for stormwater management
- Additional of community wide ordinances
 - Tree Ordinance
 - Salt Storage Ordinance
- Improved Community Wide Measures

- Increased street sweeping
- Roadside Erosion Control
- Stormwater infrastructure inspection
- Inspection and Maintenance
- Watershed Improvement Plan
- MS4 mapping [5]

14. COMMENT:

In general, NJF is supportive of many of the changes in the Draft 2023 MS4 Tier A General Permit. We appreciate the Department addressing specific comments we shared in October 2021 and March 2022, including more detailed MS4 infrastructure mapping, the requirement for permittees to develop maintenance plans, enhanced inspection, and maintenance requirements, and linking watershed planning to the impaired waters and Total Maximum Daily Loads (TMDL) program. We strongly support the Watershed Improvement Plan requirement for permittees. The inclusion of the Fact Sheet with this Draft was extremely helpful. The introductory document aided NJF when conducting stakeholder engagement and provided additional clarification of various permit requirements. We appreciate the time the NJDEP has invested in providing information and soliciting input on this Draft Tier A MS4 General Permit. [9] [27]

15. COMMENT:

First, I'd like to thank the Department. This draft permit is an improvement over past iterations. There are very important improvements, so I am glad to see that. You know, I want to start off, and I will be submitting written comments on behalf of multiple organizations, some of them are on today, but we have to recognize that water quality in New Jersey is impaired. According to the most recent integrated report, only 19 percent of New Jersey's waters meet the standards for aquatic life, only 19 percent of the waters that we have monitored in New Jersey are healthy enough for the life that lives there. We also know that from 2004 to the present integrated reports have continued to show this impairment trend. It has either stayed roughly the same or gotten worse over this time. And we also know that a significant contributor to that impairment is how we use our land, and how we manage our stormwater. So having improvements to this permit are important, so I commend the Department on that. There's a couple areas that I want to sort of point out that we believe some strengthening can occur, and we encourage the Department to look at that. [24]

16. COMMENT:

So again, I really thank the Department for these improvements, but I think there's some additional things that can be done to strengthen it. You know, we have almost 20 years of experience with the MS4 permits, we're not seeing water quality improving according to the integrated reports. So, I think taking additional small steps would be prudent. And again, thank you for this opportunity, and I will be submitting written comments later today. Thank you. [24]

RESPONSE 13-16:

The Department acknowledges the commenter's support of the various updated permit conditions that have been incorporated into this Tier A Master General Permit Renewal to address the water quality concerns in the receiving waters.

No changes have been made to the final permit as a result of these comments.

17. COMMENT:

Pilesgrove Township is concerned no matter what policies, plans, ordinances are put into place there are certain things the Township has no control over such as wildlife and erosion that has already taken place. [22]

RESPONSE:

The Department acknowledges the commenter's concern regarding matters that it does not believe it has control over such as wildlife and erosion that has already taken place.

However, the Department maintains that the municipality does have control over the specific requirements in this permit. For example, through the Wildlife Feeding Ordinance, the Department does not require the municipality to control its wildlife. The purpose of the ordinance is first to inform the residents about the negative effects that luring a large concentration of wildlife to an area can have on water quality, and secondly to enforce the prohibition on the feeding of that wildlife to prevent the associated water quality problems.

Regarding roadside erosion that has already taken place, towns can develop plans to correct existing erosion and provide that information to the Department in compliance with the Roadside Erosion Control requirement at Part IV.F.2. Existing stream scouring erosion caused by MS4 outfalls will need to be addressed in accordance with Part IV.G.2. Concerns about other types of erosion should be raised to the permittee's MS4 Case Manager (https://www.nj.gov/dep/dwq/msrp_home.htm) to determine if action is needed to be taken by the municipality.

No changes have been made to the final permit as a result of this comment.

18. COMMENT:

Could the Department start providing guidance and/or doing sort of the technical work on taking those waste load allocations and dividing them up by municipalities so that the municipalities don't have those resources and technical expertise to do it. So, the more that the Department can do either in-house or through consultants, the better off everyone will be. Again, I thank you for the opportunity for the second bite at the apple. [24]

19. COMMENT:

Many Tier A municipalities will need to develop the capacity, expertise, and funding necessary to comply with the permit requirements. We recommend that DEP develop its ability to provide high

quality technical assistance and improved training or explore the potential to work with a third party to provide these resources to municipalities and their stormwater experts. Just a few examples. [27]

20. COMMENT:

ArcGIS training, as well as funding to hire consultants to provide technical assistance, we know that the Department currently provides ArcGIS licenses at request, which is great, and adds to the layers that already exist. These are a great starting point, but many municipalities don't necessarily have the capacity to use these resources. So that additional funding would be beneficial. [27]

21. COMMENT:

NJF understands the balance that the Department is seeking between requiring municipalities to do more and recognizing the capacity needs of municipalities to do this work effectively. While the permit requirements seem to be moving in the right direction, there will not be any progress unless municipalities have the resources to implement them. In discussion with various stakeholders, including developers and municipalities, we are concerned that many municipalities do not have the funding or the staffing capacity to reach full compliance. While we are extremely supportive of the Watershed Improvement Plan requirement, the Department needs to address these compliance obstacles. For instance, stormwater utilities should continue to be promoted as a source of funding to help municipalities achieve their requirements. In addition, NJDEP should provide technical resources and training for municipalities, perhaps through a circuit rider program, as well as robust enforcement to encourage implementation and ensure compliance. NJF believes that the Department should be intentional about using its staff and resources to both support municipalities and provide accountability. [9]

22. COMMENT:

I want to get into some of the specifics if I could. Because a lot of them relate to costs associated with this permit. I think it's important for the Department to keep in mind that municipalities are subject to the two percent budget tax. So, anything that raises costs in the budget, the municipality's stuck with that two percent. And manpower costs are going up, insurance costs are going up, all these things go up for the municipalities. Obviously, everybody's aware what's happening with the cost of paving. So, all these additional costs associated with stormwater will be competing with everything else in the municipal budget, including roads, recreation projects, employees, etc. So do not underestimate the impact of these rules on the municipal budget process. [26]

23. COMMENT:

For some of our municipalities we have specific concern with the cost generative items, particularly street sweeping, retrofitting, maintaining, cleaning inlets and conveyance systems, particularly with the threshold requirements that the Department is establishing. [28]

24. COMMENT:

First, I want to thank the Department for the opportunity to speak today and for doing this public hearing. New Jersey LCV is part of a coalition that advocates for New Jersey and a few other nonprofit organizations. And our goal is to provide resources to municipalities to combat

challenges, and so we appreciate the insight that folks have given today on the challenges that local municipalities face. We do support, you know, the reality is a lot of people talk about the cost. And the reality is that these towns are already paying the cost of stormwater management, just to have various budget line items, and they're paying the cost of public works. [29]

25. COMMENT:

I think we need to get to a point where we're working together to agree on what types of regional efforts we want to make and have combined effort by local and municipalities to provide their appropriate share of the work. And with that, I think we'll be identifying to the State exactly where we need poignant funding, where we need support of the funds, where we need tool sets, and where we might need professional services that extend past those that are already afforded to us through our consulting engineers or our in-house engineering. [28]

RESPONSE 18-25:

The Department acknowledges the commenters concerns regarding the costs of meeting their Tier A MS4 NJPDES permit obligations in light of limited staffing, other regulatory obligations, and the restrictions on municipal budgets.

In order to assist municipalities with permit compliance, the Department provides a variety of resources. Specifically, the Department currently provides the following resources:

- The free-of-charge 12-hour Stormwater Management Design Reviewer Course (SWMDR) for stormwater management design reviewers twice per year, and multiple employee and municipal board and governing body members training videos. The Department is also developing an additional training program for Stormwater Program Coordinators. See <https://nj.gov/dep/stormwater/training.htm> for links to these resources, as well as a number of additional training resources.
- A free mapping application and arranges for free ArcGIS licenses as well as one-on-one direct technical assistance, and guidance and training for using the application. This training is offered either in person or virtually, upon request of the permittee, to assist with the mapping of the municipalities' stormwater infrastructure.
- Direct technical assistance for the dedicated stormwater webpage development. See https://www.nj.gov/dep/dwq/msrp_outreach_material.htm for examples and contact information.
- A wide range of guidance manuals, model ordinances, forms and template materials which are available at https://www.state.nj.us/dep/dwq/msrp_home.htm.

The Department will be providing updated versions of the MS4 Guidance documents, model ordinances, forms, and templates, etc. to follow this renewal permit. Once these documents are completed, the Department will email the permittees' SPCs and post them on its website at https://www.nj.gov/dep/dwq/tier_a.htm. The Department will also offer a 30-day informal comment period for permittees and other stakeholders to review the model ordinances and WIP template and provide suggested changes, etc. Permittees will also be notified via email when the final versions of these documents are posted online.

In order to assist with the preparation of the Watershed Improvement Plans (WIP), the municipalities can also use the TMDL Look-up Tool that was created to assist permittees with complying with the requirement in the 2018 Tier A permit renewal for “Incorporation of TMDL Information Into the SPPP.” This is available at <https://www.nj.gov/dep/dwq/msrp-tmdl-rh.htm>. The Department also provides some of the data layers necessary to complete the WIP mapping requirements, including the water quality classification of all receiving waterbody segments, the area associated with each TMDL and water quality impairment, as well as the location of overburdened communities which can be found on the NJ Environmental Justice Mapping, Assessment and Protection Tool (EJMAP) (<https://dep.nj.gov/ej/communities/>). The Department also provided stormwater related grants and technical assistance this year that was available to MS4 permittees to cover costs associated with conducting stormwater utility feasibility studies, resilience planning for Ida affected communities, conduct planning and analysis of stormwater opportunities, implement green infrastructure projects, improve existing stormwater infrastructure, and to remove impervious surfaces and restore riparian zones and/or wetland transition areas.

The Department hopes to make funding in the form of grants available to all newly assigned Tier A municipalities similar to the grants that were given to existing Tier A municipalities in 2004 but adjusted to 2022 dollars. The Department also hopes to be able to make some additional funding available to all Tier A permittees during the permit term and will advise permittees if and when that funding becomes available. There are also opportunities to obtain low- or no-interest loans to help with costs associated with capital improvement projects through the New Jersey Water Bank (NJWB). The NJWB is a partnership between the New Jersey Department of Environmental Protection (NJDEP) and the New Jersey Infrastructure Bank (I-Bank) to provide low-cost financing for the design, construction, and implementation of projects that help protect and improve water quality and help ensure safe and adequate drinking water. More information can be found at <https://www.nj.gov/dep/wiip/water-bank.html>.

The Department encourages neighboring municipalities to work together to develop more regional approaches to improving stormwater quality and reducing stormwater-related flooding. These approaches can include shared services among two or more municipalities (or other entities including other MS4 permittees) to reduce each individual permittee’s cost burdens in complying with permit requirements. Another approach could be the formation of a stormwater utility, which would be a more formal opportunity for municipalities in New Jersey to join together to meet their stormwater needs with a dedicated funding source. And since watersheds and subwatersheds do not follow municipal boundaries, the requirement in this Tier A renewal permit to develop and implement a Watershed Improvement Plan (WIP) in Part IV, Section H.1.b, also requires municipalities to interact with stakeholders including their neighboring municipalities that discharge to the same waterbodies so that watershed improvement actions can be coordinated within the subwatersheds. These are ideal opportunities for more regional efforts to be developed and multi-municipality collaboration. However, while the Department prefers and encourages the WIPs to be developed on a regional basis, it should be noted that this permit does not require municipalities to take a regional approach to the WIPs.

The Department is willing to meet with permittees and facilitate conversations to organize shared services arrangements, to discuss the process and benefits with those who want to investigate

forming individual or regional stormwater utilities, as well as to discuss working together to address stormwater concerns.

Regarding the waste load allocations (WLAs) set forth in the final Total Maximum Daily Load (TMDL) documents, they are established as percent reductions and as such do not lend themselves to being apportioned out to the dischargers. Each discharger is responsible to reduce their loading contribution of the applicable parameter by the established percent reduction and the Department cannot require any one discharger remove more than that loading associated with the established percent reduction. However, if multiple dischargers were to choose to coordinate their watershed improvement activities on a regional basis where one permittee was able to remove more than their percent reduction, then other towns in that HUC could conceivably remove less, as long as there was a net overall percent reduction achieved in the HUC(s) and no water quality impairments were allowed to get worse. Such an arrangement would need to be approved by the Department in order to ensure that all MS4 and TMDL requirements would be met.

No changes have been made to the final permit as a result of these comments.

26. COMMENT:

Many of the New Permit Conditions Constitute an Unfunded State Mandate

As a threshold matter, we must point out that many of the new permit conditions proposed in the draft MS4 Permit renewal constitute an unfunded mandate under Article VIII, Section II, paragraph 5 of the New Jersey Constitution, and are thus unenforceable. This is especially true for a number of Tier B municipalities being reassigned to Tier A.

In its Public Notice dated July 28, 2022, the NJDEP readily acknowledges that additional municipal funds expenditures will be needed to comply with the proposed conditions in the Draft Tier A Permit Renewal. NJDEP, however, attempts to rely on the recently adopted “Clean Stormwater and Flood Reduction Act,” which clarified municipal authority to create stormwater utilities, and a decision from the Council on Local Mandates to assert that these conditions are not unfunded mandates because a funding mechanism outside of the property tax exists to pay for these mandates. To put it plainly, the NJDEP’s reliance on this authority is severely misplaced.

To briefly summarize the NJDEP’s position, it wrongly maintains that because a municipality can create a stormwater utility and because this utility must use the revenues it collects for stormwater control purposes, this is a legislatively created funding source outside of the property tax available to pay for the mandates within the Draft Tier A Permit renewal. While generally speaking the NJDEP’s position may be factually true, yes, a municipality can create a stormwater utility and yes, that utility must use its revenue for stormwater control purposes, this does not equate to funding mechanism outside of the property tax to pay for the NJDEP’s MS4 Permit conditions. As such fails as a mechanism for overcoming the prohibition on unfunded mandates.

The NJDEP fails to consider that a stormwater utility may not be feasible or appropriate for all municipalities. As the NJDEP must surely be aware certain farmland is exempt from stormwater

utility fees. Another consideration is the fact that many municipalities simply do not have enough properties subject to a stormwater fee to cover the costs associated with the proposed permit conditions. Again, this is particularly true for smaller communities, like many of the current Tier B municipalities to be reassigned as Tier A. This is all to say that a stormwater utility alone does not provide a realistic funding source outside of the property tax to pay for the new mandates, underpinning once again that the action from the NJDEP is an unconstitutional unfunded mandate. [4]

27. COMMENT:

One final comment relates to the creation of Stormwater Utilities which is an option that has been suggested as a way to address the argument of this being an unfunded mandate. While Stormwater Utilities are certainly a way to provide for funding of the additional expenses related to this permit, they are simply the creation of a new taxing entity that will impact the same residents who would be impacted by a local tax increase. Several years ago, based upon encouragement and help from the State, the Borough of Woodbine went through a process to eliminate their Municipal Utilities Authority as well as their Municipal Airport Authority and thereafter consolidated those operations under their Municipal umbrella. This was done for the express purpose of saving costs by eliminating redundancy. The cost-saving effort was very successful; therefore, for the Borough to consider creation of a new utility of a similar type at this time would reverse their goal of maintaining a smaller, leaner municipal operation. [7]

28. COMMENT:

Prudent administration of the MS4 NJPDES Permit Program must include pro-active annual analysis of State-wide compliance metrics for permittees with each requirement, identification of non-compliance trends over successive permit years, public forum collaboration of Department and Permittees to discuss same, and swift response by the Department to implement targeted funding strategies eliminating the resource gaps permittees detail in their Explanation for Incidents of Non-Compliance. Above all, the Program must prioritize successful establishment of the compliance benchmark by expiration of the 5-year life of the Permit and, when necessary, the extension of the existing Permit to holistically satisfy this regulatory intent prior to the introduction of a substantially modified renewal permit. Else, the introduction of the renewal permit serves as a piling on of additional compliance requirements; compounding the burdens on the permittee, diluting its limited resource allocation to individual compliance tasks, thereby exponentially decreasing the overall rate of compliance and perpetuating partial compliance of existing requirements by forcing attention to imminent new requirements. So much so that the introduction of a substantially modified renewal permit demonstrates the Department's prioritization of their own compliance with federal mandates by the Environmental Protection Agency (EPA) at the expense of a lack of support to local municipalities and failure to promote the regulatory intent of the Tier A MS4 NJPDES Permit Program. This piling on of increased regulations and inherent conflict of interest to satisfy federal mandates [over protection of State interests] by simply trickling down the obligations to the local municipal level is justification of and a basis for concern that the Program is an unfunded Federal mandate passed through such that the burden is solely on the local permittee. [8]

29. COMMENT:

Municipalities are not the Appropriate Enforcement Agent for NJDEP Policy and Rules.

The MS4 Permit renewal includes conditions that would require municipalities to adopt and enforce ordinances written by the NJDEP. The NJDEP seeks to have municipalities adopt and enforce the NJDEP-written “Privately-Owned Salt Storage Ordinance” and “Tree Removal/Replacement Ordinance.” With this it appears that the NJDEP has forgotten the lessons of the past in regard to the previously mandatory but now optional Container/Dumpster ordinance, which was determined to be an unfunded mandate. (See, In re Complaint filed by Roxbury Township (9-10))

If the NJDEP wishes to set new policy with legal requirements, they must do so under their own authority and enforce it using their own resources. It is inappropriate and likely unlawful to require municipalities to act as the enforcement agent for NJDEP prerogatives.[4]

30. COMMENT:

NJF supports the identification of Stormwater Utilities as one of the potential funding mechanisms for the WIPs and other MS4 permit obligations. [9]

31. COMMENT:

I want to give a few comments, I will also be following up with some written comments. But first I'd like to give a context for my comments. I have been a consulting municipal engineer for over 30 years and currently represent about 20 municipalities across the state. I am a consulting engineer and based on these rules I can make an awful lot of money. So, a lot of my comments are contrary to that. But I think what I'd like to bring to the table is some of the realistic municipal constraints that are associated with permit actions like this. And I know when the Department issued the draft permit, they said nothing was an unfunded mandate because municipalities have the ability to create stormwater utilities. Now, I am a stormwater utility supporter. I believe they are good. But municipalities, only one has decided they wanted to move in that direction. I think the popularity of stormwater utilities is frankly not very popular. And I take evidence of that is the fact that the consulting grants that the Department has put out there, the technical assistance application's been extended twice. I don't know, but I'm guessing it's because there aren't a lot of people lining up to go ahead and make those applications. Stormwater utilities are complex, they work in some towns, they don't work in other towns. And the problem with these rules is they apply to every town, even if the stormwater system doesn't work. So that's a little bit of background.[26]

32. COMMENT:

I have a lot of the same respect for the program and appreciation for its stormwater utility that Commenter 26 had expressed earlier. I do find that the stormwater utility program cannot be understated as the opportunity to ensure that there is not an unfunded mandate. We need to demonstrate feasibility of the stormwater utility, but not only some municipalities, but all municipalities and all permit holders, and finding a mechanism for that opportunity to be exercised, to be able to be created and create the funding. They cannot simply be a de facto answer to the unfunded mandate question. I think we need to utilize federal and state funding to encourage the exploration freely by the municipality, as opposed to through government contractors that may

have a conflicting interest to promote the utility. And a lot of people define their appropriate course through this process and defined opportunities to fund their program. [28]

33. COMMENT:

So, a few things I have to mention. Stormwater utilities, we do support stormwater utilities. And I just want to highlight, some of the municipalities have talked about the budget struggle that they may face, that they might consider the cost in infinity, because some of those costs for the permitting and positions of the permit partly would be outside of that part of the utilities. Also, we thank the Department for the recent funding made available to do a feasibility watershed study, and we would encourage towns to do that study, not because it commits them to taking any further action, but because it gives them the information to understand that might be feasible in their town. Because as our previous speaker mentioned, every town is different and have different views. And that's part of what a feasibility study does, it looks at individual municipalities. We thank the Department for that. [29]

34. COMMENT:

Many permittees will need to establish a stormwater utility to have the resources to complete the activities in the permit. DEP should provide a dedicated annual funding source, just like the grant that's available now, for municipalities to conduct a stormwater feasibility assessment, which as we know is necessary to launch a stormwater utility. [27]

RESPONSE 26-34:

The Department would like to thank the commenters 9 and 29 for their support of the identification of stormwater utilities as stormwater funding mechanisms, as well as the support for the recent funding opportunities the Department made available. The Department received a substantial number of applications for grants and technical assistance for the formation of stormwater utilities and is currently processing those applications.

Regarding the assertion that many of the new permit conditions constitute an unfunded state mandate, the Department has reviewed the Constitutional Amendment regarding unfunded mandates and determined that no conditions contained in this renewal permit constitute an unfunded mandate under Article VIII, Section II, paragraph 5 of the New Jersey Constitution, or N.J.S.A. 52-13H, as stated beginning on page 2 of the Fact Sheet issued with the draft permit on July 28, 2022.

The Department disagrees that it solely relies on municipalities ability to form stormwater utilities to support the fact that no requirements in this renewal permit constitute unfunded mandates. As stated on page 2 of the Fact Sheet, this determination is “due to the fact that the requirements contained in this permit renewal are based on improving water quality impairments and TMDLs as required by the Federal Clean Water Act (CWA), and because the MS4 permittees now have the ability to form stormwater utilities like many other jurisdictions across the country since the “Clean Stormwater and Flood Reduction Act” (the “Act”; N.J.S.A. 40A:26B-1 et seq.) was signed into law in March of 2019.” The ability of municipalities to form stormwater utilities and charge stormwater related fees, like many other jurisdictions across the country, is an alternative, legislatively authorized funding mechanism. If a municipality finds that it needs funding to

implement the renewal permit conditions, a stormwater utility can provide said funding, rather than utilizing property tax funds. This ability of the MS4 permittees, and other entities, to form stormwater utilities in New Jersey is new since the Act was signed into law in March 2019, after the issuance of the 2018 Tier A General permit.

Where the legislative branch has provided an adequate funding mechanism that can cover expenses associated to a mandate associated with a statute, rule, or regulation, the mandate cannot be considered an unfunded mandate. (In the Matter of a Complaint Filed by Ocean Township (Monmouth County) and Frankford Township. at 5-6 (Aug. 2, 2002)). The Act provides such mechanism. The Act allows a municipality either alone, together, or with other municipalities, or as a part of a regional entity, to form a stormwater utility as an adequate funding mechanism to finance and fund the improvement of the State's stormwater infrastructure, better control water pollution and flooding, restore and enhance the quality of the State's waters, and protect the public health, safety, and welfare and the environment by correcting inadequate stormwater infrastructure and management. The stormwater utilities formed under this Act are required to charge fees based on a fair and equitable proportional contribution of stormwater runoff from the properties in the utility's jurisdiction in order to fund their unique set of stormwater needs. There is great flexibility in the rates and rate structures that utilities can choose from that vary from a tiered rate structure where multiple tiers of properties are established based on common factors, and properties within each tier are charged the same rate, all the way to the other end of the spectrum of rate structure options where every property is assessed its own rate based on factors established by the utility.

Further, while a municipality may not ultimately decide to establish a stormwater utility, it does not negate the fact that a stormwater utility is an available and adequate funding mechanism provided by the legislative branch that is open to all municipalities. The Act allows stormwater utilities to fund any required conditions of this permit renewal, if necessary. Additionally, while a single municipality may not opt to form a stormwater utility, that municipality could opt to form a stormwater utility along with one or more other municipalities in the county, or a regional authority, which could form a stormwater utility that would include the subject municipality within its service area, thus benefitting from the economy of scale of the larger entity and easing their respective administrative burdens concerning such smaller municipalities. Also, it should be noted that smaller municipalities should also have proportionately lower costs due to the reduced amount of infrastructure to inspect, maintain, etc.

The Department is aware that certain farmlands are exempt from paying stormwater fees (N.J.S.A. 40A:26B-8(c)4), but the other properties within municipalities, in addition to residential and commercial, would be required to pay stormwater utility fees. This includes county, state and federal government properties (including roads and parking lots), as well as tax-exempt properties, as utility fees are considered charges based on use and not taxes, similar to sewer and drinking water supplier fees. Fees from these types of properties would allow the utility to recoup stormwater costs from many other properties in addition to residential and commercial lots. The stormwater user fees would be required to be established based on a "fair and equitable approximation of the proportionate contribution of stormwater runoff from a real property." For example, county and state road departments would be subject to stormwater fees for their property in the service areas. Tax exempt properties would also be subject to the stormwater fees based on

the stormwater their property generates. The Department has developed extensive guidance regarding the establishment of stormwater utilities and the variety of rates structures that may be established as well as other information on its website to assist municipalities and other entities interested in learning more about establishing a stormwater utility. See https://www.nj.gov/dep/dwq/SWU_stormwaterutility.html.

And not to be discounted is the fact that the permit requirements do not constitute unfunded mandates because they are necessary in order to meet the water quality objectives of the federal CWA, which is “to restore and maintain the chemical, physical, and biological integrity of the nation's waters. This exemption is provided for under Article VIII, Section II at paragraph 5(c)(1), which states,

“(c) Notwithstanding anything in this paragraph to the contrary, the following categories of laws or rules or regulations issued pursuant to a law, shall not be considered unfunded mandates:

(1) those which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements;”

The Department has been delegated by the USEPA to administer the federal NJPDES MS4 permit program under their oversight. Therefore, it is the Department’s responsibility under that delegation agreement with EPA to implement the Federal MS4 rules via the NJPDES permit program. These particular federal requirements are included in the USEPA’s Phase II rules for small MS4’s (40 C.F.R. part 122) and incorporated into DEP’s NJPDES stormwater rules (N.J.A.C. 7:14A-25 et seq.). These conditions are imposed in this permit renewal since it has been documented that every municipality in New Jersey contains, either within or alongside its boundaries, surface waters that have impairments of the surface water quality criteria (SWQC), and many of these impaired waters have TMDLs developed, which set forth pollutant reductions necessary from the dischargers to those waters to restore the water quality to meet the SWQC. The SWQC are numeric and narrative standards which are established to protect the designated uses of those surface waters. Examples of designated uses include primary contact recreation, secondary contact recreation, and water supply. It is imperative that the discharges of pollutants into these waters from MS4 systems be reduced or eliminated to improve the negative impacts they are having on the water quality. This permit renewal is a Comprehensive General Permit (under 40 CFR 122.28), which serves to authorize MS4 stormwater discharges from New Jersey Tier A municipalities and requires those respective municipalities to develop a stormwater program and the Department further maintains proper implementation of the conditions of this renewal permit will provide a continued, iterative process towards improving stormwater quality.

The regulation of stormwater runoff through this permit renewal is intended to provide substantial water quality benefits through the changes the Department has deemed necessary. These changes are based on current information applicable to stormwater related concerns, which includes, but is not limited to, surface water quality impairments as per the final 2016, 2018 and 2020 Integrated Water Quality Assessment Reports, adopted/approved Total Maximum Daily Loads (TMDLs), the presence of Harmful Algal Blooms (HABs), the Surface Water Quality Standard water quality classification upgrades to N.J.A.C. 7:9B that occurred in May 19, 2003, November 3, 2003, August

2, 2004, June 20, 2005, June 16, 2008, and April 6, 2020, as well as the serious stormwater flooding that has resulted from recent storm events, including Hurricane Ida.

Water quality concerns have also been a main driving force behind the development of the previous iterations of the Tier A MS4 permits, and associated requirements as required under the Federal CWA and NPDES regulations noted above, and as the water quality concerns and our knowledge of them have expanded since the issuance of the initial Tier A MS4 permit in 2004, the permit requirements are also now expanding to address these increasing concerns. As noted beginning on page 19 of the Fact Sheet, these concerns were also raised to the Department on multiple occasions by EPA upon their review of previous MS4 permit actions and their audit of our delegated NJPDES MS4 program. The requirements in this permit renewal are based on the objective of reducing the water quality impairments and furthering the improvement of water quality and quantity impacts from stormwater runoff throughout the State.

Additionally, the Department disagrees that municipalities should not be required to adopt ordinances designed to restrict pollutants from being discharged from their storm sewer systems. Under the Federal NPDES and State NJPDES regulations, the discharges from outfalls are the ultimate legal responsibility of the owners of the outfalls, not the Department's responsibility. Therefore, controlling the discharges to surface and ground waters, and the associated pollutants from those outfalls, is also the responsibility of those owners. In this case, the owners are the municipalities who are discharging stormwater through their MS4s into the surface waters and ground waters of the State. As much of the storm sewer system is accessible to the general public, the Department maintains that adopting ordinances to control the actions of the general public is an effective measure, with little to no cost, to control stormwater and reduce or eliminate the introduction of pollutants into the storm sewer system. The ordinances do not require, if any, significant cost on the part of the municipality. Enforcement would generally occur when violations are noticed during other municipal activities. An already occurring municipal activity could include municipal code inspections, routine police patrols, yard waste collection, parking enforcement, or through the existing municipal permitting process. In the case of the Privately-Owned Salt Storage ordinance, the Department is not instructing municipalities to go around to every site and check for salt piles. Simply, the municipality would use the ordinance to get corrective action when these piles are discovered during routine municipal operations or through complaints. Municipalities can also adopt provisions in the ordinance to require the operators of the salt piles on properties that discharge into the MS4 to "license" those piles using an existing municipal licensing program, such as those that may already exist for dogs or landlords, which generally include the collection of a licensing fee. Regarding the tree ordinance, enforcement could be done through the existing municipal permitting process that would similarly collect fees from developers, businesses or residents wishing to cut down eligible trees. It should also be noted that similar tree ordinances with permitting requirements for tree removal/replacement already exist in some municipalities in the State.

Notwithstanding the Department's position that none of the requirements in this renewal permit constitute unfunded mandates, permittees also have the option of applying for an individual MS4 permit, as mentioned on page 10 of the Fact Sheet, which states, "Alternately, a permittee may request their stormwater discharges be authorized under an individual stormwater permit, as

described in N.J.A.C. 7:14A-6.13(g). Any permittee pursuing authorization under an individual stormwater permit shall submit an application (see https://nj.gov/dep/dwg/forms_storm.htm) under N.J.A.C. 7:14A-4 et seq. with reasons supporting the request for the individual permit. Additionally, the application for the individual permit must contain the information required under 40 CFR §122.33(b)(2). The Department will grant the request if the reasons and information cited by the permittee are determined to be adequate to support the request.”

The Department disagrees that the NJPDES MS4 permit requirements should be based on permittees’ past compliance records. The Department is tasked with implementing the Federal NPDES Permitting program for wastewater and stormwater. As part of that federal delegation, the Department is obligated to issue permits in compliance with the objectives of the CWA. Allowing permittees’ lack of compliance with their permits to set the level of water quality protection could likely encourage a poor level of compliance among some permittees in order to reduce their duties required under upcoming permit actions. As the permittees are the owners and operators of their MS4 systems, they are therefore responsible for the discharge of pollutants in that stormwater as NJPDES MS4 permittees. Part of that responsibility is to control the amount of pollutants that are discharged from their MS4 systems so as not to render the receiving waters unsuitable for the designated uses, or in other words, not cause or contribute to water quality impairments as described above. Each permittee must do their part to protect, restore, and maintain the SWQS in their receiving waters for all users, including towns downstream.

Additionally, the Department provides a great deal of support to the MS4 permittees to assist them with permit compliance. For example, the Department provides free training to the municipalities’ stormwater design reviewers to ensure they are knowledgeable of the Stormwater Management rules and program requirements. This course was previously offered by Rutgers University for approximately \$400. The Department has also developed numerous templates, model ordinances and other resources for towns to use if they want, so they do not have to develop ordinance language themselves. See RESPONSE TO COMMENTS 18-25 for additional information regarding resources developed by the Department to assist permittees with permit compliance.

No changes have been made to the final permit as a result of these comments.

35. COMMENT:

Even though we are supportive of the permit, we urge the Department to further strengthen the permit. Our general comments on proposed strengthening are:

- Clearer authority to permittees to adopt stronger standards,
- Requirements to monitor discharges to receiving waters demonstrating installed BMPs are functioning as designed and are not contributing to impairments,
- More nimble incorporation of recent scientific consensus on the impacts of climate change on our stormwater systems,
- Enforcement of stormwater BMP maintenance requirements,
- Enforcement of permittee obligations to oversee maintenance obligations,
- Incentives and enhancements for regional approaches to stormwater management,

- Continued enhancements to training of stormwater management engineers, municipal engineering reviewers and other municipal officials and boards involved in stormwater management,
- Seize opportunities to incorporate stormwater management in communities developed prior to the MS4 program or stormwater management in general,
- Provide enforceable implementation schedules for meeting TMDL objectives for achieving water quality standards, and
- Develop a series of questions to appear in the Municipal Annual Report and/or the Supplemental Questionnaire on capital costs, such as infrastructure repair, incurred by the municipality as a result of Climate Change. [5]

RESPONSE:

The Department maintains that it has incorporated extensive improvements to the Tier A MS4 NJPDES permit. Additions to the permit such as improved permit language, new and enhanced requirements, and more robust training, are intended to be important steps toward reducing pollutants in state waterbodies. The Department acknowledges the commenters general support of the permit and the proposed areas of strengthening within the permit. However, it is unclear what specific language changes the commenter is requesting, keeping in mind that permit language must include specific requirements that are clear and measurable.

Also, significant changes cannot be made between the issuance of the draft and final permits as the NJPDES regulations at N.J.A.C. 7:14A-15.14 require that significant changes to the permit conditions must be public noticed to give the opportunity for review and public comment on those revised conditions.

The Department offers the following responses regarding each bulleted topic listed above:

- “Clearer authority to permittees to adopted stronger standards” – This permit is intended only to represent the minimum standards that must be implemented by a permittee and the Department encourages permittees to implement stronger standards. This was described in the Fact Sheet as “Optional Measures,” but was erroneously left out of Part IV of the draft permit. Since optional measures are not enforceable by the Department, this section was initially removed by the Department for the pre-draft permit. However, in response to public comments, the Department agreed to add it back into the permit. This is stated in the Fact Sheet on page 18 and the “Optional Measures” section is described in more detail on page 81. Despite this information in the Fact Sheet, “Optional Measures” was mistakenly left out of the permit itself. **The Department has corrected this error made during the draft process and has added Optional Measures back into the final permit at Part IV.I.**
- “Requirements to monitor discharges to receiving waters demonstrating installed BMPs are functioning as designed and are not contributing to impairments” – Monitoring of individual BMP discharges under the Tier A permit is not appropriate as the owners of many of the BMPs are not usually the Tier A permittees. Compliance with the maintenance manual requirements has been deemed to be sufficient to demonstrate that BMPs are functioning as desired unless physical evidence indicates otherwise. Further, small MS4

permittees regulated under the Tier A permit are not subject to mandatory monitoring which is applicable to large and medium MS4s under the Federal MS4 program. Also see RESPONSE TO COMMENTS 37-39 below for additional discussion regarding MS4 monitoring.

- “More nimble incorporation of recent scientific consensus on the impacts of climate change on our stormwater systems” – It is unclear what specific language changes the commenter is requesting, but the permit must include specific requirements for which compliance is able to be determined and not moving targets. And as noted above, significant changes cannot be made between the issuance of the draft and final permits as the NJPDES regulations at N.J.A.C. 7:14A-15.14 require that significant changes to the permit conditions must be public noticed to give the opportunity for review and public comment on those revised conditions.
- “Enforcement of stormwater BMP maintenance requirements” & “Enforcement of permittee obligations to oversee maintenance obligations” – It is not clear what language changes to the permit the commenter is requesting. However, the Department’s Division of Water Enforcement staff have been conducting routine compliance inspections of the Tier A and other MS4 permittees to ensure compliance with all permit conditions, including maintenance requirements, as the requirement to ensure proper maintenance and functioning of private BMPs was also included in the final 2018 Tier A permit. The Bureau of NJPDES Stormwater Permitting and Water Quality Management has also conducted 58 compliance assistance audits of Tier A permittees since 2015. During both of these types of evaluations, the Department reviewed the permittees’ maintenance programs and associated records for stormwater facilities the municipalities owned, as well as for those they did not own. The Department also reviewed the permittees’ information regarding how they ensure compliance with these permit conditions and cited permittees who were not ensuring proper maintenance.
- “Continued enhancements to training of stormwater management engineers, municipal engineering reviewers and other municipal officials and boards involved in stormwater management” & “Seize opportunities to incorporate stormwater management in communities developed prior to the MS4 program or stormwater management in general” & “Incentives and enhancements for regional approaches to stormwater management” – It is not clear what language changes to the permit the commenter is requesting. Additionally, as noted above, permit language must include specific requirements that are clear and measurable, and incentives are not appropriate to include in a permit as they would not be clear and measurable requirements on which compliance could be determined. See RESPONSE TO COMMENTS 18-25 for additional information regarding regional approaches.
- “Provide enforceable implementation schedules for meeting TMDL objectives for achieving water quality standards” – The Department understands the commenters concern, but it is premature to establish compliance schedules for measures to meet the TMDL percent reductions as the development of those measures will come out of the final Watershed Improvement Plans which are required to be completed by November 30, 2027.
- “Develop a series of questions to appear in the Municipal Annual Report and/or the Supplemental Questionnaire on capital costs, such as infrastructure repair, incurred by the

municipality as a result of Climate Change” – The questions included in the Annual Reports are not part of this permit renewal, and it is unclear as to how the permittees would be able to categorize costs due to climate change.

36. COMMENT:

The permit should add general language regarding the goals of the MS4 program and its authority from the Clean Water Act and state programs. We recommend the permit reference the goals of restoring, maintaining, and enhancing the waters of the State. [5]

RESPONSE:

The Department included references to this information in the draft permit Fact Sheet as the Fact Sheet is where the basis and background for the permit requirements is required. The Fact Sheet also explains the goals of the general permit as well as references to permit guidance materials to further detail these points. This type of explanatory language is not suitable for the permit document itself as it does not constitute clear and measurable permit requirements which permittee compliance could be measured against.

The Fact Sheet issued on July 29, 2022, with the draft permit goes into the following detail regarding the Federal and state rules that govern stormwater discharges:

“Stormwater discharged from an MS4 is regulated through both Federal and state rules. In response to EPA’s 1999 Phase II stormwater rules, the Department promulgated:

- The Phase II NJPDES Stormwater rules, N.J.A.C. 7:14A-24 & 25 (<https://www.state.nj.us/dep/dwq/714a.htm>) administered as the Additional Requirements For Certain Stormwater Discharges and the Municipal Stormwater Regulation Program (www.nj.gov/dep/dwq/msrp_home.htm), respectively.
- The Stormwater Management rules, N.J.A.C. 7:8 administered as the Stormwater Management Program (<https://www.njstormwater.org/>; Fact Sheet page 8).

“To protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the MS4 State rules (N.J.A.C. 7:14A-25) require the Department to issue permits regulating each small MS4. These MS4 permits specify the minimum control measures that must be implemented by the permittee. These control measures serve to reduce the discharge of pollutants from the Tier A municipality’s MS4, municipal maintenance yards and other ancillary operations, to the maximum extent practicable pursuant to N.J.A.C. 7:14A-25.6(a)1 and 40 CFR 122.34(a) to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. The benefit of this approach was described in the NJPDES rule adoption notice published in the February 2, 2004, New Jersey Register (See 36 N.J.R. 828-829).

“New Jersey’s NJPDES MS4 permit program was developed under N.J.A.C. 7:14A-25 et seq., which requires all New Jersey municipalities; state, county and interstate transportation entities; and certain public complexes to apply for a NJPDES permit. N.J.A.C. 7:8 et seq. established the requirements for stormwater management plans and stormwater control ordinances, design and

performance standards for stormwater management measures, and long-term operation and maintenance of stormwater management measures (Fact Sheet page 9).”

No changes have been made to the final permit as a result of this comment.

37. COMMENT:

Establish Monitoring Requirements to Verify Compliance with Water Quality Standards

The draft permit does not seem to have any monitoring requirements; however, all NJPDES permits are required to include monitoring strategies that ensure compliance with the permit. The draft permit states that BMPs provide treatment pursuant to the Department’s authority under the Clean Water Act with the goal of meeting water quality standards. However, if BMPs are not functioning as designed there is no way to ensure that discharges are not contributing to water quality impairments. The MS4 Tier A permit should include a general monitoring requirement to establish baseline information and to track pollution loads over time. As we stated in our October 2021 and March 2022 comments, we recognize that assuming responsibility for water quality monitoring is burdensome for both municipalities and NJDEP. NJF recommends that NJDEP provide the following options:

- The municipality chooses to conduct monitoring itself. This would require additional training from NJDEP to ensure monitoring programs are successful.
- The municipality chooses to forgo its own monitoring and instead pays a fee to a NJDEP-approved third-party monitor.
- NJDEP conducts the monitoring itself. NJDEP is responsible for numerous multi-year monitoring programs mandated by the Clean Water Act. NJDEP should provide their monitoring data to permittees. In addition, the Department should strategically increase its monitoring based on locations with high concentrations of impaired waterways and overburdened communities. In an ideal world, permittees would review monitoring data to understand their municipality’s contribution to pollutant loading for impaired streams as it develops the WIP. [9]

38. COMMENT:

A couple things I want to, others have said this, but I think it really bears to be reinforced. New Jersey Future mentioned monitoring. We, the coalition, we've been working since 2014 in asking for monitoring of the BMP outfalls to really see how these things are functioning. I think that's extremely necessary, especially since we know that many of our BMPs have not been maintained over the years or decades. So, assuming that they are continuing to function and are not contributing to a problem is a problem [24]

39. COMMENT:

The final area I'd like to address is water quality monitoring. The draft permit doesn't seem to have monitoring requirements. It does state that the BMPs provide treatment pursuant to the Clean Water Act. However, if BMPs aren't functioning as designed, there is no way to ensure that discharges aren't contributing to water quality impairments. I think the MS4 permit should include a general monitoring requirement to establish a baseline of information, and to track pollution loads over time. We know the TMDL is looking to exist and is cited in the permit multiple times

as a resource to guide the watershed improvement plan. But there are other ways that data can be gathered or provided. One example being the Department can strategically increase its own monitoring based on locations with high concentrations of impaired waterways and overburdened communities. In an ideal world, permittees would review monitoring data to understand their municipality's contribution to pollutant loading for impaired streams, as it develops their watershed improvement plan. [27]

RESPONSE 37-39:

The Department assesses and evaluates compliance with the effectiveness of small MS4 permit conditions through the tracking of measurable goals, implementing BMPs, on-site audits and enforcement inspections conducted by Department staff, the submission of annual reports, and the existing ambient monitoring programs. The commenters are directed to the Division of Water Monitoring's webpage for a plethora of water quality monitoring information, including on obtaining existing ambient data and how to get involved and share input in future monitoring efforts at <https://www.state.nj.us/dep/wms/>.

The MS4 permits also require that permittees follow manufacturers maintenance plans for installed BMPs that they own or operate and require the municipalities to ensure that owners of private BMPs within their municipalities do the same. The Clean Water Act at Section 402(p)(3)(iii) states that permits for discharges from municipal storm sewers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." As per Section 402(a)(2) of the Clean Water Act, NPDES permits are required to contain monitoring provisions sufficient to assure compliance with permit conditions, "including conditions on data and information collection, reporting, and such other requirements as [the permitting authority] deems appropriate." In sum, the Clean Water Act provides flexibility in the forms of monitoring that the Department can deem appropriate. The Department has determined that monitoring is not an appropriate permit condition for the small MS4s regulated under the Tier A Renewal at this time.

Further, EPA indicated as part of the 1999 Phase II rulemaking that it "does not encourage requirements for "end-of-pipe" monitoring for regulated small MS4s. Rather EPA encourages permitting authorities to carefully examine existing ambient water quality and assess data needs." (64 FR at 68769). More recently, EPA has affirmed that its requirement that permit conditions be "measurable" does not automatically necessitate water quality monitoring or end-of-pipe monitoring. (81 Fed. Reg. 89320, 89336).

And lastly, the decision not to require the requested water quality monitoring was upheld by the Appellate Division (In the Matter of an Appeal filed by Delaware Riverkeeper Network, Maya Van Rossum, Delaware Riverkeeper, Stony Brook-Millstone Watershed Association, Save Barnegat Bay, Raritan Headwaters Association, NY/NJ Baykeeper, Hackensack Riverkeeper, and Association of New Jersey Environmental Commissions, in a decision dated March 18, 2020.

No changes have been made to the final permit as a result of these comments.

40. COMMENT:

And there's a substantial change here. And I think we need to look to this watershed improvement planning, that's probably the key, important part of this permit in these five years is establishing a watershed improvement plan, working regionally, working at the State level and trickling down. And perhaps that watershed improvement plan becomes the opportunity for successful stormwater utilities. I think we put out this opportunity for stormwater utilities a number of years ago, and it came out of nowhere for a lot of locales. It was something that was a lofty goal, and it didn't gain traction. I think the reason it didn't gain traction is primarily based in the lack of planning. The planning exercises that need to be done are these improved watershed improvement plans that we're now enumerating in this permit. I think by strengthening those documents, by getting them adopted, and having goals and objectives clearly defined, we can then look to how establish utilities under those regions and under those watersheds, that bring municipalities together to finance these initiatives. Thank you. [28]

41. COMMENT:

So municipal engineering, stormwater improvement projects, water, PE wastewater engineering, been in practice for nearly 25 years. So, I don't want to take up too much time because I think a lot of the previous comments echo some of my own comments that I would make. And I think Number 1 on that list is this idea of a regional approach to the watershed implementation plans. I applaud that these plans are now in a form of a permit requirement and a regulatory, there's a regulatory aspect to it. I think it does answer what's probably been delayed for 50 years under the Water Pollution Control Act and the subsequent amendments in the Clean Water Act. Having been involved for many years with point source pollution and wastewater management planning, we have the other piece now. We have not point source, we have watershed holistic thinking. And I think that the Department should strongly consider some lessons learned from wastewater management planning. When those plans began to be formulated here under N.J.A.C. 7:15, they were done on a smaller scale by a smaller resource utility authority, sewer authority, many municipalities. And then about 15 years ago there was a revamp of the rules. And it was the first time we saw the Department really realized that it's difficult to keep track that volume of municipal plans and speak to their updating and follow-through. So, there was a regional approach to take wastewater management planning into a 21-county based planning. Although counties do not map watershed boundaries, our political boundaries simply don't do that. The concept of a regional approach is there. And I think, again, coming back to the watershed planning, there needs to be that approach. I foresee an issue of a municipality of five permits, scarce resources to be able to put together an individual plan. It's going to be done in a vacuum. And it won't really map or align with an adjacent municipality, or perhaps an adjacent municipality in another county. And I think that lack of regional approach, what we will see is a bunch of disjointed plans. And a long time between the initial submission of these plans and then review by the Department. The Department itself is scarcely resourced in that vein.

So, I just wanted to put forth that Number 1, I do applaud the rules because the need for the mapping, the cataloging, the understanding of the assets that comprise given municipalities MS4 is needed. The need for inspection is there. The need for these watershed implementation plans,

it's the start. But I do believe that these, there needs to be truly a regional approach. And if it doesn't come in the form of a stormwater utility, the Department should strongly consider ways to incentivize municipalities, whether it is directly under their county or through an actual watershed based effort, encourage the formation of a watershed coalition that sees to, holistically speaks to the overall water quality. And other than that, I think most of the other comments I think have been put forth that I would have also put forth. So, thank you again for your time. [30]

RESPONSE 40-41:

The Department agrees that the formation of stormwater utilities would be an appropriate approach for municipalities who share common watersheds to finance water quality improvement projects that are part of a regional Watershed Improvement Plan (WIP). Municipalities are encouraged to explore the idea of working together to establish and implement a regional WIP and consider forming a stormwater utility to create a dedicated source of funding for projects identified in the plan. The Department will be providing guidance for the WIP, as well as a WIP template to assist Tier A permittees with understanding the information that will be needed to be included in the WIPs. Once the WIP template is completed, the Department will email the permittees' SPCs and post this template on its website at https://www.nj.gov/dep/dwq/tier_a.htm and offer a 30-day informal comment period for permittees and other stakeholders to review the template and provide suggested changes, etc. The Department's review and potential comments will be directed at ensuring the provided WIPs meet the requirements of the permit. The Department has also offered a program to all stormwater permittees in New Jersey to apply for free stormwater utility feasibility studies.

See RESPONSE TO COMMENTS 18-25 for additional discussion regarding stormwater utilities and regional approaches.

No changes have been made to the final permit as a result of these comments.

42. COMMENT:

We have two comments. One is we would like to know whether it is the intent of the Department of Environmental Protection to also require the watershed improvement plans for the public agency, public complex and highway agency permits, and if so, we would like to work closely with the Department of Environmental Protection prior to the release of that.

The second thing is regarding the review of the Department, it states that the Department of Environmental Protection will review and provide comments as appropriate. I would recommend that there be a more detailed discussion to determine what kind of comments and what kind of details will occur, so that permittees can understand the process that's taking place, can understand the criteria, and that it's not subject to the different reviewers so they, too, understand what the requirements are. [25]

43. COMMENT:

I did want to comment on, I don't want to counter the opinions of others, but the Department of Transportation had commented earlier about their desire for participation prior to the release of

their permit. I would encourage the Department to maintain the legal bounds of the Chinese wall between you and the Department of Transportation, to assure the ethical boundaries and lack of conflict of interest between the necessity to permit and regulate, and the desires of the State for its own funding limitations, to negotiate the requirements of their permits for all the public agencies in the State. That opportunity was not necessarily afforded to the local municipalities during this process, and I think it's appropriate that it is not afforded to a public utility under their permit review process and renewal. [28]

RESPONSE 42-43:

The Department intends to consider including Watershed Improvement Plan requirements or other requirements with similar goals in the MS4 permits for Public Complexes and Highway Agencies during the renewal processes for those permits. However, the renewal process for those permits has not begun. The Department will provide the same level of outreach and input opportunities with the issuance of the pre-draft versions of those renewal permits.

As stated in RESPONSE TO COMMENTS 18-25, the Department will be providing guidance for the WIP, as well as a WIP template to assist Tier A permittees with understanding the information that will be needed to be included in the WIPs. Once the WIP template is completed, the Department will email the permittees' SPCs and post this template on its website at https://www.nj.gov/dep/dwq/tier_a.htm and offer a 30-day informal comment period for permittees and other stakeholders to review the template and provide suggested changes, etc. The Department's review and potential comments will be directed at ensuring the provided WIPs meet the requirements of the permit.

No changes have been made to the final permit as a result of these comments.

44. COMMENT:

We also do acknowledge, as somebody said, that our regional approach to stormwater is going to be necessary in a lot of areas, so we would highlight that as well and emphasize that. We do also want to underscore that more resources and information and guidance has been given to towns as they start to take actions to comply with the permits, particularly for the towns that are in the Tier 2 categories. Somebody had mentioned, I believe it was the previous speaker, that annual sweeping is something that's not working. Again, we just want to offer that New Jersey LCV has a peer-to-peer network that connects towns with each other, so that we can talk about what's missing for their municipalities in terms of stormwater. [29]

RESPONSE:

The Department agrees that many towns would benefit from taking a regional approach to stormwater management, particularly with respect to the creation and implementation of Watershed Improvement Plans that cross municipal boundaries, developing partnerships for shared services, as well as establishing stormwater utilities.

See RESPONSE TO COMMENTS 18-25 for additional information regarding regional approaches, shared services, and stormwater utilities.

No changes have been made to the final permit as a result of this comment.

45. COMMENT:

NJBA is supportive of the Department of Environmental Protection's (Department) efforts to enhance the MS4 permit through various changes identified in the draft permit and appreciates the Department's detailed approach in creating its proposed permit changes. Additional information and guidance should be provided regarding how municipalities may create regional plans and stormwater utilities. The Department should research the economic and environmental benefits of a completely regional stormwater management approach, by permitting a regional entity to act as the MS4 permittee. The Department notes that permittees can designate by shared or contracted services, the management of one or more components of a Stormwater Pollution Prevention Plan (SPPP), but unfortunately, that a permittee still remains responsible for compliance with permit conditions if the other entity fails to implement any of the measures or components. This conflict disincentivizes the utilization of a regional approach. With a regional MS4 permit, regional stormwater utilities could align with regional Watershed Improvement Plans (WIPs) and SPPPs, and could offer completely watershed-based stormwater management, including the review and approval of stormwater plans in place of municipal review and approval. NJBA appreciates that this may require statutory changes and would amount to a drastic shift in how stormwater is managed in New Jersey but believes the economic and environmental benefits that would likely be achieved demand further investigation. [10]

46. COMMENT:

The permit's Fact Sheet, which is very helpful, by the way, and provided a lot of clarification for the requirements throughout, things that the Department will prioritize, regional watershed improvement plans in terms of assistance funding review and approval. We think that the DEP should provide additional guidance on this regional approach, since it will be given priority, and to provide additional assistance to facilitate the formation of regions. For example, the Department could outline parameters for selecting a region in terms of municipal/county boundaries, shared infrastructure, and most importantly hydrology. [27]

RESPONSE 45-46:

The Department acknowledges and appreciates the commenters' support of regional approaches to address stormwater controls. However, as noted by the commenters, requiring stormwater to be regulated on a regional basis would require legislative changes. While those changes are outside the scope of this permit, if they were to occur the Department would modify the permit as needed.

No changes have been made to the final permit as a result of these comments.

47. COMMENT:

As for best management practices guidance, we appreciate the additional clarification on inspection requirements. We do think that the Department could provide guidance, including additional templates for the type of documentation required as part of the maintenance log of

private facilities. Requiring the observation of installation of BMPs and documentation checklists for the observation would also be helpful. Maintenance has always been a lingering issue, especially with green infrastructure. These additional resources and requirements will help ensure the successful implementation and the long term success of the BMPs. [27]

48. COMMENT:

During our stakeholder engagement process that we engaged in after the draft was released in July, we discovered that there seems to be a disconnect between the resources provided by the Department and the needs of permittees. DEP could provide additional assistance through a circuit rider program. We thought it would be great to have some sort of streamlined online system where permittees can find templates for inspections, maintenance plans, and other documentation required for compliance, and some sort of portal to submit deliverables where the Department can review and provide comments in one place. And then this system would help ensure compliance and consistency with deliverables. [27]

49. COMMENT:

Overall, there are great resources out there, but they may be hard to find, or they're not yet tailored to meet the direct needs of municipalities. The Department should be intentional about using its staff and existing resources to both support municipalities and to provide accountability. As I stated earlier, we are submitting written comments echoing the statements I provided, just in more detail. Again, thank you for your consideration of our comments and thank you for the opportunity to speak this morning. [27]

RESPONSE 47-49:

The Department agrees that guidance documents, including templates for inspections, maintenance plans, ordinances, SPPP, and other documentation required for compliance should be made easily available for permittees to utilize and has developed many of these documents as well as many other resources to support permittees' compliance with the 2018 renewal permit which are provided on the Department's website at https://www.nj.gov/dep/dwq/msrp_home.htm.

Also, as noted in RESPONSE TO COMMENTS 18-25, the Department will be providing updated versions of the MS4 Guidance documents, forms, and templates to follow this renewal permit, as well as a new training program for SPCs. Permittees will be notified via email when the final versions of guidance materials, forms templates are posted.

The Department is also currently developing an online submittal service that MS4 permittees could use to submit their documents through the DEPOnline web service system. This service will allow for the submission of documents by the permittee; however, it does not allow for the Department to provide comments or correspondence back through this system. The Department's feedback and responses on submitted documents and materials will be transmitted to permittees via email.

See RESPONSE TO COMMENTS 18-25 for additional information regarding these resources.

No changes have been made to the final permit as a result of these comments.

50. COMMENT:

Elements that require developing programs with an effective date of January 1, 2023, do not give enough time to educate municipal governing bodies, management, and staff on the changes and for them to arrange work schedules and adjust local operations to ensure compliance.

Can new elements have a deadline of EDPA +12 months to allow for development and implementation? [13]

51. COMMENT:

The Borough of Rockleigh, Bergen County provides limited services to its residents through Borough employees. The Borough does not have a Department of Public Works (DPW) and does not have a Police Department. Each year, the Borough secures quotes / bids from municipalities to provide these particular services. The budget adoption occurs around April annually thereby locking in contracts and services.

The Request for Proposals which includes the particular scope of work is prepared at the beginning of each year. We quotes received in the first quarter of the year to be included as part of the budget process. The scope of services cannot be changed without an increase a cost which would not have been budgeted by the Borough.

For this reason, we respectfully request that the NJDEP consider that all items associated with additional DPW services (i.e., basin cleaning, street sweeping, etc.) be delayed for 1 year after receipt of the permit on January 01, 2023. Not permitting schedule lag would provide significant unbudgeted ramifications for reassigned municipalities without a DPW [14]

52. COMMENT:

Overall, the timelines in order to get these policies, plans, ordinance in place are too short. For small municipalities this is a huge undertaking on top of the other day to day tasks. Also, these requirements will cost extra money and to this date we do not know how much funding we will be given to help offset these costs. Pilesgrove Township believes the due dates for these policy and plans needs to be extended to be able to budget for certain requirements. [22]

RESPONSE 50-52:

The Department acknowledges the commenters' concerns of the timeline and deadlines to implement some of the requirements of the Tier A Permit. The Department maintains that EDPA is an appropriate deadline for permit that require minimal resources or are already required under the existing MS4 permits. Many of the requirements that are due upon EDPA, such as restricting herbicide application and roadside vegetative waste management simply require revisions to how those activities are performed and will not require additional resources to be implemented or are already required under the existing Tier A and B MS4 permits. Also, storm drain inlet inspections can be performed as simple observations in conjunction with other municipal activities when driving along municipal roads and are already required under the current Tier A and B MS4 permits.

However, the Department does agree with the issues raised in various comments regarding the time and resource constraints many municipalities will have acquiring additional resources to complete new permit requirements and has agreed to provide additional time for those tasks. See RESPONSE TO COMMENTS 81-83 for information regarding the revised SPPP submittal and posting due date for existing Tier A permittees, and 117-126 for information regarding revised due dates for the new street sweeping requirements.

Also see RESPONSE TO COMMENTS 18-25 for more information regarding funding opportunities.

No additional changes have been made to the final permit as a result of these comments.

53. COMMENT:

The time frame of this entire permit, the five-year permit time, is basically inventory in planning process with no requirement to implement any projects, BMPs or other measures to actually move water quality towards improvement. So, we'd like to see some of those time frames, sort of the planting and planning aspects being shortened for a three-year time period for that first phase. We think that can be shortened in many circumstances. Much of that information should be readily available to the permittees with some escape valve in case there is a need for additional time. And then that would free up some additional time to actually implement the projects, ordinances changes, and other things to actually improve water quality.

We also believe that the second phase and third phases require municipalities to set out the schedule and identify projects to improve water quality. But there's no guidance on that schedule, there is no mandatory time frames for that. For example, the Chesapeake Bay TMDL states in that TMDL they have, I believe it's a 25-year planning horizon to make sure that all the projects are implemented within 25 years, to start seeing water quality improvements, with varying phases during those 25 years of revisions and review improvements. So having an open-ended schedule, I believe this permit added the phrase reasonable schedule. But I believe a 20-year time frame set out, so that all the permittees have a schedule in which they understand they have to start setting these improvements in place, I think would be useful. I think it's required by the Clean Water Act, which requires us to move forward to achieve water quality as soon as possible.

And then there's no review process with these boards, the municipalities, to come up with a schedule. They're submitted, I believe, to the Department, but there's no review and comment process availed both for the Department to decide, for example, a municipality who wants to do everything in end year 50, that that's not appropriate, and to come in and revise that. So again, a sort of review process, sort of similar to the way the stormwater management rules have for municipalities and submit to the county a proposed ordinance. The county then has a chance to review and comment on it, a 60- or 90-day period for the Department to look at these plans, review them, comment on them. And then have the permittees revise them as appropriate, I think would make a lot of sense. [24]

RESPONSE:

While the Department agrees that water quality improvements should occur sooner rather than later, simply shortening the required due dates will not automatically result in these tasks being implemented sooner.

Regarding the due dates for the three WIP phases, while the Department acknowledges that some municipalities may have resources to complete some tasks sooner than others, it must be recognized that this is a general permit, ultimately applicable to 557 municipalities with very diverse resources, obstacles and needs. Phases 2 and 3 of the WIP build on the previous phase, with the first being the mapping of the stormwater system paired with identifying the water quality concerns related to the different areas of each municipality's stormwater system. Municipalities are also required to solicit input from stakeholders, including residents, business owners, owners of private stormwater facilities, and other municipalities and/or dischargers to the subwatershed(s) to be involved in the WIP development process, and begin conducting semi-annual public information sessions on or before EDPA +36 months. The municipalities will also need to provide information regarding their WIP in their SPPPs, and the status of compliance with the WIP in their Supplemental Questionnaires when they submit their Annual Reports. Completing all aspects of this mapping, developing proposed water quality improvement projects and providing for a robust public involvement process will likely not be quick nor simple to complete for most Tier A permittees, which is why the Department has allotted 3 years for completion of this first phase of the WIP, with the next 2 phases of the WIP due in the subsequent 2 years.

As this permit requires each permittee to solicit input on their WIP from their stakeholders, which includes their neighboring municipalities, and as the Department encourages towns to work together and develop regional approaches, it is prudent to keep all of the municipalities on the same schedule for development of their WIPs. Also, as the Department has determined that the discharges from Tier A MS4 systems are more appropriately controlled under a general permit, rather than individual permits, the permit requirements have been established taking into account that diversity.

The Department maintains that the due dates in this general permit have been established to obtain the required water quality improvements from the Tier A municipalities as quickly as practicable.

The Department is completing updates to the Tier A Guidance Manual regarding the development of the WIPs which will provide general guidance regarding the timelines for implementing water quality improvement projects. A WIP template is also being completed for towns to use so that the outline structure of all WIPs will be consistent across the State. This consistency will be necessary to streamline not only the preparation, but especially the review by the Department and members of the public. Members of the public will be able to review and comment on these reports, and the Department plans to review the final WIPs and provide necessary input back to the towns with due dates for revisions. See RESPONSE TO COMMENTS 18-25 for additional information concerning the upcoming revised guidance, templates, forms, and informal comment period on the ordinances and WIP template.

No changes have been made to the final permit as a result of this comment.

54. COMMENT:

As a principal understanding of the proposed extent of regulatory change, basis of objection, and necessity to submit public comments; it shall be recognized that the proposed Renewal Tier A Permit includes 58 permit citations requiring municipal action, of which 23 (39%) remain unchanged from the existing Tier A Permit, while 16 (28%) are modified with increased compliance requirements, and 19 (33%) are new compliance requirements. In relation to the existing Tier A Permit's prior 39 permit citations, only 23 (59%) remain unchanged such that the modified and new citations shall be acknowledged as a substantial deviation from the regulatory framework governing the administration of the MS4 NJPDES Permit Program. In furtherance of this understanding, 15 of 16 modified permit citations and 14 of 19 new permit citations, constituting 83% of the Renewal Tier A Permit, require compliance within 1 year of Effective Date of Permit Authorization (EDPA), of which 24 of these 35 permit citations (69%) require immediate compliance at EDPA and/or EDPA +3 months. The factual basis of these statistics demonstrates the unrealistic and unduly burdensome obligations imposed by NJDEP on the Town's limited staff and financial resources. Further supporting the same is the State's and Town's mutual understanding of the January re-organization of elected officials to municipal government, annual capital budget adoption processes typically concluding in the 2nd quarter of the fiscal year, and Local Public Contracts Law (LPCL, N.J.S.A. 40A:11-1 et. seq.) governing the solicitation and authorization of services to effectuate permit compliance such that the immediacy of NJDEP's compliance schedule improperly necessitates preemptive action by the acting governing body to allocate the Town's limited staff and financial resources on the basis of opinions formed solely from its understanding of this Draft Permit, as receipt of the Final Permit is anticipated less than 90 days prior to EDPA. These actions are more appropriately delegated to the re-organized governing body in the New Year, who holds the regulatory compliance obligations of the Renewal Tier A Permit. [8]

RESPONSE:

The Department acknowledges the commenters' concerns related to the new and revised permit requirements and associated compliance dates. While many requirements are unchanged from the 2018 Tier A permit, or include minor modifications, there are new or expanded requirements that may require some towns to acquire additional resources through the municipal budgetary process. In light of that information being brought to the Department's attention during the draft public comment period, the time frames for some permit requirements have been extended.

See RESPONSE TO COMMENTS 81-83 for information regarding the revised SPPP submittal and posting due date for existing Tier A permittees, and RESPONSE TO COMMENTS 117-126 for information regarding revised due dates for the new street sweeping requirements.

The Department also continues to encourage municipalities to utilize shared services and to work regionally which can reduce the need for additional resources for some requirements.

No additional changes have been made to the final permit as a result of this comment.

55. COMMENT:

NJF regards green infrastructure as an integral stormwater management practice and an essential climate-resilient solution. Overall, we would like NJDEP to encourage green infrastructure and the maintenance of these projects throughout the permit. NJDEP should:

- Emphasize that permittees are responsible for:
 - Long-term maintenance of municipally owned or managed green infrastructure as outlined in the section on Inspection Maintenance of Permittee Owned or Operated Stormwater Facilities (Part IV.F.3)
 - Enforcement of maintenance requirements for green infrastructure not owned or operated by the permittee as outlined in the section on Inspection and Maintenance of Stormwater Facilities Not Owned or Operated by the Permittee (Part IV.F.4).

The Department should provide guidance, including templates, for the type of documentation required as part of the maintenance log of private facilities. Documentation of maintenance could include protection by easement, deed restriction, ordinance, or other legal measures. Routine maintenance and NJDEP's enforcement of maintenance will ensure the long term environmental, economic, and social benefits of green infrastructure.

- To ensure the successful implementation of Best Management Practices (BMPs), the permittee's municipal engineer should be required to observe the construction of the BMPs and certify the construction meets the approved design. As an alternative, the MS4 permit condition could allow for the municipal engineer to defer to the applicant's engineer or a third-party engineer to perform the observation and testing. Checklists for the review and testing of each type of BMP and language outlining responsibilities of the municipal engineer and design engineer would help ensure effective implementation of this requirement.
- Clarify that the NJDEP Stormwater Management Rules establish the minimum standard for controlling stormwater runoff for major and minor development. Section 7.E of the Fact Sheet notes that, "this permit requires municipalities to implement these rules, or a more stringent standard, at the local level." However, other sections of the Fact Sheet and the Draft Permit that reference Residential Site Improvement Standards (RSIS) preemption contradict this statement. The permit should provide clear authority for permittees to adopt an enhanced Stormwater Control Ordinance to meet water quality goals and reduce flooding, such as New Jersey Future's Enhanced Model Stormwater Ordinance for Municipalities, which applies to major and minor developments not preempted by RSIS requirements. [9]

RESPONSE:

The Department strongly encourages the use of the green infrastructure. The amendments to the Stormwater Management rules at N.J.A.C. 7:8 which were adopted in March of 2020 included new requirements mandating the use of green infrastructure for major developments. The Stormwater Management rules establish the minimum stormwater management design and performance standards for new development and redevelopment and require applicants to design their major development projects to minimize the adverse impact of stormwater runoff on water

quality, water quantity, and loss of groundwater recharge in receiving water bodies, however minor development projects are not addressed in the rule. Pursuant to amendments to those rules, applicants must utilize green infrastructure to achieve those goals.

Regarding maintenance requirements, permittees are required to develop a program to ensure that adequate long-term cleaning, operation, and maintenance of stormwater facilities occurs for both municipally owned and operated stormwater facilities (Part IV.F.3) and stormwater facilities not owned or operated by the permittee (Part IV.F.4). Permittees are required to ensure that stormwater facilities are maintained as per their approved maintenance plans or more frequently as needed. In addition to catch basins, infiltration basins, detention basins, filter strips, riparian buffers, infiltration trenches, sand filters, constructed wetlands, wet basins, bioretention systems, low flow bypasses, and stormwater conveyances, the definition of “stormwater facility” also includes “green infrastructure.” The requirement to ensure proper maintenance has been a permit requirement for municipally owned and operated stormwater facilities since 2004 and has been a requirement for stormwater facilities not owned or operated by the permittee since the 2009 permit as noted beginning on page 47 of the Fact Sheet. This permit has further clarified the requirement to ensure long term maintenance and operation of stormwater facilities, which include green infrastructure. Chapter 4.1 “Stormwater Facilities Maintenance” is available on the Department’s website (https://www.nj.gov/dep/dwq/tier_a_guidance.htm). Additional maintenance guidance as well as a maintenance plan template, field manuals, and maintenance log and inspection record templates can be found on the NJ Stormwater web page (https://www.nj.gov/dep/stormwater/maintenance_guidance.htm).

The Department has observed that many permittees have implemented different approaches to ensure that constructed BMPs are successful. The Department agrees and appreciates the ideas for permittees to implement successful BMPs as put forth by commenter 9, but acknowledges the added resource needs to observe the construction of each BMP may be difficult for some permittees to accommodate. In order to uphold the primary objective of the MS4 stormwater program, which is to implement BMPs and other measures that are designed to reduce the discharge of pollutants, protect water quality, and satisfy applicable water quality requirements of the Clean Water Act, ensuring that stormwater management facilities meet the requirements of the Stormwater Management rules and are constructed as per the approved plans under those are critical. Part IV.E.1.e requires that the permittee shall ensure that major development projects are constructed in accordance with the approved development plans and Part IV.E.1.f requires that the permittee’s review engineer for compliance with N.J.A.C. 7:8 shall be independent from the design engineer, shall not have been involved in the design of the development plans, and shall have completed the Department’s Stormwater Management Design Review Course within the last 5 years and the Stormwater Management Rule Amendment Training, as per Part IV. F.8 and 9. Municipalities have the general authority granted under N.J.S.A. 40:55D-18 of the New Jersey Municipal Land Use Law to ensure that plans approved by the municipality are constructed and maintained according to approved plans. A checklist to assist the reviewer in conducting stormwater management reviews, which includes review of BMP design and pre- and post-construction soil testing, is provided in Chapter 3.4 of the Tier A Municipal Guidance Document available at the Department’s website (https://www.nj.gov/dep/dwq/tier_a_guidance.htm).

See RESPONSE TO COMMENT 35 regarding the restoring the Optional Measures section back into the final permit. Also see RESPONSE TO COMMENT 102-103 regarding RSIS.

No changes have been made to the final permit as a result of this comment.

56. COMMENT:

While not specifically outlined in the permit, NJDEP will need to be proactive and consistent in its enforcement of permittees in order to ensure compliance. NJF advises NJDEP to increase the staff capacity of the compliance and enforcement unit in Water Resource Management in order to do an effective job. Compliance audits should include an initial education and support component where municipalities that are found lacking are then required to complete hands-on training that would help them come into compliance. [9]

RESPONSE:

The Department acknowledges the commenter's concerns regarding enforcement of permit requirements and the need for effective training for permittees and their employees. There are many resources available on the Department's website.

Additionally, this permit requires certain municipal employees to take Department provided Stormwater Management Design Review Training, Stormwater Management Rule Amendment Training, Municipal Board and Governing Body Member Training, and Stormwater Program Coordinator Training, as appropriate based on their job duties. The permit also requires the permittees to provide Annual Employee Training to their employees according to the employees' specific job duties. This training is required to educate the employees how to perform their jobs in compliance with the permit requirements as they pertain to each specific municipality. For example, the employee training for street sweeping must include details about which roads are to be swept on what schedule, and not simply instruct employees on how to operate the street sweeper. The Department believes that these training requirements, if implemented properly, will enable the permittees to comply with the permit requirements.,

See RESPONSE TO COMMENTS 18-25 for additional information regarding Department resources for permit related training, guidance materials, and templates, and RESPONSE TO COMMENT 35 for additional discussion regarding enforcement of permit conditions.

No changes have been made to the final permit as a result of this comment.

57. COMMENT:

There are a couple of elements in the plan that require additional ordinances. And again, the Department is providing model ordinances to municipalities. I think those need to be very carefully done. They are effectively statewide regulations that the Department is pushing down on the municipalities to enforce locally. And that becomes difficult. It's difficult when you start to talk about things like steep slope ordinances, tree removal ordinances. Many municipalities have them, but they are difficult, they are a challenge. And when the Department proposes these draft model

ordinances, I would strongly recommend that you consider the realistic constraints municipalities are under. For example, there are tens of thousands of units of affordable housing that are being mandated by the courts of this State. They are going on properties that are not developed in most of my municipalities, because the rest of the town is developed. Now, municipalities don't necessarily welcome those projects, but the municipalities do not have a choice. And when the application comes in and they must clear 20 acres of trees to put in this inclusionary zoning project that was mandated by the courts, the tree removal ordinances become problematic. They will be challenged. The challenges are not necessarily cost generative under the Affordable Housing rules, and I think there's going to be a problem. I think you really need to consider the context of the development that is currently going on in New Jersey. One of the biggest pieces of the development that goes on right now are these inclusionary zoning projects. One of my towns currently has 600 units on the boards right now, about to come in and start to go to construction or the approval process. That's a lot of units. I think there's some specific elements that I'd like to comment on. [26]

RESPONSE:

The Department acknowledges the commentors concerns regarding the applicability of the ordinances required by the permit. The Department maintains that the model ordinances provided are achievable and enforceable across the State, but also notes that permittees may choose to include language in their ordinances to provide for application fees and fines when the ordinances are not followed. For example, towns may charge fees for applicants wishing to remove eligible trees from their properties to cover the costs of administering the ordinance and may assess penalties on those that do not comply to cover the costs of enforcement. The Department intends to provide a 30-day unofficial comment period on the new model ordinances.

No changes have been made to the final permit as a result of this comment.

Permit Section I: General Requirements: NJPDES

58. COMMENT:

The provision at Part I: General Requirements: NJPDES, A.1.d. incorporates the monitoring requirements found in N.J.A.C. 7:14A-6.5. This regulation requires that samples and measurements are taken and are representative of the monitored activity. In addition to New Jersey's regulations, the Clean Water Act and implementing regulations require that all NPDES permits must include conditions adequate to "ensure compliance" with applicable water quality standards. The EPA's Environmental Appeals Board has held that this requirement applies equally to MS4 permits.

While it is and has been our position that monitoring is required, it is clear that discharges for the Best Management Practices is not occurring. While the Department's water quality monitoring program is important, it is not granular enough to determine whether BMPs that are built are functioning as designed. Required monitoring by permittees can help identify those BMPs that are not functioning and inform the corrective action necessary. Without that the Department is left to developing TMDLs which is a time consuming and resource intensive process.

In addition to enforcing the legally mandated requirement for monitoring, the Department should provide training to the permittees on developing and implementing a monitoring program. Further, permittees can be encouraged to work with their local watershed organization, many which do water quality monitoring, to identified problem areas. Lastly, it is difficult to see how a permittee and the Department will implement the Watershed Improvement Plans, without a monitoring program targeted to the functioning of BMPs. How can permittees determine whether their existing BMPs and proposed projects are functioning and achieving the proposed Waste Load Allocations (WLAs). Relying on general water quality monitoring will not allow permittees to trace sources of pollution from malfunctioning BMPs. We would not allow a wastewater treatment plant or an industrial facility to discharge pollutants into a waterway without monitoring that discharge. The MS4 program should have similar requirements. [5]

RESPONSE:

Part I of the permit is titled “General Requirements of all NJPDES Permits,” and the requirements at A.1 are titled, “Requirements Incorporated by Reference.” The inclusion of the reference at Part I, A.1.d. to N.J.A.C. 7:14A-6.5 is a general reference to the regulatory requirements that would apply if the permittee were required to conduct pollutant analysis of their stormwater discharges. As per N.J.A.C. 7:14A-24.9(a)1, small MS4s are only required to comply with the requirements for evaluation, recordkeeping, and reporting, not pollutant specific analytical monitoring.

See RESPONSE TO COMMENTS 37-39 for additional information regarding small MS4 monitoring.

No changes have been made to the final permit as a result of this comment.

Permit Section II: General Requirements: Discharge Category

59. COMMENT:

Please clarify Part II.C.2.a. in the Fact Sheet if NJDEP intends to be broader in scope by including groundwater in this section as NPDES MS4 regulations apply only to stormwater discharges to waters of the United States. [1]

RESPONSE:

The Fact Sheet of the draft permit, which was issued on July 28, 2022, states at Section 3.D. on page 11 that, “This permit authorizes all new and existing stormwater discharges to surface water or ground water from small MS4s owned or operated by Tier A Municipalities. To the extent that the permit regulates underground injection, the permit also implements EPA’s regulations (found mainly at 40 CFR144-148) for the Federal Underground Injection Control (UIC) Program. The UIC Program was created pursuant to Part C of the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.). EPA recognizes that States issue general, as well as individual, permits to regulate Class V injection wells (see 64 Fed. Reg. 68554 (December 7, 1999), 67 Fed. Reg. 39590 (June 7, 2002), and the Class V Underground Injection Control Study, Volume 1 (see

www.epa.gov/uic/class-v-underground-injection-control-study). UIC is also covered in the NJPDES Regulations at N.J.A.C. 7:14A-8.”

No changes have been made to the final permit or the Fact Sheet as a result of this comment.

60. COMMENT:

Regarding Part I.C.2, Authorized Discharges, excludes flows from firefighting activities including the washing of fire fighting vehicles from regulated discharges. While we agree firefighting activities should be excluded from regulated discharges, including the washing of fire fighting vehicles is unwarranted. Washing activities are done at a central location where the collection and treatment of wash water can be achieved. Further, Section F(5)(j) requires the permittees to “manage any equipment and vehicle activities so that there are no unpermitted discharges of wash wastewater to storm sewer inlets or to surface or ground waters of the State.” These two sections seem to contradict each other and demonstrate that it is not impractical to require the collection and treatment of wash wastewater from firefighting equipment. Given the chemicals used in firefighting including PFAS, it is more prudent to require the collection and treatment of the wash water in a centralized location. Guidance from EPA does exclude firefighting activities from the requirements of the MS4 program. That guidance does not directly include the washing of firefighting equipment. We recommend deleting “including the washing of fire fighting vehicles” from the provision. [5]

RESPONSE:

This language has been carried through from the 2009 and 2018 renewal permits which authorized the “Flows from fire fighting activities including the washing of fire fighting vehicles.” The federal permit does exempt discharges from firefighting activities. The Department currently considers the washing of fire trucks to be included in this broad term.

No changes have been made to the final permit as a result of this comment.

61. COMMENT:

Regarding Part II, section C.3.a.i of the permit, every municipality has had to adopt Containerized Yard Waste/Yard Waste Collection Program Ordinances, both of which include language to ensure the source material collected by municipalities is controlled. Unless there is some documented history of stormwater runoff from New Jersey Municipal composting facilities causing some measurable environmental degradation, these facilities should remain as an “other ancillary operation” of the MS4 permit, and not be categorized as an industrial facility requiring separate permitting and capital expenditures to address the construction and reporting requirements of a separate NJPDES permit. [2]

RESPONSE:

As noted in the Wood Waste Recycling and Leaf Composting Draft Permit Fact Sheet, the Department first developed permits for wood recycling activities after it was determined from several incidents that unregulated and mismanaged sites could pose a risk to the environment and

human health. As a result, the Department has determined that uncontrolled releases of stormwater from these industrial sites pose a significant threat to water quality. Furthermore, this class of industrial activity is listed as a regulated industrial activity as per federal regulations at 40 CFR 122.26(b)(14)(i)-(xi).

In October 2007, the Department issued the Wood Recyclers MGP (R7) Master General Permit (NJ0138622) to regulate stormwater and process wastewater discharges to surface and ground water from wood recycling activities. The objective of that general permit was to provide an alternative to an individual NJPDES Stormwater Permit for wood recycling facility operators. In September 2008, the Department issued a modified version of the Wood Recyclers MGP (R7) permit that removed monitoring well requirements at the request of regulated facilities. Facility representatives contended that the requirement to install, monitor, and analyze samples from monitoring wells could impact the commercial viability of recycling facilities and should not be required until adequate pollutant characterization is accomplished. The Department agreed and delayed the requirement for implementing ground water monitoring wells until the Department reviewed pollutant characterization. Rutgers University conducted a study and submitted a report to the Department titled, "An Investigation of Quantity and Quality of Run-off from Stockpiles of Recycled Waste Materials." The results of this study support the determination that leachate/runoff from wood recycling facilities should not be discharged to surface waters without treatment, as these activities are potential sources of contamination, including nutrients.

The Department's 2018 MS4 Tier A, 2019 Public Complex, and 2020 Highway Agency permits authorized permittees that engaged in wood recycling and composting activities to discharge that stormwater to ground water only and prohibited discharges to surface water from these activities. The Department had been under the impression that these operations were relatively small and could manage those stormwater discharges by discharging to ground water.

However, the Department's Tier B Municipal Stormwater Permit provides no authorization for stormwater discharges to surface or ground water from these activities.

Since the renewal of the 2018 Tier A and B permits, the Department has become aware through enforcement inspections and MS4 Tier A Stormwater Compliance Assistance Audits that these activities are larger than anticipated, and many of these sites were unable to convey all their stormwater to groundwater. This caused ponding of stormwater on-site, which conflicted with Solid Waste program requirements restricting ponding of stormwater. With no ability to infiltrate the remaining stormwater into the ground, and with ponding not allowed, many sites relieved the ponded conditions by creating unpermitted discharges to surface water. Based on this information, and the high potential for contamination of the stormwater from these activities as noted above, the Department has determined that these sites therefore need a separate permit to regulate these discharges to surface water with proper controls in place. Therefore, discharges from municipally owned or operated (as well as commercially owned and operated) wood waste and leaf composting facilities will need to obtain either an authorization to discharge under the Wood Waste Recycling and Leaf Composting General Permit (WRC) or an Individual Stormwater Permit (RF) for these operations. However, the collection and temporary storage of yard waste is still permissible under the Tier A permit as long as the materials are not processed in any way at the site.

No changes have been made to the final permit as a result of this comment.

62. COMMENT:

Add to Part II.D.3 the following language copied from current 2018 Tier A Permit Part II.D.3.c.i:
If a municipality receives notice from the Department (pursuant to N.J.A.C. 7:14A-25.3(a)(3)) that it has been reassigned from Tier B to Tier A (pursuant to N.J.A.C. 7:14A-25.3(a)(1) and (2)), the deadline to submit an RFA is 180 days after the receipt of that notice, unless the Department approves a later date.

Retaining in the Tier A Permit a deadline for these municipalities to submit an RFA is required by N.J.A.C. 7:14A-6.13(d)4, which states in part that “general permits shall specify the deadlines for submitting requests for authorization”. See also 40 CFR 122.28(b)(2)(iii), which states in part that “general permits shall specify the deadlines for submitting notices of intent to be covered”, and which is referenced in USEPA’s Phase II small MS4 rules for general permits at 40 CFR 122.33(b)(1). What 40 CFR 122.28 and 122.33 call a “notice of intent” is what N.J.A.C. 7:14A defines as and calls a “request for authorization.”)

The deadline of “180 days after the receipt of that notice, unless the Department approves a later date” is specified in N.J.A.C. 7:14A-25.4(a) and in USEPA’s Phase II small MS4 rules at 40 CFR 122.33(c) and 122.26(e)(9). [16]

RESPONSE:

The Department disagrees that this language should be reinstated to the final renewal permit. The Department has notified all 101 Tier B municipalities that they are being reassigned to Tier A in accordance with this requirement under the existing 2018 permit. With all Tier B municipalities reassigned to Tier A there is no longer a need for this requirement in the renewal permit as there are no remaining Tier B municipalities.

No changes have been made to the final permit as a result of this comment.

63. COMMENT:

Delete Part II.D.3.d, which has no counterpart in the current Tier A Permit. Part II.D.3.d conflicts with the small MS4 rules at N.J.A.C. 7:14A-25.5(a)1, which states in part that “an operating entity seeking authorization under a general NJPDES permit shall submit to the Department a written RFA.” As a provision specific to small MS4s, N.J.A.C. 7:14A-25.5(a)1 applies rather than the general rule at N.J.A.C. 7:14A-6.13(d)8. See also USEPA’s Phase II small MS4 rules at 40 CFR 122.33(b)(1), which requires those seeking coverage under general permits to submit “notices of intent.” [16]

RESPONSE:

The inclusion of Part II.D.3.d reinforces the general permit regulations at N.J.A.C. 7:14A-6.13(d)8 which states that the Department may notify a person that a discharge is authorized by a general

permit, even if that person had not submitted a Request for Authorization (RFA) under that general permit. The rules at N.J.A.C. 7:14A-25 identify that entities seeking coverage under an MS4 permit shall submit an RFA., but do not preclude the Department from implementing N.J.A.C. 7:14A-6.13(d)8.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.B. Definitions

64. COMMENT:

Regarding Part IV Specific Requirements, Part IV.B.1, EPA recommends including the definitions for measurable goal and surface water body. [1]

RESPONSE:

There is a cross reference within Notes and Definitions Part IV.B.1.a of this section to definitions within the NJPDES Regulations at N.J.A.C. 7:14A where “surface water” is defined. Because this term is already defined within regulations, a cross reference is appropriate to ensure that the permits are current in the event of any regulatory changes. The Department chose not to define “measurable goal” in the Tier A MS4 NJPDES permit. The Department notes that this term is not defined in state or federal regulations. However, Page 13 of the 2018 Fact Sheet states that “the Department considers a “measurable goal” to be a specific action taken to implement a BMP, rather than a specific condition of stormwater or receiving water quality that is supposed to result from implementing a BMP.”

No changes have been made to the final permit as a result of this comment.

65. COMMENT:

B.1.a: The definition of the term “catch basin” may be missing the word “not” in the last line. “...so those particles do *not* pass on to the stormwater sewer system.” [11]

RESPONSE:

The Department agrees that the word “not” is missing from the definition of “catch basin,” which was an oversight, and thanks the commenter for pointing out this error.

The definition of “catch basin” has been changed in the final permit as a result of this comment.

66. COMMENT:

Regarding the Definitions section of the permit at Part IV, Section B.1.a: Please consider revising and simplifying the term “catch basin” to indicate that a catch basin is a part of the overall structure of a “stormwater inlet” instead of a separate structure. [11]

67. COMMENT:

B.1.a: Please consider revising the definition for “Storm Drain Inlet” to match NJDOT’s use of the term and to clearly indicate that the term encompasses the entire inlet structure, including the chamber, not just the opening/grate/surface. [11]

RESPONSE 66-67:

The Department does not agree with this request to revise the definition of “storm drain inlet.” The Department maintains that while catch basins and storm drain inlets have somewhat similar purposes to “remove material from passing through them, further into the storm sewer system and the receiving waters,” they are separate and distinct structures. Specifically, the draft permit defines “Storm drain inlet” as the point of entry into the storm sewer system, which is often a grate with a vertical curb opening along a curb or can be a flat type of grate located in the middle of a roadway, sidewalk, parking lot, etc. A “catch basin” is defined in the permit as “a cistern, vault, chamber or well that is typically built along a street and below an inlet grate as part of the storm sewer system that is designed to capture and retain sediment, debris, and pollutants so those particles do pass on to the stormwater sewer system.” Similarly, the federal regulations define “catch basin” as a unit that is installed to capture and retain debris, particulate matter, or other solid materials, but allows stormwater to “flow through” to its discharge location.

Also, storm drain inlets require much simpler cleaning and maintenance procedures such as sweeping or raking material off the top, and the requirement to inspect them annually is a much less laborious process than inspecting catch basins, which requires a staff person to physically perform a stick test to determine the depth of the material that has collected in the sump part of the basin. Because of the additional labor involved with the catch basin inspections, the Department has modified the inspection schedule for them to require only 20% of the total number of catch basins be inspected annually. Also, once a catch basin is determined to need cleaning, simple sweeping or raking is not adequate. Catch basin cleaning usually requires heavy machinery to remove the storm drain inlet in order to gain access to the basin below so a vacuum truck can extract the material from the bottom of the basin. Based on this information, the Department maintains that storm drain inlets differ substantially from the catch basin structure below and thus shall be regulated separately.

No changes have been made to the final permit as a result of these comments.

68. COMMENT:

Regarding the Definitions section of the permit at Part IV, Section B.1.a: Please consider defining the term(s) “pump-outs” and/or “cleanouts” as used in F.5.j.v. [11]

RESPONSE:

The Department agrees with the comment and has added clarification to the permit to distinguish what is meant by the terms “pump-out” versus “clean-out.” However, this clarification language has been added to Part IV.F.5.j.v. under the condition titled, “Pump-outs (including clean-outs)” and the online form “Wash Wastewater–Underground Storage

Tank Pump-Out/Clean-Out Log” to identify “pump-outs” as removing only the water and “clean-outs” as removing all water and sludge.

See Part IV.F.5.j.v. “Pump-outs (including clean-outs)” and form “Wash Wastewater–Underground Storage Tank Pump-Out/Clean-Out Log” for this change.

69. COMMENT:

Revise the Notes and Definitions Part IV.B.1.a.viii definition to read as follows:

“Major development” means an individual “development” as defined in N.J.A.C. 7:8, as well as multiple such developments, that, individually or collectively, ultimately disturb one or more acres of land.

The main purpose and effect of this revision is to restore without exception the “ultimately disturb one or more acres of land” threshold that is integral to the current Tier A Permit definition of “major development” and required by N.J.A.C. 7:8-4.2(a).

The definition conflicts with the N.J.A.C. 7:8-4.2(a) provision which states that “for purposes of this subchapter, major development is limited to projects that ultimately disturb one or more acres of land,” and with the N.J.A.C. 7:14A-25.6(b)3 “one acre or more” threshold for post-construction stormwater management in new development and redevelopment.

See also the related comment on Part IV.E.1.b below (see COMMENT 98). [16]

RESPONSE:

The Department agrees with the commenter that the definition of “major development” should be consistent with the definition in the Stormwater Management rules at N.J.A.C. 7:8. As stated on page 31 of the Fact Sheet, the Department’s intent was for the permittees to follow the definition of “major development” as stated in the Stormwater Management rules and has therefore revised the definition in this final permit as follows:

“Major Development” means a “major development” as defined in N.J.A.C. 7:8.

70. COMMENT:

“Outfall” includes “waters of the United States” but not “waters of the State.” Does this imply Federal oversight of MS4 Tier A Master General Permits? [2]

RESPONSE:

The Department has been delegated to implement the Federal MS4 program under the Federal NPDES program Phase II stormwater rule. The definition of “outfall” as defined in the permit matches the federal definition and the definition in N.J.A.C. 7:14A. All references to “outfalls” in the permit deal with stormwater discharges to surface water, so the definition is appropriate.

No changes have been made to the final permit as a result of this comment.

71. COMMENT:

B.1.a.xi – “Municipal Maintenance Yard and ancillary operation” – removes Municipally owned and operated composting facilities. Unless there is some documented history of stormwater runoff from New Jersey Municipal composting facilities causing some measurable environmental degradation, these facilities should remain in this definition. [2]

72. COMMENT:

B.1.a.xxvii-“Wood Waste” new definition has removed the “...and are not composed of...” language as it relates to lumber. Can the Department confirm this language was intentionally removed in order to facilitate the enactment of the Wood Waste Recycling & Composting General Permitting proposed to be required for Municipally Owned and Operated composting facilities? [2]

RESPONSE 71-72:

“Municipally owned or operated composting facilities” has not been removed from the definition of “Municipal Maintenance Yard and Ancillary Operation” as the 2018 Tier A permit did not provide a definition for “Municipal Maintenance Yard and Ancillary Operations.”

The phrase “...and are not composed of...” was also not removed from the definition of “Wood Waste.” That language did not exist in the 2018 Tier A permit’s definition of “Wood Waste” and therefore was not removed. The 2018 Tier A permit defined “Wood Waste” as “source separated whole trees, tree trunks, tree parts, tree stumps, brush and leaves provided that they are not composted, and lumber (non-chemically treated and unpainted).” The phrase “...provided that they are not composted...” was removed from the definition in this renewal permit as the processing of this material is no longer an allowable activity covered under the Tier A permit and facilities will need to seek coverage under the Department’s new Wood Waste Recycling and Leaf Composting General Permit or an individual industrial stormwater permit.

See RESPONSE TO COMMENT 63 for additional information.

No changes have been made to the final permit in as a result of these comments.

73. COMMENT:

B.1.a.xxix and xxx – “Yard Waste” seems to be an unnecessary definition, as it is included in “Yard Trimmings.” [2]

RESPONSE:

The Department agrees with the commenter that materials defined as “Yard Waste” is included in the materials defined as “Yard Trimmings.” However, this overlap of definitions does not cause any conflict within the permit and as this definition is associated with the Yard Waste Ordinance and has been adopted by all existing Tier A permittees, the Department believes that it might cause an unnecessary burden to some towns should they have to re-adopt the Yard Waste Ordinance at this time to incorporate the change from “Yard Waste” to “Yard Trimmings.”

No changes have been made to the final permit as a result of this comment.

74. COMMENT:

Add to Draft Notes and Definitions Part IV.B.1.a the following definition of this term (a term the Tier A Draft Permit uses widely):

“Permittee’s MS4” means an MS4 owned or operated by an “existing permittee” or “new permittee.”

This definition would replace the current Tier A Permit definition of “Tier A Municipality’s MS4” and would make it clear that when the permittee is a Tier A Municipality, the term “permittee’s MS4” is limited to an MS4 owned or operated by (and not merely located in the territory of) that municipality. The words “owned or operated by” are consistent with use of those words elsewhere in the Tier A Draft Permit (e.g., in Part II.C.2.a and 3.a, Notes and Definitions Part IV.B.1.a.xviii, and Parts IV.F.1.a.ii and G.1.a). [16]

RESPONSE:

The Department removed the definition of “Tier A Municipality’s MS4” in the permit renewal as it is not necessary to define. The possessive term “permittee’s MS4” implies that the MS4 is owned and operated by the permittee and does not require a definition.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.A.1. Stormwater Program Requirements

75. COMMENT:

Revise Part IV.A.1.d to be consistent with N.J.A.C. 7:14A-4.9 (a provision listed in Draft Part I.A.1.b), which requires that “all reports required by permits other than MRFs [the Tier A Permit does not require MRFs], and other information requested by the Department” shall (for a municipality or other public agency) be signed by either a principal executive officer or ranking elected official, or “by a duly authorized representative” as described in N.J.A.C. 7:14A-4.9(b). Under N.J.A.C. 7:14A-4.9(b)2, a “duly authorized representative” must be:

... either an individual or a position whose occupant has responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position whose occupant has overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position)

Part IV.A.1.d requires the SPC (who must sign the SPPP and the MSRP Annual Report) to have “the knowledge to manage the implementation and compliance of the permittee’s MS4 stormwater program” but having such knowledge does not ensure that the SPC has the “responsibility” specified by N.J.A.C. 7:14A-4.9(b)2. The need for knowledge is addressed by the certification that

N.J.A.C. 7:14A-4.9(d) requires the SPC to make when signing the SPPP and the MSRP Annual Report.

See also 40 CFR 122.22, to which N.J.A.C. 7:14A-4.9 is closely related. I also question whether in many Tier A Municipalities, given the diverse subject matter of the Tier A permittee's MS4 stormwater program and the division of relevant implementation authority among the municipal governing body, municipal planning and zoning boards, and various municipal officials, any individual has (as required by Draft Part IV.A.1.d) "the knowledge to manage the implementation and compliance of the permittee's MS4 stormwater program" and responsibility for "coordinating the permittee's implementation of its MS4 stormwater program, permit conditions, and SPPP". [16]

RESPONSE:

As noted in the Fact Sheet and in Part IV.A.1.d of the permit, this permit requires a principal executive officer or a ranking elected official to designate a Stormwater Program Coordinator (SPC) who has the knowledge to manage the implementation and compliance of the permittee's MS4 stormwater program as per N.J.A.C. 7:14A-4.9 and 25.6(a)3. As the SPC, this individual is responsible for: coordinating the permittee's implementation of its MS4 stormwater program, permit conditions, and SPPP; signing and dating the SPPP; and the completion and submittal of the Municipal Stormwater Regulation Program (MSRP) Annual Report. The Department notes based on past compliance assistance audits that the SPC responsibilities are often overlooked depending on the person who has been appointed to the role. Based on the designation from the appropriate principal executive officer, the title of SPC does in fact have the responsibility specified in N.J.A.C. 7:14A-4.9(b)2.

No changes have been made to the final permit as a result of this comment.

76. COMMENT:

Revise Draft Part IV.A.1.f by changing "(N.J.S.A. 40:55D-94)" to "(N.J.S.A. 40:55D-94 and -28b(5))". Adding N.J.S.A. 40:55D-28b(5) is necessary because unlike N.J.S.A. 40:55D-94, N.J.S.A. 40:55D-28b(5) specifically requires the "utility service plan element" of the municipal master plan to include any MSWMP required under N.J.S.A. 40:55D-93 et seq. [16]

RESPONSE:

The Department acknowledges this and agrees with the comment.

The final permit language of Part IV.A.1.f has been changed to reference N.J.S.A. 40:55D-94 and N.J.S.A. 40:55D-28b(5).

Permit Section IV.E.2.: Municipal Stormwater Management Plan (MSWMP)

77. COMMENT:

Part IV.E.2.a of the permit is also incomplete because it does not require the Tier A Municipality to submit its adopted MSWMP (including adopted MSWMP amendments) to the Pinelands Commission for examination in accordance with the Pinelands Comprehensive Management Plan rules at N.J.A.C. 7:50-3, where applicable. MSWMPs are municipal master plan amendments for purposes of N.J.A.C. 7:50-3.

Although N.J.A.C. 7:8-4 and the MLUL stormwater provisions at N.J.S.A. 40:55D-93 through 99 do not expressly mention the Pinelands, N.J.S.A. 40:55D-95 requires each stormwater management plan to “conform to all relevant federal and State statutes, rules and regulations concerning storm water management,” and N.J.A.C. 7:8-1.5(a) provides that nothing in N.J.A.C. 7:8 “shall be construed as preventing the Department or other agencies or entities [such as the Pinelands Commission] from imposing additional or more stringent stormwater management requirements necessary to implement the purposes of any enabling legislation ...” The Pinelands Comprehensive Management Plan rules include extensive requirements concerning stormwater management (e.g., at N.J.A.C. 7:50-6.84(a)6), and the Pinelands Commission has been certifying MSWMPs for many years. [16]

RESPONSE:

The Department disagrees with the commenter’s statement that draft Part IV.E.2 is incomplete for failing to require a Tier A municipality to submit its adopted MSWMP to the Pinelands Commission for review. Neither N.J.A.C. 7:14A nor N.J.A.C. 7:8 specifically require an MSWMP to be submitted to the Pinelands Commission. Furthermore, Part II.B.4.c of the draft renewal permit states:

“c. In accordance with N.J.A.C. 7:14A-6.2(a)7, this permit does not authorize any infringement of State or local law or regulations, including, but not limited to, N.J.A.C. 7:50 (the Pinelands rules).”

This is consistent with the requirement established in N.J.A.C.7-14A-6.2(a)7, which states:

“A permit shall not authorize any injury to persons or property or invasion of other private rights, or any infringement of Federal, State or local law or regulations.”

As such, the permit does not alleviate any municipality’s obligation to seek certification from the Pinelands Commission for their MSWMP, when such a certification is required.

No changes have been made to the final permit as a result of this comment.

78. COMMENT:

Revise Part IV.E.2.a to:

(1) Require the Tier A Municipality to forward a copy of any proposed (not adopted) MSWMP (or amendment thereto) to the county planning board (not the county review agency) for review and report at least 20 days prior to the date of the public hearing held by the municipal planning board under the Municipal Land Use Law. Because the MSWMP is “an integral part” of the municipal master plan (see N.J.S.A. 40:55D-94), such forwarding is required by the County Planning Act at

N.J.S.A. 40:27-4.b (also see N.J.S.A. 40:55D-13), even though such forwarding is not mentioned in N.J.A.C. 7:8-4.4;

(2) Also require the Tier A Municipality to submit the adopted MSWMP to the county review agency for review and approval pursuant to the requirements at N.J.A.C. 7:8-4.4 (this submission occurs after the public hearing held by the municipal planning board before MSWMP adoption); and

(3) Set forth a deadline for the Tier A permittee to adopt and submit to the County review agency a MSWMP that the municipality revised in response to county review agency disapproval or conditional approval of a MSWMP. County planning board review of proposed SCO; county review agency review of adopted SCO [16]

RESPONSE:

The Department disagrees with this suggested edit. While the Department does not dispute the accuracy of the commenter's suggestion, this permit cannot include requirements to comply with every applicable law and/or rule. In the case of this requirement, the permit requires compliance with the MSWMP and SCO adoption requirements outlined in the Stormwater Management rules. As per N.J.A.C. 7:8-4.4, a municipality must submit a copy of the adopted MSWMP/SCO to the county review agency for approval. The county review agency has 60 calendar days to review the submission and approve, conditionally approve, or disapprove it. The plan/ordinance is not deemed in effect until it receives approval from the county planning board, and therefore the most current plan/ordinance is still in effect until the approval is received. The plan/ordinance is automatically deemed approved if the county review agency does not take action to approve, conditionally approve, or disapprove it within 60 calendar days.

This does not alleviate the permittee of any responsibility to comply with any other applicable laws and/or rules.

No changes have been made to the final permit as a result of this comment.

79. COMMENT:

As the MSWMP is already required to be posted on the Municipal website as per Part IV.E.2.a.iii-v, and the applicable link is included in the Annual Report, why is another submission to the Department required? [2]

RESPONSE:

The Stormwater Management rules at N.J.A.C. 7:8-4.4(a) require submission of MSWMPs to the Department. The permit requirement at Part IV.E.2.a.iii requires the permittee to submit their Municipal Stormwater Management Plan electronically to the Department so that all updates can be viewed by staff whether or not the permittee has posted it on their website.

No changes have been made to the final permit as a result of this comment.

80. COMMENT:

The MSWMP is required to be reexamined at least every ten (10) years or if required due to amendments to the Stormwater Management rules at N.J.A.C. 7:8. The MSWMP appears would require a reexamination due to the proposed revisions of N.J.A.C. 7:8 and as the ten (10) year period from the date of adoption / approval of the original MSWMP approaches which would have an impact on the municipality for engineering services and the operations of the DPW . [12]

RESPONSE:

The Department recognizes that the referenced requirement may have an impact on operations within a municipality, however the requirement to have the MSWMP reviewed by the county review agency upon re-examination every ten years or when it is revised is required by law since the MSWMP is part of the Municipal Master Plan.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.A.2.: Stormwater Pollution Prevention Plan (SPPP) Requirements

81. COMMENT:

Regarding the Stormwater Pollution Prevention Plan, we would have to pay our consultant to prepare a report annually, when it could be more streamlined. [3]

82. COMMENT:

The Town acknowledges the SPPP was originally required in the 2004 Tier A MS4 Permit and that it is an existing Town “living document” intended to be annually reviewed and amended to reflect changes in the stormwater program. However, the SPPP is also required to describe how the permittee will implement each requirement and shall include template forms for maintenance, etc. for record keeping of compliance. The comprehensive nature of the document necessitates review, revision, and development of new sections to the Plan addressing the modified and new requirements of the Renewal Tier A Permit, which as noted in the above introduction constitutes approximately 61% of the permit (see COMMENT 54). In order for each modified and new section of the SPPP to be substantive, the Town must develop a compliance strategy for each. This necessitates an immediate and substantial increased staffing effort and financial investment by a Town of limited resources to demonstrate compliance within EDPA + 3 months. The comparative increase in scope and cost for the 2023 SPPP update is significant in relation to annual re-examination updates. The comparative increase in scope and cost is also significant in relation to the prior 2018 SPPP update when the 2018 Renewal Tier A Permit was introduced. As such, forward planning by the Town in recent years to anticipate another comprehensive SPPP update with the 2023 Renewal Tier A Renewal Permit falls short of that now defined. Further, the brief implementation schedule imposes a burden of supplemental advanced resource planning and funding allocation in the current year with only the Draft Permit for reference rather than a Final Permit confirming all requirements. Lastly, these mandates are imposed without the Department’s parallel release of a funding strategy to ensure the Permittee’s successful compliance on schedule by way of State financial assistance. [8]

83. COMMENT:

The Stormwater Pollution Prevention Plan (SPPP) would need to be updated and revised to satisfy the proposed new municipal maintenance yard (MMY) requirements. The Tier A Permit indicates that each MMY and ancillary operation shall be identified by its own form in the SPPP which shall include a description of the site-specific activities and associated Best Management Practices (BMPs) which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

RESPONSE 81-83:

The Department understands the commenters' concerns regarding resources needed to update the SPPP and will be providing an updated version of the SPPP template to follow this renewal permit to assist towns with meeting this permit requirement.

Additionally, in response to the concerns related to the permit only allowing 3 months for the permittees to update their SPPPs and since the updated SPPP template has not been made available, the Department has revised the due date for the updated SPPP to be submitted and posted from EDPA + 3 months to EDPA + 6 months.

The Department anticipates these documents to be finalized shortly and permittees will be notified via email when the final version of the SPPP, as well as the other guidance materials, forms, templates are available on the website. Also note that the SPPP is not intended to be a technical engineering document, but rather a plainly worded document that describes the measures the towns take to comply with their permit and can also be used to educate employees on their job responsibilities.

The SPPP template is designed with easy-to-use fill-in fields for permittees to describe their town's specific measures, and it includes instructions as well as example language to assist towns with the level of specificity needed for each section. Also, as compliance is not required with any significantly modified or new permit requirements until later in the permit term, the SPPP does not need to reflect those conditions until they are effective.

The requirement to have an individual SPPP Form 10 filled out for each MMY had been added to this permit renewal for towns with more than one MMY because there was no way to differentiate what chemicals, materials, etc. and best management practices (BMPs) applied to which MMY when the information for multiple yards was combined on one form. While this information is important during inspections, employees must be aware of and be able to determine what the responsibilities are at each MMY. This information must also be provided to employees during the annual employee training, so they are knowledgeable of the inventory of chemicals, machinery, etc. and associated BMPs at each yard.

Towns are also encouraged to contact their stormwater case managers with any questions regarding completing their SPPPs, as well as any other MS4 permit related questions. See https://www.nj.gov/dep/dwq/msrp_managers.htm to obtain the name of your respective case manager.

See RESPONSE TO COMMENTS 18-25 for additional information regarding funding.

84. COMMENT:

A.2.b – As the SPPP is already required to be posted on the Municipal website, and the applicable link is included in the Annual Report, why is another submission to the Department required? [2]

RESPONSE:

The Department has included the requirement to submit the SPPPs because the Department has found that, when attempting to review updated SPPPs on the permittees' websites, the version uploaded to the permittees' webpages are not current, or there was no SPPP loaded on the permittee's webpage at all. This submittal requirement is included to ensure that the Department only review the updated SPPPs and not review online versions only to discover that they were not the latest version. The submittal requirement will also ensure that a progressive record of the SPPPs can be maintained, and all annual updates can be reviewed by staff in an organized and timely manner.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.A.3.: Implementation of SPPP Conditions through Shared or Contracted Services

85. COMMENT:

Revise Part IV.A.3.a by deleting "stormwater utility" for consistency with N.J.A.C. 7:14A-25.7(a), which begins "a permittee may rely on another governmental, private, or nonprofit entity (for example, a watershed association) to satisfy ..." but does not list a "stormwater utility" as a fourth type of entity different from a "governmental, private, or nonprofit entity."

It appears that any "stormwater utilities" established under New Jersey's "Clean Stormwater and Flood Reduction Act" (N.J.S.A. 40A:26B-1 et seq.) would be governmental entities. NJDEP guidance for Draft Part IV.A.3 could identify stormwater utilities as within the scope of Part IV.A.3, without specifying how stormwater utilities relate to the "governmental, private, or nonprofit" entity categories. I believe that any "stormwater utility," no matter how it is established, must be a "governmental, private, or nonprofit entity." [16]

RESPONSE:

The Department recognizes the commenter's opinion on maintaining consistency with the specific language include in the regulations and the potential duplicative nature of the term. However, "Stormwater utility" was included in Part IV.A.3.a. to emphasize that stormwater utilities are an acceptable way to carry out permit conditions through a shared service.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.B.1: Public Involvement and Participation including Public Notice

86. COMMENT:

As all Municipalities are aware of the requirements for the introduction and adoption of ordinances, section B.1 seems redundant. [2]

RESPONSE:

While the Department understands that this permit condition may seem redundant, the Federal Phase II Stormwater Rule at 40 CFR 122.34 requires that operators of small MS4s develop, implement, and enforce a program that includes Six Minimum Control measures to minimize the amount of pollutants discharged into receiving waters from small MS4s. Public Involvement and Participation Including Public Notice is one of the Six Minimum Control Measures and therefore must be included in the permit language.

No changes have been made to the final permit as a result of this comment.

87. COMMENT:

Part IV.B.1.a.iii. of the 2018 permit explicitly required permittees to “ensure that applicants for development meet the notice requirements of N.J.S.A. 40:55D-12.” That specific requirement is not found in the 2022 permit. While it may be assumed in the proceeding requirement to comply with the requirements for review of applications for consistency’s sake it may be prudent to add this requirement back in. [5]

RESPONSE:

N.J.S.A 40:55D-12 is already referenced in Part IV.B.1.a.iii, which states that “The permittee shall comply with applicable State and local public notice requirements when providing for public participation in the development and implementation of the MS4 stormwater program” including “The Municipal Land Use Law concerning the adoption or amendment of the MSWMP (N.J.S.A. 40:55D-13, 28 and 94), and the review of applications for development (N.J.S.A. 40:55D-12).”

No changes have been made to the final permit as a result of this comment.

Permit Section IV.B.2.: Municipal Stormwater Webpage

88. COMMENT:

NJF supports requiring the development of a municipal stormwater webpage. [9]

RESPONSE:

The Department acknowledges the commenter’s support in developing a municipal stormwater webpage.

No changes have been made to the final permit as a result of this comment.

89. COMMENT:

In Part IV.B.2.a.xi of the permit, is the Department inferring that the Municipality must adopt a Tree Ordinance? Unlike all the previous required ordinances (pet waste, Litter control, etc.) no sample ordinance published on the Department website. This directive is not incorporated into the Stormwater Rules (NJAC 7:8) and should be eliminated. [2]

RESPONSE:

The adoption of a Tree Removal/Tree Replacement ordinance is required to be adopted on or before the Effective Date of the Permit + 12 months. As noted in RESPONSE TO COMMENTS 18-25, the Department will be providing model ordinances to assist permittees with fulfilling this permit requirement. Once the model ordinance is completed, the Department will email the permittees' SPCs and post this ordinance on its website at https://www.nj.gov/dep/dwq/tier_a.htm and offer a 30-day informal comment period for permittees and other stakeholders to review the ordinance and provide suggested changes, etc.

Additionally, the Tier A permit conditions are not all based on the Stormwater Management rules at N.J.A.C. 7:8. There is no requirement in the federal Clean Water Act, EPA Phase II rules, or the NJPDES rules that requires that ordinances must be part of the Stormwater Management rules (7:8) to be incorporated into the Tier A permit. Many permit conditions are based on the Municipal Stormwater Regulation Program, Subchapter 25 of the New Jersey Pollutant Discharge Elimination System regulations at N.J.A.C. 7:14A, and the specific basis for each permit condition can be found in the Fact Sheet. Page 39 of the Fact Sheet includes the following basis for the incorporation of this requirement,

“Tree Removal/Replacement Ordinance: This new permit requirement to adopt and enforce an ordinance to control tree removal and the replacement of any trees that are removed is derived from stakeholder involvement during 2019 regarding improvements to the Stormwater Management program and rule language, and the ongoing need for enhanced stormwater management strategies. Trees play a critical, often overlooked, role in the water cycle and can mitigate stormwater runoff issues. This ordinance is intended to ensure that permittees are considering these undervalued assets in their water quality management efforts. This permit renewal requires permittees to adopt and enforce an ordinance to control tree removal and replacement to reduce stormwater runoff and pollutants, and to promote infiltration of rainwater into the soil. The minimum standards would be provided in a model ordinance to be developed by the Department for each municipality for consideration of their own tree ordinance.”

No changes have been made to the final permit as a result of this comment.

90. COMMENT:

Is the Department inferring that the Municipality adopt a Salt Storage ordinance? Salt storage domes are typically the province of State Agencies, County and Municipal DPW's and the bulk distribution centers (which presumably have NJPDES permits for those activities. Unlike all of the previous required ordinances (pet waste, Litter control, etc.) is no sample ordinance published

on the Department website. This directive is also not incorporated into the Stormwater Rules (N.J.A.C. 7:8) and should be eliminated. [2]

RESPONSE:

The adoption of a Privately-Owned Salt Storage Ordinance is required to be adopted on or before the Effective Date of the Permit + 12 months. The Department is developing a model ordinance for permittees to use. As explained in RESPONSE TO COMMENTS 18-25, the Department will be providing updated versions of the MS4 Guidance documents, model ordinances, forms, and templates, etc. to follow this renewal permit. Once these documents are completed, the Department will email the permittees' SPCs and post them on its website at https://www.nj.gov/dep/dwq/tier_a.htm. The Department will also offer a 30-day informal comment period for permittees and other stakeholders to review the model ordinances and WIP template and provide suggested changes, etc. Permittees will also be notified via email when the final versions of these documents are posted online.

There is no requirement in the federal Clean Water Act, EPA Phase II rules, or the NJPDES rules that requires that ordinances must be part of the Stormwater Management Rules (N.J.A.C. 7:8) to be incorporated into the Tier A permit. Additionally, the Tier A permit conditions are not all based on the Stormwater Management rules at N.J.A.C. 7:8. Many permit conditions are based on the Municipal Stormwater Regulation Program, Subchapter 25 of the New Jersey Pollutant Discharge Elimination System regulations at N.J.A.C. 7:14A, while the specific basis for each permit condition can be found in the draft permit Fact Sheet. Page 39 of the draft permit Fact Sheet includes the following basis for the incorporation of this requirement,

“Privately-Owned Salt Storage Ordinance: This renewal requires permittees to adopt and enforce an ordinance requiring salt and other solid (granular) de-icing material to be covered when not in use to prevent exposure to rain, snow, or stormwater run-on. The use of anti-icing agents is critical to the public safety and economy of the state during winter precipitation events. Their use is widespread, both publicly and privately, despite the environmental impacts that de-icing agents can cause. When uncovered, pollutants from these piles are transported by winds, waters, human activities, etc. into the nearest storm drain inlet. Road salt being deposited into the receiving surface waters has become a nationwide problem, as the increase in chloride levels can be toxic to aquatic life and can contaminate surface and ground water drinking water supplies. While these discharges of salt laden runoff could have been enforced by the permittee through the improper disposal of waste ordinance that is already required, discharges from uncovered piles were witnessed in many locations within municipalities during our MS4 stormwater compliance audits and enforcement inspections, which were reported to the Department via complaints received from the general public. The requirement to develop and implement this ordinance is therefore being added to this permit renewal so that the permittees' municipal authority in this regard is very clear.

“This ordinance is intended to reduce the detrimental effects of salt laden stormwater runoff on our surface and ground waters due to unnecessary runoff from improperly stored, private stockpiles by further empowering permittees to hold privately owned salt stockpiles

(e.g., at commercial or industrial locations, such as shopping centers or industrial parks) to similar management requirements as the municipality and industrial stormwater permittees. Similar to the ordinance requirements in the prior Tier A Permit, the Department has provided a sample salt storage ordinance at https://nj.gov/dep/dwq/tier_a.htm.”

No changes have been made to the final permit as a result of this comment.

91. COMMENT:

EPA recommends requiring the MS4 Infrastructure Map to include publicly owned green infrastructure in Part IV.B.2.a.xiv of the permit. [1]

RESPONSE:

The Department acknowledges the commenter’s interest in mapping green infrastructure. Green infrastructure is included in the MS4 Infrastructure Map in Part IV.G.1.a.viii as part of the “Stormwater Facilities” feature class, not as its own stand-alone feature class. There will be an attribute field within the “Stormwater Facilities” feature class called “Green Infrastructure” in which the user can indicate whether the stormwater facility was designed and built in accordance with the NJ Stormwater Best Management Practices Manual’s green infrastructure standards. Additionally, the Department would like to note that “green infrastructure” is defined in the Stormwater Management rule (N.J.A.C. 7:8).

No changes have been made to the final permit as a result of this comment.

92. COMMENT:

In Part IV.B.2.a.xv, it appears the Department is requiring the Municipality prepare a Watershed Improvement Plan, defined elsewhere in this permit. The Stormwater Management rules (N.J.A.C. 7:8-3) make reference to permissive Regional Stormwater Management Planning that identified various possible lead agencies. There are no definitions of “watershed” included anywhere in the permit. This new directive is an unfunded mandate should be removed. [2]

RESPONSE:

The development of a Watershed Improvement Plan (WIP) is required to be completed in three phases during the term of the permit, beginning with completion of Phase 1 at EDP + 36 months. As per RESPONSE TO COMMENTS 18-25, the Department will be providing guidance for the WIP, as well as a WIP template to assist Tier A permittees with understanding the information that will need to be included in the WIPs. Once the WIP template is completed, the Department will email the permittees’ SPCs and post this template on its website at https://www.nj.gov/dep/dwq/tier_a.htm and offer a 30-day informal comment period for permittees and other stakeholders to review the template and provide suggested changes, etc.

Additionally, as stated in RESPONSE TO COMMENT 85, the Tier A permit conditions are not all based on the Stormwater Management rules at N.J.A.C. 7:8. There is no requirement in the

federal Clean Water Act, EPA Phase II rules, or the NJPDES rules that requires that ordinances must be part of the Stormwater Management Rules (7:8) to be incorporated into the Tier A permit. Many permit conditions are based on the Municipal Stormwater Regulation Program, Subchapter 25 of the New Jersey Pollutant Discharge Elimination System regulations at N.J.A.C. 7:14A, and the specific basis for each permit condition can be found in the Fact Sheet. The basis for the WIP can be found beginning on page 72 of the Fact Sheet.

The term “watershed” is not specifically defined in the permit as the definition of the term is not specifically relevant to the WIP, or any other permit requirement, and the general definition such as the one provided by Merriam-Webster is sufficient, which states that a watershed is “a region or area bounded peripherally by a divide and draining ultimately to a particular watercourse or body of water.” The specific requirements of the WIP are set forth in the permit itself and do not rely on ensuring that the permittees and the Department have a common detailed legal understanding of the term “watershed” set forth in the permit.

Also, as per the Fact Sheet, issued with the draft permit on July 28, 2022, the Department notes that no conditions contained in this renewal permit constitute an unfunded mandate under Article VIII, Section II, paragraph 5 of the New Jersey Constitution, or N.J.S.A. 52-13H. See RESPONSE TO COMMENTS 26-34 for additional discussion regarding unfunded mandates.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.C.1: Local Public Education and Outreach

93. COMMENT:

EPA believes the requirements of Part IV.C.1.a.iii seem broad and believes the NJDEP should add more specificity [1]

RESPONSE:

The permit language at Part IV.C.1.a.iii. states that the permittee shall “Keep records necessary to demonstrate compliance, including date of activities and any other relevant documentation.” Similar language was used in the corresponding section of the final 2018 permit, which states in part IV.B.2.a. that “Records shall be kept necessary to demonstrate compliance with this requirement, including date of activities and any other relevant documentation.” This requires that the permittee keep records demonstrating compliance with its local public education and outreach program, including the date of the activities the permittee conducted. It is unclear what additional specificity is recommended or could be included.

No changes have been made to the final permit as a result of this comment.

94. COMMENT:

If the Education Credits section does not say only a certain amount can be received can the Township get multiple credits for the same section? Example giveaways, can we do dog waste bags and magnets and receive a total of 4 credits or is it only 2 credits? [22]

95. COMMENT:

We hold Clean Communities cleanup twice a year, can this count towards Category 3 of the Education Credits under litter clean up? [22]

RESPONSE 94-95:

The Points System for Public Education and Outreach Activities requirements included in Attachment A of the permit do not explicitly state whether or not an activity can be done more than once in a calendar year. The Department notes that an activity can count for credit more than once as long as separate activities are performed on separate occasions or as specified in each points category. The Department reminds permittees that they are still required to conduct educational activities from at least three of the five categories listed in Attachment A to earn their 12 points for each year.

No changes have been made to the final permit as a result of these comments.

Permit Section IV.D.1.: Construction Site Stormwater Runoff

96. COMMENT:

As per 40 CFR 122.34(b)(4)(i)(A), the MS4 permittee must develop an ordinance or other regulatory mechanism to require erosion and sediment control. Please add this requirement to Part IV.D.1. [1]

RESPONSE:

This change to the permit is unnecessary as the Department maintains a separate general stormwater permit for construction activities (5G3), as identified in Part IV.D.1 of the permit, which satisfies the “other regulatory mechanism.” An ordinance or additional requirement to address soil erosion and sediment control is not required to be developed by the municipalities under this permit.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.E.1: Stormwater Management Program to Address Post Construction Stormwater Management in New Development and Redevelopment

97. COMMENT:

Please add the EPA requirements found at 40 CFR 122.34(b)(5)(i)(A) through (C) in the permit at Part IV.E.1 which requires the development and implementation of strategies which include a combination of structural and/or non-structural BMPs. It is unclear in this section what long-term

operation and maintenance requirements exist in the NJDEP permit to ensure long term operation of BMPs. [1]

RESPONSE:

The Department acknowledges the importance of long-term maintenance of BMPs. Part IV.F.3 and F.4 discuss minimum standards for inspection and maintenance of stormwater facilities owned or operated by the permittee and those not owned or operated by the permittee, respectively. This includes the requirement for the permittee to inspect and perform maintenance on municipally owned or operated stormwater infrastructure pursuant to approved maintenance plans, maintain a log sufficient to demonstrate compliance with municipally owned or operated stormwater facility inspection and maintenance requirements, and ensure that stormwater facilities not owned or operated by the permittee are inspected and maintained pursuant to approved maintenance plans.

Additionally, pursuant to Part IV.E.1.a, the permittee shall develop, update, implement and enforce its stormwater management program to address post construction stormwater runoff in new development and redevelopment and to ensure compliance with the Stormwater Management rules at N.J.A.C. 7:8, which includes maintenance requirements for stormwater management measures incorporated into the design of a major development at N.J.A.C. 7:8-5.8.

No changes have been made to the final permit as a result of this comment.

98. COMMENT:

Revise Part IV.E.1.b by changing “as defined in the Stormwater Management rules at N.J.A.C. 7:8” to “as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2(a) and 4.2(a)”. This change will ensure that in determining what is meant by “major development” as defined in N.J.A.C. 7:8, what is used is not only the N.J.A.C. 7:8-1.2(a) definition of “major development”, but also the N.J.A.C. 7:8-4.2(a) statement that “for purposes of this subchapter, major development is limited to projects that ultimately disturb one or more acres of land”. [16]

RESPONSE:

By referencing major development as defined in N.J.A.C. 7:8 overall, the term as defined at N.J.A.C. 7:8-1.2(a) and 4.2(a), and their respective applicability, are both incorporated. Additionally, referencing the definition of major development in this way minimizes the potential for an erroneous citation to be included in the permit upon any potential future amendments to N.J.A.C. 7:8.

See also RESPONSE TO COMMENT 69 regarding changes to the permit regarding the definition of “major development.”

No additional changes have been made to the final permit as a result of this comment.

99. COMMENT:

Regarding Part IV.E.1.e, municipalities are not able to ensure that “major development” projects are constructed in accordance with approved development plans because the Municipal Land Use Law (MLUL) does not allow municipalities to include on-site improvements, including stormwater management measures, in a performance guarantee. Permittees may inspect construction without compensation via a performance guarantee from the developer, but there is no mechanism in the MLUL to ensure construction complies with approved plans. Requiring permittees to inspect construction would add significant workload to already strained municipal workforces without offering any mechanism for providing the funding necessary to hire and keep the additional workforce. [11]

RESPONSE:

The Department has found through the 58 MS4 Tier A Stormwater Compliance Assistance Audits conducted since 2015, and additional reviews of development projects subject to a Municipal review under local Stormwater Control Ordinances, that in many instances, stormwater management facilities are not built in accordance with municipally approved design plans. In order to uphold the primary objective of the MS4 stormwater program, which is to implement best management practices and other measures that are designed to reduce the discharge of pollutants, protect water quality, and satisfy applicable water quality requirements of the Clean Water Act, ensuring that stormwater management facilities are constructed and maintained as per the approved plan is critical. Municipalities have the general authority granted under N.J.S.A. 40:55D-18 of the New Jersey Municipal Land Use Law to ensure that plans approved by the municipality are constructed and maintained according to approved plans.

No changes have been made to the final permit as a result of this comment.

100. COMMENT:

The language at Part IV.E.1.f would appear to eliminate the ability of a municipality of designing projects utilizing their appointed Municipal Engineer. [2]

101. COMMENT:

Please clarify whether public projects, designed by the permittee, fall under Part IV.E.1. There are typically no “independent” reviews of municipal projects. And as permittee review engineers frequently educate developers on stormwater design and go back-and-forth with developers during the review process, if a reviewer suggests changes to the design during their review, would they be unable to review subsequent iterations of the development plans if the developer incorporates the reviewer’s suggestions? [11]

RESPONSE 100-101:

Part IV.E.1.f requires that the individual who reviews a major development project for compliance with the municipality’s stormwater control ordinance cannot also have been involved in the design of that project, but it does not prohibit the municipal engineer from designing projects for the municipality.

For clarification, the review engineer for a municipality may design a major development project for that municipality as long as that project is reviewed for compliance by a separate review engineer (such as the planning board engineer), provided that review engineer has completed the Department's Stormwater Management Design Review Course within the last 5 years and the Stormwater Management Rule Amendment Training if announced, as per Part IV.F.8 and 9.

No changes have been made to the final permit as a result of these comments.

102. COMMENT:

Paragraphs E.1(d), (g) and (i) should delete all reference to RSIS. MS4 permittees are required to implement stormwater management to the maximum extent practical (MEP). RSIS creates a situation where a permittee is prohibited from instituting controls to MEP for a portion of their community. These controls or BMPs can include additional provisions over what the Model geStormwater Management Ordinance provides. For example, some of these municipalities have also adopted modifications to the definition of "major development," which is explicitly permitted in the 2018 MS4 permit and even more explicitly in this permit. Other municipalities have added an onsite retention standards or minor development requirement in their stormwater management ordinances. The CWA and its implementing regulations do not permit a permittee to avoid instituting BMPs to the MEP.

We also believe that continued reference to RSIS will also limit a permittee's ability to devise a Water Assessment Report (WAR) and final Watershed Improvement Plan Report required in Section H. Permittees will likely include stronger stormwater management ordinance requirements for new development and redevelopment in their efforts to reduce pollution to meet WLAs and to address impaired waters. Continued reference to RSIS will limit the applicability of these provisions to a portion of a municipality. For example, as part of a WAR, municipalities might want to require a site to naturalize its retention basins upon redevelopment or the construction of additions. Other provisions may institute an on-site retention standard for new and redevelopment projects.

Another possible implementation within a WAR would be treating all stormwater discharges into a waterway impaired for TSS to 95% TSS removal not 80%. The inclusion of RSIS in the permit would arguably limit the applicability of these provisions. Depending on the development patterns of a municipality this restriction would severely limit the mechanisms available to a municipality in the development of its WAR. As permittees are required to implement effluent limitations as soon as possible or achieve water quality standards limiting the available tools is contrary to this requirement.

We also note that RSIS authorizing legislation limits the applicability of RSIS to drainage structures. It does not provide authority to prevent the implementation of an enhanced definition of "major development", additional water quality or quantity controls that are found in many municipal ordinances that seek to treat pollutants discharged from a point source. RSIS is a municipal land use statute, it is not a water pollution control statute; therefore, it should not control ordinances and actions developed in accordance with the MS4 NJPDES permit. The MS4 permit

is issued under the authority of the Water Pollution Control Act and the Clean Water Act not the MLUL. For these reasons and others, we recommend deleting all references to RSIS in the permit. For a more detailed analysis on why RSIS does not regulate stormwater management, I am attaching a paper: “Stormwater Management and the Residential Site Improvement Standards.”

Paragraphs 3(a)(i) and (iii) should be deleted because of its reference to RSIS.

Paragraph 3(a)(ii) should delete “non-residential.”

Commenter 5 also submitted a white paper discussing their concerns with the Department’s references to RSIS in the Tier A MS4 permit.[5]

103. COMMENT:

This permit is rife with references to the RSIS. The RSIS is a Municipal Land Use Law requirement. This permit is a NJPDES permit, it is a discharge permit for clean water under the Clean Water Act and the Water Pollution Control Act. And I think, you know, I have said this multiple times in multiple different arenas, RSIS has no business controlling the treatment and discharge of pollutants, which stormwater is. So, I don't believe this permit should reference RSIS in any way, shape or form. And I also believe with the Watershed Improvement Plans, implementing total maximum daily loads and impaired water improvements, that by referencing RSIS and continuing this dichotomy of stronger stormwater management and stronger techniques for some of our kinds of development, but not residential development, is really going to put us at a disadvantage and really prevent Watershed Improvement Plans from actually achieving their goals. So, I don't know how you implement a Watershed Improvement Plan but ignore a certain percentage of your town's development. [24]

RESPONSE 102-103:

Both N.J.A.C. 7:8 and 40 CFR 122.34(b)(5) set forth minimum requirements for stormwater management and the RSIS incorporates N.J.A.C. 7:8 by reference. Municipalities review post-construction stormwater management through the authority granted by the Municipal Land Use Law. The RSIS regulates the stormwater management requirements for applicable residential projects. The permit references the RSIS to ensure that those projects subject to the RSIS are reviewed in accordance with those requirements. The Department can neither unilaterally alter the process of reviewing residential projects nor supersede regulations governing the review of residential projects with this permit. Should the RSIS or governing review process be revised, the Department will review the permit and revise the permit requirements if necessary.

No changes have been made to the final permit as a result of these comments.

104. COMMENT:

The statement at Part IV.E.1.i. that N.J.A.C. 7:8 and the RSIS for stormwater management (N.J.A.C. 5:21-7) ... “as implemented in this permit apply to all areas of the municipality” is unlawful for any areas of the municipality that do not contribute stormwater to any “eligible stormwater discharges” authorized in Part II.C.2.a (stormwater discharges from small MS4s and

municipal maintenance yards and other ancillary operations owned or operated by the Tier A permittee).

To begin with, applying this statement to those areas of the municipality conflicts with the first sentence of N.J.A.C. 7:14A-25.6(b)3i, which states "... the permittee shall develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb one acre or more, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the permittee's small MS4."

More fundamentally, I believe that applying this statement to those areas of the municipality is unlawful and otherwise inappropriate not only because these areas do not contribute to any discharge "authorized" by the Tier A Permit, but because these discharges do not contribute to any discharge owned or operated by the Tier A permittee. Using this Permit in this manner conflicts with the Water Pollution Control Act at N.J.S.A. 58:10A-6.a, the pertinent part of which states that "it shall be unlawful for any person to discharge any pollutant, except ... when the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit ..."

N.J.S.A. 58:10A-6.a establishes that what must conform with the NJPDES permit is the authorized discharge operated by the permittee (in this instance, the Tier A permittee), no other activities independent of this discharge, such as regulation by the Tier A permittee of private or public stormwater discharges that do not contribute to a discharge operated by the Tier A permittee and authorized by the NJPDES permit. The New Jersey courts have rejected the concept that municipalities can be NJPDES permittees (or co-permittees) for discharges from private wastewater treatment systems not owned or operated by those municipalities. See *New Jersey Builders Ass'n v. Fenske*, 249 N.J. Super. 60, 67-72 (App. Div. 1991). I see no reason why stormwater discharges would be viewed differently in this regard, or why, in light of N.J.S.A. 58:10A-6.a and this court decision, the Tier A Permit could lawfully include conditions that require Tier A permittees to regulate areas of the municipality that do not contribute stormwater to any "eligible stormwater discharges" authorized in Part II.C.2.a (except perhaps as part of a well-defined effluent trading or offsite mitigation program.)

Moreover, NJDEP enforcement actions against the Tier A permittee in regard to these areas of the municipality might well be restricted by language in *State, D.E.P. v. Middlesex Cty. Bd. Of Chosen Freeholders*, 206 N.J. Super. 414, 426 (Ch. Div. 1985); *aff'd*, 208 N.J. Super. 342 (App. Div. 1986). This language identified legal obstacles to imposing monetary penalties upon a government agency for failing to carry out properly its regulatory responsibilities as distinct from the agency's responsibility to operate properly the agency's own facilities. For these areas of the municipality, the regulatory responsibilities of Tier A permittees are not part of the responsibilities of Tier A permittees to operate properly their own stormwater facilities. See also in this regard *Bubis v. Kassin*, 323 N.J. Super. 601, 617-618 (App. Div. 1999), which identified legal obstacles to compelling municipalities in some circumstances to take enforcement action against those who violate Municipal Land Use Law ordinances.

It may be that for these areas of the municipality, the New Jersey Attorney General has standing (at least in some circumstances) to bring an action in the courts to compel the Tier A Municipality

to comply with requirements that the Municipal Land Use Law (MLUL) and N.J.A.C. 7:8 impose on such municipalities in regard to the Municipal Stormwater Management Plan (MSWMP), the Municipal Stormwater Control Ordinance (SCO), and the RSIS for stormwater management. If legal basis for such standing exists, however, this legal basis must reside somewhere other than in the Tier A Permit and in the NJPDES rules (N.J.A.C. 7:14A) and Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) as they pertain to enforcing the Tier A Permit. [16]

RESPONSE:

As per the Department's Response to Comment 130 on the 2018 Tier A MS4 NJPDES permit, regarding the concerns raised in this comment regarding Part IV.E.1.i, the Department maintains that the RSIS and N.J.A.C. 7:8 can apply to all areas of the municipality. Part IV.E.1.i. is stated as follows:

"i. The Stormwater Management rules (N.J.A.C. 7:8) and the Residential Site Improvement Standards for stormwater management (N.J.A.C. 5:21-7), independently and as implemented in this permit, apply to all areas of the municipality."

The ability to issue MS4 permits on a jurisdictional basis and not on a system specific basis can be found within the Clean Water Act at Section 402(p)(3)(B). The exact language of this section is as follows:

"(B) Municipal discharge

Permits for discharges from municipal storm sewers – (i) may be issued on a system- or jurisdiction-wide basis; (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."

Also, 40 CFR 122.34(c)(1) allows for more stringent terms and conditions to be included in the permit if it is determined that they are necessary to protect water quality:

"(c) Other applicable requirements. As appropriate, the permit will include:

(1) More stringent terms and conditions, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis, or where the Director determines such terms and conditions are needed to protect water quality."

Based on the two sections referenced above, the Department has determined that the most effective way of regulating discharges from small MS4s is on a jurisdictional (i.e., municipal-wide) basis, rather than a system-wide basis and that applying the post construction requirement to the entire municipality is a condition required to protect water quality.

The Municipal Land Use Law and Stormwater Management Act at N.J.S.A. 40:55D-95 do not distinguish between discharges to MS4s or directly to surface water. One of the primary objectives of the Stormwater Management Act is to prevent flooding and protect water quality from stormwater runoff. N.J.S.A. 40:55D-95 states the following:

“A storm water management plan and a storm water management ordinance or ordinances shall conform to all relevant federal and State statutes, rules and regulations concerning storm water management or flood control and shall be designed: a. to reduce flood damage, including damage to life and property; b. to minimize storm water runoff from any new land development where such runoff will increase flood damage; c. to reduce soil erosion from any development or construction project; d. to assure the adequacy of existing and proposed culverts and bridges; e. to induce water recharge into the ground where practical; f. to prevent, to the greatest extent feasible, an increase in nonpoint pollution; g. to maintain the integrity of stream channels for their biological functions, as well as for drainage; and h. to minimize public safety hazards at any storm water detention facilities constructed as part of a subdivision or pursuant to a site plan. A storm water management plan shall also include such structural changes and such additional nonstructural measures and practices as may be necessary to manage storm water.

For purposes of this act: "nonpoint pollution" means pollution from any source other than from any discernible, confined and discrete conveyance, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.”

Furthermore, the RSIS at N.J.A.C. 5:21 and the Stormwater Management rules at N.J.A.C. 7:8 do not distinguish between discharges to sewer systems or to surface water. As defined by both rules:

“Stormwater” means water resulting from precipitation (including rain and snow) that runs off the land’s surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities or conveyed by snow removal equipment.”

In addition, N.J.A.C. 7:8-4 Municipal Stormwater Management Planning, which describes the requirements for Municipal Stormwater Management Plans and Stormwater Control Ordinances, does not distinguish between areas discharging to the small MS4 and areas that do not. For example, N.J.A.C. 7:8-4.2(c)4 requires the Municipal Stormwater Management Plan to incorporate the design and performance standards in N.J.A.C. 7:8-5 (or alternative design and performance standards). N.J.A.C. 7:8-5.1(a) specifically states “This subchapter establishes design and performance standards for stormwater management measures for major development...” There is no restriction in N.J.A.C. 7:8 that would limit those standards to apply only to major developments that discharge into an MS4.

Based on the authority provided to the Department by the Clean Water Act, NJPDES Phase II Regulations, Municipal Land Use Law and Stormwater Management rules, the Department believes that the post construction requirements in this permit can fully apply to all areas of every regulated municipality.

No changes have been made to the final permit as a result of this comment.

105. COMMENT:

Minimum Standards for Post Construction Stormwater Management in New Development and Redevelopment: NJBA supports the removal of Attachment D, the Major Development Stormwater Summary, which required detailed information for each structural and nonstructural stormwater management measure. Considering the Department's new requirement to map all stormwater infrastructure, Attachment D may have resulted in the duplication of work.

NJBA notes that during stakeholder sessions, recommendations were made to remove references to the Residential Site Improvement Standards (RSIS.) NJBA supports the inclusion of references to the RSIS in the MS4 permit and is adamantly opposed to removing references to the RSIS, which are crucial to guiding municipalities in the development of Stormwater Control Ordinances (SCOs.) NJBA believes any change to the limitations of the RSIS imposed on SCOs would require a statutory change. The Legislature was clear in its creation of the RSIS that housing affordability is a major concern and recognized that uniform standards are crucial to maintaining predictability and efficiencies in stormwater design. Since the creation of the RSIS, New Jersey's housing affordability crisis has only worsened and thus no limitations to the scope of the RSIS should be made at this time without legislation. Municipalities seeking stricter standards for residential development may apply to the Site Improvement Advisory Board for a Special Area Standard (N.J.A.C. 5:21-3.5.) NJBA supports the Department's reference of this mechanism in the MS4 permit. The Department should further clarify that the RSIS provides for minimum and maximum standards for residential development subject to the RSIS unless the municipality obtains a Special Area Standard.

NJBA supports that the permit renewal retains the permit condition from the 2018 Tier A and Tier B permits that states that a municipality can grant a variance from the design and performance standards for stormwater management measures if the conditions at N.J.A.C. 7:8-4.6(a)1 and (a)2 are met. [10]

RESPONSE:

The Department acknowledges the commenter's support. The Department maintains that further clarification within the permit on the interpretation of the Residential Site Improvement Standards (RSIS) at N.J.A.C. 5:21 et seq regarding storm water management is unnecessary as clarification is provided under the Scope and Applicability section of the RSIS at N.J.A.C. 5:21-1.5(b).

No changes have been made to the final permit as a result of this comment.

Permit Section IV.E.3.: Municipal Stormwater Control Ordinance (SCO)

106. COMMENT:

Revise Part IV.E.3.b. to:

(1) Require the Tier A municipality to submit any proposed (not adopted) municipal SCO to the county planning board (not the county review agency) in accordance with N.J.S.A. 40:55D-15b at least 10 days prior to the date of the public hearing held by the municipal governing body. Because every municipal SCO is a “development regulation” as defined at N.J.S.A. 40:55D-4, such submission is required by N.J.S.A. 40:55D-15b, even though such submission is not mentioned in N.J.A.C. 7:8-4.4;

(2) Also require the Tier A Municipality to submit the adopted municipal SCO to the permittee’s county planning board for approval pursuant to the requirements at N.J.A.C. 7:8-4.4 (this clarifies draft Part IV.E.3.b.i); and

(3) Set forth a deadline for the Tier A permittee to adopt and submit to the county review agency a municipal SCO that the municipality revised in response to county review agency disapproval or conditional approval of a municipal SCO. [16]

RESPONSE:

As explained in RESPONSE TO COMMENT 78, the Department disagrees with this suggested edit. While the Department does not dispute the accuracy of the commenter’s suggestion, this permit cannot include requirements to comply with every applicable law and/or rule. In the case of this requirement, the permit requires compliance with the MSWMP and SCO adoption requirements outlined in the Stormwater Management rules. As per N.J.A.C. 7:8-4.4, a municipality must submit a copy of the adopted MSWMP/SCO to the county review agency for approval. The county review agency has 60 calendar days to review the submission and approve, conditionally approve, or disapprove it. The plan/ordinance is not deemed in effect until it receives approval from the county planning board, and therefore the most current plan/ordinance is still in effect until the approval is received. The plan/ordinance is automatically deemed approved if the county review agency does not take action to approve, conditionally approve, or disapprove it within 60 calendar days.

This does not alleviate the permittee of any responsibility to comply with any other applicable laws and/or rules.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.F.1.: Community Wide Ordinances

107. **COMMENT:**

Community Wide Ordinance - Section v. talks about yard waste and Pilesgrove Township does not collect any yard waste. All residents must remove their own yard waste. Do we still need this ordinance? [22]

RESPONSE:

Permittees are not specifically required to adopt the Department's model ordinances. As such, a municipality that does not collect yard waste can adopt an ordinance suited to their unique situation. The intent of the Yard Waste Ordinance is to discourage non-containerized yard waste, such as leaves and grass clippings, from being placed into the street or within 10 feet of any storm drain inlet. An ordinance prohibiting such action would satisfy this requirement.

No changes have been made to the final permit as a result of this comment.

108. **COMMENT:**

The words "Private Storm Drain Inlet Retrofitting" are repeated in F.1.a.vi. [11]

RESPONSE:

The Department thanks the commenter for the correction and has deleted the repeated words in the final permit.

109. **COMMENT:**

The term "Tier A Municipality" is used in the permit at F.1.a.vi. Other instances of this term have been replaced with "Permittee." [11]

RESPONSE:

The Department thanks the commenter for the correction and has replaced "Tier A Municipality" with "Permittee" for consistency throughout the final permit.

110. **COMMENT:**

The requirements for Salt Storage and Tree ordinances at Part IV.F.1.b are not incorporated in the Stormwater rules (N.J.A.C. 7:8) and should be eliminated. There are no sample ordinances included with the permit or published on the Department website. [2]

RESPONSE:

The Department disagrees that the salt storage and tree removal/replacement ordinances should be removed in the final permit because they do not exist in the Stormwater Management rules (N.J.A.C. 7:8). There is no requirement that ordinances must be part of the Stormwater Management rules to be incorporated into the Tier A permit.

See RESPONSE TO COMMENT 89 and 90 for information regarding the Tree Removal/Replacement and the Privately-Owned Salt Storage Ordinances and RESPONSE TO COMMENT 18-25 for information pertaining to the Department offering a 30-day informal comment period on the ordinances required under this permit.

No changes have been made to the final permit as a result of this comment.

111. COMMENT:

Two (2) new municipal ordinances would need to be adopted for salt storage and for tree removal which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

112. COMMENT:

Please provide model ordinances for the requirements at Part IV.F.1.b.i and ii. [11]

113. COMMENT:

Will NJDEP provide model tree and salt storage ordinances? [11]

RESPONSE 111-113:

As noted in RESPONSE TO COMMENTS 18-25, upon completion of the Model Tree Removal/Replacement and Privately-Owned Salt Storage ordinances, the Department will provide a 30-day informal comment period for permittees.

The Department will also provide a group model ordinance for review which combines all of the ordinances required under this permit (except the Stormwater Control Ordinance) so that the New Tier A municipalities can avoid the costs of advertising multiple ordinances.

Once finalized, these new model ordinances can be adopted with minimal change to reduce the burden of new ordinance creation for the municipalities. Although changes may be made to these ordinances prior to adoption, permittees must adopt, at a minimum, ordinances that are at least as restrictive as the Department's model ordinances, but may choose to adopt stricter ordinances, if desired. These documents will be available on our website at https://www.nj.gov/dep/dwq/msrp_home.htm.

No changes have been made to the final permit as a result of these comments.

114. COMMENT:

Part IV.F(1)(b). We support the addition of Salt Storage Ordinance and Tree Ordinance as community wide measures.

(i) Salt Storage. It is becoming well understood that salt is entering our waterways because of our storage and usage of it during winter. These practices are having a negative impact on the health of our stream and our groundwater. Municipal systems have had to be covered for several years now. Requiring privately owned property to manage their salt facilities will help reduce the input of it into our waterways.

(ii) Tree Ordinance. Requiring the protection of trees during the construction of a development and within the municipality is important to the control of stormwater. Trees not only have an aesthetic value, but they absorb and filter stormwater thus reducing pollutants entering our waterways. The trees and their root systems help slow down the flow of stormwater thus reducing erosion. The leaf and bark structure of trees also intercept rain, capturing some of it and reducing

the force that it hits the ground. Trees also increase infiltration by transporting rain into the root system and into the ground. There are well documented calculators of the value of trees. For example, <https://design.itreetools.org/>.

The proposed model ordinance should set several baseline requirements. First, ordinance should set out a protection zone around the tree which is wider than the drip line. Doing this will provide stronger protection to the root system and surrounding soils from compaction and damage from the construction process. The ordinance should also prohibit the storing of equipment or materials within this protection zone. The ordinance should also prevent the replacement of trees with non-native and/or invasive species. Lastly, the replacement calculations should be set at a level that truly compensates for the loss benefits that removed trees provide. [5]

115. COMMENT:

NJF supports requiring new tree and salt management ordinances. [9]

RESPONSE 114-115:

The Department acknowledges the commenter's support for the Tree Removal/Replacement and Privately-Owned Salt Storage ordinance requirements. See RESPONSE TO COMMENTS 18-25 for additional information regarding these ordinances.

No changes have been made to the final permit as a result of these comments.

116. COMMENT:

Expand Part IV.F.1.b.ii to include specific criteria concerning the type and degree of tree removal control and replacement required. The Department should have also made available model salt storage and tree ordinances before or when the Department issued the draft Tier A Permit Renewal. [16]

RESPONSE:

While the Department agrees with the need to provide the specific requirements applicable to the tree removal and replacement, those requirements concerning the type and degree of tree removal control and replacement required will be included in the model ordinance to be provided by the Department. Once the model ordinance is completed, the Department will email the permittees' SPCs and post this ordinance on its website at https://www.nj.gov/dep/dwg/tier_a.htm and offer a 30-day informal comment period for permittees and other stakeholders to review the ordinance and provide suggested changes, etc. See RESPONSE TO COMMENTS 18-25 for additional information regarding the informal comment period.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.F.2: Community-wide Measures

117. COMMENT:

This modification of the Street Sweeping requirements from the 2018 Tier A Permit imposes a substantial burden on the Town's limited staff and financial resources by increasing in the total miles of municipal roads required to be swept and the frequency (every 4 months) at which they are to be swept. Most notably by the broadening of the required roads definition as a significant departure from the previous limitations to "*predominantly commercial areas*." It is now inclusive of residential areas without any consideration of cost-benefit analysis by the Department relative to a correlation between potential impairment loadings on roadways as a function of measurable traffic generation thresholds of Average Daily Trips (ADT). As proposed, this requirement is simply an unrealistic and unduly burdensome obligation of the Town to allocate and expend substantial resources, of which it does not have, in deference to an initiative unsubstantiated by a reasonable cost-benefit ratio affirming a quantifiable reduction of motor vehicle surface runoff based impairments below exceedance limits of current water quality standards. Lastly, these mandates are imposed without the Department's parallel release of a funding strategy to ensure the Permittee's successful compliance on schedule by way of State financial assistance. [8]

118. COMMENT:

The Department identifies Annual Street Sweeping at Part IV.F.2.a.ii which is due to begin on or before EDPA + 12 months as a "modified" requirement from the 2018 Tier A Permit. However, we object to that classification, noting the Triannual Street Sweeping requirement is the appropriate "modification" from the 2018 Permit, while the Annual Street Sweeping requirement is most appropriately acknowledged as a "new" requirement. Specifically, in that its definition for inclusion of "all segments of roads that are owned or operated by the permittee that do not have storm drain inlets that discharge to surface water" were previously excluded holistically from the 2018 Permit. Again, in alignment with the objections noted in our other comments, this imposes a substantial burden on the Town's limited staff and financial resources by increasing in the total miles of municipal roads required to be swept and the frequency at which they are to be swept. We note our same basis of objections with respect to an initiative unsubstantiated by a reasonable cost-benefit ratio affirming a quantifiable reduction of motor vehicle surface runoff-based impairments below exceedance limits of current water quality standards. Lastly, these mandates are imposed without the Department's parallel release of a funding strategy to ensure the Permittee's successful compliance on schedule by way of State financial assistance. [8]

119. COMMENT:

Street Sweep- Sweep all streets with inlets 4 times a year. Our roads are traveled significantly less than most Tier A communities [3]

120. COMMENT:

The proposed Street Sweeping requirements would call for street sweeping of the entire town three times per year. Currently, the Township of Mendham does street sweeping twice per year. Adding an additional round would be extremely costly and move two of the Township's CDL Certified Laborers from other duties. [6]

121. COMMENT:

The street sweeping requirements are currently proposed for changes, including the need to sweep all municipal road segments with storm drain inlets that discharge to surface water every four (4) months. The current effective Tier A Permit only requires the sweeping of municipal roadways that have curbs and inlets with a speed limit of 35 mph or less within predominately commercial areas. Therefore, under the current Tier A Permit, the Township is not required to perform street sweeping. Also, all municipal streets that do not have storm drain inlets that discharge to surface water need to be swept once per year. This would have an impact on the municipality for engineering services and the operations of the DPW. [12]

122. COMMENT:

The sweeping triggers in the permit at Part IV.F.2.a.i & ii are substantially different than the existing permit requirements. The previous unrealistic (for most Municipalities) monthly sweeping requirements appear to have been eliminated, but the streets that are now required to be swept has been expanded. What data was utilized to justify the change in sweeping requirements? [2]

123. COMMENT:

I would just like to comment on the Tier A proposed changes. As a small rural municipality, many of the proposed regulations would have a significant impact on our town. One such example is that of street sweeping. We do not have a public works department in our community. The tasks associated with these departments fall to the mayor and committee to complete. In fact, just in 2022 I have personally completed snow removal on township roads, mowed the shoulder of roads, repaired inlets, cleaned catch basins, and filled potholes, among many other items. Requiring rural municipalities to unnecessarily sweep roads will have a huge burden on our personal, as well as our township budgets. In addition to the overall requirement, the frequency that is proposed is not sustainable for a rural community. [15]

124. COMMENT:

As noted earlier we have concern with gravel roadways and definitions of roadways for annual sweeping. We think the triennial sweeping is an opportunity for modification to the permit, but the annual street sweeping is identified as a modified requirement and should be more appropriately looked at as a new requirement, because it was a specifically defined exclusion previously that I think does need to be refined more and tightened down for further exclusions, to relieve some of the financial pressures on the municipalities. [28]

125. COMMENT:

The Community Wide Measures-Street Sweeping requirement needs to be clarified to state only paved roads not oil and chip. [22]

126. COMMENT:

The street sweeping is one that is a particularly difficult one for me, because I understand that you want to sweep the streets, but now you've made it, you've expanded it to include all roads within a municipality. I have more than one municipality with miles and miles of dirt roads. Obviously, those can't be swept. If you're going to keep this requirement in there, please put in an exception for unpaved roads. It certainly makes no sense to sweep an unpaved road. [26]

RESPONSE 117-126:

The Department understands the commenters concerns regarding the revised street sweeping requirements. The Department also recognizes that these revised street sweeping requirements constitute an overall increase in the area that will be swept on an annual basis, but maintains that the increase in the area to be swept is an appropriate pollution reduction measure to be taken by the MS4 permittees in order to reduce the solid and floatable materials and associated pollutants that had been deposited on their roadways from being washed via stormwater runoff into the surface and ground waters of the State, and to ensure the proper operation of the stormwater sewer systems, which will also prevent or reduce localized flooding.

Street sweeping has been a permit requirement since the 2004 Tier A MS4 Permit. The sweeping requirement proposed in this permit renewal is revised to apply to all permittee owned or operated roads that discharge to surface water, as opposed to only predominantly commercial permittee owned roads as per the 2018 Tier A permit. Although the scope of the roads required to be swept has increased, the frequency at which roads would be required to be swept would be greatly reduced from monthly to triannually or annually dependent on whether the segments of roads have storm drain inlets that discharge to surface water, or not, respectively.

The regulatory basis for the street sweeping requirements in this renewal permit, including the increase in the road miles required to be swept, is noted in the draft permit Fact Sheet. In the Introduction section which begins on page 1, it is explained that the majority of the surface waters, in terms of subwatersheds, in the State are documented in the Department's "Integrated Water Quality Assessment Reports" as being impaired for one or more stormwater related pollutants. Further, the "Clean Stormwater and Flood Reduction Act" (which became effective after the issuance of the 2018 Tier A permit) notes that it is "estimated that up to 60 percent of the State's existing water pollution is attributable to stormwater and nonpoint sources of pollution."

The Introduction section further explains that "The enhancements to the conditions in the 2018 MS4 Tier A permit are generally based on the objective of furthering the improvement of water quality and quantity impacts from stormwater runoff throughout the state and are identified and discussed in Section 7 of this Fact Sheet, entitled, "Basis and Background of Tier A Permit Requirements. The Department maintains proper implementation of the conditions of this renewal permit will provide a continued, iterative process towards improving stormwater quality."

Section 7.2.i. of the Fact Sheet contains further justification for the revised street sweeping requirements, as "The Department proposes that these revised street sweeping requirements constitute an overall increase in the road miles that will be swept on an annual basis and consequently, a reduction in solid and floatable materials discharged to surface waters." As also noted in the Fact Sheet, this change is being made because the number of municipal road miles required to be swept monthly under the 2018 permit was limited, as those roads had to be in a predominantly commercial area, have storm drain inlets, curbs, and have a posted speed limit of 35 MPH or less. This requirement in the 2018 permit resulted in many roads throughout the State without effective solids and floatables controls and has been noted by the Department through numerous enforcement inspections, the 58 Compliance Assistance Audits, as well as citizen complaints about clogged storm drain inlets and catch basins, resulting in localized flooding. The

Department also acknowledges that many permittees already implement more frequent and widespread street sweeping than required by the 2018 Tier A permit.

It is not only the presence of the solid and floatable materials, or the traffic related to Average Daily Trips referenced by Commenter 8 that cause problems in the State's waters. Many pollutants are also associated with the solid and floatable materials that street sweeping removes from the road's surfaces. For example, oils, metals, and other pollutants from normal vehicle wear and tear become deposited on the roads and adhere to the materials removed by street sweeping. These pollutants can kill fish and other aquatic life and contaminate drinking water supplies. Leaves and grass clippings that accumulate along the gutters of roads also contribute pollutants to surface and ground waters as they decompose and are washed along into the storm sewer system, contributing to harmful conditions in the surface waters as well.

The Department reviewed the surface water quality impairments and TMDLs in the Integrated Report, as noted in the Fact Sheet, when preparing this permit renewal and found that water quality impairments associated with these types of pollutants are present across the State. As these materials are present on all types of roads in the State, removing these materials and their associated pollutants from the roads before they are conveyed further through the storm sewer system is an effective pollution reduction measure across all areas of the State designed to restore the surface water quality to meet the Surface Water Quality Standards at N.J.A.C. 7:9B, and is a necessary cleaning measure to ensure the proper operation of the MS4s, which will also serve to reduce or prevent localized flooding, as noted above.

This requirement is being enhanced to meet the reduction/elimination of solid and floatable materials requirement in the Federal MS4 rule at 40 CFR 122.34(b)(6)(ii) and N.J.A.C. 7:14A-25.6(b)6. The Department made similar changes to the Public Complex and Highway Agency MS4 permits for 2019 and 2020, respectively. As noted on page 41 of the Fact Sheet, "(t)hese revised sweeping requirements will also reduce flooding due to clogged storm drain inlets, and thus be more protective of public health and safety." The street sweeping requirements as written in the Tier A MS4 permit constitute clear, specific, and measurable requirements that meet the intentions of the Federal MS4 rule to implement a solid and floatable material reduction/elimination program.

Also, as roadways are considered to be part of the permittees' MS4 conveyance systems, conducting street sweeping is also a form of proper maintenance to ensure that stormwater can be effectively conveyed away from the road surfaces, into the receiving waters directly, or via additional conveyance infrastructure. Allowing trash, leaves and other debris to collect on top of storm drain inlets will reduce the speed at which the stormwater can flow from the road surface and potentially cause flooding. Additionally, if the trash, leaves and other debris are flushed through the inlet, they can clog the catch basin below the inlet, and/or the downstream conveyance infrastructure, reduce the speed at which the stormwater can flow from the road surface and potentially cause flooding. If the debris passes through the inlet structure, some of it will be captured and accumulate in any catch basins constructed below the inlets, by design. Then, to ensure proper operation of the catch basins in subsequent storm events, the catch basins need to be inspected and once the sump chamber at the bottom of the structure is full, the roads must be

partially or fully closed to allow heavy machinery, such as vacuum trucks, to remove the debris. This is often a more resource intensive task than sweeping the roadway in the first place.

Permittees are encouraged to enter into shared service agreements to assist in meeting permit requirements. This may include agreements with other MS4 permittees, such as other municipalities and county or state highway agencies, and stormwater utilities.

Proper street sweeping should result in reduced obligations associated with storm drain inlet and catch basin cleaning and may also reduce flooding due to improperly maintained storm sewer systems, and thus will be more protective of public health and safety.

See RESPONSE TO COMMENTS 18-25 for additional information regarding funding.

Although the Department has retained the Street Sweeping requirements from the draft permit, the Department recognizes the challenges the revised requirements may pose to some permittees, especially due to constraints related to the municipal budgetary process. **Additionally, as the mapping of the storm drain inlets is not due until Effective Date of Permit Authorization (EDPA) + 36 months, and that mapping is critical to determine which roads are to be swept on which schedule, the Department has therefore extended the implementation of the revised street sweeping requirements from EDPA + 12 months to EDPA + 36 months for both existing and new permittees for the Triannual and Annual Street Sweeping requirements.** Existing Tier A permittees are required to maintain their existing street sweeping schedule until the revised schedule becomes effective as per Part IV.F.2.a.i and ii of the permit.

Additionally, the Department recognizes that the draft permit was not clear in that it did not explicitly exclude certain road surface types from the street sweeping requirements. The intent of the requirement is that only asphalt and concrete paved roads are required to be swept, as sweeping would not be appropriate for dirt, gravel, and tar and chip roads. The Department has added language to Part IV.F.2.a.i and ii to clarify this requirement.

Further, while not part of this final permit document, the Department noted that the phrase “that discharge to surface water” was inadvertently left out of the second sentence of the Fact Sheet discussion of the street sweeping requirements, even though it was associated with this requirement in the actual permit requirement. Therefore, the Department is hereby revising the Fact Sheet for the purpose of the Administrative Record as follows:

“The sweeping requirement proposed in this permit renewal would be broadened to apply to all permittee owned roads that discharge to surface water, as opposed to only some permittee owned roads that discharge to surface water as per the 2018 Tier A permit.”

127. COMMENT:

Please consider clarifying the language in Part IV.F.2.a.i: the permit to more clearly indicate if a single roadway may have different sweeping frequencies along the road’s length if some portions of the road drain to inlets and other portions of the road do not. [11]

RESPONSE:

The Department agrees that “a single roadway may have different sweeping frequencies along the road’s length if some portions of the road drain to inlets and other portions of the road do not,” but does not agree that the street sweeping language in the permit needs to be clarified to indicate whether a roadway may have different sweeping frequencies. The language in the Draft Permit clearly states that only segments of roads that are owned or operated by the permittee and have storm drain inlets that discharge to surface water are required to be swept three times per year. The permittee must determine what parts of their roadways fall under the requirements for triannual and annual sweeping as part of the development or revisions to their street sweeping programs, which will be described in their SPPP.

No changes have been made to the final permit as a result of this comment.

128. COMMENT:

Please consider clarifying the term in Part IV.F.2.a.i and ii for “discharge to surface water” and clarify when a roadway would not discharge to surface waters. [11]

129. COMMENT:

We support the revisions to the street sweeping requirements. By removing sediment and other particulate matter from streets before it can enter stormwater systems or waterways will help reduce the amount of pollutants. As a point of clarification, when the permit references direct discharges to waterways in (a)(i), does it mean the inlets must not be connected to a stormwater BMP before discharge? This should be clarified. We recommend that all roads with inlets whether they are directly discharging into a waterway or are routed through a BMP first before discharge to the waterway should be included in the requirements of (a)(i). [5]

RESPONSE 128-129:

The Department appreciates the commenter’s support of the revised street sweeping requirements.

Roadways where stormwater runoff is not able to be conveyed by any means (pipe, swale, ditch, overland flow, or similar) to surface water and is therefore completely infiltrated to groundwater would not be considered a discharge to surface water. Examples of discharges to surface water include situations where stormwater flows through a pipe or open channel directly into a surface water at a bridge; or when stormwater flows from a roadway through a storm drain inlet into an underground piped conveyance system, or open channel conveyance, which ultimately discharges into a surface water. Conversely, a stormwater discharge from a roadway into an infiltration basin, with no outfall structure or other MS4 conveyance from the basin, would be a discharge to ground water, not surface water. Also, stormwater that flows from a roadway through an inlet into a structure with a soil or gravel type of bottom, where the stormwater is infiltrated, would not constitute a discharge to surface water. Stormwater runoff that flows off a roadway into a surrounding pervious area and is infiltrated also would not constitute a discharge to surface water.

The existence of a BMP after the storm drain inlet does not automatically mean that there is a discharge to surface water. That would only be the case if the BMP had an outfall that discharged to surface water.

See the RESPONSE TO COMMENT 64 regarding the definition of “surface water.”

No changes have been made to the final permit as a result of these comments.

130. COMMENT:

Pilesgrove Township has both County and State Roads that run through the Township. Is each municipality only responsible for sweeping the paved streets they maintain and own versus all streets within the Township? [22]

RESPONSE:

As per Part IV.F.2.a.i and ii of the permit, the permittee is required to only sweep segments of asphalt and concrete roadways that are owned or operated by the permittee. Both county and state roadways are regulated by the Department’s MS4 Highway Agency permit which included similar street sweeping requirements in the 2020 renewal of that permit.

No changes have been made to the final permit as a result of this comment.

131. COMMENT:

The Timeframes Provided to Comply with New Conditions are not Feasible or Realistic.

Assuming arguendo that the NJDEP’s actions are not an unfunded mandate, the five-year period required for catch basin retrofit is not feasible, especially for smaller municipalities and current Tier B municipalities. Most municipalities, especially small municipalities, upgrade catch basins and other stormwater infrastructure during road projects. This is the most cost-effective way to complete these retrofits and upgrades. Mandating a 5-year period in which all catch basins must be retrofitted fails to consider the realities of municipal capital budgeting and the limited resources with which municipalities must work.

The NJDEP must consider this before attempting to approve these conditions. If these conditions remain in the MS4 Permit renewal, the NJDEP should provide grant funding to municipalities to account for the additional costs associated with these requirements.[4]

132. COMMENT:

Regarding Catch Basins/Storm Drain Inlets, another concern would be the inspections and repairs of catch basins. The Township of Mendham currently has 2,600 catch basins/storm drain inlets. Currently, the Township is able to replace or restore ~ 300 catch basins per year. In reality, we might be able to handle 15% of the basins, but our labor force would be unable to shoulder a workload of inspecting 20% or “the greater 1,000” basins a year. With that being said, Mendham Township would not be able to restore 2,600 in the proposed timeline of 59 months. [6]

133. COMMENT:

The timeline to provide water quality retrofits of all Storm Drain Inlets at Part IV.F.2.a.iv is new. The previous iteration of the permit only required retrofits when roadways were repaved, or inlets were reconstructed. What is the impetus for the sudden sunset date for retrofits, which are more costly and time consuming than the inlet labels? [2]

134. COMMENT:

The Department's revised definition at Part IV.F.2.a.iv for Storm Drain Inlet Retrofitting, which is due on or before EDPA + 59 months, from the limitations of "*municipally owned and operated storm drain inlets in direct contact with repaving, repairing, resurfacing, [...] or reconstruction*" to a broader "*all permittee owned or operated storm drain inlets*" imposes a substantial burden on the Town's limited staff and financial resources by significantly expanding the scope of retrofits to be completed while significantly limiting the available timeframe of compliance to within the 5-year life of the Renewal Permit. The Town acknowledges the inclusion of the Storm Inlet Retrofit program since the first iteration of the MS4 General Permit in 2004 and is proud of the retrofits it has completed. However, it objects to the Department's underestimation of the imposed strain on its limited and overburdened resources in the immediacy of the next 5 years to comply for 100% of municipal storm drain inlets, without conducting a study to quantify the progress of the program between 2004 and 2022 and establish a reasonable compliance metric specific to thresholds of percent (%) and/or units (#) repaired and remaining to be applied individually to each Permittee in consideration of the staffing and financial recourses required to be allocated. The Department appears to have instead assumed that in an 18-year history of MS4 General Permit requirements there would be a linear trend of remaining retrofits to be accomplished based on the average lifespan of asphalt roads being approximately 18-20 years. It fails to recognize the variable rates of degradation based on light and heavy traffic volumes as well as various road preservation techniques which are implemented by municipalities without triggering retrofit under the prior definition. Further, limitations of available NJDOT Municipal Aid grant funding and Town Capital Improvement Budget constraints have also limited the scope of road improvement programs to further rely on cost-effective road preservation programs. Lastly, these mandates are imposed without the Department's parallel release of a funding strategy to ensure the Permittee's successful compliance on schedule by way of State financial assistance.[8]

135. COMMENT:

All storm drain inlets shall be retrofitted for permit compliance within five (5) years of the effective date of permit authorization (EDPA), whereas the current effective Tier A permit only requires inlet retrofitting for storm inlets within the limits of pavement/roadway work. This new requirement would have an impact on the municipality for engineering services and the operations of the DPW [12]

RESPONSE 131-135:

The Department understands the commenters' concerns regarding the increased costs for some municipalities due to the revised storm drain inlet retrofitting requirement, and notes that this requirement pertains to the storm drain inlets, not the catch basins located below the inlet. Also, while the Department included slightly modified language for clarification of the definition of

storm drain inlets at Part IV.B – Notes and Definitions in the permit, the requirement to retrofit the storm drain inlets is not part of that definition.

The Department maintains that the due date for existing and new Tier A permittees to retrofit all remaining permittee owned or operated storm drain inlets with the standards set forth in Attachment B of EDPA + 59 months is appropriate.

As noted in the comments above, Tier A and Tier B municipalities have been required to retrofit any storm drain inlets that come in contact with repaving activities since the first iteration of the MS4 general permits in 2004. The Department maintains that the requirement to retrofit all remaining storm drain inlets by the end of this permit term is an appropriate measure for municipalities to undertake to restrict the passage of solid and floatable materials, and in doing so, reduces the municipality's costs of needing to employ the use of a vacuum truck to clean the catch basin below the inlet.

As the requirement to complete the storm drain inlet retrofits by the end of the permit term is included in the permit for the similar reason for the street sweeping requirements which is to reduce the conveyance of solid and floatable materials, the Department refers the commenters to the discussion regarding the need to control solid and floatable materials in RESPONSE TO COMMENTS 117-126.

The Department anticipates that the percentage of inlets that municipalities will need to retrofit (outside of those that are in non-compliance of the existing requirement during repaving, etc.) is relatively low since the municipalities have been working on this retrofitting their storm drain inlets that were associated with repaving projects for approximately 18 years, which will be 23 years by the compliance due date to complete the retrofits and the average lifespan of asphalt paving is 20 years. It must also be noted that retrofitting of most storm drain inlets can be accomplished with relatively minimal cost by bolting a grate over the large curb opening, which is a much less costly option than replacing the entire inlet structure.

However, the renewal permit retains the same "Exemptions from the Design Standards" in Attachment B – Design Standards for Storm Drain Inlets to continue to provide permittees appropriate flexibility regarding the inlet retrofits.

While labeling storm drain inlets is less costly than retrofitting the opening sizes, these two activities serve completely different purposes, and they are not interchangeable. The storm drain inlet labeling program is intended to educate the public that materials that enter storm drain inlets can end up in local waterways, but do not provide any physical removal of materials from the storm sewer system. One of the main purposes of retrofitting the storm drain inlet openings is to reduce the size amount of solid and floatable materials that can pass through the inlet, so those materials are not transported through the storm sewer system to the surface waters. Reducing the size of these materials also has another important, and less costly, purpose regarding proper maintenance which is to prevent those materials from accumulating in the storm sewer and causing backups of flow and flooding. Also as noted in RESPONSE TO COMMENTS 66-67, removing these materials from the stormwater before they enter the downstream parts of the system is less

costly overall as it will reduce the incidents of catch basin and conveyance system cleaning which usually requires heavy machinery to remove the storm drain inlet in order to gain access to the infrastructure below so a vacuum truck can extract the accumulated material.

The Department disagrees with the request to apply individual metrics to each municipality for how many inlets need to be replaced within a given compliance time frame. Individualized permit conditions are not able to be incorporated into General Permits. A municipality may apply to be regulated under an individual MS4 permit, rather than the Tier A MS4 General Permit. Permittees may contact the Bureau of NJPDES Stormwater Permitting and Water Quality Management at stormwatermanager@dep.nj.gov to discuss this alternative.

See RESPONSE TO COMMENTS 18-25 for information concerning funding.

See RESPONSE TO COMMENTS 149-158 for additional discussion regarding the catch basin inspections.

No changes have been made to the final permit as a result of these comments.

136. COMMENT:

The proposed prohibition at Part IV.F.2.a.v of installing a storm drain is clearly an overreach by the Department, eliminating a typical engineering design option for stormwater improvements to existing systems. This prohibition would seemingly eliminate the construction of doghouse inlets, as well as introduce additional construction costs for those municipalities with areas of shallow bedrock. [2]

137. COMMENT:

These two items together at Part IV.F.2.a.iv and v imply that existing inlets installed within a bridge or culvert and bridge scuppers would need to be replaced or retrofitted. Please clarify if that is the intent and/or if there will be an exception. [11]

138. COMMENT:

Please clarify if there will be an exception for Part IV.F.2.a.v for inlets installed in a bridge or culvert immediately above a stream. [11]

RESPONSE 136-138:

Part IV.F.2.a.v titled “Storm Drain Installation,” applies to the installation of new storm drain infrastructure and is not a requirement to begin retrofitting existing storm drains. This clear, specific, and measurable requirement has been added in the renewal permit to reduce the amount of solid and floatable material being discharged into the receiving waters and to meet the reduction/elimination of solid and floatable materials requirement in the Federal rule at 40 CFR 122.34(b)(6)(ii). See RESPONSE TO COMMENTS 117-126 for additional discussion regarding the importance of removing solid and floatable materials.

The requirement at Part IV.F.2.a.v provides flexibility should the installation of a catch basin below the storm drain inlet not be technically feasible. Permittees also have option to install multiple inlets with a downstream catch basin or other alternative BMP designed to reduce/eliminate solid and floatable material from being discharged to the surface waters from the road surface.

The Department has revised language to clarify that the catch basin requirement applies to the installation of new storm drain inlets that discharge to surface water.

The Department has added language to exempt bridges and culverts from the Part IV.F.2.a.v Storm Drain Installation requirement.

139. COMMENT:

This new requirement at Part IV.F.2.a.vi would appear most associated with the operations of the NJDOT. Could the Department provide the documented instances of Tier A Municipalities performing this herbicide application to substantiate this requirement? [2]

RESPONSE:

The Department agrees that the application of herbicides is an optional practice and therefore, this BMP may not be applicable to every permittee. The Department feels that it is reasonable to assume that some municipalities apply herbicides and, thus, should be adhering to the requirements of the Herbicide Application Management BMP to prevent the discharge of herbicides to waters of the state and to prevent erosion caused by de-vegetation. Additionally, this is not a new Tier A permit requirement. Herbicide application was addressed in the 2018 Tier A permit under the heading “Roadside Vegetation Management” found in Attachment E (Best Management Practices for Municipal Maintenance Yards and Other Ancillary Operations). The name of this requirement has been revised in this Tier A renewal permit to “Herbicide Application Management” for clarification purposes and has been moved under the “Community-wide Measures” section; however, the requirement is retained from the 2018 Tier A permit with only minor edits for clarity. This clarification has also been made in the 2019 Public Complex MS4 permit and in the 2020 Highway Agency MS4 permit.

No changes have been made to the final permit as a result of this comment.

140. COMMENT:

This new requirement at Part IV.F.2.a.vii also is most associated with the operations of the NJDOT, whose contract snow removal fleets are typically staged along highway shoulders and may not utilize advanced salt spreading feeders. During and after snow/icing events where salt application is required, the requirement for Municipalities to explore and remove salt piles of some indeterminate size would take manpower away from other obvious Public Works operations following these events. [2]

RESPONSE:

This requirement is in response to rising levels of total dissolved solids, which includes sodium chloride, in New Jersey's water bodies, citizen complaints, and the Department's observations in the field regarding piles of excess road salt that have remained on or adjacent to roadways, parking lots, or other impervious areas long after storms had passed. This new requirement ensures that excess de-icing material deposited during spreading operations (e.g., piles resulting from accidental spillage or when spreading equipment is started or stopped) on all streets and parking areas owned or operated by the permittee, is removed after a storm event and prevented from discharging to surface or groundwater by subsequent rain events.

This requirement is consistent with the 2020 Highway Agency MS4 permit and therefore, NJDOT and other Highway Agency permittees are already required to remove excess de-icing material from roadways that they own or operate after a storm event. Tier A permittees are only required to remove excess de-icing material from roadways that they own or operate.

No changes have been made to the final permit as a result of this comment.

141. COMMENT:

We support the addition of the Excess De-Icing Material Management measure. Excess use of salt is contributing to significant water quality problems and must be addressed. Recent studies performed by the Watershed Institute demonstrate an uptick in chloride levels during the winter months, especially February. Actions to minimize the transport of chloride into our waterways should be implemented. We also suggest that the permittee identify locations that special care should be asserted, or additional measures implemented in the deployment of de-icing material. For example, bridge crossings, etc. where excess material can easily enter the waterways or waterways with known chloride impairments. [5]

RESPONSE:

The Department appreciates the commentor's support of the addition of the Excess De-Icing Material Management Tier A permit requirement.

Regarding the request to require additional measures for deployment of deicing materials, the permittees will have an opportunity to identify and highlight locations that require special care and/or additional measures regarding excess de-icing material, among other things, when developing their Watershed Improvement Plan. Phase 2, the Watershed Assessment Report, must include an assessment of potential water quality improvement projects by watershed and parameter, among other things, based on surface water quality impairments and TMDLs. If a permittee identifies an area in the municipality that is experiencing repeated instances of excess de-icing material such as identified in the comment or where a watercourse is impaired for chloride or total dissolved solids, they may include a potential project or additional measure to address this in the Watershed Assessment Report.

No changes have been made to the final permit as a result of this comment.

142. COMMENT:

As one of many Municipalities with a high percentage of narrow uncurbed roadways, mailboxes set near the pavement edge, as well as on-street parking, the mandatory repair timeline at Part IV.F.2.a.ix is an unreasonable new requirement. The language inferring the Department may authorize a different timeline unreasonably inserts the Department into the day-to-day operations of a Tier A Municipality's DPW operations. The installation of full faced curbing, while immediately and permanently addressing roadside erosion control, would be at odds with a community's desire for a more rural aesthetic as well as being prohibitively expensive. [2]

143. COMMENT:

Regarding the Roadside Erosion Control at Part IV.F.2.a.ix of the permit, which is due to begin on or before EDPA + 12 months, the Town objects to the Department's underestimation of the imposed strain on its limited and overburdened resources in the immediacy of the first calendar year of the Renewal Permit to reintroduce these requirements last seen in the original 2004 Permit before their prior removal in 2009. Particularly the addition of a 90-day timeframe to complete the repair of roadside erosion, recognized by the Town as an unrealistic and unduly burdensome obligation.

Observation of recent climate trends identifies a substantial increase in the frequency and intensity of "flash flooding" across the State. The Town is proud of the emergency response efforts by Public Works, given their limited resources, to clean up debris and stabilize minor erosion after storms. However, the Department has neglected to acknowledge the limitations of the Town's resources as it relates to manpower, equipment, and overtime pay to address the same. Further, the 90-day timeframe imposes an unrealistic deadline on completion of erosion repairs of significant scope and cost.

Repairs often exceed the capabilities of Public Works in-house; requiring solicitation of quotes from Contractors and/or design and public bid by the Town Engineer. Through imposing a 90-day deadline, the Department's regulatory pressures inappropriately leverage the Town to circumvent the best intentions of Local Public Contract Law through declaration of emergencies. Emergency repairs trigger significant cost escalation, often as high as 150% or more of a publicly bid project due to the nature of the immediacy of the Contractor securing the labor and materials to perform the work. They also require municipal financing of loans and bonds to address their strain on the Town's operating budget, thereby further increasing the cost burden by the interest rates.

Lastly, these mandates are imposed without the Department's parallel release of a funding strategy to ensure the Permittee's successful compliance on schedule by way of State financial assistance. [8]

144. COMMENT:

These requirements in the permit about monitoring roadside swale erosion, and recurring those within 90 days, that again is, in my mind, completely unrealistic. Repairing roadside erosion is not a simple issue in many cases. It requires design, it requires construction, and it requires money to do that, which needs to go into the budget side for all municipalities. Towns just don't have

\$100,000 sitting in a corner to fix roadside erosion on an annual basis, it just isn't there. So, I think while it's important to do that, you need to be realistic as to when those repairs can be made. [26]

RESPONSE 142-144:

This permit renewal re-incorporates the Roadside Erosion Control requirement from the original 2004 Tier A permit. This requirement has been reintroduced in response to citizen complaints and Department inspections and observations of roadside erosion. New Jersey has approximately 35,600 miles of roads, and more highways per square mile than any other state, and erosion of or along these streets, highways, and other roads contributes suspended solids, sediment and other materials to storm sewer systems and waterways. This condition is being restored in the permit to provide additional water quality protection, and as a stormwater facility maintenance requirement, as roads are considered to be part of the municipalities' stormwater conveyance systems.

The introduction of suspended solids, sediment, and other pollutants not only cause an increase of permittee costs for ditch, culvert and catch basin cleaning to ensure proper operation and maintenance and prevent associated flooding, it is also the single largest contributor of pollution to our nation's waters. Sedimentation and the deposition of material eroded by runoff from roads and roadsides can significantly impact water quality, and when not maintained, this erosion can also convey a significant number of pollutants in the stormwater runoff. Sedimentation can also lead to a decrease in water carrying and storage capacities of streams and reservoirs, as well as destroy fish and other aquatic habitats.

The Department recognizes that permittees may be concerned that implementing this condition will incur more costs and municipal resources and acknowledges that often the necessary road repairs may not be able to be implemented within the 90 days as per the draft permit due to the municipal budgetary constraints noted in the comment. **Therefore, the Department has revised this permit condition similarly to the Stream Scouring requirement which requires that if repairs cannot be completed within 90 days, the permittee must notify the MS4 Case Manager before the 90-day deadline of the location and details of the roadside erosion, the plans for repairing the road, and the projected timeframe with milestones for completing the repairs.**

The Department disagrees with the commenter's interpretation that this permit condition requires the installation of "full faced curbing." The Department is not requiring municipalities to adjust their rural aesthetic by implementing curbing along roadways, nor would the Department suggest this as the only alternative to roadside erosion control. This section requires the permittee to develop a program to detect and repair erosion along the roads owned or operated by the permittee and to inspect and maintain the stability of shoulders, embankments, ditches, and soils along these roads to ensure that they are not eroding and contributing to the sedimentation of receiving waters.

See RESPONSE TO COMMENTS 18-25 regarding additional discussion regarding unfunded mandates and funding.

The Department has added language to notify the MS4 Case Manager if roadside erosion repairs cannot be completed within a 90-day period at Part IV.F.2.a.ix Roadside Erosion Control .

145. COMMENT:

Regarding the Roadside Erosion Control requirement at Part IV.F.2.a.ix, what constitutes a “program”? And what about roadside erosion caused by repeat offenders such as residents repeatedly parking on the side of the road in front of their residence? [11]

RESPONSE:

The term “program” in this section is referring to the referred to the Stormwater Management Program that MS4 permittees are required to develop and incorporate into their SPPP. Part IV.A.1. of the permit states,

“The permittee shall develop, update, implement and enforce an MS4 stormwater program. A primary objective of the MS4 stormwater program shall be to implement best management practices and other measures that are designed to reduce the discharge of pollutants from the permittee’s MS4, municipal maintenance yards and other ancillary operations, to the maximum extent practicable pursuant to N.J.A.C. 7:14A-25.6(a)1 and 40 CFR 122.34(a), to protect water quality, and to satisfy the applicable water quality requirements of the Clean Water Act.

This requirement was included in the 2018 Tier A MS4 permit and has been carried over into this renewal permit.

The Department maintains that municipalities have the freedom to establish any measures for roadside erosion control that are suitable for their municipality, including municipal ordinances, and to enforce those programs against offenders with penalties. For example, a municipality with roadside erosion problems caused by residents parking on the side of the road may establish an ordinance restricting or prohibiting such parking. However, as not all municipalities have erosion problems caused by residents parking on the side of the road, it is not mandatory to establish such an ordinance. Municipalities are simply required to incorporate measures in their stormwater program to detect and repair erosion along municipally owned or operated roadways.

No changes have been made to the final permit as a result of this comment.

146. COMMENT:

I generally support Part IV.F.2.a.ix, which is in many respects similar to the “Road Erosion Control Maintenance” requirement in Part I.F.7.d of the original 2004 Tier A Permit. In the December 3, 2008, Fact Sheet for the renewal of this permit, the Department explained its proposed removal of this requirement as follows:

According to municipal officials and the advisory group assembled for the 2009 Tier A Permit renewal, the Road Erosion Control BMP was ineffective. Although the majority of Tier A municipalities have established and begun implementing a program, the Department has decided to change the scope of this requirement in the permit. The Road Erosion Control BMP will now be considered an optional measure that the Tier A municipality may adopt to suit their individual needs.

In the 2009 Response to Comments on the draft Tier A Permit, the Department summarized the associated Clean Ocean Action comment and Department response as follows:

13. COMMENT:

The rule changes and the Fact Sheet do not explain why the Road Erosion Control Statewide Basic Requirement was ineffective. The Department should explain in detail why the Road Erosion SBR is proposed to be eliminated from the permit. (8)

RESPONSE:

The Road Erosion Control Maintenance SBR is essentially a duplicate requirement. Municipalities are already required to control erosion under the Standards for Soil Erosion and Sediment Control in New Jersey (N.J.A.C. 2:90-1). In addition, the removal of this permit requirement does not in any way reduce the Department's ability to take action if an erosive condition is found to be contributing pollutants to the waters of the State.

I believe this response was incorrect. As in 2009, nothing in N.J.A.C. 2:90-1 requires municipalities to develop a roadside erosion control program to identify and repair erosion along roads or streets operated by the municipality, or to inspect and maintain the stability of shoulders, embankments, ditches and soils along these roads or streets to ensure that they are not eroding and contributing to sedimentation of receiving waters. Instead, N.J.A.C. 2:90-1 mainly (i) requires the soil conservation districts (SCDs) to enforce the vegetative and engineering standards published by the State Soil Conservation Committee (SSCC) when the SCDs review applications for certification of soil erosion and sediment control plans for "projects" under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.; and (ii) addresses the authorities, roles and responsibilities related to implementation of this Act by the SSCC and the SCDs in regard to these "projects." The N.J.S.A. 4:24-41.g definition of "project" does not include ongoing erosion along roads and streets unless such erosion is occurring on lands that are at least part of some construction, demolition, mining or quarrying, or land clearing or grading activity regulated as a "project" under this definition. As implemented under N.J.A.C. 2:90-1, this Act does not require municipalities to control erosion along roads or streets those municipalities operate unless such erosion falls within the N.J.S.A. 4:24-41.g definition of "project."

As for the Department's ability to take action if an erosive condition is found to be contributing pollutants to the waters of the State, my first question is, to what extent if any has the Department taken such action since 2009 in regard to erosion that is along municipally operated roads or streets but not within the N.J.S.A. 4:24-41.g definition of "project?" A complete or nearly complete absence of such action may indicate that such Department ability has little practical significance. Moreover, any serious Department effort to take such action in all or any substantial part of the

State might require rulemaking under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., which as far as I know the Department has not undertaken.

Finally, such Department action, which for each roadside erosion location would require the Department to learn about the erosion, visit the site and document site conditions, and threaten or commence an enforcement action, would be a far less efficient means of accomplishing the needed erosion control than a Roadside Erosion Control requirement in the Tier A Permit, a requirement that would be implemented by municipal personnel who are familiar with and control the road in question. If Part IV.F.3.a.v and Part IV.G.1.a.vi requirements to inspect, maintain, and map “MS4 conveyances” (such as roadside ditches) is adopted, then implementation of those requirements with the Roadside Erosion Control requirement would presumably be closely coordinated.

The Department should also expressly discuss its own above quoted December 3, 2008 Fact Sheet statement that “according to municipal officials and the advisory group assembled for the 2009 Tier A Permit renewal, the Road Erosion Control BMP was ineffective.”

In regard to specific language in Part IV.F.2.a.ix, I suggest:

- Adding “or stormwater infrastructure” immediately after “sedimentation of receiving waters,” as limiting such sedimentation in many instances helps to ensure proper function and operation of such infrastructure. Although page 46 of the Department’s July 28, 2022 Fact Sheet for the draft renewal of this permit states that “permittees would also be required to regularly inspect and maintain the stability of shoulders, embankments, ditches, and soils along these streets to ensure that they are not eroding and contributing to clogging or destabilization of stormwater infrastructure...” Draft Part IV.F.2.a.ix does not itself mention sedimentation of stormwater infrastructure; and
- Inserting “the vegetative and engineering standards in” immediately before “the Standards for Soil Erosion and Sediment Control in New Jersey” to require compliance with the technical provisions rather than also the administrative provisions of N.J.A.C. 2:90-1. In those instances where the repair is itself a “project” (or part of a “project”) as defined in N.J.S.A. 4:24-41.g, then administrative provisions of N.J.A.C. 2:90-1 will apply automatically, independently from the Tier A Permit. Those administrative provisions exist solely to regulate such “projects” and should not apply in the absence of such “projects.” [16]

147. COMMENT:

We support the addition of the Roadside Erosion Control measure. [5]

RESPONSE 146-147:

The Department appreciates the commenters’ support and Commenter 16’s recollection of the history of this permit requirement.

The Department also agrees with the suggested changes to the permit language for clarification by the Commenter 16. As stated on page 46 of the Fact Sheet, the Department agrees that this requirement should not have been removed from the 2009 and 2018 Tier A general

permit renewals. Therefore, it has been reintroduced and clarified in this renewal to ensure proper maintenance of roadside erosion.

The Department agrees with the Commenter 16's suggestion in the first bullet to add "or stormwater infrastructure" immediately after "sedimentation of receiving waters," as limiting such sedimentation in many instances helps to ensure proper function and operation of such infrastructure. This language was included in the Fact Sheet acknowledging that the sedimentation from road erosion can also clog stormwater infrastructure leading to impaired function and operation.

However, the Department disagrees with Commenter 16's suggestion to insert "the vegetative and engineering standards in" immediately before "the Standards for Soil Erosion and Sediment Control in New Jersey" to require compliance with the technical provisions. The Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39) defines what a "project" is. The Standards for Soil Erosion and Sediment Control in New Jersey only apply to activities determined to meet the definition of a "project." Therefore, if an erosion repair activity does not meet the definition of a "project" then the nothing is required to meet the requirements of the Standards. **The Department has added "as applicable" to this section to provide additional clarification.**

Permit Section IV.F.3.: Inspection and Maintenance of Stormwater Facilities Owned or Operated by the Permittee

148. COMMENT:

We support the provisions at Part IV.F.3.a.(vi) - (x) for Inspection and Maintenance which require regular inspection and maintenance of publicly owned and privately owned stormwater systems. It is commonly acknowledged that inspection and maintenance has not been a priority and likely results in significant environmental impacts. Even though the 2018 MS4 permit included inspection and maintenance requirements there has been little observed improvements in this arena. It is unclear whether permittees have vigorously enforced these requirements on private systems or have in place systems to track such compliance.

The Department should consider engaging in a round of random or targeted audits/ inspections of stormwater systems to verify the annual reports from permittees and from private entities. We would also support reinstituting a permittee's authority to require long term maintenance bonds for new development. One of the strongest tools available to a municipality is bonding requirements to ensure compliance with maintenance and inspection requirements. Recent legislation removed this authority.[5]

RESPONSE:

The Department acknowledges the commenters support for the Inspection and Maintenance requirement for stormwater facilities owned or operated by the permittee and those not owned or operated by the permittee. The Department also supports the use of long-term maintenance bonds; however, it does not have the authority to require private developers to post these bonds.

The Department's Division of Water Enforcement staff do perform inspections of the MS4 permittees on a rotating schedule. The Bureau of NJPDES Stormwater Permitting and Water Quality Management also performed 58 compliance assistance audits since 2015, however, due to COVID-19 pandemic, these on-site audits have been temporarily suspended. In the meantime, the Bureau has been conducting a scaled down version of the audit by reviewing the permittees' documents that are required to be submitted or posted on-line and intends to resume the on-site audits in the near future if conditions allow.

No changes have been made to the final permit as a result of this comment.

149. COMMENT:

With the inlet inspection and the outfall inspection programs, we have thresholds that are identified in the language and in definitions specifically up to a thousand structures or 20 percent, whichever is greater. And with outfalls, 100 outfalls or 20 percent, whichever is greater, I encourage the Department to look at those threshold numbers and look at a statistical analysis of what the municipalities do own and operate and where the appropriate median is. Because what I'm finding in many of the municipalities is that we're effectively requiring annual compliance of 100 percent of inspection, and then triggered maintenance that must be accomplished, in some cases in 90 days, and others in under a year. Which puts an undue burden on these municipalities to have limited resources and funding opportunities. I think we need to look at that threshold number being more commensurate to allow people to operate their program over the five-year life of the permit. [28]

150. COMMENT:

Regarding Part IV.F.3.a.i, the previous permit language allowed the inspection of both storm drain inlets and catch basins to once every 5 years. There has not been a reduction in the number of these structures, but the inspection recurrence has been dramatically shortened. Unless there will be perpetual funding provided for additional manpower to meet these requirements, this seems to be an unreasonable requirement and the previous maintenance schedule reinstituted. [2]

151. COMMENT:

Regarding Inlet Inspection & Cleaning, Knowlton has a small DPW. Our staff would need to increase to accommodate this requirement. This would carry a financial burden. [3]

152. COMMENT:

The Town objects to the Department's systematic increase of inspection requirements every 5 years with the introduction of each Renewal Permit, recognizing it as yet another imposed strain on its limited and overburdened resources. The 2004 and 2009 Permits required the establishment of local accountability for its infrastructure through preparation of an individualized operation and maintenance program. The 2018 Permit was a stark departure from the intent of the prior permits and established specific minimum standards for these programs without consideration of the limitations of available resources. Most notably, requiring inspection of every catch basin and inlet within a 5-year period. The 2023 Renewal Permit once again exponentially increases these inspection responsibilities, now to inspection of every inlet annually. The 2018 requirements were previously confirmed as an unrealistic and unduly burdensome obligation on the Town through

repeat recognition of its inability to comply as enumerated in the annual Explanation for Incidents of Non-Compliance. To which the Town received no response and/or individualized support of Department resource allocation to encourage future compliance. Instead, the 2023 Renewal Permit has exponentially increased the burden on the Town by 500%, while failing to provide a parallel release of a funding strategy to ensure the Permittee's successful compliance on schedule by way of State financial assistance. [8]

153. COMMENT:

Regarding Part IV.F.3.a.ii, Storm Drain Inlet Cleaning and Maintenance due at EDPA, the Town objects to the Department's systematic increase of cleaning and maintenance requirements every 5 years with the introduction of each Renewal Permit, recognizing it as yet another imposed strain on its limited and overburdened resources. The objections are part and parcel to those enumerated in my other comments with respect to increased inspection requirements as the scope of cleaning and maintenance is necessitated by the results of increased inspection frequency. The Town's objection is by no means a lack of appreciation for the potential water quality benefits to the receiving waters. Rather, the Town continues to hold itself accountable for implementation of an appropriate maintenance program and asserts its firm belief the program must be regulated with a basis of the Department's understanding of each permittee's limitations on staffing and funding resources. The Department's development of individualized funding strategies must be addressed in parallel to the adoption of regulation to ensure the Permittee's successful compliance on schedule. [8]

154. COMMENT:

Regarding Part IV.F.3.a.iii, the previous permit language allowed the inspection of both storm drain inlets and catch basins to once every 5 years. While there is a sliding scale of inspections now provided, it would be fair to say that those Tier A municipalities with less than 1000 structures are not as well staffed as those with more than 1000. The previous inspection occurrence should be maintained. [2]

155. COMMENT:

Regarding Part IV.F.3.a.iii, Catch Basin Inspection due on EDPA, the Town objects to the Department's underestimation of the imposed strain on its limited and overburdened resources as a result of its revised definition of catch basin inspection requirements on the basis of "a minimum of 20% of the total or 1,000 per year, whichever is greater." The Department has failed to acknowledge the unrealistic and unduly burdensome obligation imposed on the Town by the language "whichever is greater." In its annual reporting, the Town documents it operates 338 catch basins. Under the 2018 Permit, the Town assured inspection of a minimum 68 catch basins (20%) to demonstrate compliance in the 5-year term. The Town asserts the Department should have utilized the language "whichever is less" to afford the opportunity to continue demonstrating compliance with an inspection program for which is already overburdens its resources to accomplish. The Department's establishment of a minimum structure total of 1,000 per year is unfounded by supporting statistical analysis to demonstrate it as appropriate for broad brush application to all permittees regardless of the size of the system they operate. This regulatory change has exponentially increased the burden on the Town by 500%, while failing to provide a

parallel release of a funding strategy to ensure the permittee's successful compliance on schedule by way of State financial assistance. [8]

156. COMMENT:

Regarding Part IV.F.3.a.iii (also G.2.b.i and G.3.b.i), permittees may need to hire consultants to perform these inspections. Providing the option to inspect all structures every 2, 3, 4, or 5 years, instead of requiring a minimum number of yearly inspections, may provide more flexibility for permittees to use funds efficiently. [11]

157. COMMENT:

Regarding Part IV.F.3.a.iv, Catch Basin Cleaning due to begin on EDPA, the Town objects to the Department's underestimation of the imposed strain on its limited and overburdened resources as a result of the regulatory compounding of catch basin cleaning necessitated by the change in catch basin inspection regulation. Under the new requirements, the Town must now inspect all 338 catch basins annually. While the intent of the catch basin cleaning regulation has not changed, the ambiguous nature of the definition "as frequently as necessary to ensure, at a minimum, that sediment, trash, or other debris is removed as necessary to control it from entering the waters of the State" imposes the unrealistic and unduly burdensome obligation on the Town to annually clean 100% of its catch basin inventory for which inspections note required maintenance. Between 2016 and 2021 the Town's Annual Report documents that while inspecting a minimum of 68 (20%) catch basins annually, it cleaned as many as 105 and as little as 25 basins in a given year. That accounts for a range of 155% to 38% of the catch basins inspected necessitated cleaning. As the inspection requirement exponentially increases by 500% the Department imposes a strain on the Town's resources not only to perform the inspection but also, the immediate cleaning, which is significantly more straining on staffing resources and funding. Lastly, these mandates are imposed without the Department's parallel release of a funding strategy to ensure the permittee's successful compliance on schedule by way of State financial assistance. [8]

158. COMMENT:

The current effective permit requires each storm inlet and catch basin to be inspected at least once every five years, but the renewal Permit requires permittees to inspect each catch basin once a year for municipalities which own and operate less than 1,000 catch basins. If the municipality owns or operates 1,000 or more catch basins, the municipality must inspect a minimum of 20% of the total or 1,000 inlets per year, whichever is greater. Based on our records, the Township has approximately 1,500 catch basins which they own or operate which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

RESPONSE 149–158:

The Department recognizes the commenters' concerns regarding the revised storm drain inlet and catch basin inspections and cleaning requirements. However, the requirement to ensure that the municipalities' stormwater facilities are functioning properly has been a requirement since the 2004 MS4 permits to ensure that municipalities discover problems with storm drain inlets, outfalls, catch basins and other stormwater facilities early. They can be fixed through minor maintenance and cleaning activities and before they require costly repair and replacement, or result in damaging flooding, injuries or pollutant discharges.

Municipalities have also been required to certify annually in the Annual Reports that all their stormwater facilities were functioning properly. However, through enforcement inspections, compliance assistance audit and numerous complaints, the Department has discovered that the cleaning, maintenance and repairs that are necessary for these facilities to operate properly as designed has been noticeably lacking. The lack of cleaning, maintenance and repairs of storm drain inlets and catch basins ultimately leads to increased flooding causing public safety issues, as well as the discharge of pollutants to waterbodies of the State.

The Department maintains that ensuring proper maintenance is not a new requirement and the enhanced requirement to perform certain numbers of inspections per year is a progression of the requirement to ensure proper operation and maintenance, with the added language in compliance with the Federal NPDES MS4 rules at 40 CFR 122.34(a) which state that MS4 permit conditions be expressed in “clear, specific and measurable terms” which EPA has also commented on multiple occasions. The Department also maintains that this requirement is consistent with the intent of the federal MS4 program’s pollution prevention requirements at 40 CFR Part 122.34(b)(6).

The Department revised the inspection permit requirements in this renewal permit to ensure the permit conditions are clear, measurable and specific and to ensure that permittees are developing, updating, and implementing a program that sufficiently ensures adequate long-term cleaning, operation, and maintenance of all municipally owned or operated storm drain inlets, catch basins, outfalls and other stormwater facilities. Accordingly, the Department proposed a specific numerical threshold, in addition to a percentage, of inspections per year based on an average number of each type of stormwater facility according to available information at the time of the issuance of the draft permit.

However, based on the information supplied in the comments regarding the inequity due to the minimum numerical thresholds for catch basin and outfall inspections may cause in smaller system municipalities, **the Department agrees with the commenters and has revised these permit conditions to remove the numerical threshold value for each type of inspection. Therefore, this final renewal permit requires that permittees inspect each type of stormwater facilities at a minimum of 20% each calendar year.** The 20% threshold is being retained as that was the intent of the proposed permit requirement, but as the number of these stormwater facilities varies greatly from municipality to municipality across the State, the numerical threshold would ultimately require many smaller permittees with fewer resources to inspect these facilities annually, which was not the Department’s intent. This revision is consistent with the Department’s intent to have the entire system inspected once per 5 years, at a minimum, which will be achieved by retaining the 20% requirement.

Regarding the request to retain the requirement from the 2018 Tier A permit that each catch basin and storm drain inlet be inspected at least once every five years, the Department maintains that with the removal of the numerical thresholds for these inspections, the requirement to inspect 20% of the catch basins and storm drain inlets retains that basic requirement, while also making it “clear, measurable, and specific.”

In response the commenters concerns regarding the 90 day time frame to complete repairs and the requirement that municipalities perform maintenance or repair within 90 days from the discovery of a problem is to ensure maintenance or repair is being performed in a timely manner. The Department maintains that most cleaning and maintenance problems and some repairs (depending on the severity and cost of the repair) should be able to be completed within 90 days. Should the municipality have trouble meeting the 90-day deadline, they should contact the Department at stormwatermanager@dep.nj.gov to discuss the situation. Also, the increase in scope of the municipal street sweeping requirements, if performed properly, should result in a decrease of material deposited on storm drain inlets and in catch basins thus reducing the amount of maintenance and cleaning costs.

Therefore, the 1000 catch basin inspection and 100 outfall inspection threshold requirements have been removed from the final permit sections at Part IV.F.3.a.iii for Catch Basin inspections, Part IV.G.2.b.i. for outfall stream scouring inspections, and Part IV.G.3.b.i. for outfall illicit discharge detection inspections.

159. COMMENT:

Part IV.F.3.a.i and ii: Please consider clarifying that this section refers to the at-grade portion of an inlet (i.e., the grate and curb piece). [11]

RESPONSE:

The Department confirms that the referenced requirements apply to the as described by the commenter, however, the Department believes that the language in this permit requirement is adequate. Additional information is provided in the Tier A permit guidance documents and njstormwater.org.

No changes have been made to the final permit as a result of this comment.

160. COMMENT:

Does NJDEP require a certain format for inspection logs (paper versus digital documents)? [11]

RESPONSE:

The Department does not require that the logs be kept specifically in either paper or electronic format, as long as the logs are legible, contain the required information, and are accessible for inspection. The decision is left up to each municipality to decide what format is best suited for their stormwater program.

No changes have been made to the final permit as a result of this comment.

161. COMMENT:

Regarding Part IV.F.3.a.iii, EPA recommends that the permit specify inspection requirements. For example, the current draft NYS MS4 permit requires that during catch basin inspection, the

permittee records: the date of inspection; the approximate level of trash, sediment, and/or debris captured as percentage of sump capacity full [less than or greater than 50% sump capacity]; depth of structure; and depth of sump. Additionally, the EPA recommends that the permit require the permittee to develop an inspection prioritization plan based-on historical cleaning needs – focusing on hot spot catch basins for more frequent inspections. [1]

162. COMMENT:

Regarding Part IV.F.3.a.iv, EPA recommends that the permit specify cleaning requirements. For example, the current draft NYS MS4 permit requires: the date of clean out to be recorded; within 90 days after the catch basin inspection, catch basins which had trash, sediment, and/or debris exceeding 50% sump capacity as a result of catch basin inspection must be cleaned out; within 6 months after the catch basin inspection, catch basins which had trash sediment, and/or debris at less than 50% sump capacity as a result of catch basin inspection must be cleaned out; and, catch basins which have no debris do not need to be cleaned out. [1]

RESPONSE 161-162:

The Department agrees that permittees should be capturing this information as part of the catch basin inspection and maintenance program and has included a reference to EPA's Catch Basin Technology Overview and Assessment document in this section of the permit. The Department will also be adding related fields to the mapping application the Department has developed for permittees to record this information for their logs.

The Department also maintains that the current inspection requirements as stated in F.3.a.viii are sufficient:

“The permittee shall maintain a log sufficient to demonstrate compliance with this section, including but not limited to the type of stormwater facility; location information of the facility with geographic coordinates; name of inspector; date of inspection; observations of the structural integrity; history of complaints; evidence of current or previous flooding; any preventative and corrective maintenance performed; and any additional information or findings. Example Maintenance Logs and Inspection Records forms are available at www.njstormwater.org under the maintenance guidance link;”

It should be noted that the draft permit incorrectly directed permittees to find the link to EPA's Catch Basin Technology Overview and Assessment document through the Highway Agency MS4 Guidance document, but that link does not exist in that guidance document. This final permit has corrected that error and has included the direct link to EPA's document in this permit instead.

Additional guidance for permittees can be found in the Tier A guidance document such as the recommendation that permittees prioritize inspections and maintenance of catch basins and storm drain inlets that are in areas that are more prone to flooding or that fill up with material quicker and require cleaning on a more frequent basis.

No additional changes have been made to the final permit as a result of these comments.

163. COMMENT:

Regarding Part IV.F.3.a.v, MS4 Conveyance System Inspection and Cleaning due beginning upon EDPA, the Town objects to the Department's underestimation of the imposed strain on its limited and overburdened resources as a result of the regulatory compounding of new requirements to develop an inspection, cleaning, and maintenance program for MS4 conveyance systems concurrently with the increased requirements noted above for substantial modification to the current Inlet and Catch Basin inspection, cleaning, and maintenance programs (see COMMENT 157). The Town asserts the belief the Department must propose a modified compliance schedule for these new requirements, staggered significantly by EDPA +36 months to +59 months in order to promote the permittee's successful compliance. Staggered compliance scheduling would nurture prioritization of permittee efforts in the onset of the renewal permit on the modified requirements for Inlets and Catch Basins, while deferring permittee efforts to the latter years of the renewal permit on these new requirements for conveyance systems. Additionally, these mandates are imposed without the Department's parallel release of a funding strategy to ensure the Permittee's successful compliance on schedule by way of State financial assistance. [8]

164. COMMENT:

The Township would need to develop, update, and implement a Municipal Separate Storm Sewer System (MS4) conveyance inspection, cleaning, and maintenance program which would have an impact on the municipality for engineering services and the operations of the DPW. In accordance with the definition in the permit, an MS4 conveyance means a conveyance or system of conveyance including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains. [12]

165. COMMENT:

Regarding Part IV.F.3.a.vii, Stormwater Infrastructure Maintenance due beginning on EDPA, the Town objects to the Department's underestimation of the imposed strain on its limited and overburdened resources as a result of the regulatory compounding of new requirements for Stormwater Infrastructure Maintenance concurrently with the increased and new requirements noted above for substantial modification to the current Inlet and Catch Basin and new MS4 conveyance system inspection, cleaning, and maintenance programs (see COMMENTS 157 and 163). The Town asserts the belief the Department must propose a modified compliance schedule for these new requirements, staggered significantly by EDPA +36 months to +59 months in order to promote the permittee's successful compliance. Additionally, these mandates are imposed without the Department's parallel release of a funding strategy to ensure the permittee's successful compliance on schedule by way of State financial assistance. [8]

RESPONSE 163-165:

The Department disagrees with the request to extend the compliance due date and maintains that time frames established for the requirement to develop, update, and implement the inspection, cleaning, and maintenance programs at Part IV.F.3.a.v and vii for MS4 conveyance and other stormwater infrastructure are sufficient, however see RESPONSE TO COMMENTS 149-158

regarding removal of the annual numerical thresholds for catch basin and storm drain inlet inspections.

While this renewal permit includes specific separate requirements regarding inspection, cleaning and maintenance requirements for the conveyance systems and other stormwater infrastructure, these are not new requirements as the prior MS4 permits also required the permittees to ensure adequate long-term cleaning, operation and maintenance of all municipally owned or operated stormwater facilities, which included the conveyance systems and other stormwater infrastructure by definition.

Regarding the conveyance system program, the Department has not imposed precise inspection and cleaning schedules, but instead, the permittee is to create their own program which shall be specific to their conveyance system and adequate in ensuring the proper function and operation of the system. This requirement, as written, provides flexibility to the permittee while ensuring that proper maintenance is performed thus reducing the amount of flood damage caused by failing conveyance systems.

The Department also maintains that the requirement to perform maintenance of stormwater infrastructure as per Part IV.F.3.a.vii pursuant to approved maintenance plans, or more frequently as needed, to ensure the proper function and operation of the stormwater facility is sufficient and is an existing MS4 permit requirement. Stormwater infrastructure must be maintained in accordance with the approved design to ensure proper function and to prevent the discharge of pollutants to surface and ground water of the State and to mitigate damage caused by flooding resulting from failing systems. See www.nj.gov/dep/stormwater/maintenance_guidance.htm.

Please also refer to RESPONSE TO COMMENTS 18-25 for additional information regarding resources developed by the Department to assist permittees with permit compliance and funding.

No changes have been made to the final permit as a result of these comments.

166. COMMENT:

In regard to the phrase “after each rainstorm exceeding 1 inch of total rainfall” in Part IV.F.3.a.vi, the Department should provide specific guidance as to how the Tier A permittee and the public can easily, and without paying subscription fees, obtain rainfall depth data, acceptable for use in Part IV.F.3.a.vi, for individual stormwater infrastructure locations. In providing such guidance, the Department should keep in mind that (i) for any particular rainstorm, rainfall depth can vary considerably within short distances, and that much stormwater infrastructure is not located in the immediate vicinity of official rain gauges; and (ii) guidance is also needed concerning how many rain-free hours suffice to separate one rainstorm from another (as opposed to all the rain in question being considered part of a single rainstorm). [16]

RESPONSE:

Rainfall data is available online from multiple sources, such as <https://njdep.rutgers.edu/rainfall/>, <https://www.weather.gov/>, and <https://www.wunderground.com/history>. All of these sources can be utilized without paying subscription fees.

The Department considers a rain-free period of 24 hours between precipitation events as an adequate period to separate one storm from another.

No changes have been made to the final permit as a result of this comment.

167. COMMENT:

Regarding Part IV.F.3.a.vi and vii: (1) Please clarify if outfalls are included. (2) Please consider allowing inspections conducted after a 1”+ rainstorm to count towards the required quarterly inspections if the stormwater facility is dry at the time of the inspection. [11]

RESPONSE:

The Department has clarified the permit language to exclude outfalls from Part IV.F.3.a.vi – Stormwater Infrastructure Inspections and Part IV.F.3.a.vii – Stormwater Infrastructure Maintenance. The permittee shall follow the requirements at Part IV.G.3.b of the permit for outfall inspections.

Permittees shall first inspect all stormwater infrastructure pursuant to approved maintenance plans. Only if there are no approved maintenance plans for certain stormwater facilities will the permittee be required to conduct inspections four times annually and after each rainstorm exceeding one inch of total rainfall. The permittee may count an inspection conducted after a one inch rainstorm as a required quarterly inspection if the conditions of the facility meet the inspection requirements of the approved maintenance plan or the NJ Stormwater BMP Manual.

Part IV.F.3.a.vi, Stormwater Infrastructure Inspections, and Part IV.F.3.a.vii, Stormwater Infrastructure Maintenance, have been revised accordingly.

168. COMMENT:

Regarding Part IV.F.3.a.ix, requiring permittees to perform corrective maintenance and repairs within 90 days from discovery may be untenable. Especially for small permittees and permittees near the beginning of their program, there may not be enough available funds in the annual budget to cover all of the repairs. [11]

RESPONSE:

While a specific target timeframe of 90 days for corrective maintenance and repairs will be introduced in this renewal permit, maintaining stormwater facilities owned or operated by the permittee is an existing requirement for all MS4 permittees. As such, the Department maintains that the requirement at Part IV.F.3.a.ix is sufficient and provides flexibility to the permittee should maintenance and repairs not be feasible withing 90 days.

See RESPONSE TO COMMENTS 149-158 for additional discussion regarding the 90-day timeframe to complete corrective maintenance and repairs.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.F.4.: Inspection and Maintenance of Stormwater Facilities Not Owned or Operated by the Permittee

169. COMMENT:

We support the maintenance and inspection requirements for privately held stormwater systems at Part IV.F.4 for the reasons noted above (see COMMENT 148). The Department may want to consider revisions to the model stormwater ordinance to include language for municipal use in devising a reporting, auditing of private inspection reports and suggested enforcement language including penalties. This will hopefully result in better compliance. [5]

RESPONSE:

The Department acknowledges the commenter's support of the maintenance and inspection requirements for privately owned stormwater facilities and will consider the suggestions the next time the model SCO is revised.

However, the Department maintains that the language in Part IV.F.4 of the permit is sufficient for ensuring the proper inspection and maintenance of private stormwater facilities and allows a level of flexibility for each permittee to create and implement a system of ensuring the inspection and maintenance of privately owned stormwater facilities that best suites the permittee's stormwater program. As written, the permit allows permittees the flexibility to adopt a more stringent stormwater control ordinance, including adding additional requirements related to reporting, auditing, and enforcement, than the model ordinance provided by the Department.

No changes have been made to the final permit as a result of this comment.

170. COMMENT:

The municipality is still responsible to ensure proper maintenance of existing stormwater facilities not owned or operated by the Township, but the permit now requires inspection and maintenance operations by the third party at least once per year. A new paragraph has also been added to the section for Stormwater Facilities Not Owned or Operated by the Permittee requiring the Township to ensure that the third-party storm facilities are being cleaned by the parties including the removal of excessive vegetative growth which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

RESPONSE:

The Department recognizes that these changes to this requirement may have an impact on current operations within a municipality, but this impact should be minimal as the inspections and

maintenance requirements are the responsibility of the owners of those stormwater facilities, not the municipality. However, the responsibility on the permittees to ensure proper maintenance of facilities not owned or operated by the municipality has been retained from the 2018 Tier A and B permits, and the new requirements are simply an extension of the Department's intent regarding some of the specific measures that a municipality should require of these owners to ensure proper maintenance. These requirements have been added in response to observations made during enforcement inspections, compliance assistance audits, and citizen complaints regarding poor operation and maintenance of stormwater facilities and to ensure that the permit requirements are "clear, specific, and measurable" as required by the Federal MS4 regulations.

The Department is also preparing an inspection certification form for permittees to have the owners of these stormwater facilities submit annually, similar to the forms that some municipalities currently use. The use of this form by permittees will be optional, but the Department expects that using the form will reduce the amount of resources expended on this permit requirement every year. The Department will email the Stormwater Program Coordinators once this form is completed and ready for use.

No changes have been made to the permit as a result of this comment.

171. COMMENT:

Part IV.F.4 should apply to these stormwater facilities only if they discharge into the Tier A permittee's small MS4 or municipal maintenance yards and other ancillary operations, for reasons similar to those discussed in my comment above (see COMMENT 104) in regard to N.J.S.A. 58:10A-6.a, New Jersey Builders Ass'n v. Fenske, and State, D.E.P. v. Middlesex Cty. Bd. of Chosen Freeholders. [16]

172. COMMENT:

In the permit it states the municipality is responsible for stormwater facilities not owned or operated by the permittee, which means we need to keep logs and have their maintenance plans. Pilesgrove Township does not believe we should have to make sure privately owned stormwater facilities follow their maintenance plans or maintain logs. The same goes for waterways on DEP owned properties that are eroding. The Township believes that DEP should be working directly with private facilities on their stormwater facilities and also should be responsible for DEP owned properties. And on that same comment if the private stormwater facilities are located on a County or State road this responsibility should not fall on the Township [22]

RESPONSE 171-172:

The Department disagrees that Part IV.F.4 should only apply to stormwater facilities that discharge into the municipalities MS4. N.J.A.C. 7:8-4, Municipal Stormwater Management Planning, which describes the requirements for Municipal Stormwater Management Plans and Stormwater Control Ordinances, does not distinguish between areas discharging to the small MS4 and areas that do not. See also RESPONSE TO COMMENT 104 for further discussion related to this topic.

The Department also disagrees that municipalities should not be responsible for maintaining logs or have the maintenance plans for stormwater facilities not owned or operated by the municipality. The Stormwater Management rules were adopted under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Stormwater Management Act, N.J.S.A. 40:55D-93 et seq., among other statutes, and regulate stormwater runoff discharges from developments approved by municipalities. Part of the responsibility under municipalities' stormwater management programs is to ensure that the applications for major development are complete prior to approval, which includes ensuring that a maintenance plan is included in the application. Further, as explained beginning on page 30 of the Fact Sheet, this condition has been retained largely unchanged from the 2018 Tier A and Tier B permits and, therefore, is not a new requirement. Further, the Department does work directly with private facilities on their stormwater facilities where those private facilities need permits from the Department for their stormwater discharges. Counties, the NJDOT, and other highway agencies may have their own stormwater requirements that they implement for properties adjacent to their roadways, but the Stormwater Management Act and rules set municipalities as the entity responsible for review of the stormwater management systems with major development projects. Counties are required to review municipal stormwater management plans and ordinances to ensure they meet the requirements of the Stormwater Management Act and rules, but not to do the reviews of individual developments. However, they are responsible for ensuring their own major development projects meet the requirements and that they perform maintenance of any stormwater infrastructure that they own or operate under their respective MS4 permit authorization.

Additionally, Pilesgrove Township has already implemented a program to address this requirement. Pilesgrove Township's adopted SCO that is posted on their website requires that the person responsible for the implementation of the SMMP (stormwater management maintenance plan) submit the maintenance log information and an annual engineering inspection report to the municipality annually.

Regarding the statement about eroding waterways on Department properties, the Department assumes that this is in reference to the Stream Scouring requirement at Part IV.G.2. It should be noted that this requirement applies only to scouring from the permittee's outfalls. The requirement applies regardless of the ownership of the lot in question, as any scouring that requires correction under this requirement of the permit would be the result of the permittee's stormwater discharge, rather than actions of the property owner.

No changes have been made to the final permit as a result of these comments.

173. COMMENT:

The Department has provided no valid basis for the "constructed after February 7, 1984" criterion. On page 53 of the Department's July 28, 2022, Fact Sheet for the draft renewal of this permit, the Department states that "Proposed Part IV.C.1.b establishes the date frame "constructed after February 7, 1984" to accommodate the time needed for municipalities to adopt stormwater ordinances following the February 7, 1983, adoption of first adopted Stormwater Management rules." By itself, however, this adoption did not trigger a February 7, 1984, or any other specific

date deadline for municipalities to adopt SCOs. This is because then as now, N.J.S.A. 40:55D-93 stated and states:

Every municipality in the State shall prepare a storm water management plan and a storm water control ordinance or ordinances to implement said plan. Such a storm water management plan shall be completed within 1 year from the date of promulgation of comprehensive storm water management regulations by the Commissioner of the Department of Environmental Protection, or by the next reexamination of the master plan required pursuant to section 76 of P.L.1975, c. 291 (C. 40:55D-89), whichever shall be later, provided that a grant for the preparation of the plan has been made available pursuant to section 6 hereof [40:55D-98]. The plan shall be reexamined at each subsequent scheduled reexamination of the master plan pursuant thereto. Such a storm water control ordinance or ordinances shall be adopted within 1 year of the completion of the storm water management plan and shall be revised thereafter as needed. [16]

174. COMMENT:

In the September 17, 1990, New Jersey Register, in part of a Summary of a proposal concerning the Stormwater Management rules and some other Department rules, the Department explained one of its proposed amendments to N.J.A.C. 7:8-1.1 as follows (22 N.J.R. 2873):

At N.J.A.C. 7:8-1.1, the Department is also proposing to delete the statement that no funds have been appropriated for the stormwater management grant program. This statement became outdated in April 1985, when \$1 million was appropriated for that program (P.L. 1985, c.124). On August 30, 1985, grants for 90 percent of the cost of preparing Phase I storm water management plans were made available by the Department to 180 municipalities that had high priority on the Department's municipal ranking list for these grants. Applications for these were accepted until November 1, 1985. On March 16, 1987, the Department made such grants available to 330 municipalities that had high priority on the Department's revised municipal ranking list. Applications for these grants were accepted until June 1, 1987. More than 90 municipalities applied for these grants in 1985 or 1987, and grant agreements were executed with 40 municipalities.

It thus appears that even by mid-1990, the Department had not made grants available to over 200 New Jersey municipalities, which therefore were still not required to complete a "storm water management plan," much less adopt a "storm water control ordinance." [16]

RESPONSE 173-174:

The Department disagrees that the criterion of "constructed after February 7, 1984" does not have a valid basis. As noted by the commenter, the Fact Sheet explained on page 53 that "Proposed Part IV.C.1.b establishes the date 'constructed after February 7, 1984' to accommodate the time needed for municipalities to adopt stormwater ordinances following the February 7, 1983, adoption of first adopted Stormwater Management rules." Note that the reference in the Fact Sheet to Part IV.C.1.b is an erroneous reference to the location of this requirement in the 2018. The correct permit citation in this renewal permit is Part IV.F.4.a.

The Department also disagrees that the referenced language implied that grants needed to be provided to every municipality for those municipalities to develop stormwater management plans or stormwater control ordinances.

See also RESPONSE TO COMMENTS 190-194 and RESPONSE TO COMMENT 195 on the 2018 Tier A MS4 NJPDES permit.

No changes have been made to the final permit as a result of this comment.

175. COMMENT:

Another item as you talk about the inspection and maintenance of stormwater facilities not owned by the permittee, that is important. It's important that these things be done. But you also have to recognize that many of these facilities have been around for years, and it's virtually impossible to find the responsible party for the maintenance of some of these basins. They may be on private properties and the ownership may be unknown. I know in one town where the property was owned by the developer, developer's long gone 20 years ago. And now there's nobody to maintain those basins. So that becomes difficult on the municipal level to try to manage those operations and maintenance. [26]

RESPONSE:

The Department recognizes that while the permittees are required to ensure that stormwater facilities not owned by the municipality are properly maintained, difficulties may arise when dealing with older privately owned basins. In situations where it is difficult to determine who the responsible party is, permittees should review previous records, including lot and block maps, deed notices, and/or originally approved plans (if available) to determine who the owner was at the time the stormwater facilities were installed, and how the responsibility was passed along during real estate transactions. If these efforts fail to find a current responsible party, the permittee should contact the MS4 program at stormwatermanager@dep.nj.gov for further assistance in determining responsible parties, as well as evaluating alternative means to establish a new maintenance plan for those facilities.

No changes have been made to the final permit as a result of these comments.

Permit Section IV.F.5.: Municipal Maintenance Yards and Other Ancillary Operations

176. COMMENT:

Regarding Part IV.F.5.b, this new permit requires the development and maintenance of a monthly inspection log to be filed, presumably posted on the Municipal website with the SPPP for actions that are typically addressed on an emergent case. [2]

RESPONSE:

As per Part IV.B.2.a.i of the renewal permit, the requirement to post the current SPPP on a dedicated municipal stormwater webpage excludes the posting of inspection logs and other

recordkeeping documents. The permit, however, does require that inspection and maintenance logs be filed onsite with the physical SPPP. This requirement is intended for each member of the Stormwater Pollution Prevention Team, and other municipal employees, to have access to the SPPP for reference, for compiling recordkeeping data, and for inspection by the Department. Further, conducting these inspections only on an emergent basis would be inappropriate, as the discharge of pollutants would have already occurred or would be occurring at the time of inspection. The intent of the monthly inspections is to detect and correct issues that would result in discharges of pollutants into waters of the state before they occur.

Additionally, this requirement, now at Part IV.F.5.b of the renewal permit, requiring monthly site inspections for MMYs and other ancillary operations, and tracking the inspections on a maintenance log, is not a new permit condition. This requirement was incorporated into the renewal permit from Attachment E of the 2018 Tier A permit.

No changes have been made to the final permit as a result of this comment.

177. COMMENT:

Site inspections of the MMY need to be completed and logged for both wet and dry conditions to identify conditions that would contribute to stormwater contamination, illicit discharges, or negative impacts to the permittee's MS4. The log would need to be kept with the SPPP which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

RESPONSE:

This requirement at Part IV.F.5.b that requires site inspections of MMY and other ancillary operations to be conducted under dry conditions, and wet conditions when possible is not a new permit requirement, as it was incorporated into the renewal permit from Attachment E of the 2018 Tier A permit. Keeping inspection and maintenance logs filed onsite with the physical SPPP is intended for each member of the Stormwater Pollution Prevention Team, and other municipal employees, to have access to the SPPP for reference, for compiling recordkeeping data, and for inspection by the Department.

No changes have been made to the final permit as a result of this comment.

178. COMMENT:

Regarding Part IV.F.5.f, some clarification is required as it relates to aboveground fuel storage tanks with integral secondary containment systems. The language seems to indicate that the integral secondary containment has to provide the volumetric capacity of 110% of the largest tank's capacity. [2]

179. COMMENT:

The Department should discuss how Part IV.F.5.f relates to N.J.A.C. 7:1E, Discharges of Petroleum and Other Hazardous Substances Rules. For aboveground storage tanks regulated under

N.J.A.C. 7:1E, do the secondary containment requirements in Draft Part IV.F.5.f differ from the secondary containment requirements in N.J.A.C. 7:1E, and what justifies the differences, if any? [16]

180. COMMENT:

Regarding Part IV.F.5.h, clarification is required for this new regulation as it relates to aboveground fuel tanks with integral secondary containment. [2]

RESPONSE 178-180:

The 110% capacity requirement does not apply to secondary containment for double walled aboveground storage tanks, since such tanks already have built-in, or integral, secondary containment with the capacity to contain the entire volume of the tank. The 110% capacity requirement applies to the secondary containment area, which is the containment structure enclosing one or more single walled aboveground storage tanks.

In addition, federal regulation 40 CFR §112.8 requires bulk storage tank installations to have a secondary means of containment for the entire capacity of the largest single tank, plus sufficient freeboard to contain precipitation. In Part IV.F.5.f of the renewal permit, the Department uses the general rule of thumb that when a secondary containment area is open to rainfall, at minimum, the containment area must be able to contain 110% of the largest tank's volumetric capacity.

The rule at N.J.A.C. 7:1E-2.6 pertaining to facility drainage and secondary containment requires the capacity of the secondary containment area to hold the volume of the largest tank within the area and include an additional capacity to accommodate six inches of rainwater if the secondary containment is located where rainwater could accumulate in it. This renewal permit condition is in conformance with the Discharges of Petroleum and Other Hazardous Substances Rules at N.J.A.C. 7:1E.

No changes have been made to the final permit as a result of these comments.

181. COMMENT:

Regarding Part IV.F.5.j.ii and iii, the "...tank use log" referenced in these paragraphs is not attached to the permit. Please consider providing the tank use log as an attachment. [11]

RESPONSE:

The Department appreciates the commenter's correction that the tank use log was not included with the draft permit. The Department incorporated the requirements that were previously in Attachment E of the 2018 Tier A permit into the body of this renewal permit and intended to note that the log form would then be made available on the MS4 webpage as a fillable PDF for greater use by the permittees. However, that change was inadvertently not made in the draft permit.

Therefore, Part IV.F.5.j.ii, iii, v and vi of the renewal permit, pertaining to the vehicle and equipment wash wastewater containment forms, has been updated to include the link to the

Department's Tier A Municipal Stormwater Permit webpage, where the Wash Wastewater logs, and the Engineers Certification form are available.

182. COMMENT:

Regarding Part IV.F.5.j.v, please consider defining the term(s) “pump-outs” and/or “cleanouts”. If only one term is defined, please consider only using the defined term. [11]

RESPONSE:

The Department appreciates the commenter's request for the Department to clarify what the terms “pump-out” and “clean-out” means. The Department defines “pump-out” as removing the water from the tank, and “clean-out” as removing all water and accumulated sludge from the bottom of the tank.

This clarification of the terms “pump-outs” and “clean-outs” has been added to Part IV.F.5.j.v and included in the updated Wash Wastewater–Underground Storage Tank Pump-Out/Clean-Out Log.

183. COMMENT:

Regarding Part IV.F.5.k, we support the requirement. [5]

RESPONSE:

The Department acknowledges this comment in support of Part IV.F.5.k of the renewal permit pertaining to salt and other granular de-icing material storage and handling.

No changes have been made to the final permit as a result of this comment.

184. COMMENT:

Regarding Part IV.F.5.k.iii, k.iv, l.ii and o.ii, EPA believes that the NJDEP should use more clear, specific and measurable language with regards to the use of the minimizing in these sections. [1]

RESPONSE:

The Department disagrees with EPA's comment on needing to include more clear, specific and measurable language with regard to the use of “minimizing” in these sections.

Parts IV.F.5.k.iii and iv pertain to the storage and handling of salt and other granular de-icing material. Part IV.F.5.l.ii pertains to the storage of aggregate material, wood chips, and finished leaf compost and Part IV.F.5.o.ii pertains to the storage of construction and demolition waste, wood waste, and yard trimmings. The Department maintains that this use of the term “minimizing” is used in the same fashion in these sections as the term “maximum extent practicable” is used in federal stormwater rules and has been effective and enforceable since it has been carried forward from the previous MS4 permits through to this renewal.

Further, Part IV.A.2.a.iii of the permit requires the permittee to include in their SPPP information that describes the specific measures the permittee has established to ensure compliance with all components of this permit by providing details on how each element of the stormwater program is implemented, including details as to how they are “minimizing” exposure to stormwater runoff.

No changes have been made to the final permit as a result of this comment.

185. COMMENT:

Regarding Part IV.F.5.o, can the Department confirm this new language was included in order to facilitate the enactment of the Wood Waste Recycling & Composting General Permitting? [2]

RESPONSE:

Part IV.F.5.o of the renewal permit pertains to the temporary storage of construction and demolition waste, wood waste, and yard trimmings, provided there is no processing taking place. As further discussed on page 54 of the Fact Sheet, after the Department identified activities occurring at MMYs that were outside the scope of what was permissible under the existing Tier A permit, the Wood Waste Recycling and Leaf Composting (WRC) general permit was created to regulate discharges to surface water from these activities. The language in this permit section does not facilitate the WRC permit but establishes the allowable activities under this renewal Tier A permit. Operations that cannot comply with these requirements will need to seek additional permit coverage under another general or individual stormwater permit.

No changes have been made to the final permit as a result of this comment.

186. COMMENT:

The Permit requires that all scrap tires be stored in a covered container or enclosure to prevent the exposure to stormwater which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

RESPONSE:

The Department recognizes that this requirement is new to the 2023 permit and maintains that this requirement was meant to be a low-cost measure to prevent scrap tires from being exposed to stormwater runoff.

Upon reevaluation of the draft permit language, the Department has clarified this permit condition at Part IV.F.5.p to remove the implication that all scrap tires must be stored in a container and to clarify that regardless of whether the scrap tires are stored in a container or not, that a waterproof material (i.e., tarpaulin or 10-mil plastic sheeting) will suffice to meet the requirement to cover stored scrap tires to prevent their exposure to stormwater.

187. COMMENT:

Regarding Part IV.F.5.q, inoperable vehicles are a good source of spare parts for other operable vehicles. This is especially true for specialty vehicles of a single make, which is common among municipal fleets. Please consider allowing inoperable vehicles to be stored indefinitely so long as monthly inspections are conducted and logged appropriately. And so long as drip pans and monthly inspections are used to ensure inoperable vehicles are not polluting runoff, the use of portable tents or covers would not significantly improve runoff quality compared to not implementing this practice. This practice would however necessitate the manufacture, purchase, use, and disposal of cover materials, which does have a quantifiable environmental impact. [11]

188. COMMENT:

The permit indicates that permittees are allowed to temporarily store (up to 6 months) inoperable vehicles and equipment if drip pans are utilized for all leaking vehicles and monthly inspections must be conducted for leaks and filled drip pans which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

RESPONSE 187-188:

The Department recognizes that municipalities may need to keep certain inoperable vehicles and equipment for spare parts but must ensure that the storage of these vehicles and other equipment is managed in a manner to prevent contaminants from them from being transported in the stormwater into the surface and ground waters. The Department has clarified the permit language to allow for indefinite storage where best management practices are used to prevent potential contaminants from vehicles from entering surface or ground waters of the State.

The Department has modified the requirements in Part IV.F.5.q to read: “The permittee may store inoperable vehicles and equipment provided measures are taken to prevent stormwater runoff of pollutants. Specifically, inoperable vehicles and equipment with intact bodies and exteriors capable of preventing the contact of stormwater with internal components and fluids capable of discharging pollutants and not leaking any fluids may be stored indefinitely. For those that have body damage, rust damage, missing body panels, or broken windows, such that the exterior is no longer impervious to precipitation must have portable tents or covers are placed over vehicles. If any inoperable vehicle is found to be leaking, drip pans must be utilized immediately, and that leak must be repaired or that fluid must be drained from the vehicle. For all inoperable vehicles and equipment in storage, the permittee must ensure that there are designated storage areas sited away from storm drain inlets, and monthly inspections are conducted for leaks and filled drip pans...” These BMPs are designed to prevent stormwater exposure to potential pollutants generated by the vehicles while in storage. This change provides the municipalities with a more economical usage of the end-of-life vehicles and equipment while still providing adequate environmental protection.

189. COMMENT:

Municipal Maintenance Yards- Containers and Dumpsters must be covered; does this mean all dumpsters at the Township Convenience Center, or can we leave those uncovered as long as we have a dump schedule and avoid reaching top capacity to prevent overflow. [22]

RESPONSE:

The intent of this requirement is to prevent stormwater from carrying pollutants from containers and dumpsters into surface or ground waters of the State. As such, the Department has clarified that this requirement as it applies to clean recyclable materials.

The Department has added clarifying language to this section of the final permit which distinguishes the difference between cover requirements for refuse containers and clean recyclables containers. Specifically, the permit states, “Roll-offs and open-top waste containers used to collect and temporarily store municipal trash, garbage and non-recyclables must be kept tarped, or otherwise covered unless actively being filled or emptied. Clean roll-offs or other open top containers used to collect clean household recyclables (such as cans, bottles, and paper; but does not include materials such as electronics) must be covered when not in use, at the end of each workday, and before any anticipated storm event.”

Neither a specified dump schedule nor ensuring that the dumpsters do not reach top capacity are effective management practices to ensure stormwater does not contact or discharge from refuse containers and dumpsters.

Permit Section IV.F.6: Stormwater Program Coordinator (SPC) Training

190. COMMENT:

NJBA supports the requirement for enhanced training by the SPC and employees, and the Department’s free training. Enhancing training for municipal employees involved in plan review and stormwater facility maintenance and monitoring is crucial to the success of proper stormwater management. [10]

RESPONSE:

The Department appreciates the support for the new Stormwater Program Coordinator training. The intention, in part, is to train the SPCs, so they are better able to ensure the necessary annual training of the other municipal staff occur. Stormwater facility inspections and maintenance, among other things, will be covered during the training.

No changes have been made to the final permit as a result of this comment.

191. COMMENT:

Because some Part IV.F.6 and IV.F.7 requirements pertain to Parts IV.A, IV.D, IV.G or IV.H rather than to other Part IV.F provisions, these SPC Training and Annual Employee Training requirements should be relocated to their own Part IV subpart somewhere after Part IV.H. [16]

RESPONSE:

The Department presents the training requirements in one permit section at Part IV.F. Minimum Standards for Pollution Prevention/Good Housekeeping for Municipal Operators in order to be consistent with the provisions of EPA's Six Minimum Control Measures for Small MS4s.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.F.7.: Annual Employee Training

192. COMMENT:

In Draft Part IV.F.7.a.ii, insert "or individual" immediately after "general" for consistency with Draft Part IV.D. [16]

RESPONSE:

The Department agrees and has inserted the words "or individual" immediately after the word "general" for consistency between IV.D.1.a. and IV.F.7.a.ii.

193. COMMENT:

Regarding Part IV.F.7, Annual Employee Training, rigorous training of municipal employees and officials is essential for the success of the MS4 program. For example, it is not infrequent for planning board or zoning board members to be uninformed regarding the requirements of State rules or the municipalities stormwater management ordinance. We have been at multiple hearings for development applications where the applicant and/or the board believe that the quantity controls found in N.J.A.C. 7:8 are in fact volume reductions and not the peak rate reductions almost universally proposed by an applicant. Also, it is not unheard of for an applicant and/or the board to assert that the board does not have to pass on the adequacy of the proposed stormwater management plan. It is asserted that either the board's professionals or the applicant's professional can "work out" any deficiencies post approval or even worse that the DEP will be responsible for reviewing and approving of the proposed stormwater plans.

Additional and revised training should be provided. Further, the Department should audit a percentage of the approvals issued by the land use board to determine compliance with these requirements. [5]

RESPONSE:

The Department agrees that adequate training is essential for the success of the MS4 program. The permit already requires Municipal Board and Governing Body Member Training for planning board members, zoning board members, and governing body members who review and approve applications for development and redevelopment projects on behalf of the permittee. This training is free and entails completing the "Asking the Right Questions in Stormwater Review Training Tool" posted at www.njstormwater.org/training.htm, and once per term of service thereafter, municipal board and governing body members must review at least one of the other training tools

offered under Post-Construction Stormwater Management found at the website above. The Department will be updating these training materials to reflect the renewal permit. It is unclear what additional training the commenter is requesting for board members. As it would be unreasonable to expect all municipal board or governing body members to be knowledgeable about the specific details and calculation methodologies, these individuals are not required to take the Department's more comprehensive Stormwater Management Design Review Training, which is designed for engineers that perform reviews on behalf of the municipality.

Additionally, the Department has conducted 58 compliance assistance audits of Tier A municipalities since 2015, which included the review of major development projects where the stormwater management designs, and related documentation, were reviewed for compliance with the Stormwater Management rules (N.J.A.C. 7:8) or local stormwater control ordinance, as applicable; however, due to the COVID-19 pandemic, these on-site audits were suspended.

The Department is also developing a new Stormwater Program Coordinator training to train the SPCs, so they are not only better familiar with the permit requirements, but also for SPCs to better inform or train other municipal staff and board members. See RESPONSE TO COMMENT 195 for additional information regarding the SPC training.

No changes have been made to the final permit as a result of this comment.

194. COMMENT:

Regarding Part IV.F.7.a.xi, it appears the Department is requiring the municipality prepare a Watershed Improvement Plan (WIP), defined elsewhere in this permit. The Stormwater Management rules (N.J.A.C. 7:8-3) refer to permissive Regional Stormwater Management Planning that identified various possible lead agencies. There are no definitions of "watershed" included anywhere in the permit. This new directive is an unfunded mandate should be removed. [2]

RESPONSE:

While establishing a regional stormwater management plan pursuant to N.J.A.C. 7:8-3 would likely meet most, if not all, of the WIP requirements, the creation of a regional stormwater management plan pursuant to N.J.A.C. 7:8-3 is not specifically required under this permit.

As noted in RESPONSE TO COMMENT 92, the term "watershed" is not specifically defined in the permit as the definition of the term is not specifically relevant to the WIP, or any other permit requirement, and the general definition such as the one provided by Merriam-Webster is sufficient, which states that a watershed is "a region or area bounded peripherally by a divide and draining ultimately to a particular watercourse or body of water." The specific requirements of the WIP are set forth in the permit itself and do not rely on ensuring that the permittees and the Department have a common detailed legal understanding of the term "watershed" set forth in the permit.

The Department disagrees that the Watershed Improvement Plan is an unfunded mandate, as further discussed in RESPONSE TO COMMENTS 26-34.

Also see RESPONSE TO COMMENTS 18-25 regarding information on the resources the Department has prepared to assist permittees with preparing the WIPs.

No changes have been made to the final permit as a result of this comment.

195. COMMENT:

Provide Robust Assistance and Training.

Many Tier A municipalities will need to develop the capacity, expertise, and funding necessary to comply with the permit requirements, whether they rely on in-house stormwater staff or outside stormwater consultants. NJF recommends that NJDEP develop its ability to provide high-quality technical assistance and more robust training or explore the potential to work with a third-party to provide these resources to municipalities and their stormwater experts. Below are some specific ideas and examples about areas where many municipalities will need support. NJDEP should:

- Develop municipal mapping capacity. Providing ArcGIS licenses and data layers is a good starting point, but many municipalities do not necessarily have the capacity to use these resources. Therefore, NJDEP should provide ArcGIS training as well as funding to hire consultants to provide technical assistance.

- For the WIP mapping requirements, NJDEP could complete a preliminary analysis and provide the results, so that every municipality is not required to complete the same mapping work independently. Or NJDEP could contract with a consultant or university to complete the GIS work.

- Continue to support stormwater utility feasibility studies. Many permittees will need to establish a stormwater utility in order to have the resources to complete the activities outlined in the permit. NJDEP should provide annual funding for localities to conduct a stormwater utility feasibility assessment, which is necessary to launch a stormwater utility.

- Provide updated and improved training. The draft permit requires a lot of training for municipal staff. Many municipal engineers are not necessarily stormwater professionals and will need to improve their skills in order to realize successful stormwater practices, including green infrastructure, at the local level. In particular, permit review engineers will need to have a better understanding of the latest innovations in green infrastructure design, implementation, and maintenance given the new requirements outlined in the permit. NJDEP should expand their existing training for municipal engineers or identify quality training opportunities and robust resources to help municipal staff and/or their contractors comply. Video training is not adequate to develop the expertise required.

- Provide Technical Assistance. During our stakeholder engagement process it was noted that there is a disconnect between the resources provided by NJDEP and the needs of permittees. NJDEP should provide robust technical assistance to aid permittees in developing the capacity to implement the permit. This could be accomplished in several ways:

- A circuit rider program, in which NJDEP staff spend a short amount of time in each municipality, or other assistance efforts provided by the Department or a third party contractor.

- A streamlined online system where permittees can find templates for inspections, maintenance plans, and other documentation required for compliance and a portal to submit

deliverables will help ensure compliance and consistency with deliverables. An online system where the Department can provide comments on deliverables and set deadlines can help with enforcement. Consistency in the format of deliverables will also aid the Department in their review of the submissions and will be useful for future statewide mapping of MS4 infrastructure and tracking of overall program success. [9]

RESPONSE:

The Department will be providing updated versions of the MS4 Guidance documents, model ordinances, forms, and templates, etc. to follow this renewal permit. Once these documents are completed, the Department will email the permittees' SPCs and post them on its website at https://www.nj.gov/dep/dwq/tier_a.htm. The Department will also offer a 30-day informal comment period for permittees and other stakeholders to review the model ordinances and the WIP template and provide suggested changes, etc. Permittees will also be notified via email when the final versions of guidance materials, forms, and templates are posted online. See RESPONSE TO COMMENTS 18-25 for additional information regarding the resources provided by the Department.

In addition to the free mapping application and ArcGIS licenses, the Department has also communicated to the MS4 permittees during numerous outreach sessions that our staff is available to provide training for using the mapping app, either virtually or in person, upon request of the permittee.

Regarding the training suggestion for municipal engineers and permit review staff, the permit requires municipal engineers and permit review staff who review major developments on behalf of the permittee to take the Department run (and free of charge) Stormwater Management Design Review training at least once every 5 years. This course covers the applicable rule requirements, calculation methodologies, and how to review a major development. Further, this renewal permit also now requires the same individuals to take a short update course within 1 year of any adopted amendments to the Stormwater Management rules. The Department agrees that video training is not adequate to develop the expertise required and that is why watching videos posted on the Department's website (even the previous recordings of these exact courses) is not sufficient to satisfy either of these training requirements.

Regarding the mapping requirement for Phase 1 of the Watershed Improvement Plan, the Department already has some of the mapping layers available for permittees for this task, including the water quality classification of the receiving waterbody segments and the areas associated with each TMDL and water quality impairment, a map layer of overburdened communities at: [NJ Environmental Justice Mapping, Assessment and Protection Tool \(EJMAP\) \(arcgis.com\)](https://arcgis.com/home/webmap/viewer.htm?appid=9876543210&appid=9876543210). However, the municipalities will need to combine the Department's mapping layers with the mapping of their infrastructure, which the Department does not have, to complete this task. It should be noted that some municipalities have shared that they have already mapped all of their municipal infrastructure, some have mapped some infrastructure including the outfall pipes as required under the 2018 Tier A MS4 permit, but some other permittees have not begun their mapping.

The Department has also recently offered various types of stormwater related funding, including a program for free technical assistance to develop stormwater utility feasibility studies, which would include stormwater infrastructure mapping. Approximately 30 entities submitted letters of interest. The Department also hopes to continue to be able to offer additional funding opportunities, but the availability of those resources in the future is not known yet. See RESPONSE TO COMMENTS 18-25 for additional information regarding funding.

As for the suggestion to provide Department staff or contractors to assist permittees, in addition to updating the resources noted above, the Department also plans to provide guidance through the SPC Training, which is anticipated to involve a half-day session of permit condition discussion, review of the Department's Stormwater Pollution Prevention Plan template, and a demonstration of the annual reporting process. Each municipality also has a stormwater program case manager assigned by county in the MS4 permitting group (https://www.nj.gov/dep/dwq/msrp_home.htm) to provide one-on-one assistance with any issues they may have with implementation of the program in their town.

The Department is also currently developing an online submittal service that MS4 permittees could use to submit their documents through the DEP-Online web service system. This service allows for the submission of documents by the permittee; however, it does not allow for the Department to provide comments or correspondence back through this system. The Department's feedback and responses on submitted documents and materials will be transmitted to permittees via email.

No changes have been made to the final permit as a result of this comment.

196. COMMENT:

Employee Training- Clarification is needed on training for employees. Can it be a staff meeting to cover any changes or concerns or does this training need to be done by a licensed trainer with credits applied? [22]

RESPONSE:

Municipal staff training does not need to be done by a licensed trainer. The training may be conducted at a staff meeting by another employee, such as the Stormwater Program Coordinator, the Director of Public Works, the Municipal Engineer or another appointee knowledgeable of the topic(s). Staff need only be trained on those stormwater topics that pertain to their job duties and should be able to review the language in the Stormwater Pollution Prevention Plan for reference, as well as details in the Tier A permit.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.F.8.: Stormwater Management Design Review (SWMDR) Training

197. COMMENT:

In Part IV.F.8.a, insert “and the Residential Site Improvement Standards for stormwater management (N.J.A.C. 5:21-7)” immediately after “N.J.A.C. 7:8.” These RSIS for stormwater management include important requirements not found in N.J.A.C. 7:8-5 but mandatory under Parts IV.E.1.b and IV.E.1.g. [16]

RESPONSE:

The Department disagrees with the suggestion in this comment. Since the RSIS at N.J.A.C. 5:21-7 incorporates Stormwater Management rules at N.J.A.C. 7:8 by reference, review of stormwater management designs for Major Development projects within areas under the purview of the RSIS will include information regarding the use of green infrastructure, stormwater runoff quantity, stormwater runoff quality, groundwater recharge, and maintenance requirements for compliance with N.J.A.C. 7:8. Additionally, the Stormwater Management Design Review Course is intended for individuals who review Major Development projects for compliance with the requirements of N.J.A.C. 7:8 and any requirements that are not identified within N.J.A.C. 7:8 are outside the scope of the course.

No changes have been made to the final permit as a result of this comment.

198. COMMENT:

Stormwater Management Design Review Training - how do we find this course? The Permit states its mandatory but contains no information on how to find it. [22]

RESPONSE:

The Department’s Stormwater Management Design Review course information is posted on the stormwater webpage at <https://nj.gov/dep/stormwater/training.htm>. The registration information is updated periodically, please contact DWQ-BNPC-StormwaterManagement@dep.nj.gov for additional information regarding the course.

An additional link to the training information webpage has been added to Part IV.F.8.a of the permit.

199. COMMENT:

First, the Department has done some strengthening to the trainings occurring, and we believe that better training needs to happen. I have attended dozens, if not hundreds, of land use board hearings. My colleagues have done as many, if not more. And it is not uncommon to hear the design engineers, the review engineers, and the planning and zoning boards to really misunderstand these rules. You know, they talk, for example, quantity as being, in fact, a volume reduction when, in fact, it is a peak rate reduction. They talk about, they don't have an obligation to review and decide whether these plans are compliant with the rules. And that either the review engineer can work it

out later, or that it is DEP's job to decide this. So, any strengthening of the trainings is important, because the permit is only as good as the people that are implementing it. [24]

200. COMMENT:

The permit requires a lot of training for municipal staff. Many municipal engineers aren't necessarily stormwater professionals and will need to improve their skills in order to realize successful stormwater practices. So, we think the DEP could expand their existing training for municipal engineers who identify comparable training opportunities, and resources to help municipal staff or their contractors comply. [27]

RESPONSE 199-200:

Since 2018, the Department has required that all individuals responsible for reviewing and approving stormwater management design reviews for major development projects attend the Department's free Stormwater Management Design Review course (SWMDR) once every five years. Department engineering staff provide the training and include in-depth discussions of all aspects of stormwater management design reviews and detailed explanations of key elements of the stormwater rules at N.J.A.C. 7:8. This training is typically offered twice each year and held in-person or via a live interactive webinar, approximately 12 hours in length over multiple days. Individuals who have successfully completed the course are listed on the Department's website at <https://nj.gov/dep/stormwater/training.htm>. In addition, the Department has added a requirement to the next iteration of the Tier A permit (2023) for these same individuals to also attend Department training on stormwater management rule amendments if determined such training is necessary. Department staff is available for consult should municipal engineers have questions regarding their interpretation of N.J.A.C. 7:8 during their reviews.

See also RESPONSE TO COMMENTS 18-25 for additional information regarding training and other resources available from the Department.

No changes have been made to the final permit as a result of these comments.

Permit Section IV.F.10.: Municipal Board and Governing Body Member Training

201. COMMENT:

Regarding Part IV.F.10.b, the proposed language now requires municipal board and governing body members to review and document their completion of stormwater training once per term, where this was previously only required for new members. Given land use board and governing body members are represented by licensed professional engineers to answer questions and provide technical guidance on stormwater related matters, this new mandatory training requirement appears unreasonable [2]

RESPONSE:

The Department does not agree that watching these brief training videos once per election term is an unreasonable requirement.

Additionally, this training requirement is not a new requirement for existing Tier A municipalities as municipal board and governing body members have been required to view Department training videos once per term since 2018. New members are required to watch “Asking the Right Questions” within 6 months of commencement of duties. After that, they must watch one of the five videos from the Stormwater Management Rule video series, which are all under 15 minutes in length. Typical term length is two years, which means individuals serving on municipal boards and governing bodies would need to schedule a maximum of fifteen minutes every other year to comply with this permit condition. Links to these training videos are available on the Department's website at <https://nj.gov/dep/stormwater/training.htm>.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.G.1.: MS4 Mapping

202. COMMENT:

We do not anticipate that mapping will be utilized by our staff, however it will be costly to create. [3]

203. COMMENT:

Regarding Part IV.G.1, MS4 Mapping which is due on or before EDPA + 36 months, the Town objects to the Department’s underestimation of the imposed strain on its limited and overburdened resources in order to demonstrate compliance with this requirement. The Department indicates it continues to provide a free to use, ArcGIS Online based, stormwater infrastructure mapping application, inferring that simply by providing a toolset the Department has eliminated any and all cause for concern that Town resources would be burdened by the increase in regulatory compliance. The Department fails to acknowledge the unrealistic and unduly burdensome obligations imposed on the Town’s limited staff, for which it does not have available manpower to allocate towards these efforts, or its limited financial resources, for which it does not have available funds to hire additional staff and/or compensate existing staff with overtime wages to complete these tasks. The Town’s position is further reinforced by the fact that these mandates are imposed without the Department’s parallel release of a funding strategy to ensure the permittee’s successful compliance on schedule by way of State financial assistance. [8]

204. COMMENT:

The MS4 outfall mapping requirements have been revised to include on the map the locations of all MS4 infrastructure including all storm inlets, manholes, MS4 conveyance with type and direction of flow, stormwater facilities, and property boundaries of maintenance yard(s). The current requirement for the MS4 outfall mapping was for only locating and plotting within a GIS system the MS4 storm sewer outfalls. The MS4 Infrastructure Map would need to be completed on or before 36 months from the EDPA which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

205. COMMENT:

Regarding Part IV.G.1.b.iv, we predict that most permittees have not mapped their entire stormwater facilities in GIS, except for the outfall mapping previously required. Completing this mapping initiative in 36 months is an expensive and unrealistic target. Also, many stormwater facilities, especially older facilities, are poorly documented. Permittees are only likely to map 80-90% of their MS4 based on existing records or readily visible structures, and they will find the remaining 10-20% over time as older facilities are discovered. This concept seems to be understood based on G.1.b.i., but the language of this section does not seem to include any leeway. [11]

RESPONSE 202-205:

The Department understands the permittees' concerns about completing the enhanced infrastructure mapping. However, as per the Fact Sheet issued with the draft permit on July 28, 2022, the Department notes that enhanced mapping is necessary for a number of reasons and is updating its free-to-use mapping application to assist permittees with completing this task, as further explained in RESPONSE TO COMMENTS 18-25. It is necessary to ensure and improve the proper operation and maintenance of the storm sewer systems throughout the State as permittees must be aware of the location of their storm sewer system components in order to conduct proper operation and maintenance, which is critical to the protection of public health, safety, and the environment.

Proper operation and maintenance of this infrastructure consequently improves the quality of the stormwater that is managed by that infrastructure, aiding in the goal of improving water quality. Proper maintenance of stormwater infrastructure also ensures that that infrastructure will operate as designed during storm events to alleviate localized flooding due to stormwater runoff. For example, performing street sweeping removes material containing pollutants from the road surfaces that can cause water quality impairments and prevents that same material from clogging inlets, catch basins and conveyance pipes which can cause localized flooding and public safety concerns.

Further, knowing the location of storm sewer system components is also necessary when implementing a stream scouring and illicit discharge detection and elimination program in order to be able to identify likely sources causing scouring and illicit discharges.

The Department will continue to make available a free to use mapping application and ArcGIS Online licenses as well as one-on-one direct technical assistance, and guidance and training for using the application in order to ease the potential cost burden of the mapping requirement. This training is offered either in person or virtually, upon request of the permittee, to assist with the mapping of the municipalities' stormwater infrastructure.

The Department requires that the MS4 infrastructure be mapped and submitted to the Department by EDPA +36 months. It is understood that there may be components of the MS4 infrastructure that are undocumented and may not be known to the municipality at the deadline. It is the Department's intent that these maps be living documents, requiring updating over time as new or newly discovered infrastructure is added or infrastructure is removed. This is why an annual review

is required in Part IV.G.1.b.i which specifically refers to “new or newly identified MS4 infrastructure.”

No changes have been made to the final permit as a result of these comments.

206. COMMENT:

Regarding Part IV.G.1.a.i-ix, the attributes, and especially the term “type”, are undefined for the various categories of infrastructure that will be mapped. Please consider providing a definitive domain/schema so that various permittees will populate these fields consistently. Also, please clarify if other attributes are required. For instance, a distinction between cast-in-place labels vs stenciled labels, catch basin description, solids capturing BMPs, materials, sizes, age, and condition. [11]

RESPONSE :

The Department disagrees that the domain/schema is undefined. The ArcGIS based mapping tool provided by the Department provides permittees with a definitive domain and schema for each attribute field where appropriate. This allows permittees to collect stormwater infrastructure data without needing to type information and allows the data to remain consistent throughout the state. The Department has also made the same domains and schema available through the ESRI Shapefile, Geodatabase, and MS Excel templates offered on the Department’s mapping and inventory web page. This not only maintains consistency in the data but also provides flexibility to the permittee as to how the mapping requirement is completed.

The Department has made clear in Part IV.G. which attribute fields will be required to complete as part of the mapping requirement. These required attributes will not vary over the term of the final permit.

No changes have been made to the final permit as a result of this comment.

207. COMMENT:

In regard to the Part IV.G.1.a.vi requirement to map “MS4 conveyances,” the Department should make available a model MS4 Infrastructure Map that shows and discusses how “MS4 conveyances” can be effectively mapped. In doing this the Department should keep in mind that for a street or road, each of the following could separately be considered “MS4 conveyances”:

- The whole street or road, including the entire cartway and in many locations, abutting land owned or operated by the Tier A Municipality. See the N.J.A.C. 7:14A-1.2 definition of “municipal separate storm sewer”, which expressly includes “municipal streets.” During heavy intense rainstorms, many entire streets are among the most important “MS4 conveyances”;
- Curbs in the street or road (see the same definition of “municipal separate storm sewer”);
- Gutters in the street or road (see the same definition of “municipal separate storm sewer”);

- Roadside ditches or swales (see the same definition of “municipal separate storm sewer”); and
- Storm sewer pipes beneath the street or road.

The question is whether and how each of the above should be distinguished on the map. Does the ArcGIS Online based application discussed on page 69 of the Department’s July 28, 2022 Fact Sheet for the draft renewal of this permit allow each of the above to be distinguished? [16]

RESPONSE:

The Department acknowledges the comment and understands that MS4s are complex systems with different types of conveyances. The “MS4 Conveyance” feature class which will be available in the ArcGIS based tool and the ESRI Shapefile, Geodatabase, and MS Excel templates will have an attribute field that will allow the permittee to identify the type of conveyance that is being mapped. By completing this attribute field, the feature class will be able to be displayed in different symbologies depending on the type of conveyance. Additionally, the Department will provide guidance materials on how to comply with the mapping requirements including the requirement to map MS4 conveyances.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.G.2.: Stream Scouring

208. COMMENT:

Regarding Part IV.G.2, Stream Scouring due on EDPA, the Town objects to the Department’s underestimation of the imposed strain on its limited and overburdened resources in order to demonstrate compliance with this requirement. Particularly the immediacy by which the compliance schedule’s EDPA deadline necessitates the Town to act ahead of the effective date of the 2023 Renewal Permit to develop and implement a comprehensive program to detect and investigate instances of stream scouring. This compliance schedule lack congruency with the EDPA + 3 months adoption of an updated SPPP, in which the Stream Scouring program is required to be incorporated. Similar to IV.F.3.a.iii “Catch Basin Inspection,” the Department has failed to acknowledge the unrealistic and unduly burdensome obligation imposed on the Town by its definition of outfall inspection for “a minimum of 20% of the total number of outfalls or 100 per year, whichever is greater.” The Department’s establishment of a minimum structure total of 100 per year is unfounded by supporting statistical analysis to demonstrate it as appropriate for broad brush application to all permittees regardless of the size of the system they operate or the resources available to them. The Town of Clinton operates 38 outfalls and under this proposal will be required to inspect all 38 annually. Of even greater consequence is that the Department imposes a strain on the Town’s resources not only to perform the inspection but also requires the immediate repair and mitigation of stream scouring within 12 months. The Town’s objection is by no means a lack of appreciation for the potential water quality benefits to the receiving waters. Rather, the Town continues to hold itself accountable for implementation of an appropriate program and asserts its firm belief the program must be regulated with a basis of the Department’s understanding of each permittee’s limitations on staffing and funding resources. The Department’s

development of individualized funding strategies must be addressed in parallel to the adoption of regulation to ensure the Permittee's successful compliance on schedule. [8]

RESPONSE:

The requirement to develop and implement a stream scouring program is due EDPA for existing Tier A permittees because this was already a requirement of the 2018 Tier A permit. As such, no additional time will be given for existing permittees to comply with this requirement. However, as per RESPONSE TO COMMENTS 81-83, the Department has revised the due date for existing Tier A permittees to update their SPPP to reflect the revisions to this requirement from EDPA + 3 months to EDPA + 6 months.

See also RESPONSE TO COMMENTS 149-158 regarding additional information related to revisions to the catch basin and outfall inspections requirements.

No changes have been made to the final permit as a result of this comment.

209. COMMENT:

The amount of MS4 outfalls requiring inspection for scouring has been revised to a minimum of 20% of the total number of outfalls or 100 per year, whichever is greater which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

RESPONSE:

As per RESPONSE TO COMMENTS 149-158, the Department has revised this requirement to limit the number of outfall inspections per year to 20%. The Department would like to note that inspections are necessary in order to ensure the stability and effectiveness of the systems and minimize the effects of erosion and flooding, therefore promoting improved water quality within surface waterbodies.

No changes have been made to the permit as a result of this comment.

210. COMMENT:

Regarding Part IV.G.2.b.iv, please clarify if the permittee will need to have a map for the drainage areas to each outfall in order to meet this requirement. [1]

RESPONSE:

Drainage areas do not have to be mapped in order to meet the requirement in Part IV.G.2.b.iv. However, the mapping requirements for the WIP do require that the drainage areas applicable to each outfall be mapped on or before EDPA + 36 months. The Department maintains that it will be beneficial to map drainage areas in order to aid in identifying the source of the stormwater that is contributing to the scouring. While the mapping requirement will aid in limiting the area in which to locate the source(s) of the scouring, the permittee may choose to use whatever other effective methods they choose to identify the actual source(s). The methods used and actions taken to demonstrate compliance with the requirements at Part IV.G.2.b.iv must be documented in the

Department's Stream Scouring Investigation Recordkeeping Form. This will allow the Department to determine if the methods used and actions taken were sufficient and meet the intent of the stream scouring requirements.

No changes have been made to the final permit as a result of this comment.

211. COMMENT:

In Parts IV.G.2 and G.3, add "on or before EDPA + 12 months" (or some other number of months) to give existing permittees time to expand their programs to include stormwater outfalls (such as roadside ditch outfalls) that have no outfall pipes.

The Stream Scouring and Illicit Discharge Detection and Elimination requirements in the current Tier A Permit are limited to outfall pipes. In contrast, the requirements in Draft Parts IV.G.2 and G.3 pertain to all MS4 "outfalls", a much broader term (see the Draft Notes and Definitions Part IV.B.1.a.xv definition of "outfall") that includes, for example, gutters and roadside ditches that discharge "directly to waters of the United States" even where there is no outfall pipe.

Contrary to, for example, the statement on page 70 of the Department's July 28, 2022, Fact Sheet for the draft renewal of this permit that "as with the 2018 permit, this permit retains references to 'localized' stream scouring 'in the vicinity of the outfall pipe'", Part IV.G.2 nowhere uses the word "pipe". Moreover, the statement on page 72 of the Department's July 28, 2022 Fact Sheet for the draft renewal of this permit that "existing Tier A permittees should already have [the Illicit Discharge Detection and Elimination Program] in place, so compliance is required at EDPA" failed to recognize that the Illicit Discharge Detection and Elimination requirements in Part IV.B.6.c of the current Tier A Permit are expressly limited to outfall pipes. [16]

RESPONSE:

The Department appreciates the commenter's correction to the language in the Fact Sheet. However, The Department disagrees with the need to add an extended compliance date for this requirement. The majority of these structures are known to the municipalities as either part of the existing MS4 system or already identified as an outfall in the municipal inventory. As they would require inspection only once every 5 years, no additional time should be required to incorporate these outfalls into the inspection schedule. Additionally, new or newly identified outfalls would need to be inspected within 30 days of their discovery. This inspection would most likely occur upon the discovery.

No changes have been made to the final permit as a result of this comment. However, while the Fact Sheet is not part of the final permit documents, the Department is hereby acknowledging this change for the purposes of the Administrative Record:

As with the 2018 permit, this permit retains references to "localized" stream scouring "in the vicinity of the outfall pipe."

Permit Section IV.G.3.: Illicit Discharge Detection and Elimination

212. COMMENT:

Regarding Part IV.G.3, Illicit Discharge Detection and Elimination due EDPA, the Town objects to the Department's underestimation of the imposed strain on its limited and overburdened resources in order to demonstrate compliance with this requirement. The objections are part and parcel to those enumerated above with respect to Stream Scouring (see COMMENT 208). Again, this compliance schedule lack congruency with the EDPA + 3 months adoption of an updated SPPP, in which the Illicit Discharge Detection and Elimination program is required to be incorporated. Further, Department has failed to acknowledge the unrealistic and unduly burdensome obligation imposed on the Town by its definition of outfall inspection for "a minimum of 20% of the total number of outfalls or 100 per year, whichever is greater." The Department's establishment of a minimum structure total of 100 per year is unfounded by supporting statistical analysis to demonstrate it as appropriate for broad brush application to all permittees regardless of the size of the system they operate or the resources available to them. Of even greater consequence is that the Department imposes a strain on the Town's resources not only to perform the inspection but also requires the immediate elimination of illicit discharges within 12 months of detection. The Town's objection is by no means a lack of appreciation for the potential water quality benefits to the receiving waters. Rather, the Town continues to hold itself accountable for implementation of an appropriate program and asserts its firm belief the program must be regulated with a basis of the Department's understanding of each permittee's limitations on staffing and funding resources. The Department's development of individualized funding strategies must be addressed in parallel to the adoption of regulation to ensure the Permittee's successful compliance on schedule. [8]

213. COMMENT:

The amount of MS4 outfalls requiring inspection for illicit connections has been revised to a minimum of 20% of the total number of outfalls or 100 per year, whichever is greater which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

214. COMMENT:

NJF supports improvements to the Illicit Discharge Detection and Elimination program, including inspection requirements. [9]

RESPONSE 212-214:

The Department acknowledges Commenter 9's support.

The elimination of illicit discharges from municipal storm sewer systems is important as they are discharges of untreated wastewater into the receiving waters and are considered unpermitted/illegal discharges from the municipality's MS4 outfalls.

The requirement to develop and implement an illicit discharge detection program is due EDPA for existing Tier A permittees because this was already a requirement of the 2018 Tier A permit. As such, no additional time will be given for existing Tier A permittees to comply with this requirement. However, as per RESPONSE TO COMMENTS 81-83, the Department has revised

the due date for existing Tier A permittees to update their SPPP to reflect the revisions to this requirement from EDPA + 3 months to EDPA + 6 months.

The requirement to develop and implement an illicit discharge detection program is due EDPA + 12 months for new Tier A permittees to allow time for those permittees to develop this program.

See also RESPONSE TO COMMENTS 149-158 regarding additional information related to the number of catch basin and outfall inspections required per year.

No changes have been made to the final permit as a result of these comments.

215. COMMENT:

Regarding Illicit Connections Testing, we have instances of spring water in the Township. This permit will require excessive testing of waters that are known to be clean. [3]

RESPONSE:

The Department is aware that in some instances, dry weather flows can be caused by ground water infiltration into the stormwater conveyance system. The Department does not require that ground water infiltration be removed, only that it be verified that the dry weather flows are indeed clean ground water, and not sanitary or industrial wastewater, or otherwise not contaminated. While testing is an appropriate method for determining the source of many dry weather flows, and necessary in some cases, the permit does not require all ground water flows into MS4s to be tested. The permittee should refer to the MS4 Guidance Manual for additional information and should first perform physical observations, such as observations of any odor, color, turbidity, floatable matter, deposits or stains at the outfall, as well as vegetation at the outfall. The permittee should also attempt to determine whether or not the dry weather flow is continuous or intermittent.

No changes have been made to the final permit as a result of this comment.

Permit Section IV.H.1.: Requirements for the Watershed Improvement Plan

216. COMMENT:

Regarding the Watershed Improvement Plan, we are very supportive of the inclusion of Watershed Improvement Plans as part of this MS4 permit. State regulations also provide that all permits regulating discharges into surface water “shall include ... [w]ater quality based limitations ... when the Department has determined that the discharge causes, has the reasonable potential to cause, or contributes to an excursion above the SWQS [water quality standards].” New Jersey’s Surface Water Quality Standards regulations, in turn, provide: “Existing uses shall be maintained and protected. Designated uses shall, as soon as technically and economically feasible, be attained wherever these uses are not precluded by natural conditions.” Further, the regulations provide that “[w]ater quality characteristics that are generally worse than the water quality criteria shall be improved to meet the water quality criteria.”

It is clear that stormwater runoff is a significant contributor to NJ's water impairments. New Jersey's Integrated Report and many of the approved TMDLs support this contention. The problem up to now is that the WLAs have not been implemented by municipalities. It is clear that NJ should have been implementing mechanisms to improve water quality by stronger regulations of stormwater discharges.

The CWA requires the development of the Total Maximum Daily Load upon the listing of a water as impaired. The CWA and NJ law also requires the implementation of those WLAs. Federal Clean Water Act regulations require any NPDES permit to include the "more stringent terms and conditions ... based on an approved total maximum daily load."

All NPDES permits, of which the MS4 is one, must contain requirements "consistent with the assumptions and requirements of any available wasteload allocation." New Jersey's municipal stormwater regulations require the inclusion of TMDLs as Additional Measures within the MS4 permit. Wasteload allocations represent the maximum amount of pollutant that a point source – such as an MS4 – can discharge into a water body each day and still attain water quality standards, in accordance with that water body's total maximum daily load (TMDL). Once a point source such as an MS4 is assigned a WLA, that WLA must be implemented through a NPDES permit. The EPA's MS4 Permit Improvement Guide confirms, "If there are waste load allocations applicable to the permittee, these should be addressed in the permit."

An EPA Guidance Memo on implementing TMDLs in stormwater permits stated "[p]ermitting authorities should consider and build into general permits requirements to ensure that permittees take actions necessary to meet the WLAs in approved TMDLs and address impaired waters. Therefore, we also support the requirement for WIPs to accommodate the improvement of impaired waters found in the Department's Integrated Report 303(d) list. This inclusion is also required by the CWA as noted in the memo. The WIPs also require attention to flooding as well as water quality, which we support. [5]

217. COMMENT:

While generally supportive of WIPs, we do have a few concerns and recommendations for improvement. Our concerns include:

- the length of time to devise the various phases of the WIP
- no requirement for DEP approval of the various reports/plans
- no requirement for monitoring the effectiveness of implemented projects
- no maximum time frame to achieve the goals of the WIP

The first concern is the timing of the three phases of the WIP. The first phase, the Watershed Inventory Report (WIR) is due within 3 years (36 months) from the issuance of the permit. This is too long as much of this information should be readily available to the permittee and/or was, in one way or another, required by previous permits to be collected by the permittee. For example, permittees should have an inventory of their outfalls as this was required in the 2004 permit. Identifying the receiving waterbodies, the classification of the receiving waterbody, areas associated with TMDLs, and overburdened communities are readily available data from NJDEP's GeoWeb. The 2018 (at least) permit required "the location (and name . . .) of all surface water

bodies receiving discharges from the outfall pipes. GeoWeb also provides an impervious cover layer, which while out of date, provides a start for the complying of the report. All the preceding information can be collected in relative short order.

The remaining items may require the permittee to do some additional data collection and analysis. The remaining items are calculations of drainage area for each outfall, stormwater interconnections, their respective drainage areas, storm drain inlets, areas associated with water quality impairments, and the location of ownership of all privately owned stormwater outfalls and infrastructure. The location of ownership of all privately owned stormwater outfalls and infrastructure should be readily ascertainable by permittees at this point. The 2018 MS4 permit required that permittees “develop, update, implement and enforce a program to ensure adequate long-term cleaning, operation and maintenance of privately owned BMPs. Permittees should have collected the necessary information over the last five years to comply with this provision. Many municipalities instituted a reporting process for private owners of BMPs to report on the maintenance and functioning of BMPs. If locational information was not required by permittees, it should be relatively easy for permittees to revise their reporting protocols to require the private entities to provide this information within 1 year. Some of the required items may not apply to a municipality. For example, it is possible for there to be no interconnections between municipalities.

We note that the Department has deleted a requirement that private inlets be included in the mapping/inventory requirements of the WIP. We urge the department to restore this requirement. It is difficult for a permittee to understand the entire MS4 system when a key component of the inputs is missing. Without knowing the location of all inputs into the drainage area, permittees will be making decisions on projects with incomplete data.

We recommend that permittees have no longer than 12 months from EDPA to prepare this report. If a permittee can demonstrate that additional time is needed to complete components of the WIP, the Department could require a partial report within the 12 months and provide an extension to submit the remainder. Former Tier B permittees may fall into the category, upon a demonstration of need, for additional time to complete the WIP.

We also recommend as part of the WIP requirement to identify water quality classifications, the permittee identify Federal Wild and Scenic River designated or eligible waterways; and State Wild and Scenic Rivers. Once identified, the permittee should include as part of the WAR and final WIP the impact of those designations on the proposed projects.

The second phase, the Watershed Assessment Report is submitted four years into the permit. Again, the concern is that this phase is too long. We recommend the WAR be submitted within 30 months from EDPA or 18 months from the submission of the WIP whichever is less. The permit should require a review period by DEP of 30 to 60 days. Like the review period for new stormwater control ordinances, the plan is approved unless comments are made by the review agency. If comments are made, the permittee should then have 90 days to revise the WAR accordingly and resubmit the report. This would be a similar process as utilized in the Chesapeake Bay TMDL where the States submit their plans for EPA review and approval.

The WAR requires an estimate of the percent reduction in loading from the proposed projects and a schedule for implementation. It is presumed that the construction of all the projects will take several years and would occur over multiple permit cycles. There are three concerns with the WAR and the final WIP process. First, the permit should set out a maximum compliance period for implementing the projects and achieving the requisite WLAs. Second, there is a need to monitor the functioning of the implemented projects to confirm that the proposed reductions are occurring. Third, the WAR should be reviewed and revised to account for the findings of the monitoring program.

First, the permit should set out a maximum schedule, with interim milestones, for meeting the WLA allocations within the relevant TMDL. While the WAR requires the development of a schedule there are no guidelines on how long the schedule can be. Nor is there a requirement for approval by the DEP of the proposed schedule. The permit should set out a maximum time frame for achieving the WLAs in the relevant TMDL. An enforceable schedule is required under the CWA. New Jersey regulations also allow for a compliance schedule. While Federal regulations provide flexibility in determining the schedule, that schedule should seek to achieve the water quality goals “as soon as possible.” We recommend that the permit require a twenty-year implementation schedule with annual re-examination and revision to the WAR/ final WIP to account for unforeseen issues, etc. Interim reports are also required by the CWA. A 2014 EPA Guidance Memorandum required that “[p]ermits should also include milestones or other mechanisms where needed to ensure that the progress of implementing BMPs can be tracked.” [5]

218. COMMENT:

Second, monitoring should be a requirement, in this provision or anywhere else in the permit, that permittees monitor the implemented projects to determine whether the estimates are achieved. That monitoring should occur downstream of the projects to demonstrate improving water quality. If the estimated load reductions are not achieved, then the WAR should be revised to address the shortfall. The Guidance memo states “NPDES permits must specify monitoring requirements necessary to determine compliance with effluent limitations. This type of requirement is consistent with other MS4 permits. For example, the proposed MS4 permit for Charles County requires:

Monitoring locations: locations established by Charles County for chemical, biological, and physical monitoring of watershed restoration efforts and the 2000 Maryland Stormwater Design Manual, unless participating in the pooled monitoring program described in PART IV.G.; and

The final Watershed Improvement Plan Report has a proposed implementation schedule but no guidance on the length of the schedule or requirement to periodically review that schedule. The schedule should be no longer than 20 years and require annual review and revisions. [5]

219. COMMENT:

Third, periodic review and revisions of the WIRs, WARs and final WIP should occur. While subsection (i) requires updates based upon the release of integrated reports, that should not be the only trigger. While it is hopeful that the integrated reports are not delayed as happened with the 2016, 2018, 2020 and 2022 reports, it is a possibility, there should be a regular revaluation of the

final WIP independent of the publication of integrated reports. If intervening information or occurrences arise the final WIP should be updated to include that information. For example, if a new integrated report demonstrates a declining water quality trend, despite the installation of new BMPs, a review and revision should be triggered. Another example could be the development of a new TMDL should trigger the review and revision of a final WIP to include the new TMDL. [5]

220. COMMENT:

Fourth, another very important issue with the WIP is there is no requirement for the permittees to engage in any activity or project to implement the WLAs or impaired waters within the term of this permit. As currently envisioned, this WIP process is a planning process. The permit should require the implementation of projects during the term of this permit. While we understand that subsequent permits may revise these requirements, we believe it is a better process to include implementation requirements, iterative review and revisions to the plans based upon the results of monitoring or change in circumstances within this permit. This way the permittees can have a general understanding of the needs in the future. Future MS4 permits can refine this process as permittees and the Department gain experience with the process.

The WIP process with implementation of a TMDL's WLA and addressing impaired water is important and legally required. It is also a complex issue which permittees are required to address for the first time. We urge the Department to flesh out the process in more detail in this permit as well as in guidance. For example, what is the protocol for translating a multi-municipality WLA into meaningful, measurable targets for a permittee. The Department should also strongly consider providing technical assistance and funding to municipalities in figuring out the relevant load allocations for their municipality. The Department may also think about preparing the municipal allocations of the WLA for the permittees instead of relying on 364 municipalities to do it themselves. They would prevent municipalities within the same watershed from developing inconsistent methodologies, assumptions, and proposed projects. This will give permittees a start on preparing the WIPs as they are given the targets to achieve. It will be up to the permittees to decide how to reach those targets and whether working with other permittees to achieve the WLA is worthwhile.

The Department should also consider prioritizing providing its technical expertise and funding opportunities to permittees that seek to implement a regional stormwater management plan per N.J.A.C. 7:8-3 et seq., regional stormwater utilities, or regional WIPs. Municipalities may have the interest in exploring a regional plan but lack the resources and technical expertise to do so. Additional technical expertise and funding should also be allocated to environmental justice communities. This allocation of resources and funding to regional efforts may help spur municipalities to undertake these activities. [5]

221. COMMENT:

And then Watershed Improvement Plans, they are absolutely necessary. I think they are a long time coming. And I really commend the Department for adding this to the permit. We believe the Clean Water Act requires that once the TMDL is set with a waste load allocation for urban stormwater, that the permittees, in this case the municipalities, are required to implement those waste load allocations. So, seeing that, we support that, and I'm glad to see that. [24]

222. COMMENT:

Regarding Watershed Improvement Plans, NJBA supports the requirement for permittees to adopt WIPs and the Department's prioritization of regional plans.

NJBA supports the Department's requirement to map all existing stormwater infrastructure which will better allow for the monitoring and management of stormwater facilities. However, NJBA is concerned that the large amount of small-scale Best Management Practices (BMPs) in existence and being constructed, pursuant to the Green Infrastructure stormwater rule, will demand extensive work by permittees. It is crucial that the cost of this work is socialized and is not passed on to developers through new or higher review/permitting fees. NJBA strongly encourages the utilization of stormwater utilities to fund this endeavor and other requirements of the MS4 permit. [10]

223. COMMENT:

Many people have mentioned the regional approach. We have put that in our regional pre-draft comments, and I think that really bears to be reinforced. I think if New Jersey and the permittees take a permittee-by-permittee, municipality-by-municipality approach to meeting the watershed improvement plans, we have really missed an opportunity and have really done it wrong. I think we are really on a cusp of seeing municipalities wanting to work together to do regional. The Watershed Institute is involved in leading two initiatives on regional approaches, one for the Stony Brook towns, and another one for the Assunpink towns, with a meeting coming up. And then I know Somerset County is starting to convene their communities to do, looking at regional approaches to flooding. But if we start to really look at flooding, water quality and providing resources for regional approaches, I think we are going to get a better product. We are going to get a more efficient and least cost approach. I think the Department, I'm glad to hear that there is in the Fact Sheets sort of that guidance. I think by providing guidance, resources, technical resources to those municipalities, especially those who are doing a regional approach, we will really start to see improvements in water quality. [24]

224. COMMENT:

First, I want to thank everybody for the opportunity to have this discussion. And with that, I think it's important that we look at the opportunity in front of us for restoring a much more symbiotic relationship between the permittee and the DEP, as well as all the way up to the EPA. I think there is a growing trend of pressure of regulations from federal government down that our locales are feeling as a burden specifically on their shoulders and pass through to the DEP. And looking at a 20-year history of the permit program, we see a lot of improvements that have been made. We're seeing Fish & Wildlife indicating that we do have positive fishing hatcheries for trout. Lake trout populations restoring and populating themselves in some of our deeper lakes. Brook trout, rainbow trout, brown trout in the waterways, in the C1's. And we are going towards overall beneficial water quality, but we have a lot of room to grow and to continue. With that, I think it's important that we work with the State to identify our regional planning measures, our TMDL goals, our water quality goals, and set specific watershed improvement plans from a State level and regional level together, and the municipalities participate in those as opposed to being established with permit

requirements that require them to enumerate everything themselves, in a sense, feeling the pressures of asking the tail to wag the dog. [28]

225. COMMENT:

And I think that comes down to the watershed improvement planning. I think we need to look at State defined requirements for how we improve our water quality, how we look at the locale of a C1 waterway, its tributaries. And with that, how we improve specific discharge points and sampling locations attributable to each municipality and to the regional watershed. And look at the watershed improvement planning as more of a regional aspect akin to the Highlands Act, and the regional watershed planning and water quality planning through the Highlands. I think it's only appropriate that we start to look at that at a larger level. And we encourage participation of the municipality for only the burden that they can share. I don't think it's reasonable for a municipality at this time to be asked to identify what projects will provide what metrics of success, when the State themselves cannot provide those to us at this time. [28]

226. COMMENT:

Lastly, as we look at mapping opportunities and watershed improvement planning, I do appreciate that municipalities have EDPA plus months to establish the proper protocols and development of these system. But again, I look at this as an opportunity over the five years of this program. There's a lot of things in flux, and I think there's a lot of room for understanding and development and strengthening of our relationships to operate this program for the future, and not specifically for this five-year period. I think we're looking at a much more successful opportunity over a 20-, 25-year period, which is going to be the better bulk of my career in municipal services. And I'll be proud to participate all the way through and through. [28]

227. COMMENT:

The watershed improvement plan, there was some talk about that. I understand the importance of that, I understand the context. But I think there really needs to be some thought put into exactly how much that is going to cost to put together. In the context of a stormwater utility, that's something that's certainly fundable and doable. But as I said, most municipalities are not interested in stormwater utilities for one reason or another, regardless of how much I try to convince them to do it. But these watershed improvement plans will be costly. And whether you get them done in three years, five years or ten years, there's a large capital outlay the municipalities are going to have put out there in order to be able to do this. I won't take any more of your time. I do appreciate the opportunity to comment. As I said, I do intend on supplying some written comments as well. Thank you. [26]

228. COMMENT:

We strongly support the watershed improvement plan requirements. However, just to echo some sentiments that are already shared, we are concerned that many municipalities do not have the funding or the staffing capacity to reach full compliance. We do feel that there ought to be more clarification of certain requirements and think that permittees would benefit from additional assistance from the Department beyond what is currently available. Like I said, one of the major changes is the requirement for a watershed improvement plan. And we strongly support this new requirement. We understand the need to give municipalities the flexibility to determine the

solutions that are feasible for them, given their unique constraints, their unique water quality issues. We are concerned about the timelines and potential lack of implementation. Just to give a quick overview of some suggestions that we'd like to share, approximate timeline for the development and implementation of the watershed improvement plan for existing Tier A municipalities will be beneficial. We understand that the 101 municipalities that were previously Tier B would need additional time to comply. A planning period should be specified. An implementation plan is already required, but a period of time should be set by the Department. Say within ten, twenty years, X number of projects shall be completed, for example. [27]

229. COMMENT:

Strengthen the Watershed Improvement Plan Requirements - NJF strongly supports the new requirement for municipalities to create a Watershed Improvement Plan. We understand the need to give municipalities the flexibility to determine the stormwater solutions that are feasible for them, given their unique constraints and water quality issues. However, we are concerned about the timelines and potential lack of implementation over the course of the 5-year permit as outlined in the draft permit. There are several areas where NJDEP could improve the WIP requirements:

- Require a faster timeline for the development and implementation of the WIP for existing Tier A municipalities (section H.1.), such as:
 - Prepare the Watershed Inventory Report on or before Effective Date of Permit Authorization (EDPA) + 18 months;
 - Prepare the Watershed Assessment Report on or before EDPA + 24 months;
 - Prepare the final Watershed Improvement Plan Report on or before EDPA + 36 months; and
 - Construct initial implementation projects to reduce pollution loads by EDPA + 59 months.
- Specify a planning period for the WIP. An implementation plan is included as a requirement for the Watershed Assessment Report however a planning period of no less than 20 years should be specified. To incentivize the implementation of projects within the 5-year permit cycle, the Department should give projects identified in the WAR funding priority.
- Provide guidance about what to include in these plans. The plans should require municipalities to achieve percent reductions in pollution levels by the end of the end of the planning period. For example, Pennsylvania requires pollution reduction by small percentages in each MS4 Permit cycle.
- Include guidance on how municipalities should craft the WIP to take into account increasing water quality and flood risk due to climate change, including linking these plans with the New Jersey Protect Against Climate Threats (NJPACT) initiative. WIPs should acknowledge that the models used to design projects will change over time as NJPACT initiatives go into effect.
- Include guidance on how Stormwater Control Ordinances (SCOs) and WIPs should fit together. More stringent SCOs can help meet the water quality improvements identified in a WIP.
- The permit's Fact Sheet states that the "Department will prioritize regional WIPs in terms of Department assistance, funding opportunities, and review and approval" (H.3.). The

NJDEP should provide additional guidance on a regional approach and should provide additional assistance to facilitate the formation of regions. For example, the Department could outline parameters for selecting a region in terms of municipal/county boundaries, shared infrastructure, and/or hydrology.

- Include Departmental review of the three phases of the WIP and the planning period identified in the WAR. If the Department provides comments, the permittee should have a specified amount of time to address comments and resubmit for final approval. [9]

230. COMMENT:

A new section has been added to the Tier A Permit for the development of a Watershed Improvement Plan in three (3) phases which would specify and describe the actions the permittee will take to improve water quality by reducing the contribution of pollutant parameters for waters with Total Maximum Daily Loads (TMDL); improve water quality by reducing the contribution of pollutant parameters for waters that are causing water quality impairments as per the NJDEP Integrated Report; and reduce and/or eliminate stormwater flooding in the municipality. The Watershed Improvement Plan under Phase 1 will require mapping including the drainage areas for each outfall, all items from the revised MS4 Infrastructure Map, and impervious areas. The permittee shall conduct semi-annual public information sessions (in-person or virtual) throughout the development of the Plan which would have an impact on the municipality for engineering services and the operations of the DPW. [12]

231. COMMENT:

Regarding the Watershed Improvement Plans, this is an expensive report to prepare and unnecessary for a rural community such as ours. [3]

232. COMMENT:

Regarding Part IV.H.1, please explain how NJDEP includes waste load allocations in this section. [1]

233. COMMENT:

How does a “Watershed Management Plan” relate to N.J.A.C. 7:8-3 Regional Stormwater Management Planning? There are no definitions of “watershed” included anywhere in the proposed rule change. This new directive is an unfunded mandate should be removed. [2]

234. COMMENT:

Regarding Part IV.H.1.d thru g, Watershed Improvement Plan which is due EDPA +36, +48, & +59 months, the Town objects to the Department’s imposition of these new requirements on local municipal government for the development of a Watershed Improvement Plan, inclusive of the development of Inventory, Assessment, and Improvement Plan Reports. Watersheds are regional territories that do not observe the municipal boundaries established by man. The State, as well as our Nation, have a well-documented history of Watershed Management being regional, not localized, planning mechanisms. For example, the adoption of the Highlands Water Protection and Planning Act and its creation of the Highlands Council. The Town holds no objection to their future participation in regionalized and State-wide water quality improvement planning initiatives, subject to the availability of appropriate funding mechanisms being made available to them. These

actions demonstrate the Department's prioritization of self-preservation and inherent conflict of interest to satisfy federal mandates [over protection of State interests] by simply trickling down the obligations of a Herculean task to the local municipal level to accomplish a regional objective that compels the State's leadership and decision making.

The Department's recent Notice of Reassignment from Tier B to Tier A for all 101 Tier B municipalities in itself supports the Town's assertion that these WIP efforts must be led by the State on the basis of a more substantial analysis and understanding of the findings contained in the Integrated Water Quality Assessment Report. The Department has dissolved the Tier B program, citing the lack of congruency between N.J.A.C. 7:14-25 with the Federal rules under 40 CFR 122.32. In part, also justifying the same through the 2018/2020 Integrated Water Quality Assessment Report's conclusions as to the extent of impairments of waterways being of equal responsibility to all municipalities within the drainage basin, regardless of their upstream / downstream locale, population disparities, and potential of pollutant loading to a water of the State. The length of time (2004-2022) the Tier B program existed with reduced compliance requirements combined with the alignment of their pending incorporation into the Tier A program as part of the 2023 Renewal Permit necessitates the Department's prudence to first invest their resources to better understand the water quality benefits realized by Tier B Reassignment over the 5-year period of the 2023 Renewal Permit as a basis of defining their goals and objectives to State-wide Watershed Improvement Planning. Only after which is it appropriate to impose regulatory compliance for localized WIPs to support prior-adopted State and regional Watershed Improvement Plans. [8]

235. COMMENT:

Revise Parts IV.H.1.a.i and 1.a.ii to make it clear that the only pollutant parameters that must be reduced are those that (i) have percent reductions listed for stormwater in the applicable TMDL; or (ii) are causing water quality impairments identified in applicable parts of the Department's Integrated Report. This revision is consistent with Part IV.H.1.e.ii, which requires "an estimate of the percent reduction in loading of the TMDL/impaired parameters." [16]

236. COMMENT:

Regarding Part IV.H, please consider hosting an information session dedicated solely to the proposed Watershed Improvement Plan requirements. [11]

RESPONSE 216-236:

The Department acknowledges the comments submitted in support of the inclusion of the Watershed Improvement Plan requirement in the renewal permit to improve water quality in accordance with the Clean Water Act, as well as regional WIP planning, and infrastructure mapping. The Department also recognizes the challenges that permittees will face in the development and implementation of the Watershed Improvement Plans.

However, all dischargers to the waters of the State, including MS4s, have a mutual obligation to control those discharges so they do not cause or contribute to water quality impairments. As noted in the Fact Sheet, the Department determined that a more specific permit requirement than the related 2018 permit requirement, such as requiring each municipality to develop its own Watershed

Improvement Plan, or WIP, was necessary in order to obtain pollutant reductions from municipal stormwater. The 2018 Tier A permit required permittees to evaluate the TMDLs that had been developed for their waters and develop strategies to address their discharges of the stormwater related pollutants. The 2018 permit required:

- i. “The Tier A Municipality shall annually review approved or adopted TMDL reports to identify stormwater related pollutants listed therein and associated with any segment of surface water wholly or partially within or bordering the Tier A Municipality. This information may be accessed at www.nj.gov/dep/dwq/msrp-tmdl-rh.htm;
- ii. The Tier A Municipality shall use TMDL information identified in i, above to, at a minimum, (1) assist in the prioritization of stormwater facility maintenance including schedules for repairs required at Part IV.B.6.b.iv (Stream Scouring) and IV.C.1.a.iv (Stormwater Facilities Maintenance), above; and (2) identify and develop strategies to address specific sources of stormwater related pollutants contributing to discharges authorized under this Tier A MS4 NJPDES permit. Strategies may include but are not limited to those found in the implementation section of approved or adopted TMDL reports (for examples see “Total Maximum Daily Load (TMDL) Guidance for Tier A MS4 Permittees” found at www.nj.gov/dep/dwq/msrp-tmdl-rh.htm); and
- iii. The Tier A Municipality shall annually update its SPPP to list information identified in i and ii, above; and
- iv. The Tier A Municipality shall incorporate any strategies identified in ii(2), above as an Optional Measure. See Part IV.E (Optional Measures) and Part IV.F.1.c (SPPP), below.”

However, most of the 37 municipalities for which the Department conducted compliance assistance audits during that timeframe did not include any information about their TMDLs in their SPPPs. Furthermore, they did not explain in their SPPPs to prioritize maintenance and repairs in those areas, nor provide any strategies developed to improve water quality in TMDL affected waters. While the requirement in the 2018 permit could have led to some water quality improvements in the TMDL associated waters if implemented, this permit requirement did not address the surface water quality impairments in the municipalities, include a specific timeframe for implementation, or provide for improvements to achieve compliance with the wasteload allocations specified in the TMDLs. It should also be noted that each permittee is only responsible for addressing the contribution of the pollutant(s) causing the surface water quality impairment(s) that are discharged from their MS4, and each permittee’s WIP would therefore be tailored to the unique circumstances of that municipality and their respective subwatersheds. The Department does not have the information, resources, or authority to make those decisions for the municipalities. And, similar to the requirement in the 2018 Tier A permit, permittees are required to update their WIPs “when necessary, based upon the biennial (every 2 years) review of the revisions to the impairments of the permittee’s waterbodies as per the Department’s Integrated Report and newly adopted TMDLs.

Based on current information including, but not limited to, surface water quality impairments, TMDLs, Harmful Algal Blooms (HABs), upgrades to the surface water quality classifications, and flooding due to recent storm events including Hurricane Ida, the Department determined additional measures, including the development of a WIP, were necessary to address these concerns. Specifically, Part IV.H.1.a. requires that permittees improve water quality by reducing the

contribution of pollutant parameters for all receiving waters within and bordering the municipality that have impairments and that have percent reductions listed for stormwater in the Total Maximum Daily Loads. Each discharger, including each MS4 discharger, is responsible to reduce their loading contribution of the applicable parameter to meet the wasteload allocations (WLAs) set forth in these final Total Maximum Daily Load (TMDL) documents as percent reductions. The goal in instituting a Watershed Improvement Plan is to make reasonable progress towards restoring water quality in the impaired waters of the State, including those waters with adopted/approved TMDLs. Many of the surface waters subject to TMDLs and impairments do not have point source discharges outside of the contributions from MS4 systems.

As stated in RESPONSE TO COMMENT 53, while the Department agrees that water quality improvements should occur sooner rather than later, simply shortening the required due dates will not automatically result in these tasks being implemented sooner. The correct completion of these tasks will take time; therefore, the Department maintains that the timeframes allotted in this renewal permit are appropriate due to the amount of information that must first be developed, then evaluated for potential improvement projects appropriate for the pollutant(s) and area. This information then is required to be coordinated with other stakeholders, including the other municipalities discharging to the same subwatersheds, and the public. The Department would also like to note that municipalities will be required to discuss their WIP projects within their annual reports and their SPPP.

Additionally, the Department appreciated the permittees' interest in an additional separate training session for the development of the WIPs and plans to incorporate training and provide a WIP template for permittees to use to comply with this permit requirement. Training on the WIP will also be part of the SPC training noted in RESPONSE TO COMMENT 196. Once the WIP template is completed, the Department will email the permittees' SPCs and post them on its website at https://www.nj.gov/dep/dwq/tier_a.htm. The Department will also offer a 30-day informal comment period for permittees and other stakeholders to review the WIP template and provide suggested changes, etc. Permittees will also be notified via email when the final version of the template is posted online.

Regarding addressing the WIPs on a regional basis, while each permittee is individually responsible for complying with the requirement to develop a WIP, the Department requires the permittee to solicit input from other stakeholders, including other municipalities discharging to the same subwatersheds. While the Department is not requiring municipalities to create regional WIPs, it does encourage municipalities to work together in developing more regionalized WIPs, especially where a regional approach would be more effective at meeting the surface water quality standards or would result in accelerated water quality improvements. Regionalized WIPs will be accepted as compliant with this requirement, as long as each permittee's responsibilities under the regional WIP are clearly outlined and agreed upon by the group of permittees covered by the regional WIP. Also, while establishing a regional stormwater management plan pursuant to N.J.A.C. 7:8-3 would likely meet most, if not all, of the WIP requirements, the creation of a regional stormwater management plan pursuant to N.J.A.C. 7:8-3 is not specifically required under this permit.

Further, the Department will prioritize regional WIPs in terms of Department assistance, funding opportunities, and review and approval.

As noted in RESPONSE TO COMMENTS 18-25, the Department hopes to make funding in the form of grants available to all newly assigned Tier A municipalities similar to the grants that were given to existing Tier A municipalities in 2004 but adjusted to 2022 dollars. The Department also hopes to be able to make some additional funding available to all Tier A permittees during the permit term and will advise permittees if and when that funding becomes available. There are also opportunities to obtain low- or no-interest loans to help with costs associated with capital improvement projects through the New Jersey Water Bank (NJWB). The NJWB is a partnership between the New Jersey Department of Environmental Protection (NJDEP) and the New Jersey Infrastructure Bank (I-Bank) to provide low-cost financing for the design, construction, and implementation of projects that help protect and improve water quality and help ensure safe and adequate drinking water. More information can be found at <https://www.nj.gov/dep/wiip/water-bank.html>.

The Department would also like to remind permittees that they can decrease some of the resource burdens by utilizing shared service agreements with other MS4 permittees, including municipalities, counties, and the State, to satisfy some permit requirements. Each permittee also has the opportunity to form or be part of a larger stormwater utility, which would be an adequate funding mechanism to use to satisfy permit requirements.

Regarding the reassignments of the Tier B municipalities, despite the Department understanding the commenters' concerns regarding the reassignments, the Department's evaluation and subsequent determination to reassign municipalities that were designated as Tier B to Tier A is a separate action from this permit renewal as noted in RESPONSE TO COMMENTS 1-12. The notices of reassignment afforded those municipalities the opportunity to request an adjudicatory hearing on the reassignment. The Department will continue to work with the former Tier B permittees that requested hearings on their reassignments through the adjudicatory hearing process.

To assist permittees with reducing the resources needed to comply with the requirement to complete their stormwater infrastructure mapping, the Department has a free mapping application and arranges for free ArcGIS licenses, as well as one-on-one direct technical assistance, and guidance and training for using the application. This training is offered either in person or virtually, upon request of the permittee, as noted in RESPONSE TO COMMENTS 18-25. As further noted in that response, the Department also provides some of the data layers necessary to complete the WIP mapping requirements, including the water quality classification of all receiving waterbody segments, the area associated with each TMDL and water quality impairment, as well as the location of overburdened communities which can be found on the NJ Environmental Justice Mapping, Assessment and Protection Tool (EJMAP) (<https://dep.nj.gov/ej/communities/>).

However, the requirement to "identify the location of the stormwater management measure(s) in NAD 1983 State Plane New Jersey FIPS 2900 US Feet or Latitude and Longitude in decimal degrees" if that stormwater management measure (or BMP) is part of a major development was

incorporated into the Stormwater Management rules at N.J.A.C. 7:8-5.1(m) via rule amendments adopted on March 2, 2019 and became the responsibility of the applicants at that time.

Regarding stormwater utilities as stated in RESPONSE TO COMMENTS 18-25, the formation and use of stormwater utilities is supported and encouraged by the Department as an alternative means to help fund compliance with the permit requirements as noted above, but the decision to establish a stormwater utility is completely at the discretion of the permittees and other eligible entities as the Department does not have any authority to require the formation of stormwater utilities.

As noted in RESPONSE TO COMMENT 92, the term “watershed” is not specifically defined in the permit as the definition of the term is not specifically relevant to the WIP, or any other permit requirement, and the general definition such as the one provided by Merriam-Webster is sufficient, which states that a watershed is “a region or area bounded peripherally by a divide and draining ultimately to a particular watercourse or body of water.” The specific requirements of the WIP are set forth in the permit itself and do not rely on ensuring that the permittees and the Department have a common detailed legal understanding of the term “watershed” set forth in the permit.

The Department does not agree with requiring monitoring downstream of installed projects or BMPs as explained in RESPONSE TO COMMENT 35. The Department also does not agree with requiring discharge monitoring by the Tier A municipalities as discussed in RESPONSE TO COMMENTS 37-39. As EPA indicated as part of the 1999 Phase II rulemaking that it “does not encourage requirements for ‘end-of-pipe’ monitoring for regulated small MS4s. Rather EPA encourages permitting authorities to carefully examine existing ambient water quality and assess data needs.” (64 FR at 68769). More recently, EPA has affirmed that its requirement that permit conditions be “measurable” does not automatically necessitate water quality monitoring or end-of-pipe monitoring. (81 Fed. Reg. 89320, 89336). Ultimately, it is the results of the ambient monitoring that will determine if the receiving waters are meeting the applicable surface water quality standards.

Further, the Clean Water Act at Section 402(p)(3)(iii) states that permits for discharges from municipal storm sewers “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” As per Section 402(a)(2) of the Clean Water Act, NPDES permits are required to contain monitoring provisions sufficient to assure compliance with permit conditions, “including conditions on data and information collection, reporting, and such other requirements as [the permitting authority] deems appropriate.” In sum, the Clean Water Act provides flexibility in the forms of monitoring that the Department can deem appropriate.

As noted above, each discharger, including each MS4 discharger, is ultimately responsible to reduce their loading contribution of the applicable parameter to meet the wasteload allocations (WLAs) set forth in the final Total Maximum Daily Load (TMDL) documents as percent reductions. The Department is also preparing WIP guidance as noted in RESPONSE TO

COMMENTS 18-25. The Department's guidance to permittees for impaired waters, where no TMDL has been established, will explain how permittees can make informed decisions as to what levels of reduction are economically achievable based on the severity of the impairment, the source(s) of the pollutant(s), and available technology, while complying with the CWA requirement noted above which states that permits for discharges from municipal storm sewers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."

Once the Department completes the revisions to the templates, ordinances and other permit resource documents, the Department will email the permittees' SPCs and post them on its website at https://www.nj.gov/dep/dwq/tier_a.htm. The Department will also offer a 30-day informal comment period for permittees and other stakeholders to review the model ordinances and WIP template and provide suggested changes, etc. Permittees will also be notified via email when the final versions of these documents are posted online.

237. COMMENT:

Revise Part IV.H.1.a.iii to allow the permittee to exclude, from this provision's scope, flooding that poses at most a de minimis risk of impairing the chemical, physical, or biological integrity of waters of the State (including corresponding risks to aquatic life or public health.) See the legislative findings and declarations in N.J.S.A. 58:10A-2, which do not include such flooding. Under current New Jersey statutes, and like other NJPDES stormwater permits, the Tier A Permit is not, and cannot be, an all-purpose stormwater management permit. In this respect, the scope of NJPDES stormwater permits is narrower than the scope of the New Jersey Stormwater Management Act, N.J.S.A. 40:55D-93 through -99, and N.J.A.C. 7:8. [16]

RESPONSE:

The Department disagrees with this suggested revision. While the Department does not expect the WIP to alleviate all flooding in every municipality, the WIP is requiring the municipalities to evaluate the causes of the flooding to determine if the stormwater infrastructure is operating properly, or if maintenance or repairs are necessary. Further, pursuant to Part IV.H.1.a.iii, areas of flooding are to be prioritized based on threat to human health and safety, environmental impacts, and frequency of occurrence, which already includes the considerations suggested by the commenter.

No changes have been made to the final permit as a result of this comment.

238. COMMENT:

Regarding Part IV.H.1.d.xi, there are no definitions of "overburdened communities" provided [2]

239. COMMENT:

In regard to Part IV.H.1.d.xi, the term “overburdened communities” should be defined in Notes and Definitions Part IV.B.1.a. [16]

240. COMMENT:

Regarding Part IV.H.1.g.ii, can the Department provide the applicable Administrative Codes associated with 1) wildlife corridors; 2) environmental justice; 3) forest corridors. Also, there are no definitions provided for these “regulatory requirements.” [2]

RESPONSE 238-240:

The Department notes that “overburdened communities” is not a term defined in the permit, however, New Jersey’s Environmental Justice Law at N.J.S.A. 13:1D-158, defines an “overburdened community” as “any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency.” A GIS map layer depicting the areas in the state that qualify as “overburdened communities” can be found on the NJ Environmental Justice Mapping, Assessment and Protection Tool (EJMAP) (<https://dep.nj.gov/ej/communities/>).

The consideration for wildlife corridors and forest corridors are included in the permit as they are part of the Connecting Habitat Across New Jersey (CHANJ) initiative. This list provided in the permit is intended as examples of other programs that should be considered when evaluating improvement projects. The Department has provided this list to ensure that the WIP is a wholistic plan, although every example may not be applicable to every municipality. And while these other programs should be considered, they do not necessarily need to be taken into account when choosing improvement projects, unless required by regulation.

The Department provides much of this data via download from the Bureau of GIS to assist permittees with their Watershed Improvement Plan.

No changes have been made to the final permit as a result of these comments.

241. COMMENT:

In Draft Part IV.H.1.d.xiii, change “(not owned/operated)” to “(not publicly owned or operated)”. [16]

RESPONSE:

The Department thanks Commenter 16 for the correction to the permit language.

The permit language at Part IV.H.1.d.xiii has been changed for clarity to read, “The location and ownership of all stormwater outfalls and basins/infrastructure not owned/operated by the permittee.”

Permit Section IV.I.1.: Incorporation of Additional Measures

242. COMMENT:

In Part IV.I.1.a, I support its deletion from the current Tier A Permit of the words “or the adopted Statewide Water Quality Management Plan” because this Plan no longer exists under N.J.A.C. 7:15. (For the same reason, the references to this plan in N.J.A.C. 7:14A-25.6(e) should be deleted via a notice of administrative correction.) Page 81 of the Department’s July 28, 2022, Fact Sheet for the draft renewal of this permit failed to mention this deletion, and erroneously refers to this Plan as if it still exists. [16]

RESPONSE:

The current version of the N.J.A.C. 7:15 Water Quality Management Planning rules, last amended in 2016, does not mention “Statewide Water Quality Management Plan.” When N.J.A.C. 7:14A was amended in 2018, the word “Statewide” was not removed throughout N.J.A.C. 7:14A-25.6(e), however, initiating a notice of administration correction for N.J.A.C. 7:14A is beyond the scope of this permit renewal action.

The July 28, 2022, Fact Sheet does mention the Statewide Water Quality Management Plan as a basis for an Additional Measure in error. As the Fact Sheet is not part of the final permit, this response serves to correct the Administrative Record.

No changes have been made to the final permit as a result of this comment.

Department Initiated Changes

The Department removed Part IV.F.10.d of the draft permit in the final permit. This language was duplicate language already stated in Part IV.F.10.b.

The Department has added clarifying language to Part IV.F.2.a.iii which reads: “The permittee shall maintain records of which inlets have been labeled.” This is an existing recordkeeping requirement that the Department felt needed clarity.

The Department has removed the text “and for those waters that are causing” from Part IV.H.1.a.ii that was present in the draft permit. The Department had intended to delete this language prior to the issuance of the Draft. It’s inclusion was an oversight and it’s removal will provide clarity to this section.

1. Acronyms

a. Stormwater acronyms included in these responses are as follows:

- i. "AM" – Additional Measures
- ii. "BMP" – Best Management Practice
- iii. "CFR" – Code of Federal Regulations
- iv. "DMR" – Discharge Monitoring Report
- v. "DSW" – Discharge to Surface Water
- vi. "EDP" – Effective Date of Permit
- vii. "EDPA" – Effective Date of Permit Authorization
- viii. "GI" – Green Infrastructure
- ix. "MLUL" – Municipal Land Use Law
- x. "MMY" – Municipal Maintenance Yard
- xi. "MS4" – Municipal Separate Storm Sewer System
- xii. "MSWMP" – Municipal Stormwater Management Plan
- xiii. "MSRP" – Municipal Stormwater Regulation Program
- xiv. "MTD" – Manufactured Treatment Device
- xv. "N.J.A.C." – New Jersey Administrative Code
- xvi. "NJPDDES" – New Jersey Pollutant Discharge Elimination System
- xvii. "NPDES" – National Pollutant Discharge Elimination System
- xviii. "N.J.S.A." – New Jersey Statutes Annotated
- xix. "OM" – Optional Measures
- xx. "RSIS" – Residential Site Improvement Standards
- xxi. "SPC" – Stormwater Program Coordinator
- xxii. "SPPP" – Stormwater Pollution Prevention Plan
- xxiii. "TMDL" – Total Maximum Daily Load
- xxiv. "WAR" – Water Assessment Report
- xxv. "WIP" – Watershed Improvement Plan
- xxvi. "WLA" – Waste Load Allocation