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ENVIRONMENTAL PROTECTION
ENVIRONMENTAL REGULATION

New Jersey Pollutant Discharge Elimination System
Stormwater Regulation
Underground Injection Control

Adopted Amendments: N.J.A.C. 7:14A-1.1, 1.2, 2.4, 2.13, 3.1, 4.2, 4.3, 4.4, 6.2, 6.13, 7.4, 7.9, 8.3, 8.4, 8.5, 8.8, 8.10, 8.11, 8.16, 8.18, 11.1, 11.2, 11.6, 13.3, and 16.4

Adopted Repeal: N.J.A.C. 7:14A-11.5

Adopted New Rules: N.J.A.C. 7:14A-24 and 25

Proposed: January 6, 2003 at 35 N.J.R. 169(a)

Adopted: January 5, 2004 by Bradley M. Campbell, Commissioner, Department of Environmental Protection

Filed: _____ as _____, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1D-1 et seq.; 40:55D-1 et seq.; 58:10A-1 et seq. and 58:11A-1 et seq.

DEP Docket Number: 33-02-12/192

Effective Date: _____ (Date of publication in New Jersey Register)

Expiration Date: February 5, 2004

The Department of Environmental Protection (Department) is adopting amendments to the New Jersey Pollutant Discharge Elimination System (NJPDDES) rules. These amendments were proposed on January 6, 2003 at 35 N.J.R. 169(a). The Department extended the close of the comment period from March 7, 2003 to April 7, 2003 (see 35 N.J.R. 1331(a); March 17, 2003).

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The adopted new rules, amendments, and recodification revise requirements concerning stormwater discharge permits, address “Phase II” regulations that the United States Environmental Protection Agency (USEPA) published in the December 8, 1999 Federal Register (64 Fed. Reg. 68721) concerning such permits, and integrate the New Jersey Pollutant Discharge Elimination System (NJPDES) program for “municipal” (that is, government agency) separate storm sewer systems with other aspects of stormwater management. In addition, the adopted amendments address the 1999 changes to the Federal Underground Injection Control (UIC) regulations and revise other UIC requirements relating to the issuance of the permits.

Most of the adoption focuses on the establishment and implementation of the Municipal Stormwater Regulation Program. Under this Program, potentially all of New Jersey’s 566 municipalities, all 21 counties, the New Jersey Department of Transportation (NJDOT), State highway authorities, and many other State, interstate, and Federal agencies will be required to obtain a NJPDES permit for their stormwater discharges. The adoption also expands NJPDES permit requirements for stormwater discharges associated with construction activity, excludes from the NJPDES permit requirement stormwater discharges from industrial facilities that have “Permanent No Exposure” of industrial activities or materials to stormwater, extends the deadline by which certain publicly owned or operated industrial facilities must apply for a NJPDES stormwater permit, and eliminates the August 7, 2001 deadline by which other “Phase II” sources must apply for a NJPDES stormwater permit.

As part of its comprehensive Stormwater Management and Control Program, the Department is also adopting changes to the Stormwater Management Rules (N.J.A.C. 7:8). See the separate notice of adoption for N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register.

Concurrently with the promulgation of these amendments to the NJPDES rules, the Department is issuing as final four general permits to implement the Municipal Stormwater Regulation Program: the Tier A Municipal Stormwater General Permit (Tier A Permit, NJ0141852); the Tier B Municipal Stormwater General Permit (Tier B Permit, NJ0141861); the Public Complex Stormwater General Permit (Public Complex Permit, NJ0141879); and the Highway Agency Stormwater General Permit (Highway Permit, NJ0141887). These general permits are not part of the NJPDES rules. However, comments that the Department determined to be on both the NJPDES rule proposal and the drafts of one or more of these general permits are addressed below (along with other comments on the NJPDES rule proposal) in the Summary of Public Comments and Agency Responses, which is by reference part of the response to comments document for the general permits issued under N.J.A.C. 7:14A-15.16. The response to comments document for the general permits is available from the Bureau of Nonpoint Pollution Control, Department of Environmental Protection, PO Box 029, Trenton, New Jersey 08625-0029, and on the Department’s website at www.njstormwater.org.

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Summary of Hearing Officer's Recommendations and Agency Responses:

The Department held three public hearings on the rule proposal. The hearings were held on the following dates and locations: February 13, 2003, Morris County Frelinghuysen Arboretum, Morristown, New Jersey; February 20, 2003, Collingswood Senior Community Center, Collingswood, New Jersey; and February 25, 2003, Department headquarters building, Trenton, New Jersey. Barry Chalofsky, P.P., Chief of the Bureau of Nonpoint Pollution Control in the Department, served as the hearing officer, and recommended that the amendments be adopted with the changes described below in the Summary of Public Comments and Agency Responses and the Summary of Agency-Initiated Changes. The Department accepts this recommendation.

The hearing records are available for inspection in accordance with applicable law by contacting:

New Jersey Department of Environmental Protection
Office of Legal Affairs
Attn.: DEP Docket No. 33-02-12/192
PO Box 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The Department accepted comments on the January 6, 2003 proposal through April 7, 2003. The following persons timely submitted written comments and/or made oral comments at one or more of the public hearings.

1. Adams, Frank E.; Mayor, Borough of Spring Lake Heights
2. Ahearn, Matt, New Jersey General Assembly
3. Allen, Janice G.; Mayor, Borough of North Plainfield
4. Allen, Judith A., Delaware Township Planning Board
5. Andersen, Thomas S., DuPont Chambers Works
6. Anderson, Alma
7. Andrews, Margaret
8. Arnold, Mary
9. Arochas ?, Nora
10. Baker, David N., Village of Ridgewood, Department of Public Works
11. Bakun, George B., Conoco Phillips Company
12. Barbaccia, Annette M., The Pinelands Commission
13. Barker, Charlton
14. Batty, Sandy, Association of New Jersey Environmental Commissions
15. Beckmeyer, Joseph F., Jersey City Municipal Utilities Authority
16. Bendtsen, Denise
17. Bolli, Eileen

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18. Bolyai, Stephen, William Paterson University
19. Bowden, Robert, Township of Colts Neck
20. Bowe, Stacey
21. Brewer, Debbie
22. Briant, Robert A., Utility and Transportation Contractors Association of New Jersey
23. Brous, Jenny
24. Brous, Robert
25. Brown, Larrell, Alliance for a Living Ocean, commenting through Clean Ocean Action
26. Byrstan ?, Kenneth
27. Carluccio, Tracy, Delaware Riverkeeper Network
28. Chell, Timothy W., Gloucester County Mayor's Association
29. Cichone, Edward R., Lebanon Borough Sewerage Authority
30. Clark, Leslie; Mayor, City of Woodbury
31. Clarke, Thomas
32. Coleman, Nancy Browne, Par-Troy Environmental Advisory Committee
33. Connolly, Arlene V.
34. Corica, John N., Borough of Florham Park
35. Cortese, Cinzia ?
36. Coyle, Matilda
37. Cruz, Dawn
38. Cruz-Perez, Nilsa, New Jersey General Assembly
39. Curtis, Marie A., New Jersey Environmental Lobby
40. Datz, Michael, Township of Mantua
41. deCamp, William, Save Barnegat Bay, commenting through Clean Ocean Action
42. Dech, David K., Warren County Planning Department
43. Deckelnick, Joe, Audubon Society
44. DeMarcantonio, C. Mike, Public Works Association of New Jersey
45. Dillingham, Tim, American Littoral Society
46. Dillingham, Tim, American Littoral Society, commenting through Clean Ocean Action
47. Dillingham, Tim, Stony Brook-Millstone Watershed Association
48. DiLodovico, Anthony, Ocean County Soil Conservation District
49. DiLodovico, Anthony, Schoor DePalma Inc., National Association of Industrial and Office Properties (New Jersey Chapter), Saint Mary's Abbey, and more than 75 unnamed municipalities and counties
50. Dlugosz, Edward J., Eatontown Environmental Commission and Monmouth County Friends of Clearwater, commenting through Clean Ocean Action
51. Dolell ?, J.
52. Domico, Donna, Boroughs of Westville and Brooklawn
53. Dougherty, Hugh, Pennoni Associates Inc., on behalf of Township of Moorestown
54. Dowd ?, Walter S.

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55. Dressel, William G., New Jersey State League of Municipalities
56. Dunne, John J.; Mayor, Borough of Madison
57. Egenton, Michael A., New Jersey State Chamber of Commerce
58. Fair, Abigail, Association of New Jersey Environmental Commissions
59. Favaro, Joseph, Borough of Englewood Cliffs
60. Ferrentino, Mary Ellen
61. Feyl, Gene; Mayor, Township of Denville
62. Finlayson, Sharon
63. Fletcher, Audrey
64. Flynn, K. Maureen
65. Fogarino ?, Josephine J.
66. Fosdick, George D.; Mayor, Village of Ridgefield Park
67. Fox, Eugene, Great Swamp Watershed Association
68. French, Michael
69. Fressola, Michael; Mayor, Township of Manchester
70. Frey, Wilma E., Highlands Coalition
71. Furnari, Russell J., PSEG Services Corporation
72. Gilmore, Howarth C., City of Summit
73. Gleason ?, Sandy
74. Goldsmith, Amy, New Jersey Environmental Federation
75. Gonzalez, V.
76. Gormley, Ray, Township of Little Egg Harbor
77. Greenstein, Linda, New Jersey General Assembly
78. Guear, Gary L., New Jersey General Assembly
79. Guenther, Bernhard D., Township of Mt. Olive
80. Gufonetti, Kathryn
81. Guthrie, Douglas L., Monmouth County Mosquito Extermination Commission
82. Hackett, Mims, New Jersey General Assembly
83. Halpin, Matthew S., New Jersey Society of Municipal Engineers
84. Harknett ?, Ann C.
85. Harquail, Gregory W.; Mayor, Borough of Sea Bright
86. Hausner, Jack
87. Hawkins, George S., New Jersey Council of Watershed Associations, on behalf of 25 watershed associations
88. Hegarty, Brian, Shark River Cleanup Coalition, Inc., commenting through Clean Ocean Action
89. Henderson, Michael D., Morristown National Historical Park
90. Henshaw, Thomas, Township of Galloway
91. Hetrick, Kenneth L., Township of West Milford
92. Hillman, Katrie, Monmouth County Water Resources Association
93. Hines, Roger; Mayor, Town of Hackettstown
- 93A. Hinesley, Gary
94. Holzapfel, Jim, New Jersey General Assembly
95. Hopp, Melissa L., Camden County College

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96. Howe, William T.
97. Hunninghake, Mike, Bordentown City Environmental Commission
98. Illegible, George D.
99. Illegible, Illegible
100. Illegible, Matthew
101. Illegible, Robert
102. Inverso, Peter A., New Jersey Senate
103. Jacukowicz, Linda A., Readington Township Planning Board
104. Jamanow, Nancy W., Environmental Resolutions, Inc., on behalf of Township of Chesterfield
105. Johnson, Ella
106. Kaczynski, Thomas P., Borough of Roseland
107. Karelio, Mr. and Mrs. Kenneth
108. Kellogg, John, Hunterdon County Planning Board
109. Kendall, Bertrand N., Borough of Glen Rock
110. Kilby, Jerry L., City of Atlantic City
111. Kinkade, Merwin
112. Kirchoffer, Don, Salem County Watershed Task Force
113. Kiss, Elizabeth H., Township of East Brunswick
114. Kobylarz, Michael A., Township of Roxbury
115. Kochel, David R., Township of Ocean (Monmouth County)
116. Kroll, Peter, Haddon Township Environmental Commission
117. Kunz, Harvey
118. LaGala, Janice
119. Lance, Leonard, New Jersey Senate
120. Lanza, Ben
121. Lawson, Brett
122. Lee, Richard, Surfers' Environmental Alliance, commenting through Clean Ocean Action
123. Leove ?, Carol
124. MacQueen, Gary, Lebanon Township Planning Board
125. Maher, Joseph M., Atlantic County
126. Mair, Andrew A., Township of Winslow
127. Maldonado, Barbara, Borough of Little Ferry
128. Manning, Joseph F., Borough of Middlesex
129. Mans, Debbie, New York/New Jersey Baykeeper
130. Margiotta, Margaret J., Township of Hazlet
131. Matheussen, John J., New Jersey Senate
132. Maxwell, John A., New Jersey Petroleum Council
133. McCarthy, Suzanne, Upper Maurice River Watershed Association
134. McDonell ?, Kathleen
135. McGuinness, Michael, National Association of Industrial and Office Properties, New Jersey Chapter
136. McMackin, Lorraine L., Borough of Norwood

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137. McPolin, Kirstin, Clean Ocean Action, on behalf of Alliance for a Living Ocean, American Littoral Society, Eatontown Environmental Commission, Monmouth County Friends of Clearwater, Save Barnegat Bay, Shark River Cleanup Coalition, Inc., Surfers' Environmental Alliance, and Surfrider Foundation – Jersey Shore Chapter
138. Merrill, Marian Jacobs
139. Messina, Peter, Township of Bernards
140. Metelski, Joseph H.; Mayor, Township of Bedminster
141. Michaels, M.
142. Migel, Gwen
143. Mironer ?, Joshua
144. Mitchell, Alison, New Jersey Conservation Foundation
145. Montelone ?, Lona ?
146. Moreland, Joan D., Borough of Haddon Heights
147. Muha, Lucille
148. Nogaki, Jane, Coalition Against Toxics
149. Novak, Joseph S., Novak & Novak, on behalf of Township of Union (Hunterdon County) Planning Board/Board of Adjustment
150. Olsen, Lora, Township of West Amwell
151. O'Malley, Doug, New Jersey Public Interest Research Group
152. Orlando, Anne S.
153. Ortiz, Alex
154. Pacio, Michael A.; Mayor, Borough of Roseland
155. Palmer, Peter S.; Freeholder Director, Board of Chosen Freeholders of Somerset County
156. Park, William J.; Mayor, Township of Haddon
157. Pascarella, Vincent
158. Patrick, Jason, Environmental Defense
159. Pence, Barbara, Township of Bernards
160. Pety ?, Edward R.
161. Picardi, Joseph; Mayor, Township of Deptford
162. Pierson, Robert D.; Mayor, Township of Mendham
163. Pogorzelski, Paul E., Van Cleef Engineering Associates, on behalf of Township of Hopewell (Mercer County)
164. Powley, Renee M.
165. Previte, Mary T., New Jersey General Assembly
166. Pringle, David, New Jersey Environmental Federation
167. Pringle, David, New Jersey Environmental Federation (petition listing 4531 individuals)
168. Purdy, Marie Louise
169. Quinlan, Michael C., Rutgers University
170. Quinn, James; Mayor, City of Millville
171. Quinones, Alex
172. R Illegible, D

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173. R Illegible, Tackoor ?
174. Raczynski, Richard J., New Jersey Turnpike Authority
- 174A. Robbie, Mary Pat, Burlington County Board of Chosen Freeholders
175. Rooney, John E., New Jersey General Assembly
176. Roque ?, Angel
177. Rumpf, Brian E.; Mayor, Township of Little Egg Harbor
178. Ruschman, Donald; Mayor, Borough of Park Ridge
179. Russell, Gray, Township of Montclair
180. Russo, Anthony, Chemistry Council of New Jersey
181. S Illegible, Michael T.
182. Santimauro, Joyce C., Township of Wyckoff
183. Savan, Leslie
184. Scardaville, Joseph P.
185. Scerbo, Ryan J., DeCotiis, Fitzpatrick, Cole & Wisler, LLP, on behalf of New Jersey Highway Authority
186. Schubert, Jo-Anne B.; Mayor, Borough of South Bound Brook
187. Shallcross, Amy L., New Jersey Water Supply Authority
188. Singer, Jeremy
189. Sluka, Kevin, Township of Long Hill
190. Smith, Marianne, Township of Hardyston
191. Smith, Robert J., New Jersey General Assembly
192. Somers, Julia, Great Swamp Watershed Association
193. Souza, Stephen, Princeton Hydro
194. Spencer, Mary
195. Stine, Fred, Delaware Riverkeeper Network
196. Sweeney, Philip, United States Environmental Protection Agency
197. Sweeney, Stephen M., New Jersey Senate
198. Tittel, Jeff, New Jersey Sierra Club
199. Uchrin, Lisa; Mayor, Borough of Lebanon
200. Underhill, Henry M., Township of Sparta
201. Van Abs, Daniel J., New Jersey Water Supply Authority
202. Van Drew, Jeff, New Jersey General Assembly
203. van Rossum, Maya K., Delaware Riverkeeper Network
204. Varacalli, Fran, South Branch Watershed Association
205. Verbaro, Dennis; Mayor, Borough of Chester
206. Vesper, Dominic J., New Jersey State Association of County Road Supervisors, and Camden County
207. Vogel, Robert, Borough of Madison
208. Vogt, Terence, Remington & Vernick Engineers, Inc.
209. Wagner, Robert & Joanne
210. Wall ?, Anne M.
211. Walnut, A. Jerome, Ocean County Environmental Agency
212. Wargacki, Walter G.; Mayor, Borough of Wallington

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213. Weber, John, Surfrider Foundation, Jersey Shore Chapter, commenting through Clean Ocean Action
214. White, James R., Township of East Brunswick
215. Wilday, Cassandra, Hoboken City Department of Environmental Services
216. Williams, James; Mayor, Borough of Bernardsville
217. Willner, Andrew J., New York/New Jersey Baykeeper
218. Wilson, Belinda
219. Wolfe, David W., New Jersey General Assembly
220. Woody, Walter
221. Wyant, Harry L.; Mayor, Town of Phillipsburg
222. Yarnett ?, Ann C.
223. Yeaton, Thomas C.
224. Zambelli, Jillian
225. Zawacki, Karen
226. Zikas, Harry; Mayor, Borough of Alpha
227. Zipf, Cindy, Clean Ocean Action, on behalf of Alliance for a Living Ocean, American Littoral Society, Eatontown Environmental Commission, Monmouth County Friends of Clearwater, Save Barnegat Bay, Shark River Cleanup Coalition, Inc., Surfers' Environmental Alliance, and Surfrider Foundation – Jersey Shore Chapter

In addition to the timely submitted comments from the above-listed individuals, the Department received many letters dated or postmarked after the close of the comment period. Because these letters were submitted after the close of the comment period, the Department has not summarized them below, or listed the names of the senders above (except for senders who also timely submitted comments). However, most of these letters raised issues that were raised by other persons during the comment period, and thus are addressed in the Department's responses below.

The timely submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above. The general comments are presented first, followed by comments relating to specific aspects of the proposal.

General

1. COMMENT: The Department is commended for scheduling three public hearings in different parts of New Jersey at various times between 12:00 P.M. and 10:00 P.M., and for reaching out to municipalities. (151)

RESPONSE: The Department acknowledges the commenter's support.

2. COMMENT: Many commenters requested an extension of the public comment period for reasons including the length and complexity of the Department's proposed

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NJPDES rule amendments and Stormwater Management rules (N.J.A.C. 7:8), the time needed to review the rules, concerns regarding the applicability of the rules to commercial projects that discharge stormwater to ground water, and because the New Jersey Stormwater Best Management Practices Manual was not available for review. (4, 49, 76, 79, 83, 108, 124, 135, 150, 156, 161, 177, 185, 204, 221, 226)

3. COMMENT: One commenter said that extending the comment period beyond April 7, 2003 is not appropriate. Another commenter said that an extension is not constructive and represents obstructionist delay tactics. (151, 166)

RESPONSE TO COMMENTS 2 and 3: Based upon comments received after the rule proposal was published in the New Jersey Register on January 6, 2003, the Department extended the close of the comment period from March 7, 2003 to April 7, 2003. (See 35 N.J.R. 1331(a)). This gave a total comment period of 91 days from the date of publication of the proposal. The Department believes that the extended comment period and the three public hearings were sufficient to enable the public to evaluate the rules and prepare comments. The Department also posted the rule proposal on its website before January 6, 2003. In regard to the Stormwater Best Management Practices (BMPs) Manual (BMP Manual), see the responses to comments in the adoption of the Stormwater Management rules, N.J.A.C. 7:8, published elsewhere in this issue of the New Jersey Register.

4. COMMENT: Many commenters supported the proposed stormwater rules. Support was expressed for controlling pollution from nonpoint sources or urban runoff; addressing stormwater impacts from both new and existing development and land uses; regulating discharges to both surface and ground waters; reducing mosquito breeding habitats by ensuring the long term maintenance and function of stormwater systems and preventing sedimentation and scouring in streams; improving surface water quality and quantity; protecting water quality in coastal areas; protecting drinking water sources, streams, water supplies, parks, or people and the environment; protecting waterways, wetlands, and habitat; broadening the scope of regulated entities responsible for the cleanup of waterways as related to stormwater; and eliminating toxic inputs. (5, 8, 14, 20, 25, 39, 41, 43, 46, 47, 50, 51, 57, 58, 67, 70, 73, 81, 83, 88, 89, 92, 97, 103, 112, 122, 137, 141, 155, 166, 174A, 179, 180, 187, 192, 193, 201, 204, 207, 209, 213, 217, 224, 227)

RESPONSE: The Department acknowledges the commenters' support for the rules. The NJPDES stormwater rules are a major part of the Department's efforts to prevent and reduce pollution of lakes, rivers, other water bodies, and drinking water by stormwater and storm sewer discharges.

5. COMMENT: Many commenters who supported the proposed stormwater rules noted in particular the provisions concerning: aquifer recharge; smart growth; urban redevelopment; 80 percent or greater reduction of suspended solids, runoff pollution,

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toxic runoff, or runoff; reducing polluted runoff from sprawl; innovative technologies; buffers around key water supplies, drinking water sources, or high quality waters; and alleviating the frequency and severity of floods and droughts. Several commenters also supported the rules for reasons including: erosion reduction (because runoff volume is addressed), reduced cost of development, enhanced property values, control of nonpoint source pollution, an increase in BMPs, employing BMPs as the means of addressing nonpoint source pollution, maintaining a clean water supply, expanded educational policies, enhanced vegetation and wildlife, the emphasis on prevention, the impact fees provision, lack of trust in municipal administrations with ties to developers and builders, and addressing stormwater management on a regional, watershed, or drainage area basis.

One of the commenters agreed with the establishment of 300 foot buffers around Category One waters. The commenter is also concerned about the stormwater needed to recharge aquifers, wants to promote redevelopment and smart growth in affected areas, and feels that developers should increase the use of innovative building techniques to reduce runoff and polluted sprawl runoff.

Several commenters said that the stormwater rules will reduce polluted runoff, reduce the severity or frequency of floods and droughts, promote smart growth or assist in managing development in appropriate places, reduce polluted runoff by 80 percent, maintain clean water and a healthy environment, and improve the quality of drinking water. Another commenter said that the proposed stormwater rules are important, and wants protection of drinking water supplies and a reduction in water pollution and the frequency and severity of droughts and floods.

Other commenters asked the Department to require as much stormwater runoff to recharge aquifers after construction of a new development as before construction; increase the use of innovative building techniques to reduce runoff, “polluted sprawl runoff,” or pollution from runoff by 80 percent; and establish buffers around Category One waters, or the State’s most pristine waters, to protect drinking water supplies and endangered species habitat. Another commenter also asked the Department to stop runoff from polluting water-recharging aquifers, and asked that new development sites be recharged with adequate water. Another commenter requested additional buffers of a minimum of 300 feet around water supplies. Another commenter said that in regard to pollution of drinking water, factors of concern include reducing polluted runoff and establishing restrictions around potable water reservoirs. (2, 6, 7, 9, 13, 16, 21, 23, 24, 26, 27, 31, 32, 33, 35, 36, 37, 38, 45, 54, 60, 63, 62, 64, 65, 68, 75, 77, 78, 80, 82, 84, 86, 87, 94, 96, 98, 99, 100, 101, 102, 105, 107, 111, 116, 117, 118, 119, 121, 123, 131, 134, 138, 142, 143, 144, 145, 147, 148, 151, 152, 153, 157, 158, 160, 164, 165, 167, 168, 171, 172, 173, 175, 176, 181, 183, 184, 188, 191, 194, 195, 197, 198, 202, 203, 210, 211, 218, 219, 220, 222, 223)

RESPONSE: The Department acknowledges the commenters’ support for the rules. Many of these comments are related to various provisions in the concurrently

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proposed Stormwater Management rules (N.J.A.C. 7:8), for example, nonstructural stormwater management strategies, groundwater recharge (including exempting urban redevelopment from the groundwater recharge standard), stormwater runoff quantity, reducing the post-construction load of total suspended solids (TSS) by 80 percent, special water resource protection areas to protect Category One waters, and regional stormwater management planning. The Department has responded to comments regarding these issues in the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register.

6. COMMENT: The commenter understands this plan is in a preliminary stage, and encourages the Department to continue to solicit and encourage dialogue to ensure the development of effective and comprehensive stormwater regulations. (102)

RESPONSE: The Department solicited comments on the rule proposal and associated draft NJPDES general permits in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the NJPDES rules at N.J.A.C. 7:14A-15. See also the response to Comments 2 and 3, above, for discussion of the opportunity for public comment on this rulemaking.

7. COMMENT: The Municipal Stormwater Advisory Group (MSAG) should have consisted of four or five consulting engineers representing a broad base of municipalities to evaluate the exact implementation requirements of the needs in each town. Schoor DePalma specifically requested to be on the MSAG to represent various towns, and was rejected. In addition, the process followed in developing the rules was unfair to commercial development as well as other interests that were not represented, such as school boards, the business community, and public colleges and universities. The Department told the National Association of Industrial and Office Properties not to be a member of the MSAG even though the New Jersey Builders Association is a member. (49)

8. COMMENT: The proposed NJPDES rules were developed with all affected interests, so the rules contained a great deal of practical input. The different interests had vigorous discussions at the MSAG meetings. (58)

9. COMMENT: Every major stakeholder was represented on the MSAG, including municipalities, developers, environmentalists, planning officials, and engineers. That is not to say every stakeholder group had more than one representative (several environmental groups were rejected), but there was a fair representation of stakeholders. (166)

10. COMMENT: The commenter's organization asked to be on the MSAG, but through a misunderstanding did not get on it. If one person complains about being excluded from the MSAG, then many others can also complain. However, the basics were covered, and the result is a balanced effective rule. (27)

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RESPONSE TO COMMENTS 7 through 10: The Department established the MSAG to assist in the development of the NJPDES Municipal Stormwater Regulation rule amendments and the four general permits. This group was composed of representatives from most of the affected entities. There is no statutory or other legal requirement to have such a body, but the Department believed strongly that such input is crucial to the success of the program. The Department decided early on to make the MSAG a small working group that would be involved with drafting language and be consulted on policy issues. The Department also established or met with other working groups including a Best Management Practices Subcommittee and the New Jersey Quality Initiative Group of transportation officials. In addition, Department staff met with organizations prior to the proposal to seek input on the issues that affected those constituencies.

11. COMMENT: The commenter supports the NJPDES rules in part because they implement and integrate with the proposed Stormwater Management rules (N.J.A.C. 7:8), which the commenter strongly supports. (166)

12. COMMENT: The commenter commends the Department for integrating two similar rules, the NJPDES rules and the proposed Stormwater Management rules, by having joint public hearings on them, and by taking a full-scale look at not just water quality issues, but quantity issues and land practices. (151)

RESPONSE TO COMMENTS 11 and 12: The Department acknowledges the commenters' support.

13. COMMENT: Municipal compliance is based on a full understanding of both N.J.A.C. 7:14A and N.J.A.C. 7:8, and this can be confusing. To ensure full compliance, the State needs to outline the municipal requirements from both rules in a simple manner, and both rules should be clarified and consistent. (87)

RESPONSE: The Department recognizes that amended N.J.A.C. 7:14A and N.J.A.C. 7:8 have many new and complex provisions that in some respects address similar subject matter. However, the Department has worked with many different groups and individuals to ensure that the rules are consistent and clear. The Department is also preparing comprehensive guidance for amended N.J.A.C. 7:14A that will be available from the Bureau of Nonpoint Pollution Control, Department of Environmental Protection, PO Box 029, Trenton, New Jersey 08625-0029, and on the Department's website at www.njstormwater.org, in order to assist permittees and others to understand more easily the various requirements. Sources for technical guidance concerning amended N.J.A.C. 7:8 are identified in N.J.A.C. 7:8-5.9. In addition, the Department has provided, and will continue to provide, training to all affected entities to assist in program compliance (see the responses to Comments 189 through 207 and 330 through 334 below).

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14. COMMENT: Two commenters supported the Department's policy to amend corresponding rules with the proposed NJPDES rules, such as the Residential Site Improvement Standards (RSIS), N.J.A.C. 5:21, and the Construction Activity Stormwater General Permit. This is critical to the successful implementation of the NJPDES rules. (27, 203)

RESPONSE: The Department acknowledges the commenters' support.

15. COMMENT: The proposed amendments to the NJPDES stormwater rules need to provide better definitions for language and should be synonymous to definitions used in other regulations. The rules need to be reviewed against competing regulations, that is, RSIS, to make sure there is compatibility in all regulatory efforts. (204)

16. COMMENT: All other State rules and laws should be revised to become effective concurrent with the proposed NJPDES stormwater rules. Currently, there is no coordination between many other State rules and laws, and this lack of coordination may create extraordinary delays and result in great costs. The Department should delay adoption of the proposed rules until all necessary coordination issues have been debated and there is clear guidance, if not cast in law, at least in policy, in order to avoid delays and costs. (163)

RESPONSE TO COMMENTS 15 and 16: The Department tries to coordinate rule definitions to the extent feasible. However, certain terms may have a meaning that is specified in statutes or Federal regulations or is otherwise unique to the context of a given rule, may have historical precedents, or may have underlying links with other programmatic issues that could be jeopardized if changed.

The Department has coordinated the NJPDES stormwater rules with the Department's Stormwater Management rules, N.J.A.C. 7:8 (see N.J.A.C. 7:14A-25.6(b)3). The Department has adopted changes to N.J.A.C. 7:8 that complement the NJPDES stormwater rules. In addition, the Department has adopted amendments of the stormwater management provisions of the following rules in order to coordinate with and cross-reference N.J.A.C. 7:8: the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A; the Coastal Zone Management rules at N.J.A.C. 7:7E; the Flood Hazard Area Control rules at N.J.A.C. 7:13; the Water Quality Management Planning rules at N.J.A.C. 7:15; and the Dam Safety Standards at N.J.A.C. 7:20. See the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register.

The Department has also coordinated the NJPDES stormwater rules with the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules, and with the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50 (see N.J.A.C. 7:14A-24.10(a)1 and 6, 25.6(b)2, and 25.7(b)), and with the RSIS (see N.J.A.C. 7:14A-25.6(b)3iv).

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The Department recognizes that New Jersey statutes establish a complex framework for stormwater management. The NJPDES stormwater rule amendments are, with limited exceptions (see, for example, the responses to Comments 89 through 99 below), required in order to implement a Federally mandated program with Federal deadlines whose implementation in New Jersey is already overdue.

17. COMMENT: Simplified permitting for all municipal projects should be incorporated into the rules to give a clear dictate to the various review subcomponents of the Department. (163)

RESPONSE: The Department reviews municipal projects under a wide variety of permit programs, and tries to provide as much coordination between its review units as possible. In rulemaking, however, the need for simplified permitting must be balanced against potential adverse impacts of municipal projects, and the need to address applicable statutory or Federal requirements. The Department also does not and cannot distinguish in this rulemaking between municipal and non-municipal projects, since each can have a substantial impact on the public and the environment.

18. COMMENT: The application of the proposed rules to redevelopment at existing industrial sites is unclear. The Department should clarify the circumstances that would require application of some or all parts of the proposed rules. (5, 11, 57, 132, 180)

RESPONSE: Rule provisions may apply to existing industrial and other sites that are redeveloped, depending on the nature of the redevelopment. For example, if during redevelopment there is stormwater discharge associated with construction activity as described in N.J.A.C. 7:14A-24.10, then a NJPDES permit for that discharge would be required in accordance with that section and N.J.A.C. 7:14A-24.2, 24.4, and 24.7. See also the response to Comment 35 below. In addition, redevelopment projects at existing industrial and other sites that disturb one acre or more and discharge stormwater runoff into “small municipal separate storm sewer systems” (small MS4s) operated by municipalities would be required to comply with programs established under N.J.A.C. 7:14A-25.6(b)3 or 25.8(e)1 for post-construction stormwater management. Depending on its nature, redevelopment at an existing industrial site may also result in, change, or eliminate “stormwater discharge associated with industrial activity,” which may require or obviate the need for a NJPDES permit under N.J.A.C. 7:14A-24.2, 24.4, and 24.7, or the redevelopment might result in or eliminate the condition of “Permanent No Exposure” identified under N.J.A.C. 7:14A-24.6, which could likewise result in or eliminate the need for a NJPDES permit.

19. COMMENT: Public participation and review of reports and plans generated under these rules should be further enhanced and expanded to ease public involvement in the process. The commenters were intimately involved in monitoring the La Mer residential development in the Borough of Sayreville, Middlesex County, and often felt frustrated by the lack of coordination by the Department with the public. (129, 217)

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RESPONSE: The Department provides for public participation in the Statewide Stormwater Permitting Program through means such as public notice and comment and other procedures set forth in the NJPDES rules at N.J.A.C. 7:14A-15, -16, and -17. The Department generally does not keep on file stormwater pollution prevention plans that permittees must develop and retain as a condition of many general NJPDES stormwater permits, including the “construction activity” stormwater general permit (which regulates the La Mer project) and those issued under the new Municipal Stormwater Regulation Program. However, the Department does make records, reports, or information obtained by the Department under the NJPDES rules, or that permittees must develop and retain as a permit condition, available to the public at the offices of the Department in accordance with N.J.A.C. 7:14A-18.1. Certain records will also be available from municipalities, counties, soil conservation districts, and other public agencies in New Jersey under the Open Public Records Act (OPRA), P.L. 2001, c. 404, and from Federal agencies under the Freedom of Information Act, 5 U.S.C. § 552. Certain information, such as some information on enforcement cases (including the La Mer enforcement case) or trade secrets, may be subject to confidentiality or other access restrictions. In general, however, most information on enforcement cases is available to the general public.

20. COMMENT: The environmental community did not get everything it wanted in these rules, which do not require much retrofit to existing development. In an ideal world there would be more retrofit provisions, but in the real world there needs to be reasonable balance. The State cannot afford to delay these rules, which provide such balance. (166)

21. COMMENT: The commenter is very concerned that the proposed rules do not require that existing problems be dealt with and mitigated. The proposed rules do not address runoff control from existing development causing erosion in the way of water quality and quantity as well as recharge. The rules target new development, and do not necessarily ensure improvement in water quality from existing development. Funding needs to be provided for restoration of already developed areas to restore water quality and stream base flow, and establish a deadline by which restoration should be completed. (48)

22. COMMENT: This initiative should include restoration and remediation of existing sources as redevelopment work in particular, but also municipal work and other types of development projects, goes forward. New Jersey is fighting an uphill battle, and has to take advantage of opportunities to fix the mistakes of the past. (45)

RESPONSE TO COMMENTS 20 through 22: The Highway, Public Complex, and Tier A Permits require a limited form of retrofitting of many existing storm drain inlets over time. The Department believes that this retrofitting will provide significant control of large solid and floatable materials. As discussed below, however, there are practical problems associated with wholesale retrofitting of MS4s in existing developed areas. The Department agrees that requiring wholesale retrofitting of those MS4s to meet

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new standards would enhance efforts to protect water quality, control runoff, and increase recharge. However, such wholesale retrofitting would carry enormous and immediate costs to municipalities and other government agencies. Therefore, the Department has chosen not to require such retrofitting at this time.

The rules for the Municipal Stormwater Regulation Program require control of post-construction stormwater runoff from new development and redevelopment projects that disturb one acre or more (see N.J.A.C. 7:14A-25.6(b)3 and 25.8(e)1). The Department recognizes that these rules do not address existing developed areas in the same manner as they address new development and redevelopment. This is due in part to corresponding requirements in the USEPA Phase II regulations, and to a larger extent to the practical limitations of managing existing developed areas. Stormwater management in most such areas is constrained by the existing land use patterns. It would be very expensive, and in some instances impossible, to require retrofitting of all existing developed areas to reduce runoff and increase recharge. Rather, Statewide Basic Requirements (SBRs) in NJPDES permits under this Program require a number of BMPs to control pollutants from existing developed areas, such as BMPs for illicit connections and improper disposal of waste (including pet waste, litter, and yard waste), street sweeping, stormwater facility maintenance, roadside erosion, stream scouring at outfall pipes, retrofitting storm drain inlets, and public education. The Department along with the USEPA believe that these more practical BMPs will provide significant improvements in stormwater quality from existing developed areas.

The Department's view, based upon consultation with local and regional planners and stormwater managers, is that extensive structural retrofits of small MS4s should not be implemented before completion of regional analysis and planning. The provisions in N.J.A.C. 7:14A-25.6 for "additional measures" (AMs) create an orderly framework for requiring, through water quality management plans (WQM plans), additional retrofits of small MS4s where appropriate.

23. COMMENT: Develop ways to further enhance stormwater control programs to improve water quality. Such initiatives will ensure that healthy ecosystems exist in the future, and that citizens will enjoy a sustained quality of life. (211)

RESPONSE: The Department is committed to continuing to improve and enhance its regulatory requirements and guidance for the improvement of water quality.

24. COMMENT: The Department should consider other methods that may assist with stormwater management and recharge. For example, concrete drainpipes in culverts direct water to creeks, streams and rivers, reducing aquifer recharge. Perforated pipes may improve recharge. (4)

24A. COMMENT: The Department should require the county to use perforated pipe, loose joints, and in general less concrete in new construction of roadside ditches. Water

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that gets into unperforated pipe with tight joints has no chance of recharging into the ground. (93A)

RESPONSE TO COMMENTS 24 and 24A: The Department does encourage the use of perforated or other recharge-promoting pipes in certain situations, especially where there is not a substantial likelihood of clogging from sediment or debris. However, because many stormwater systems are subject to significant amounts of sediment or debris, a requirement to use only such pipes could lead to system failure and flooding. The Department participates in a national program to develop and encourage innovative and alternative stormwater technologies, and is committed to bringing appropriate technologies to permittees whenever they become available.

Most new construction at county highways is subject to the requirements for nonstructural stormwater management strategies in N.J.A.C. 7:8-5.3, and to the erosion control, groundwater recharge, and runoff quantity standards in N.J.A.C. 7:8-5.4 (see N.J.A.C. 7:8-1.6, N.J.A.C. 7:14A-25.2(a)3 and 25.6(b)3, and Part I.F.3 of the Highway Permit). N.J.A.C. 7:8-5.3 requires uses of vegetated open-channel conveyance systems discharging into or through stable vegetated areas, unless use of such systems is not feasible for engineering, environmental or safety reasons. Use of perforated or other recharge-promoting pipes is not specifically required under N.J.A.C. 7:8-5.4, but may be one of the means of meeting standards in N.J.A.C. 7:8-5.4 for groundwater recharge, depending on site-specific conditions. These standards may also be met by using stormwater management measures, such as infiltration structures, that may receive stormwater from or release stormwater overflows into unperforated pipe with tight joints.

25. COMMENT: With regard to pollution of drinking water, “polluted runoff stations” should be replaced or renovated by using innovative equipment and better technology, and by holding accountable the utilities that are causing water pollution through various industries. The State should prosecute polluters. (65)

RESPONSE: It is unclear what the commenter intends by the term “polluted runoff stations.” However, as noted in the response to Comment 24 above, the Department participates in a national program to develop and encourage innovative stormwater technologies. In addition, the Department regulates over 2,000 industrial facilities under its NJPDES Industrial Stormwater Permitting Program, and holds those facilities accountable when they violate their NJPDES permits. This accountability can include enforcement actions and prosecution if necessary.

26. COMMENT: While these rules are a giant leap forward, there are still problems of combined sewer overflow to be addressed, probably in another set of future regulations. (148)

RESPONSE: Although these NJPDES rule amendments do not address combined sewer overflow (CSO), the Department, under guidance from the USEPA, has a NJPDES

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CSO Program that regulates municipalities and other sewerage entities for discharges from CSOs. These permits impose a number of control measures that are designed to reduce or eliminate the impacts from CSOs on water bodies. The requirements of this program can be found in the NJPDES rules (see, especially, N.J.A.C. 7:14A-11.12 and N.J.A.C. 7:14A-11 Appendix C) and the CSO General Permit available from the Department's Division of Water Quality website at www.state.nj.us/dep/dwq.

The Department has proposed to revoke and reissue the NJPDES General Permit for Combined Sewer Systems (CSS). Specifically, the general permit is being revoked and reissued to include additional provisions that will require owners and/or operators of combined sewer systems to develop and evaluate the feasibility of pathogen control technologies to meet the requirements of the Federal Clean Water Act (CWA, 33 U.S.C. §§ 1251 et seq.). Permittees would also be required to prepare cost and performance curves for various scenarios and to quantify expected removal of other pollutants that may occur incidental to the control of pathogens.

27. COMMENT: Stormwater should have been addressed many years ago. The State had the opportunity to address this problem when the Camden County regional sewer system was established. The infiltration/inflow studies were done but never implemented because the Department agreed with the Camden County Municipal Utilities Authority (CCMUA) that it would not be "cost effective." It would have cost too much to rip up the streets and install the sewer lines that could handle the extra stormwater runoff. Waterways are now being contaminated because of this runoff that was never truly addressed. The State's lifting of bans has allowed development and aggravated this very serious problem.

Also, because of a State-signed enforcement instrument (the "Global Decree"), deadly runoff from the GEMS Superfund site has for years affected waterways and the underlying sole source aquifer. A closed-loop system at GEMS to direct runoff back into the aquifer will not truly address the contamination. How will these new rules be implemented in this case and at other landfills, like Pennsauken, that are non-compliant and now in litigation to fix their problems?

These new rules are only a band-aid for a serious problem that needs to be addressed today. Water is a public asset that the State has truly mismanaged. The State is responsible for water supply and waterway protection, and the "cost factor" is not and never was an issue to consider. The State must stop all development now. Buffers around waterways, and using MS4s, will not address the true problems. Handing over the responsibilities to the municipalities and developers, and allowing CCMUA to spread sludge using dilution mathematics, is not the answer. Hazardous waste must be cleaned up. Stop land application of non-compliant "Beneficial Sludge." Deadly landfills, especially GEMS, and "Beneficial Sludge Use," which is a nonpoint source of contamination, must be considered when the State looks into aquifer recharge and waterway protection.

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Do not lower the standards of drinking water, as has been allowed in the past. Uranium in drinking water should have never been allowed to be a standard in “Safe Drinking Water.” (225)

RESPONSE: It is appropriate to consider cost-effectiveness in deciding whether and to what extent to remove infiltration/inflow (including stormwater inflow) from a sewer system. See, for example, USEPA funding regulations at 40 C.F.R. 35.2005(b)(16) and 35.2020, which require prevention of “excessive infiltration/inflow” in sewer systems as determined in a “cost-effectiveness analysis.” The Department grants sewer connection ban exemptions in accordance with N.J.A.C. 7:14A-22, which is outside the scope of this rulemaking. Stormwater management requirements are established in the NJPDES Municipal Stormwater Regulation Program and N.J.A.C. 7:8, rather than through Department rules for sewer connection bans.

The Department does not anticipate that these NJPDES rule amendments will have a significant effect on the management of stormwater exposed to solid waste in existing landfills. Discharge to surface water (DSW) of such stormwater from landfills that receive or have received industrial waste will continue to be regulated by the Department as “stormwater discharge associated with industrial activity” as defined in N.J.A.C. 7:14A-1.2. If, however, a landfill (such as the GEMS landfill) is no longer receiving solid waste, and has been capped and otherwise managed to prevent solid waste or other “significant materials,” as defined in N.J.A.C. 7:14A-1.2, from being exposed to stormwater resulting from future precipitation events, then there is unlikely to be “stormwater discharge associated with industrial activity.” DSW of contaminated groundwater at a landfill is not stormwater DSW.

In addition, the NJPDES rule amendments do not address all stormwater discharges to groundwater (DGW), but are limited to stormwater DGW from “municipal separate storm sewers” and “animal feeding operations” (as defined in N.J.A.C. 7:14A-1.2), residential areas, commercial areas that do not have “areas of high pollutant loading” (as described in N.J.A.C. 7:14A-7.4(a)5iii), and agricultural and silvicultural nonpoint sources regulated under N.J.A.C. 7:14A-2.5(d). Other stormwater DGW (from other commercial and industrial facilities including landfills, for example) are outside the scope of these amendments, but are subject to applicable provisions of N.J.A.C. 7:14A-7 through -10, and 7:14A-2.5. One such provision is N.J.A.C. 7:14A-7.4(a)3, which provides that persons responsible for discharges that occurred prior to May 5, 1997 (including placement of solid waste in landfills), who did not have a NJPDES permit on that date for those discharges, are exempt from the requirement to obtain a NJPDES DGW permit. Stormwater from Superfund sites and sanitary landfills is controlled by engineering design standards in sanitary landfill operating permits, by remedial activities as specified in Remedial Action Plans (RAPs) or other equivalent Department administered remedial programs, and, where NJPDES permits are required, by conditions in NJPDES permits.

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The Department must find a balance between economic concerns and protecting environmental quality. The Department supports limited, focused development that embraces smart growth – protecting New Jersey’s natural resources while accommodating New Jersey’s growing population. Water pollution caused by MS4s, and inadequate buffers around waterways are true problems that should be addressed regardless of how other potential pollution sources such as hazardous waste, landfills, and sludge are addressed. USEPA regulations at 40 C.F.R. 122.26 frequently require municipalities and developers to obtain and comply with permits for stormwater discharges from MS4s and construction activity. The NJPDES permit program for these and other stormwater discharges is one of many State activities to help protect water supplies and waterways from adverse stormwater-related and other impacts of new development and other pollution sources.

Under the NJPDES rule amendments, stormwater DSW from certain facilities handling sludge (but not from some lands where sludge is beneficially reused) will continue to be regulated by the Department as “stormwater discharge associated with industrial activity” (see subparagraph 1ix of the N.J.A.C. 7:14A-1.2 definition of that term). However, Department standards for the use or disposal (including land application) of sludge and other residual are established in N.J.A.C. 7:14A-20, which is outside the scope of this rulemaking and which includes standards to protect surface water and groundwater quality. The Department does not allow land application of sludge or other residual that does not comply with requirements established in or under N.J.A.C. 7:14A-20. The Department supports the reuse of sludge as an activity beneficial to the environment, but also requires adequate stormwater controls in connection with such reuse.

Under the NJPDES rule amendments, stormwater DSW from certain hazardous waste treatment, storage, or disposal facilities will also continue to be regulated by the Department as “stormwater discharge associated with industrial activity.” However, comprehensive requirements regarding landfills and cleanup of hazardous waste are established under statutes and rules that are outside the scope of this rulemaking, such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. §§ 9601 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Industrial Site Recovery Act, N.J.S.A. 13:1K 6 et seq. (ISRA); the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., the Solid Waste rules, N.J.A.C. 7:26; the Industrial Site Recovery Act rules, N.J.A.C. 7:26B; the rules for Department Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C; the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; the Remedial Priority System rules, N.J.A.C. 7:26F; and the Hazardous Waste rules, N.J.A.C. 7:26G.

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Standards for uranium or other substances in drinking water or in sources of drinking water are set forth in the Ground Water Quality Standards, N.J.A.C. 7:9-6, the Surface Water Quality Standards, N.J.A.C. 7:9B, and the Safe Drinking Water Act rules, N.J.A.C. 7:10, all of which are outside the scope of this rulemaking.

28. COMMENT: The proposed stormwater management requirements sound good, but may be too little, too late. The proposed residential development (six new homes) named Birch Lane Estates in Parsippany-Troy Hills Township will kill lakes, damage rivers, irreversibly harm the aquifer, and adversely affect a nearby reservoir. (120)

RESPONSE: Whether the NJPDES rule amendments, which incorporate by reference provisions of the Stormwater Management rules at N.J.A.C. 7:8, will substantially affect a particular proposed residential development will depend on factors such as whether that development is a “major development” as defined at N.J.A.C. 7:8-1.2, whether that development qualifies for exemption under N.J.A.C. 7:8-1.6(b), and what (if any) local approvals or Department permits have yet to be obtained. Even if the NJPDES rule amendments may not affect some developments that are already under way, the rule amendments will result in substantial environmental benefit in the future due to improved stormwater management at other locations.

Cesspools

29. COMMENT: Alter the N.J.A.C. 7:14A-1.2 definition of “cesspool” by changing “injection well” to “underground injection well (for the purposes of N.J.A.C. 7:14A).” (187, 201)

RESPONSE: The Department believes that the rule is correct as written. N.J.A.C. 7:14A-1.2 defines “injection well” and “underground injection,” but not “underground injection well.” The Department believes that referring to a cesspool as an “injection well” adequately conveys the meaning that a cesspool is an “underground” injection well, because the definition of “injection well” is “... a cavity ... used to deliver fluids directly to a point below the ground surface.”

Construction Activity

30. COMMENT: Two commenters supported the Department’s expanded permit requirements for stormwater runoff associated with construction activity, both during and after construction. (129, 217)

31. COMMENT: Two commenters supported a timely revision of construction activity regulation under N.J.A.C. 7:14A-11.1(b). (27, 203)

32. COMMENT: The Department’s decision to retain the provision that allows the soil conservation districts to administer construction activities is the most efficient way to

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operate the program. This eliminates possible program redundancy, confusion, and conflicting regulatory requirements. (22)

RESPONSE TO COMMENTS 30 through 32: The Department acknowledges the commenters' support.

33. COMMENT: Training needs to be provided to soil conservation districts to implement the requirements of the proposed rules. (48)

RESPONSE: The Department has already begun working with soil conservation district personnel to prepare to implement the new requirements.

34. COMMENT: Clarify the relationship between the Department's "construction activity" stormwater general permit (NJPDES Permit No. NJ0088323) and construction covered by a soil erosion and sediment control plan, and clarify whether the considerations are different for construction in an Urban Redevelopment Zone or for construction at a contaminated site. (11, 132)

RESPONSE: The principal requirement in NJPDES Permit No. NJ0088323 is the requirement that land may be disturbed only in accordance with a soil erosion and sediment control plan certified pursuant to N.J.S.A. 4:24-43, or requirements for soil erosion and sediment control established in or pursuant to a municipal ordinance in accordance with N.J.S.A. 4:24-48, whichever is applicable. This is why soil conservation districts and the New Jersey Department of Transportation, which certify such plans, also receive and certify requests for authorization under the permit. The permit does not distinguish construction in an Urban Redevelopment Zone or at a contaminated site from other construction, except that certain stormwater discharges from sanitary or hazardous waste landfills are ineligible for the permit.

35. COMMENT: There is concern regarding the expansion of regulated construction activities from projects impacting five acres and greater, to projects impacting one acre and greater, and the efforts necessary for compliance. The Department has not made the "construction activity" stormwater general permit available for comment. It is expected that ample time to review and comment on this permit will be provided. (71)

RESPONSE: The requirement to regulate "small construction activity" disturbing one acre or more is based on USEPA regulations (see, for example, 40 C.F.R. 122.26(a)(9)(i)(B)), and is necessary for the Department to meet its delegated responsibilities under the National Pollutant Discharge Elimination System. The Department issued a draft major modification of this general permit on October 29, 2003, and provided a 30-day comment period following publication of notice of that draft modification in the November 12, 2003 issue of the DEP Bulletin, in accordance with N.J.A.C. 7:14A-15.10.

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36. COMMENT: Soil erosion and sediment control measures for construction areas should be strengthened. (4)

RESPONSE: The Department has been working for many years with the New Jersey Departments of Agriculture and Transportation to ensure that New Jersey's soil erosion and sediment control standards reflect current scientific and engineering principles. The three departments are committed to continuing this effort. In addition, the rule amendments that require a NJPDES permit for "stormwater discharge associated with small construction activity" expand the universe of construction activity regulated under the NJPDES program.

37. COMMENT: In regard to the N.J.A.C. 7:14A-1.2 definition of "stormwater discharge associated with small construction activity," the commenters support the proposed exclusion from permitting of small construction activity of "routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility." However, "routine" should be deleted as the term is subjective. To eliminate any ambiguity, the proposed stormwater rules for construction activity should not be applicable whether or not the maintenance is considered routine. Maintenance of any existing facilities should not be considered as construction, or be considered similarly to construction of new facilities. (5, 11, 57, 132, 180)

RESPONSE: The phrase "routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility" is verbatim from the USEPA rules at 40 C.F.R. 122.26(b)(15)(i). USEPA has provided the following guidance concerning "routine maintenance" at its website (<http://www.epa.gov/OWM/>) under "FAQ" (Frequently Asked Questions) about the "Stormwater Program":

- **“What if Earth Disturbance is a Normal Part of the Post-Construction Use of the Site?”**

“The earth disturbing activity has to be part of a project to build, demolish, or replace a structure (e.g., building, road, pad, pipeline, transmission line, etc.) to trigger the need for permit coverage. Earth disturbance that is a normal part of the long-term use or maintenance of the property is not covered by the construction general permit. For example, re-grading a dirt road or cleaning out a roadside drainage ditch to maintain its ‘as built’ state is road maintenance and not construction. Restoring the original well pad to work over an existing oil or gas well is operation of a well and not construction. Re-grading and re-graveling a gravel parking lot or equipment pad is site maintenance and not construction. Repaving is routine maintenance unless underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation. Where clearing, grading, or excavating (i.e., down to bare soils) takes place, permit coverage is required if more than one acre is disturbed. Reworking planters that are part of the landscaping at a building is landscape maintenance and not construction.

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Applying daily cover at a landfill is simply part of operating a landfill and not construction.

- **“Does the term ‘Routine Maintenance’ apply to all construction activity?”**

Yes. The definition of small construction at 40 CFR 122.26(b)(15)(i) includes the phrase ‘Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.’ EPA has revised the definition of ‘large construction’ in this permit to include similar language. However, the term ‘routine maintenance’ should not be confused with activities such as repairs, replacement, and other types of non-routine maintenance that are required to obtain permit coverage where more than one acre is disturbed.”

The Department believes that in this context, the USEPA has narrowly and specifically defined “routine maintenance” in its guidance so that the regulated community and the regulators can have a common understanding of the term.

38. COMMENT: The proposed rules for redevelopment at existing industrial sites are unclear. A construction stormwater permit should not be required if the stormwater discharge outfall contains a NJPDES Total Suspended Solids (TSS) permit limit or if wastewater treatment plant (WWTP) capacity will not be increased as a result of the new construction (i.e., the maximum daily flow capacity from the WWTP will not be increased). (5, 11, 57, 132, 180)

RESPONSE: The requirement in N.J.A.C. 7:14A-24.2, 24.4, and 24.7 for obtaining a NJPDES permit for stormwater discharge associated with construction activity is based solely upon disturbing the land, and is not related to wastewater treatment plant capacity. If all stormwater from the area disturbed by construction is discharged through a NJPDES permitted outfall with a numeric TSS permit limit, then a separate NJPDES permit for this stormwater discharge is not required.

39. COMMENT: Is N.J.A.C. 7:14A-24.4(a)6 intended to be retroactive to require NJPDES permits if the construction activity has already begun? (140, 205, 216)

40. COMMENT: Confirm that under N.J.A.C. 7:14A-24.4(a)1 and (a)6, a permit for stormwater associated with construction activity will not be required for sites that have a soil erosion and sediment control plan approved by the New Jersey Natural Resources Conservation Program in place for new construction activities prior to the effective date of the proposed rules. (5, 11, 57, 132, 180)

RESPONSE TO COMMENTS 39 and 40: For stormwater discharge that is associated with construction activity described under subparagraph 1x of the N.J.A.C. 7:14A-1.2 definition of “stormwater discharge associated with industrial activity” (so-

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called “large” construction activity), a NJPDES permit is required under N.J.A.C. 7:14A-24.4(a)1 even if the construction activity has already begun or if the site has an approved soil erosion and sediment control plan. Such stormwater discharge has required a NJPDES permit for many years under repealed N.J.A.C. 7:14A-11.5.

However, the Department has modified subparagraph 1x upon adoption with regard to facilities (other than airports, powerplants, or uncontrolled sanitary landfills) that are owned or operated by municipalities with a population of less than 100,000. Under repealed N.J.A.C. 7:14A-11.5(e)1i and (g), the deadline to apply for a NJPDES permit for such facilities was no later than August 7, 2001. The Department did not enforce that deadline because the Department adopted it in 1997 as a temporary interim measure pending adoption of USEPA’s final Phase II stormwater regulations and the proposal and adoption of corresponding amendments to the NJPDES rules. (For additional background, see Comments-Responses 11-34 and 11-43, 29 N.J.R. 1827-1828 and 1829; May 5, 1997). USEPA promulgated its final regulations on December 8, 1999, but corresponding amendments to the NJPDES rules are only now being promulgated.

As modified upon adoption, subparagraph 1x does not include construction activity at such facilities that commenced prior to the date 30 days after the effective date of subchapter 24 (the deadline to apply for a permit for such facilities specified in N.J.A.C. 7:14A-24.4(a)1i) unless such activity required, but did not have, certification or approval under the Soil Erosion and Sediment Control Act prior to 30 days after the effective date of subchapter 24.

In addition, the Department has upon adoption added subparagraph 1ii to the N.J.A.C. 7:14A-1.2 definition of “stormwater discharge associated with small construction activity” to provide that small construction activity does not include construction activity that commenced prior to the date that is 30 days after the effective date of subchapter 24, unless such activity required, but did not have, certification or approval issued under the Soil Erosion and Sediment Control Act prior to 30 days after the effective date of subchapter 24. On February 2, 2004, the Department modified its “construction activity” stormwater general permit (NJPDES Permit No. NJ0088323) to authorize and control stormwater discharge associated with small as well as large construction activity. The principal requirement in the permit is the requirement that land may be disturbed only in accordance with a soil erosion and sediment control plan certified pursuant to N.J.S.A. 4:24-43, or requirements for soil erosion and sediment control established in or pursuant to a municipal ordinance in accordance with N.J.S.A. 4:24-48, whichever is applicable. This is why soil conservation districts and the NJDOT, which certify such plans, also receive and certify requests for authorization under the permit. To require NJPDES permits for construction projects that have or will very soon have commenced, and that have or will very soon have certification or approval under the Soil Erosion and Sediment Control Act, would be burdensome on both the soil conservation districts and those who operate these projects for little environmental benefit.

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41. COMMENT: In N.J.A.C. 7:14A-24.7(a)2i(3), why does the Department request either soil data or stormwater quality data instead of obtaining both? (187, 201)

RESPONSE: This provision is relocated from repealed N.J.A.C. 7:14A-11.5(c)1ii(5), and is based on the USEPA rules at 40 C.F.R. 122.26(c)(1)(ii)(E). The Department does, however, require that the applicant provide both soil and stormwater discharge quality data if both types of data exist.

42. COMMENT: Verify that for stormwater discharges associated with small construction activity, the application requirements under N.J.A.C. 7:14A-24.7(a)2i(5)(D) through (M) are limited to the area affected by the construction activity and the associated stormwater runoff. (11, 132)

RESPONSE: Except as noted below, the information required in N.J.A.C. 7:14A-24.7(a)2i(5)(D) through (J) is limited to the area where the construction activity will occur. In some instances, locations of BMPs identified under N.J.A.C. 7:14A-24.7(a)2i(5)(K) may be outside that area (for example, if the applicant proposes to use an existing stormwater management basin downhill from that area), and information about how stormwater is conveyed from that area to such BMPs would be identified under N.J.A.C. 7:14A-24.7(a)2i(5)(F) and (G). The “facility” referenced in N.J.A.C. 7:14A-24.7(a)2i(5)(L) and (M) is the area where the construction activity will occur, but in some instances, surface water bodies and drainage systems identified under those provisions may be nearby but outside that area.

43. COMMENT: Verify for stormwater discharges associated with small construction activity, that the requirements for an annual inspection and report in N.J.A.C. 7:14A-24.9(a)2 should not be applicable if all construction activity will be completed within less than a year of the permit approval date. (11, 132)

RESPONSE: If construction is completed in less than one year, then the permittee should perform an inspection and prepare a report at that time. This meets the requirement for the annual inspection and report in N.J.A.C. 7:14A-24.9(a)2.

44. COMMENT: The commenters support the provisions in N.J.A.C. 7:14A-24.10 that extended the permit to cover many previously poorly regulated sources of pollution and the development of a stormwater pollution prevention plan (SPPP). Too often, discarded materials, washout effluent, and other hazardous and chemical waste finds its way into waterways. The definition of pollution, expanded on by municipalities based on local experience, will help control previously undetected sources. (27, 203)

RESPONSE: The Department acknowledges the commenters’ support. However, municipalities do not determine what is regulated under N.J.A.C. 7:14A-24.10.

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45. COMMENT: The Department needs to clarify what exactly the requirements in N.J.A.C. 7:14A-24.10(a)7 are for “the receipt and consideration of information submitted by the public.” How is the public to be notified of the permit application? How much consideration is the permittee to give information submitted by the public? Will the Department consider information submitted by the public in its review of the application? In short, what is the significance of requiring the permittee to consider information submitted by the public? The commenter needs assurance that public participation, as required here, is meaningful. (217)

RESPONSE: This provision refers to the Department’s permit program, rather than to the permittee’s obligation under the permit. This provision is based on USEPA rules at 40 C.F.R. 122.34(b)(4)(ii)(E), and is implemented by various means including the public comment process for draft NJPDES permits. When in response to a permit application the Department issues a draft individual NJPDES permit for stormwater discharge associated with construction activity, public notice is published in the Department of Environmental Protection Bulletin (DEP Bulletin) and in a newspaper within the affected area. For the draft “construction activity” stormwater general permit and all other draft general permits, the Department publishes public notice in the DEP Bulletin and in selected newspapers around the State. Public notices for draft individual and general permits are also mailed to various persons as required under N.J.A.C. 7:14A-15.10(e).

The public may submit comments to the Department on draft individual and general permits during the public comment period, which is at least 30 days. The Department may also hold a public hearing on a draft permit. The Department considers all timely comments in making its final permit decision. Subsequent renewals or major modifications of these permits are also subject to the same public comment process. See N.J.A.C. 7:14A-15, which sets forth the procedures for public participation that the Department follows when processing NJPDES permits.

Agriculture

46. COMMENT: Soil erosion and sediment control measures for farm fields should be strengthened. (4)

46A. COMMENT: The new regulations and plans do nothing to address the problem of eroded clay in runoff from farm fields into culverts, although they do recognize the importance of culverts: the county is given five years to complete a photographic inventory of the ends of all of its culverts. Beyond this, the Department requires nothing from the county regarding the maintenance of discharge from the county’s culverts. The farm field is not regulated. Measures that could alleviate the soil erosion and stormwater runoff, such as perennial crops, hedgerows, terraces, or wetlands built at the edges of farm fields, are left entirely to the discretion of the landowner.

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The Department will not solve the problem of soil erosion and lost rainwater in a farming county by regulating only new house construction. The Department, the State Agricultural Development Committee, the County Agricultural Development Board, soil conservation districts, the Association of New Jersey Environmental Commissions, and county and municipal planning boards could look into what could be done to reduce erosion and runoff from farm fields. Probably more could be accomplished by education rather than by regulation. (93A)

47. COMMENT: Either amend the definition of “major development” to delete the reference to the Municipal Land Use Law (MLUL) so that agricultural operations will be covered by these rules, or repeal N.J.A.C. 7:14A-2.5(a)4, which exempts agriculture. In addition, the phrase “that are regulated under N.J.A.C. 7:14A-2.5(d)” should be deleted and “all” inserted before “agricultural” in N.J.A.C. 7:14A-24.2(a)8. Under the Right to Farm Act, municipal regulations relating to land management under the MLUL do not apply, so towns have no way to influence the stormwater and land management practices on a farm site. The stormwater management plans developed as part of a farm conservation plan under the soil conservation entities for farming operations are not as protective as proposed N.J.A.C. 7:8 and 7:14A (with respect to impervious surface, for example). Agriculture contributes to surface water and groundwater pollution and, according to USEPA’s National Water Quality Inventory, is the leading pollutant source for stormwater in the surveyed river miles. These commenters support the inclusion in N.J.A.C. 7:14A-24.2(a)8 of discharges to groundwater from agricultural and silvicultural nonpoint sources. (27, 203)

RESPONSE TO COMMENTS 46 through 47: The Department works closely with the New Jersey Department of Agriculture, the United States Natural Resources Conservation Service, and the soil conservation districts to make sure that the agricultural community understands the importance of minimizing the impact of farming activities on water quality. These agencies sponsor voluntary programs that provide funding and guidance to farmers on preparing and implementing Resource Conservation and Management measures that are designed to reduce or eliminate impacts to water quality.

The term “major development” is defined not in the NJPDES rules, but in the Stormwater Management rules, N.J.A.C. 7:8. In regard to that definition, see the responses to comments in the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register.

Under N.J.A.C. 7:14A-2.5(d), the Department has the authority to require a NJPDES permit for agricultural sources of nonpoint pollution in order to impose management measures “necessary to achieve and maintain applicable water quality standards.” As noted above, the Department works with the New Jersey Department of Agriculture and other agencies in promoting voluntary programs for agricultural nonpoint source pollution abatement. In those cases where a farmer does not cooperate on a

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voluntary basis, the Department has the authority to require a NJPDES permit for such sources.

With regard to the inclusion in N.J.A.C. 7:14A-24.2(a)8 of discharges to groundwater, the Department acknowledges the commenters' support.

The Statewide Basic Requirements (SBRs) listed in N.J.A.C. 7:14A-25.6(b) and set forth in the Highway and Public Complex Permits, do not require counties to prepare a photographic inventory of the ends of all of their culverts. Instead, N.J.A.C. 7:14A-25.6(b)5 and the Highway and Public Complex Permits require counties to develop a map, showing the location of the end of outfall pipes that are operated by the county, and that discharge within the county's jurisdiction to a surface water body (for example, a lake or pond, the Atlantic Ocean or one of its estuaries, or a river or stream including an intermittent stream). Many culverts are not outfall pipes, and the ends of the outfall pipes do not have to be photographed. However, pursuant to N.J.A.C. 7:14A-25.6(a) and (b), the Highway and Public Complex Permits do require counties to develop and implement a stormwater facility maintenance program for cleaning and maintenance of county stormwater facilities, including culverts, and these permits also include several other SBRs to reduce the discharge of pollutants from county storm sewer systems.

Animal Feeding Operations

48. COMMENT: Two commenters supported the inclusion in N.J.A.C. 7:14A-24.2(a)4 of discharges to groundwater from concentrated animal feeding operations (CAFOs), but also suggested that N.J.A.C. 7:14A-2.13 and 24.2(a)4 be expanded to require NJPDES permits for any discharges, point or nonpoint, from animal feeding operations. Without individual permits with site-specific conditions, AFOs and CAFOs will cause water pollution. Agricultural runoff is a major source of stream pollution, and the case-by-case basis that requires inspection is not enough to ensure pollution abatement. (27, 203)

RESPONSE: The Department acknowledges the commenters' support. The Department has adopted an Animal Feeding Operations General Permit to enable concentrated animal feeding operations (CAFOs) and certain AFOs to be regulated under a NJPDES Permit. This general permit approach is consistent with both Federal requirements and with programs in other states. The USEPA has developed a strategy for addressing pollution from AFOs that stresses permitting for CAFOs and voluntary management for AFOs. The Department has adopted a similar strategy. Given the large number of AFOs in New Jersey and the fact that most of them have very small numbers of animals, the Department believes that the USEPA approach provides the appropriate protection for water quality.

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Additional Application Requirements for Discharges to Surface Water

49. COMMENT: Modify the proposed opening clause of N.J.A.C. 7:14A-4.4(b)5 by inserting “or reasonably expected” between “known” and “pollutants.” (187, 201)

RESPONSE: The Department has changed this clause upon adoption to read: “The applicant shall report the presence of pollutants that it knows or has reason to believe are present as follows:” This change makes this clause consistent with the phrase “knows or has reason to believe” used elsewhere in N.J.A.C. 7:14A-4.4(b)5.

Stormwater Discharges to Groundwater

50. COMMENT: Two commenters support the inclusion of discharges to groundwater (DGW) as well as surface water throughout the proposed rule and in N.J.A.C. 7:14A-11.1(a), 24.2(a)4, 24.2(a)8, and 25.2(a), in order to effectively preserve drinking water quality and waterway quality. The quality and quantity of base flow in streams is defined by the groundwater that feeds base flow. It is important that informed implementation of BMPs is applied, realizing that the science supports the benefits of BMP infiltration measures. In addition, expand N.J.A.C. 7:14A-24.2(a)4 and 8 to regulate stormwater DGW from all agricultural nonpoint sources and animal feeding operations. (27, 203)

RESPONSE: The Department acknowledges the commenters’ support for inclusion of DGW as well as discharges to surface water. The Department also encourages proper use of BMPs, including infiltration measures where appropriate (see, for example, the standard in N.J.A.C. 7:8-5.4 to encourage and control groundwater recharge, and the New Jersey Stormwater Best Management Practices Manual referenced in N.J.A.C. 7:8-5.9(a)1). With regard to expanding N.J.A.C. 7:14A-24.2(a)4 and 8 to regulate stormwater DGW from all agricultural nonpoint sources and animal feeding operations, see responses to Comments 46 through 48 above.

51. COMMENT: Three commenters questioned the Department’s authority under N.J.A.C. 7:14A-24.2(a)9 to regulate stormwater runoff that discharges to groundwater via overland flow. How will the Department determine whether stormwater runoff violates a Ground Water Quality Standard? To begin regulating runoff that does not discharge to surface water would be a monumental task. Most, if not all industrial facilities, that discharge stormwater runoff to surface water are regulated by a NJPDES permit by either numerical limitations (point sources) and/or the requirement to have a Stormwater Pollution Prevention Plan (SPPP) in place. Most SPPPs have Best Management Practices (BMPs) in place which address all areas of a site. It is unclear what new requirements would emerge with regard to DGW stormwater permits. Until the Department can elaborate and show cause for regulating such discharges, this requirement is subjective and will lead to unnecessary confusion and expenditures of money with little environmental benefit gained. This requirement should be deleted. (5, 57, 180)

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RESPONSE: The Department has authority under the New Jersey Water Pollution Control Act to adopt rules that require NJPDES permits for stormwater DGW, whether or not the stormwater is conveyed in overland flow. See, for example, N.J.S.A. 58:10A-6a and the broad N.J.S.A. 58:10A-3 definitions of “discharge” and “waters of the State.” However, N.J.A.C. 7:14A-24.2(a)9 does not pertain to industrial facilities. Instead, N.J.A.C. 7:14A-24.2(a)9 pertains only to “stormwater DGW otherwise exempt under N.J.A.C. 7:14A-7.4(a)5i, ii, or iii,” which are limited to certain stormwater DGW from municipal separate storm sewers and residential areas, and from commercial areas that do not have areas of high pollutant loading. In addition, N.J.A.C. 7:14A-24.2(a)9 does not create a new requirement for a NJPDES permit because, until N.J.A.C. 7:14A-7.4(a)5 and 24.2(a)9 concurrently became effective, these stormwater DGW were included under NJPDES rule provisions such as N.J.A.C. 7:14A-2.1(d) and 7.2(b).

The Department has been working for some time to secure broader industrial compliance with N.J.A.C. 7:14A-2.1(d) and 7.2(b), provide more equitable control of industrial facilities with stormwater discharges to surface water and groundwater, and protect the groundwaters of the State. In 2002, for example, the Department expanded its “basic industrial” stormwater general permit (NJPDES Permit No. NJ0088315) to include industrial stormwater DGW. The SPPP required by that permit addresses discharges to both surface water and groundwater. In general, the SPPP requirements established by the Department in recent years for industrial stormwater discharges to surface water and groundwater are similar, and are contained in a NJPDES permit that is both a discharge to surface water (DSW) permit and a DGW permit. This Department practice avoids unnecessary confusion and expenditures. When a NJPDES permit is for DSW only, the SPPP and BMP requirements in that permit do not necessarily address all areas of the site, but only the areas of the site that contribute to the DSW.

The Department also notes that N.J.A.C. 7:14A-7.3(b)3 and 7.12 expressly recognize “overland flow” as a type of activity, pollution source, or regulated unit subject to the requirements of N.J.A.C. 7:14A-7. To preserve the Department’s ability to protect groundwater, it is important for the Department to be able to require a NJPDES permit for stormwater DGW that are likely to contravene the Groundwater Quality Standards at N.J.A.C. 7:9-6. For purposes of N.J.A.C. 7:14A-24.2(a)9, the Department may use any scientifically defensible technical approach to determine that the DGW is likely to contravene the Groundwater Quality Standards, including but not limited to approaches that use groundwater monitoring. The public, including the discharger, may comment on the appropriateness of the Department’s determination in accordance with N.J.A.C. 7:14A-24.2(b).

52. COMMENT: For private residential development not covered under the Municipal Stormwater Regulation Program, there is a specific exemption from having to get individual NJPDES DGW permits. There does not seem to be a specific exemption for commercial projects. The Department will require commercial projects to infiltrate stormwater and discharge to the ground, but will not require municipalities to own and

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operate these commercial stormwater systems. Therefore, all commercial stormwater systems that municipalities require to be privately owned and operated (that is, most commercial systems) will need individual NJPDES DGW permits to meet the recharge requirements of N.J.A.C. 7:8. The Department's staffing and criteria to evaluate and issue these permits is questioned. (49)

RESPONSE: The Department has modified N.J.A.C. 7:14A-7.4(a)5ii and 24.2(c)3 upon adoption to exempt commercial areas (other than areas of high pollutant loading) stormwater DGW, from the requirement to obtain a NJPDES DGW permit since, as the commenter points out, stormwater discharges from such areas are similar to the stormwater discharges from residential areas, which are exempt from the rules. This exemption will not apply to stormwater discharges through underground injection regulated under N.J.A.C. 7:14A-8, or if the Department determines that the discharge from a commercial area is likely to contravene the Groundwater Quality Standards at N.J.A.C. 7:9-6, or may result in violation of the Surface Water Quality Standards at N.J.A.C. 7:9B as provided at N.J.A.C. 7:14A-24.2(a)9. The Department has also modified N.J.A.C. 7:14A-8.5(b)9 upon adoption to include stormwater discharges from commercial areas, in order to make underground injection of these stormwater discharges into Class V wells eligible for a permit-by-rule for which the similar residential stormwater discharges were proposed to be eligible.

As explained in the proposal summary at 35 N.J.R. 175 and 176, the stormwater discharges from residential areas addressed under N.J.A.C. 7:14A-7.4(a)5ii and 8.5(b)9 pose a relatively low risk to groundwater quality, and to require NJPDES permits for these would be burdensome on both the Department and the residential dischargers for little environmental benefit. The same analysis applies to commercial stormwater discharges so long as the commercial area is not an area of high pollutant loading. These changes upon adoption also ensure consistency with the standards in the companion Stormwater Management rules at N.J.A.C. 7:8-5.4(a)2, which generally encourage infiltration and groundwater recharge of stormwater from commercial and other "major development" as defined in N.J.A.C. 7:8-1.2, but prohibit recharge of stormwater from areas of high pollutant loading in commercial developments. The description of "high pollutant loading areas" in N.J.A.C. 7:14A-7.4(a)5ii is consistent with the description of "high pollutant loading areas" in N.J.A.C. 7:8-5.4(a)2.

Stormwater Discharges from Industrial Facilities

53. COMMENT: Revise N.J.A.C. 7:14A-24.2(e) so that each entity discharging into a privately owned storm sewer is issued a separate NJPDES permit with separate compliance points. The use of co-permittees is cautioned due to compliance liabilities. How would violations or enforcement actions affect each co-permittee? (5, 57, 180)

RESPONSE: N.J.A.C. 7:14A-24.2(e) replaces repealed N.J.A.C. 7:14A-11.5(a)5, and is based on Federal requirements at 40 C.F.R. 122.26(a)(6). Both the Department

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and regulated entities can benefit from the substantial reduction in paperwork that results from issuing a single individual NJPDES permit (or a single authorization under a general permit) to two or more co-permittees. Concerns about compliance with and enforcement of such a permit are addressed through the requirement in N.J.A.C. 7:14A-24.2(e) that “any permit authorizing more than one operating entity shall identify the effluent limitations, or other permit conditions, if any, that apply to each operating entity.” See, for example, Part I.C.1.c of the Department’s “basic industrial” stormwater general permit (NJPDES Permit No. NJ0088315), which provides that if a facility has two or more permittees under that permit, then the stormwater pollution prevention plan (SPPP) may allocate responsibility for implementing specific parts of the SPPP among the permittees. Each co-permittee is responsible only for NJPDES permit conditions relating to the discharge for which that co-permittee is an operating entity (see N.J.A.C. 7:14A-1.2 and 40 C.F.R. 122.26(b)(1) for definitions of “co-permittee”).

54. COMMENT: To clarify N.J.A.C. 7:14A-24.2(e), the following modification is suggested: “For dischargers associated with industrial activity which discharge through a private conveyance system, the Department shall issue either a single NPDES [sic] permit or individual permits. When a single permit is issued, each discharger becomes a co-permittee to the permit issued to the operating entity for each portion of the private conveyance system that discharges to surface water. A single permit may be an authorization under a general permit and individual permits may be individual authorizations under a general permit.” Define “private conveyance system” in N.J.A.C. 7:14A-1.2 as a “privately owned and operated separate storm sewer system.” (187, 201)

RESPONSE: To address the commenters’ concern, the Department has modified N.J.A.C. 7:14A-24.2(e) on adoption to clarify the subsection by deleting duplicative language and moving the alternative regulatory options into separate paragraphs. However, the Department notes that the terms “individual NJPDES permit” and “general permit” are mutually exclusive as used throughout the NJPDES rules. An individual NJPDES permit cannot, as the commenters suggest, serve as an individualized authorization under a general permit. It is unnecessary to define the term “private conveyance system” at N.J.A.C. 7:14A-1.2 because it is adequately described in N.J.A.C. 7:14A-24.2(e) and used only in that subsection.

55. COMMENT: In N.J.A.C. 7:14A-24.6(f)1, the term “dumpsters” should be expanded to include roll-off containers and other types of containers used for waste material that are “watertight, leak proof, and covered” for facilities certifying “Permanent No Exposure.” (5, 57, 180)

56. COMMENT: Confirm that the term “dumpsters” in N.J.A.C. 7:14A-24.6(f)1 includes roll-off containers and other types of containers used for waste material that are “watertight, leak proof, and covered” for facilities certifying “Permanent No Exposure.” (11, 132)

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RESPONSE TO COMMENTS 55 and 56: The Department agrees that roll-off containers are an example of the type of waste containers intended to be covered by this paragraph and has modified N.J.A.C. 7:14A-24.6(f)1 upon adoption so that it applies to “dumpsters, or other rigid containers of similar or larger size, that are used only for routine collection and temporary storage of industrial or other waste materials generated at the facility, and that are watertight, leak proof, and covered.” In addition, changes upon adoption clarify that these dumpsters or other containers must have no visible residue or contamination on the external exposed surfaces.

57. COMMENT: Delete N.J.A.C. 7:14A-24.6. The commenters do not have confidence that a “Permanent No Exposure” provision can be successfully carried out without further site-specific studies and on-site controls by the Department. There is not enough information as to the siting of industrial facilities in the State to allow for this exemption. The information that the commenters have argues for closer individual permit scrutiny, not less. USEPA’s National Water Quality Inventory identified stormwater runoff from industrial operations to be a significant cause of nonpoint source pollution to waterways. There are too many unanswered questions to allow for this proposed option, for instance: Are these facilities’ roofed buildings located near wellheads or groundwater recharge areas? How is the runoff from buildings handled and is it contaminated by activities on site? What is the distance of the activity from water supply reserves? (27, 203)

RESPONSE: The USEPA rules expressly provide for a “No Exposure” exclusion at 40 C.F.R. 122.26(g). The Department has taken a conservative approach in defining its “Permanent No Exposure” exclusion under N.J.A.C. 7:14A-24.6 by limiting this exclusion to facilities that demonstrate that their industrial materials and activities, with certain narrow exceptions, are within a permanent, completely roofed and walled building or structure. The Department is satisfied that facilities that meet this requirement will not have industrial materials or activities exposed to stormwater. Preventing, eliminating, or minimizing the impacts of such exposure is the fundamental basis for the NJPDES Industrial Stormwater Permitting Program.

With regard to rooftop runoff, the “Permanent No Exposure” exclusion does not apply to facilities with rooftop runoff that comes into contact with industrial materials or activities. The Department has consistently taken the position, reflected in NJPDES industrial stormwater permits, that rooftop runoff that does not come into contact with industrial materials or activities is not likely to be a significant source of contamination. While there are some incidental pollutants in such rooftop runoff, they are not significantly different from pollutants in runoff from thousands of rooftops of commercial and residential structures. It would be impractical for the Department to require NJPDES permits for all of these sources of rooftop runoff.

58. COMMENT: Confirm that under N.J.A.C. 7:14A-24.7, the permit application requirements for stormwater discharges associated with industrial activity are not applicable to applications that have been deemed complete by the Department prior to the

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effective date of the proposed rules. The proposed rules contain more requirements than the existing rules, and none of these applications should have to be resubmitted in part or in whole when the new rules become effective. (11, 132)

RESPONSE: Permit applications for stormwater discharges associated with industrial activity that is not limited to construction activity do not need to be resubmitted if the applications are administratively complete prior to the effective date of this section. The “new” requirements in this section for these applications incorporate existing requirements in permit application forms. Applications for individual NJPDES permits for stormwater discharges associated solely with construction activity do have to be resubmitted to reflect the new requirements, which are necessary to implement USEPA Phase II rules concerning such activity, or the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50), or to clarify the previous requirements.

59. COMMENT: Under N.J.A.C. 7:14A-24.7(a)1i(7), what is the need or purpose of going back three years for purposes of a stormwater NJPDES permit? Also, there is no definition of “significant materials” in the definitions section of the proposal as stated. (5, 57, 180)

RESPONSE: This provision is relocated from repealed N.J.A.C. 7:14A-11.5(c)1i(1), and is based on USEPA regulations at 40 C.F.R. 122.26(c)(1)(i)(A) that require identification of “each past or present area” used for outdoor storage or disposal of “significant materials.” The Department determined in 1997 that three years was sufficient for identifying “past” areas (see Comment-Response 11-38, 29 N.J.R. 1828). The notice of proposal did not include the N.J.A.C. 7:14A-1.2 definition of “significant materials” because the Department did not propose to amend that definition in this rulemaking. The existing definition remains in effect.

60. COMMENT: Expand N.J.A.C. 7:14A-24.7(a)1i(8) to include the location of non-structural control measures to reduce pollutants in stormwater runoff. N.J.A.C. 7:14A-24.7(a)1v(6) requires narrative description of existing structural and non-structural measures to reduce pollutants in stormwater runoff, so it makes sense to include these non-structural measures on the permit application site map as well. (217)

RESPONSE: N.J.A.C. 7:14A-24.7(a)1i(8) is relocated from repealed N.J.A.C. 7:14A-11.5(c)1i(1), and is based on USEPA regulations at 40 C.F.R. 122.26(c)(1)(i)(A). Like the USEPA regulations, N.J.A.C. 7:14A-24.7(a)1i(8) specifically requires the site map to show each existing structural control measure to reduce pollutants in stormwater runoff, but does not require the site map to show non-structural control measures.

61. COMMENT: Expand N.J.A.C. 7:14A-24.7(a)1i(13) to specifically include the location of wetlands and seeps. (217)

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RESPONSE: Wetlands and seeps are covered by N.J.A.C. 7:14A-24.7(a)1i(13) because the definition of “surface water” at N.J.A.C. 7:14A-1.2 expressly includes “wetlands,” and because “seeps” are commonly defined as “springs.” (See, for example, the definition of “seeps” in Webster’s Third International Dictionary.)

62. COMMENT: Tests for non-stormwater discharges considered acceptable under N.J.A.C. 7:14A-24.7(a)1vi should be recognized to include visual observations and facility knowledge. Field tests (for example, smoke or dye tests) should not be considered mandatory for all outfalls. (11, 132)

RESPONSE: N.J.A.C. 7:14A-24.7(a)1vi provides that tests for non-stormwater discharges “may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests.” Therefore, visual observations and facility knowledge are acceptable tests if they are “analysis of accurate schematics” or “other appropriate tests.” Field tests are not mandatory for all outfalls. See also the response to Comment 63 below.

63. COMMENT: Three commenters questioned the need to certify, under N.J.A.C. 7:14A-24.7(a)1vi, all outfalls and drainage areas not served by an outfall by means of testing. Testing should be left up to the professional judgement of the applicant. The rules should require the applicant to certify that no discharges occur other than stormwater, and let the applicant decide how that is proven. These rules should not prescribe testing methods. (5, 57, 180)

RESPONSE: N.J.A.C. 7:14A-24.7(a)1vi requires a certification that the outfalls and drainage areas in question have been “tested or evaluated” for the presence of non-stormwater discharges. This provision does not prescribe testing methods, but instead provides that the tests “may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests.” This provision is relocated from repealed N.J.A.C. 7:14A-11.5(c)1i(3), and is based on USEPA regulations at 40 C.F.R. 122.26(c)(1)(i)(C) that require an essentially equivalent certification for outfalls.

64. COMMENT: Delete N.J.A.C. 7:14A-24.7(a)1vii. The commenters question the need for this information about spills and leaks as it relates to a stormwater permit application. Spills and leaks are handled through other Department programs, such as DPCC and Site Remediation. Any information the Department would like to receive regarding spills and leaks at a particular facility can be obtained through the Department’s New Jersey Environmental Management System (NJEMS) database. (5, 57, 180)

RESPONSE: N.J.A.C. 7:14A-24.7(a)1vii is relocated from repealed N.J.A.C. 7:14A-11.5(c)1i(4), and is based mainly on the text and USEPA interpretations of regulations at 40 C.F.R. 122.26(c)(1)(i)(D) that require existing information regarding significant leaks or spills of toxic or hazardous pollutants. USEPA stated at 55 Fed. Reg.

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48020 (November 16, 1990) that National Pollutant Discharge Elimination System (NPDES) permitting authorities, such as the Department, need to have this information available “in order to determine which drainage areas are likely to generate storm water discharges associated with industrial activity, evaluate pollutants of concern, and develop appropriate permit conditions.”

65. COMMENT: Under N.J.A.C. 7:14A-24.7(a)1viii, the quantitative data collected during storm events should not be required from “all” outfalls containing a stormwater discharge associated with industrial activity. Outfalls serving similar areas should be allowed to be grouped together with sampling limited to a representative outfall. (5, 11, 57, 132, 180)

RESPONSE: N.J.A.C. 7:14A-24.7(a)1viii is relocated from repealed N.J.A.C. 7:14A-11.5(c)1i(5), and is based on USEPA regulations at 40 C.F.R. 122.26(c)(1)(i)(E) that require quantitative data based on samples collected from “all” outfalls. The commenters’ concern is addressed through N.J.A.C. 7:14A-4.4(b)1 and the application requirements of the Department’s “Form RF, General Sampling and Reporting Guidance for PAS and ADI Form” under the sampling requirements for “Stormwater Discharges with Substantially Identical Quality.”

66. COMMENT: Delete N.J.A.C. 7:14A-24.7(a)1x. Stating that both outfalls and drainage areas not served by outfalls shall be regulated in the same manner as “outfalls” implies that areas where stormwater runoff does not enter surface waters will be subject to permit conditions (the DGW stormwater issue). The commenters question the Department’s authority to regulate such discharges of stormwater runoff to groundwaters of the State. (5, 57, 180)

RESPONSE: N.J.A.C. 7:14A-24.7(a)1x is relocated from repealed N.J.A.C. 7:14A-11.5(c)1i(6), and addresses nonpoint source stormwater discharges to surface water from drainage areas that do not have specific outfalls. Like the rest of N.J.A.C. 7:14A-24.7, this provision does not address any discharges to groundwater. In regard to the Department’s authority to regulate stormwater discharges to groundwater, see the response to Comment 51 above.

67. COMMENT: Expand N.J.A.C. 7:14A-24.7(a)4 to also require operating entities to apply for a NJPDES DSW permit when an existing or new discharge composed entirely of stormwater from a mining operation comes into contact with any disturbed area on the site of such operations. Restricting the requirement for a NJPDES DSW permit to only those instances when the discharge comes into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site does not adequately protect receiving waters. Once existing land cover is disturbed there is potential for erosion and increased sediment loading. (217)

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RESPONSE: N.J.A.C. 7:14A-24.7(a)4 is relocated from repealed N.J.A.C. 7:14A-11.5(c)1iv, and is based on Federal limitations on NPDES permit requirements for discharges of stormwater from mining operations (40 C.F.R. 122.26(c)(1)(iv) and Section 402(l) of the Federal Clean Water Act, 33 U.S.C. §1342(l)). Most disturbed areas at mining operations are also areas where stormwater comes into contact with overburden, raw material, intermediate products, finished product, byproduct or waste products. In addition, disturbance of more than 5,000 square feet of the surface area of land for the operation of any mining or quarrying facility is subject to requirements under the Soil Erosion and Sediment Control Act. These requirements also constitute the erosion and sediment control component of NJPDES DSW stormwater permits for most mining operations.

Monitoring Requirements for Certain Stormwater Discharges

68. COMMENT: There should be increased monitoring requirements for implemented BMPs. (129)

69. COMMENT: Ongoing monitoring is needed to measure BMP effectiveness, not only on a site-specific basis, but also as a check on the stormwater planning as well as the way of assessing BMP development. (47)

70. COMMENT: There needs to be follow-up, enforcement of the permits, and water quality testing. (151)

RESPONSE TO COMMENTS 68 through 70: The Department assumes that what the commenters mean by “monitoring” is sampling, which is one form of monitoring. To the extent that the commenters use the term “monitoring” to refer to inspections, those concerns are also addressed in the responses to Comments 72 through 75 below.

Most of the Department’s individual and industry-specific general NJPDES stormwater permits require permittees to perform sampling. The sampling data is submitted to the Department, and is reviewed by both permitting and enforcement staff. If the permit contains numeric effluent limitations and the sampling discloses violations of those limitations, then enforcement action is taken. For permits or parameters that have no such limitations, sampling is used to evaluate BMP performance. Depending on the permit and the sampling data, the permittee may be required, under the conditions of the permit, to implement more effective BMPs, or the Department may draft changes to the permit if necessary. The Department inspects all facilities with individual permits at least once per year.

Sampling of specific BMPs, other than at facilities with individual or industry-specific general permits, is not a cost-effective method of ensuring the success of stormwater management. The Department issues thousands of authorizations under

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industrial stormwater general permits, and anticipates issuing over 700 new authorizations under Municipal Stormwater Regulation Program general permits. To require site-specific sampling for all of those facilities would be overly burdensome to both the permittees and to the Department. The Department inspects all of the industrial facilities, and will also perform inspections under the Municipal Stormwater Regulation Program. If inspections disclose violations of the permit, then enforcement action is taken. With regard to enforcement of Municipal Stormwater Regulation Program, also see the response to Comments 230 through 233 below.

The Department also relies on its program for monitoring ambient water quality to evaluate the overall effectiveness of the stormwater program. Given the cumulative nature of the thousands of facilities with general permits, the Department believes that the ambient monitoring approach gives a better picture of the comprehensive success of the program, and helps to identify sources that create obstacles to water quality improvement. That information can then guide targeted action by the Department.

71. COMMENT: The success of any BMP will only be guaranteed through monitoring of both compliance and performance. N.J.A.C. 7:14A-24.8 should require monitoring for compliance under the NJPDES permit. For example, the Department will not know whether a selected BMP will reduce total suspended solids (TSS) by 80 percent unless pre- and post-BMP monitoring is required. Moreover, monitoring will highlight the need for continued maintenance of installed BMPs. (87)

RESPONSE: The Department assumes that what the commenter means by “monitoring” is sampling, which is one form of monitoring. N.J.A.C. 7:14A-24.8 establishes sample collection procedures for individual NJPDES DSW stormwater permit applications, and does not address monitoring required as a NJPDES permit condition, which is addressed at N.J.A.C. 7:14A-24.9. See also the response to Comments 68 through 70 above in regard to sampling, and the response to Comment 317 below in regard to TSS.

72. COMMENT: To clarify N.J.A.C. 7:14A-24.9(a) and eliminate ambiguity and subjectivity, monitoring requirements should be established for pollutants of concern for all discharges to waterways or segments of waterways identified as impaired or water quality limited, not on a case-by-case basis. (217)

73. COMMENT: Two commenters support the concept of stormwater pollution prevention plans (SPPPs), but said more accountability and monitoring is needed. These commenters are concerned that the lack of accountability and evaluation of the effectiveness of the measures and plans to improve stormwater runoff management from MS4s will result in a failure of the NJPDES rules and continued stormwater pollution. Limitations and monitoring under N.J.A.C. 7:14A-24.9(a) must be on a consistently mandatory basis, not on a case-by-case basis. A track record of implementation should be established first, and then such a basis could be considered, depending on individual

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compliance. Such a basis could be awarded as an incentive for municipalities that achieve successful implementation of the rule's requirements. The rest of the sentence after the phrase "on a case-by-case basis" should be deleted. (27, 203)

RESPONSE TO COMMENTS 72 and 73: The Department assumes that what the commenters mean by "monitoring" is sampling, which is one form of monitoring. See the response to Comments 68 through 70 above with regard to sampling in general. The requirements in N.J.A.C. 7:14A-24.9(a) concerning stormwater discharges associated with industrial activity are relocated from former N.J.A.C. 7:14A-11.2(a)3 and 4, and are based on USEPA regulations at 40 C.F.R. 122.44(i)(4) and (5), which require that for most such discharges, requirements to report monitoring results "shall be established on a case-by-case basis dependent on the nature and effect of the discharge."

The Department believes that sampling of MS4s should only be required on a case-by-case basis in order to encourage municipalities to focus their efforts and limited resources on program implementation, rather than on costly sampling. If in the later stages of the Municipal Stormwater Regulation Program the Department determines that the Program is not leading to significant water quality improvement, then sampling may be one of the tools that could be explored to improve effectiveness. See also the discussion of MS4 monitoring in the response to Comment 354 below.

74. COMMENT: In regard to N.J.A.C. 7:14A-24.9(a), quarterly inspections and inspection reports should be required for stormwater discharges associated with industrial or small construction activity. Annual inspections fail to account for seasonal changes affecting stormwater discharge. Quarterly reports will provide a more accurate picture of the facility's ability and willingness to comply with its SPPP and protect the State's natural resources. The reports should be required to be on file on-site and at the municipal building, with the right of the public to view them during normal business hours. (217)

RESPONSE: The origin and basis of this provision's requirements for stormwater discharges associated with industrial activity are discussed in the response to Comments 72 and 73 above. The pertinent USEPA regulations establish the minimum requirement of annual, not quarterly, inspections, and do not require that inspection reports be made available to the public on-site and at municipal buildings.

The Department believes that the existing program is effective, and that, while more frequent inspections may disclose some additional violations, an across-the board requirement for such inspections would impose a significant and as yet unnecessary burden on permittees. The Department also believes that the Legislature has not given it authority to require private entities to make inspection reports available to the public on-site on private property, or to require municipalities to keep inspection reports not directly related to the municipalities' official business on file and available to the public at municipal buildings. The Department makes records, reports, or information that it

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obtains or that is required to be developed and retained by the permittee as a permit condition, available to the public at the offices of the Department in accordance with N.J.A.C. 7:14A-18.1. Such documents include reports or other information required under N.J.A.C. 7:14A-24.9(a).

75. COMMENT: Delete N.J.A.C. 7:14A-24.9(a)2i and ii, which require an annual inspection, and a report summarizing the result of the inspection accompanied by an annual certification. This requirement is unnecessary and will only add an extra burden onto facility personnel with no environmental benefit. Compliance is demonstrated through monthly Discharge Monitoring Reports (DMRs) and through prescribed action items contained in a SPPP (for example, daily sweeping). (5, 57, 180)

RESPONSE: N.J.A.C. 7:14A-24.9(a)2i and ii are relocated from former N.J.A.C. 7:14A-11.2(a)3i and ii, and are based on USEPA regulations at 40 C.F.R. 122.44(i)(4)(i) and (ii) that require annual inspections and reports as a means of evaluating and recording whether measures identified in a SPPP are adequate and properly implemented in accordance with the terms of the permit, or whether additional control measures are needed. Most facilities subject to these provisions are not required by their NJPDES permit to prepare DMRs, or they are required to prepare DMRs for only one or some of the pollutants that the permit is intended to control.

Municipal Stormwater Regulation Program

Summarized below are comments on the Municipal Stormwater Regulation Program. Comments that the Department determined to be on the draft NJPDES general permits rather than on the rule proposal are addressed in the response to comments document for the general permits issued under N.J.A.C. 7:14A-15.16. The response to comments document for the general permits is available from the Bureau of Nonpoint Pollution Control, Department of Environmental Protection, PO Box 029, Trenton, New Jersey 08625-0029, and on the Department's website at www.njstormwater.org.

76. COMMENT: The emphasis that these rules place on maximizing groundwater recharge and minimizing nonpoint source pollution represents a very positive approach to stormwater management in New Jersey. (12)

77. COMMENT: The requirements are critical to preventing pollution from New Jersey's streets and public works yards as well as for educating and regulating actions by the public. (58)

78. COMMENT: The commenter wholeheartedly supports these rules. For once, nonpoint source pollution is actually being addressed, action is mandated at the local and development levels for the first time, and the Department is comprehensively giving towns the tools and the mandates. (74)

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79. COMMENT: The commenter endorses the proposed Municipal Stormwater Regulation Program, and agrees with its methods of implementing proper stormwater management techniques and encouraging the role of municipalities in that implementation. (116)

80. COMMENT: The commenter supports the Department's proposed rules, specifically the Statewide Basic Requirements of public education on stormwater impacts, detection and elimination of illicit connections, control of solid and floatable materials, implementation of good housekeeping practices in public works yards, and effective employee training. The commenter also supports the Department's extended permit requirement for post-construction stormwater runoff. (129)

81. COMMENT: The commenter is extremely supportive of both the stormwater rules and the NJPDES permits for municipalities, public complexes, and NJDOT. It is quite feasible for towns to meet the Department requirements, which should not be weakened. Although there is a cost for implementation, the good housekeeping practices and good management practices in general are absolutely essential, very acceptable practices that needed to be established long ago by the towns, public complexes, and development. (133)

82. COMMENT: The commenter supports the proposal to regulate stormwater as a point source through the Municipal Stormwater Regulation Program and draft NJPDES general permits. This shift to point source regulation of stormwater will help to stem the toxic tide of pollution into the State's waterways and ultimately the ocean. (137)

83. COMMENT: The commenter supports the proposed rules that are designed to reduce water pollution in New Jersey from stormwater runoff. The commenter supports the rules that require BMPs to reduce pollution runoff from new development, and that address polluted runoff from already developed areas. Public outreach and education are critical. (211)

RESPONSE TO COMMENTS 76 through 83: The Department acknowledges the commenters' support.

84. COMMENT: Can N.J.A.C. 7:14A-25 be changed by public comment? (208)

RESPONSE: The essential purpose of allowing public comment on proposed rules under the New Jersey Administrative Procedure Act is to give those affected by the proposed rules an opportunity to participate in the rulemaking process. An agency is able to make changes to proposed rules based on public comments, provided those changes are not so substantial as to effectively destroy the value of the original notice of proposal. The Department has made certain changes to subchapter 25 and a related provision at N.J.A.C. 7:14A-24.3(c), as discussed in responses to Comments 248, 308 through 310, 336 and 337, and 349 and 350 and the Summary of Agency Initiated Changes below.

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85. COMMENT: These rules are too restrictive, and entail a redundant layer of bureaucracy. The process proposed is unwieldy and complicated. (61)

RESPONSE: The Municipal Stormwater Regulation Program rules are, with limited exceptions (see the responses to Comments 89 through 99 below), Federally mandated under Phase II rules that the USEPA promulgated in the Federal Register on December 8, 1999 (64 Fed. Reg. 68721). Under these USEPA rules, many entities that operate “small municipal separate storm sewer systems” (small MS4s) must apply to the National Pollutant Discharge Elimination System (NPDES) permitting authority (which in New Jersey is the Department) for a NPDES permit under the CWA. If this permit is a general permit, it must include six listed “minimum control measures” (even if such entities already implement various components of those measures), and it must require the permittee to submit reports periodically to the NPDES permitting authority. In addition, the Municipal Stormwater Regulation Program is intended to provide substantial environmental benefits, as discussed in the Environmental Impact statement at 35 N.J.R. 191-192.

As discussed in the responses to Comments 97 through 99, 136 through 140, 189 through 207, and 342 below, the Department has simplified the NJPDES permit process for small MS4s, has issued general permits that clearly state the specific means to meet the Federal requirements, is preparing Guidance Documents and will continue to present seminars, workshops, and training sessions to assist permittees. For further response to issues raised by this commenter, see the responses to Comments 157 and 304 below, and the Department’s response to comments document for the draft NJPDES general permits, which is available from the Bureau of Nonpoint Pollution Control, Department of Environmental Protection, PO Box 029, Trenton, New Jersey 08625-0029, and on the Department’s website at www.njstormwater.org. Many issues raised by this commenter are specific Statewide Basic Requirement (SBR) elements that are set forth in the Tier A Permit, but not in the Tier B Permit or the NJPDES rule amendments.

86. COMMENT: Besides N.J.A.C. 7:14A-25.6(j)2, which requires the permittee to make the records required by the NJPDES permit, as well as the Stormwater Pollution Prevention Plan, available to the public at reasonable times during regular business hours, the Municipal Stormwater Regulation Program has no other provision for public involvement. At a minimum, NJPDES municipal separate storm sewer system permit applications should be made available for public comment. (217)

RESPONSE: The Department made the draft Highway, Public Complex, Tier A, and Tier B Permits available in January 2003 for public comment in accordance with N.J.A.C. 7:14A-15, and will continue to make draft NJPDES permits for the Municipal Stormwater Regulation Program available for public comment in accordance with N.J.A.C. 7:14A-15. To request authorization under the final Highway, Public Complex, Tier A, and Tier B Permits, applicants submit “requests for authorization” (RFAs). These

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RFAs are not permit applications, but items of procedural correspondence that represent a formal acceptance of the terms elaborated in these general permits. Therefore, and in accordance with N.J.A.C. 7:14A-6.13, these RFAs are not made available for public comment. However, N.J.A.C. 7:14A-6.13 does provide for public involvement in certain aspects of the NJPDES general permit program. The Department makes applications for individual NJPDES permits available for public comment when the Department makes the draft permits available for public comment in accordance with N.J.A.C. 7:14A-15.

In addition, N.J.A.C. 7:14A-25.6(b)1 requires the permittee, at a minimum, to comply with applicable State and local public notice requirements when providing for public participation in the development and implementation of the permittee's stormwater program.

On September 15, 2003, the United States Court of Appeals for the Ninth Circuit issued its opinion in *Environmental Defense Center, Inc. v. U.S.E.P.A.*, 344 F.3d 832 (9th Cir. 2003). In that opinion, the court affirmed USEPA's Phase II Rule against several challenges. However, the court concluded that USEPA's failure to require review of "notices of intent" (NOIs) for small MS4 general permits, and USEPA's failure to make these NOIs available to the public or subject to public hearings contravene the CWA. The court therefore vacated those portions of the Phase II Rule that address these procedural issues relating to these NOIs, and remanded those portions so that USEPA may take appropriate action to comply with the CWA. *Id.* at 840, 858.

Because of the general permit approach that the Department uses in its Municipal Stormwater Regulation Program, the Department does not believe that the court's opinion affects its implementation of these new rules. Under the general permit program that the Department is adopting for its Municipal Stormwater Regulation Program, the general permit is the means by which the Department regulates a large number of similar dischargers. Each general permit identifies the requirements necessary to protect water quality from those discharges. The dischargers seek permission to discharge under the CWA by filing RFAs, which represent a formal acceptance of the terms of the general permit. Because the specific pollution control information is contained in the general permit itself, rather than in the dischargers' RFAs, the concern that the court had regarding review of the dischargers' individual stormwater control program is not applicable to New Jersey's Municipal Stormwater Regulation Program. Similarly, because the public is able to review and comment on the proposed rules establishing the general permits, as well as the general permits themselves, the courts' concern regarding public review of the municipal dischargers' respective stormwater control programs for small MS4s is not applicable to New Jersey's new Program.

87. COMMENT: The NJPDES rules and general permits must require the Department to create a central website to list all approved stormwater general permit authorizations and post subsequent information submitted. Add N.J.A.C. 7:14A-25.6(j)4 to read "The Department shall make all information submitted by permittees available to the public via

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the Internet on a central Departmental website, including, but not limited to, the information submitted pursuant to this subsection, 25.5(a), 25.6(a)3, 25.6(a)5, and 25.8(i).” Also make corresponding changes to the draft Highway, Public Complex, Tier A, and Tier B Permits.

The NJPDES rules and general permits include various requirements for regulated entities to seek authorization, certify, keep records, and submit an annual report; however, as proposed a permittee is only required to make its “records” available to the public during regular business hours. The Department must make all information submitted pursuant to the NJPDES rules and general permits widely available to the public to ensure public education, involvement, and support.

One of the six minimum controls that USEPA required states to address in the Phase II rules is public education and outreach (see 40 C.F.R. 122.34(b)(1) and (2)). The Department must create a central website to list all stormwater general permits issued and post subsequent information submitted, including, but not limited to, requests for authorization (RFAs) per N.J.A.C. 7:14A-25.5, and annual reports and certifications per N.J.A.C. 7:14A-25.6(j), as well as the Stormwater Pollution Prevention Plan (SPPP) and small MS4 outfall pipe map per N.J.A.C. 7:14A-25.6(a)3 and (b)5. The Department already has a trial website for discharge permits and daily monitoring reports that could be expanded to cover NJPDES general permit authorizations. Increased public access to information will result in a more effective program due to the public’s ability to assist the State and regulated entities in carrying out the program. Another benefit is better access by regulated entities and Department staff to this information. (25, 41, 46, 50, 88, 122, 137, 213, 227)

RESPONSE: 40 C.F.R. 122.34(b)(1) and (2) impose requirements on permittees, but do not require NPDES permitting authorities, such as the Department, to make information available to the public. However, the Department makes records, reports, and information that it obtains or that is required to be developed and retained by the permittee as a permit condition, available to the public at the offices of the Department in accordance with N.J.A.C. 7:14A-18.1, which is incorporated in NJPDES permits including the Highway, Public Complex, Tier A, and Tier B Permits. Such documents include RFAs, SPPPs, maps showing the end of MS4 outfall pipes, and annual reports and certifications. The Department also makes the information available via the Internet, based on factors such as the benefit of and amount of work required for making the particular kind of document available via the Internet. For example, the Department has created a website on the Internet for the Municipal Stormwater Regulation Program, and has made the final Highway, Public Complex, Tier A, and Tier B Permits available on that website. That website will also list the municipalities authorized to discharge under the Tier B Permit, in accordance with N.J.A.C. 7:14A-25.8(d). In addition, the Department will list authorizations issued under the final Highway, Public Complex, Tier A, and Tier B Permits in the “NJPDES Permit List by Discharge Category” Reports available through the Department’s Open Public Records Act website. The Department

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will also publish reports of authorizations issued under these permits in the DEP Bulletin (or other similar Department publication) in accordance with N.J.A.C. 7:14A-6.13(d)6. In addition, information about all enforcement actions under the rules and the general permits will be accessible on the Department's website.

The DEP Bulletin is also available through the Department's website. The RFAs submitted for these general permits will not be available via the Internet, because of the large expected number of RFAs (over 600), and because these RFAs are items of procedural correspondence that represent a formal acceptance of terms elaborated in the general permits.

In the future, if resources are available, the Department may make annual reports and certifications (or summaries thereof) available via the Internet, especially if they are submitted electronically (see the responses to Comments 344 and 346 below in regard to, respectively, the content of these certifications and electronic submission). The Department is also working to make information about permits more easily accessible to concerned citizens via the Internet.

As discussed in the responses to Comments 285, 286, and 325 below, SPPPs and maps showing the end of MS4 outfall pipes must be submitted to the Department if requested. Because of the amount of work and expense required, it is unlikely that the Department will make them available via the Internet in the near future. Like annual reports and certifications and other records required by the NJPDES permit, permittees must make them available to the public during regular business hours. 40 C.F.R. 122.34(b)(1) and (2) impose requirements on permittees but do not require the NPDES permitting authority to make information available to the public.

Federal Laws or Rules

88. COMMENT: Many commenters supported or recognized the Department's effort through these rules to comply with Federal mandates; Federal Clean Water Act (CWA) requirements for municipal separate storm sewer systems, nonpoint source pollution control, or stream quality; USEPA requirements; new and upcoming total maximum daily load (TMDL) rules; or USEPA Phase II stormwater rules. (27, 39, 71, 74, 116, 129, 144, 166, 187, 195, 201, 203, 211)

RESPONSE: The Department acknowledges the commenters' support for the rules.

89. COMMENT: Several commenters noted that they understood that the Federal law must be implemented through State rules. One question that has not been satisfactorily addressed is whether these proposed rules go beyond what is required by Federal law. (3, 55, 56, 85, 130, 190)

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90. COMMENT: While it is acknowledged that the Tier A Permit is in response to Federal law, it is unclear whether these proposed rules go beyond what is required under that law. The Department should assure that the proposed rules comply with, but do not exceed, what other states are doing to comply with these Federal requirements. (66)

91. COMMENT: The Department states that the proposed program is a result of USEPA rules. This justification is often cited and is generally true to a degree. What is not clear is whether the Department's program is more stringent, is more comprehensive, or is being phased in faster than USEPA requires. (128)

92. COMMENT: It appears that the State rules go beyond the Federal mandate. (69)

RESPONSE TO COMMENTS 89 through 92: With respect to "waters of the United States," as defined in 40 C.F.R. 122.2 (most surface waters), and underground injection, the NJPDES rules for the Municipal Stormwater Regulation Program are required to comply with Federal laws or rules. This Program implements the Federal mandates; it does not go beyond them.

For discharges to surface water (DSW), the Department developed the NJPDES rules for the Municipal Stormwater Regulation Program within the framework of Section 402(p) of the CWA (33 U.S.C. §1342(p)) and related provisions of the National Pollutant Discharge Elimination System (NPDES) rules, 40 C.F.R. 122, 123 and 124, promulgated by the USEPA under the CWA. NPDES rules specific to discharges from municipal separate storm sewers are found mainly at 40 C.F.R. 122.26 and at 40 C.F.R. 122.30 through 122.37 and 123.35, and include Phase II rules that the USEPA promulgated in the Federal Register on December 8, 1999 (64 Fed. Reg. 68721), as well as Phase I rules promulgated earlier. Other relevant USEPA rules and Federal law are found in 40 C.F.R. 122.4, 122.21(a), (c), (d), and (f), 122.28(b), 122.41(j), 122.42(c), 122.44(k), 122.62(a), 124.52, and 130.12; and Section 208(e) of the CWA (33 U.S.C. §1288(e)). For discharges to groundwater or to surface waters of the State that are not "waters of the United States," see the response to Comments 93 through 96 below.

The Department has consulted with other states to compare approaches to implementing several aspects of the Federal requirements. Some states, like New Jersey, have identified more specific means to implement the minimum control measures in the Federal rules; others have not. The Department believes that in those states that have not proposed more specific means to implement the minimum control measures in the Federal rules, the process of developing permits will be much more resource-intensive for both the regulated community and the environmental agencies, with a great deal of case-by-case negotiation and litigation that may well produce results similar to what New Jersey proposed. In addition, New Jersey is the Nation's most densely populated and urbanized state; therefore, approaches taken by other states to implement the Federally required program would not necessarily be appropriate in New Jersey. NPDES permit programs also vary among states because of differences in state constitutions, statutes, or

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judicial decisions, or because of differences in approaches to Phase II stormwater regulation (see the response to Comments 97 through 99 below).

Like the USEPA Phase II stormwater rules for small MS4s, the NJPDES rules for small MS4s outline in broad terms what must be included in the discharge permits. Most of the specific BMP requirements of the Municipal Stormwater Regulation Program are set forth in these permits rather than in NJPDES rule itself. See the response to Comments 97 through 99 below.

The Federal rules require states to “specify a time period of up to 5 years from the date of permit issuance for operators of regulated small MS4s to fully develop and implement their storm water program” (40 C.F.R. 123.35(e); see also 40 C.F.R. 122.34(a)), and expects those programs to include “interim milestones” that permittees are required to meet if the USEPA or state has provided or issued a menu of BMPs (see 40 C.F.R. 122.34(d)). USEPA also noted in the Preamble to its Phase II rules (64 Fed. Reg. 68764) that “full implementation of an appropriate program must occur as expeditiously as possible, and not later than five years.” New Jersey is implementing these Federal mandates by N.J.A.C. 7:14A-25.6(a)1, (c), and (g), and by the implementation schedules specified in the Tier A, Highway, and Public Complex Permits, which clearly state the “interim milestones” that the Federal rules require. See the response to Comments 97 through 99 below.

Until December 10, 2001, the Federal rules allowed, but did not require, states to phase in NPDES permit coverage for small MS4s serving jurisdictions with a population under 10,000 on a schedule consistent with a state watershed permitting approach (40 C.F.R. 123.35(d)(3)). The Department chose not to phase in such permit coverage because the Department believes that watershed management in New Jersey does not warrant delayed NJPDES regulation of these small MS4s, and such delayed regulation would actually make watershed management more difficult.

93. COMMENT: The NPDES stormwater permit program is limited to stormwater discharges to the “waters of the United States.” The Department’s Municipal Stormwater Regulation Program is broadening its authority to regulate not only these discharges, but certain other stormwater discharges to other waters of the State including groundwater. Since the State is including State waters and groundwater to be regulated by the proposed rules, they are State mandated, not Federally mandated. (114)

94. COMMENT: The Department’s regulation of discharges to groundwater goes beyond the minimum requirements of the Federal mandate. (27, 203)

95. COMMENT: While the Department may seek to defend the rule proposal on the basis that it implements a Federal mandate, this representation is only partially true as the Federal rule is limited to surface waters while the Department has expanded the scope of Phase II implementation by including groundwater. (106, 154, 215)

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96. COMMENT: The rules should be consistent with the USEPA rules. The USEPA Phase II rules require permits for discharges to surface waters only. The proposed Department rules will expand the permitting jurisdiction to discharges to surface water and to groundwater. The proposed rules also appear to extend jurisdiction to all municipalities in the State when the USEPA mandates permits to municipalities within the “urbanized” areas as designated by the Federal Census Bureau. Although the USEPA rules contain provisions that would allow the Department to expand its scope, expanding the scope to include the many rural municipalities in the State is excessive. The commenter interviewed county planning agencies in Cayuga County, New York (which has no MS4s) and Monroe County, Pennsylvania, and found that New York and Pennsylvania are following USEPA requirements rather than expanding the scope to non-urbanized communities.

The expanded regulatory scope will place additional burdens on local governments that are already facing significant budgetary shortfalls. How will a limited number of Department staff process permits from 566 municipalities, 21 counties, and an untold number of State and Federal agencies, public complexes, and others? (42)

RESPONSE TO COMMENTS 93 through 96: The Department believes that with respect to underground injection, the NJPDES rules for the Municipal Stormwater Regulation Program are required to comply with Federal laws or rules. This Program implements the Federal mandates; it does not go beyond them.

Specifically, some discharges to groundwater (DGW) subject to these NJPDES rules are through Class V injection wells (such as dry wells and certain infiltration structures) subject to USEPA rules for the Federal Underground Injection Control (UIC) Program at 40 C.F.R. 144-148, promulgated under Part C of the Federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300(f) et seq.). (See, for example, the references to “storm runoff” in 40 C.F.R. 144.81(4).) For these discharges, these NJPDES rules require a general or individual NJPDES DGW permit that differs from the authorization by rule that 40 C.F.R. 144.24 and 144.84 provide for some Class V wells. This requirement is authorized by 40 C.F.R. 144.82(d), which recognizes that States can establish additional requirements for Class V wells to protect underground sources of drinking water.

In addition, USEPA recognizes that States issue general as well as individual permits to regulate Class V injection wells. See 67 Fed. Reg. 39590 (June 7, 2002), 64 Fed. Reg. 68554 (December 7, 1999), and The Class V Underground Injection Control Study, Volume 1, EPA/816-R-99-014a, September 1999. USEPA’s June 7, 2002 statement said, in part, “A growing concern expressed by commentators, States, and EPA Regions, is that there will be a dramatic increase in the use of Class V wells to dispose of storm water rather than obtain NPDES permits for surface discharge. This is an example where general [UIC] permits may be utilized.”

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Because of the limited scope of USEPA's jurisdiction under the CWA and the SDWA, the Federal NPDES discharge permit program is limited to discharges to "waters of the United States," and the Federal UIC Program is limited to underground injection through wells. In the NJPDES rules for the Municipal Stormwater Regulation Program, however, the Department is exercising its broader authority under the New Jersey Water Pollution Control Act and Water Quality Planning Act to regulate not only those discharges and underground injection, but also discharges to other waters of the State, including groundwater, with or without underground injection. These rules regulate discharges to surface water and groundwater from small MS4s in a unified and consistent manner.

The Department does not believe that regulating discharges from small MS4s to surface waters and groundwaters of the State that are not "waters of the United States" will place undue additional burdens on local governments, other permittees, or the Department. Because of the very common presence of discharges to "waters of the United States" from small MS4s, a very large fraction, and potentially all, of the government agencies that require a NJPDES permit for discharges to such surface waters and groundwaters also require a NJPDES permit for discharges to "waters of the United States." In most instances, the NJPDES permit for all of the discharges would be a single general permit (the Tier A, Tier B, Highway, and Public Complex Permit, whichever is applicable), with resulting savings in costs and paperwork to both permittees and the Department. To a large extent, the same ordinances (or other regulatory mechanisms), public education programs, illicit connection detection and elimination programs, operation and maintenance programs, and employee training programs that would be used to reduce pollutant discharge to "waters of the United States" would also be used to reduce pollutant discharge to surface waters and groundwaters of the State.

In addition, the Department does not agree that its inclusion of rural municipalities in the Municipal Stormwater Regulation Program is excessive. It must first be noted that 492 of New Jersey's 566 municipalities are located entirely or partially within "urbanized areas" as determined by the 2000 Census. These 492 municipalities are found in all of New Jersey's 21 counties. No part of New Jersey is more than about 20 miles away from a Census 2000 "urbanized area."

The Federal rules require the State to develop and apply a process and criteria to designate small MS4s outside "urbanized areas" (40 C.F.R. 123.35(b); also see 40 C.F.R. 122.32(a)). Of the 74 New Jersey municipalities that are located fully outside Census 2000 "urbanized areas," only three have been designated by the Department as Tier A municipalities pursuant to 40 C.F.R. 123.35(b). One is Bridgeton City, which has a Census 2000 population density of 3,660 per square mile and a Census 2000 population of 22,771, and therefore had to be evaluated for designation under 40 C.F.R. 123.35(b)(2). The other two municipalities are Corbin City and Egg Harbor City, which are deemed to have a stormwater sewer system discharging directly into the salt waters of

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Atlantic County (see N.J.A.C. 7:14A-25.3(a)1iii and N.J.A.C. 7:22A Appendix A). These two municipalities are assigned to Tier A because of the particular importance of limiting pollutants in small MS4 discharges to these salt waters (as recognized in the Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq.).

The Department assigned the other 71 municipalities located fully outside Census 2000 “urbanized areas” to Tier B. The Department could have designated all small MS4s operated by these municipalities as small MS4s that require NPDES permits pursuant to 40 C.F.R. 123.35(b), but did not make that designation for any of those small MS4s. Instead, the Department issued the Tier B permit, which is not in any respect a NPDES permit under section 402 of the CWA (see N.J.A.C. 7:14A-25.8(a)). The Department and the Municipal Stormwater Advisory Group determined that the Municipal Stormwater Regulation Program should in some manner include all municipalities that operate small MS4s, in order to prevent or minimize water quality impacts of stormwater runoff from new development and redevelopment projects Statewide, and to provide a degree of equity among municipalities.

By obtaining the Tier B Permit, these 71 Tier B municipalities avoid designation under 40 C.F.R. 123.35(b), and the costs imposed by such designation. Because the Statewide Basic Requirements (SBRs) in the Tier B Permit include only two of USEPA’s minimum control measures (post-construction stormwater management in new development and redevelopment, and public education), the costs incurred by Tier B municipalities will be substantially lower than those incurred by Tier A municipalities. Public complexes located entirely in these 71 municipalities do not require NJPDES permits for their small MS4s (see N.J.A.C. 7:14A-25.2(a)2), except for any small MS4s that receive special designation under N.J.A.C. 7:14A-25.2(a)4.

According to the New York State Department of Environmental Conservation (NYSDEC) “FINAL Designation Criteria for Identifying Regulated Municipal Separate Storm Sewer Systems” (January 2003), the NYSDEC has designated small MS4s outside “urbanized areas” under 40 C.F.R. 123.35(b) in Dutchess, Putnam, and Westchester Counties, and in eastern Long Island. According to a November 26, 2003 telephone conversation with Pennsylvania Department of Environmental Protection staff, the designation process in Pennsylvania is still under way.

The Department estimates that eight State and interstate agencies require NJPDES permits under N.J.A.C. 7:14A-25.2(a)3 for small MS4s at highways and other thoroughfares, and that about 40 public complexes (or groups of public complexes such as multiple campuses of a State university) operated by State or Federal agencies require NJPDES permits under N.J.A.C. 7:14A-25.2(a)2. The Department also estimates that about 25 public complexes (or groups of public complexes) at county colleges and correctional and medical facilities require NJPDES permits under N.J.A.C. 7:14A-25.2(a)2, and that some general county administration facilities may also be public complexes requiring NJPDES permits.

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The Department has simplified the task of processing NJPDES permits for potentially 566 municipalities, all 21 counties, and various State, interstate, and Federal agencies by issuing the Tier A, Tier B, Highway, and Public Complex Permits. The Department expects that almost all regulated entities will seek coverage under the appropriate general permit(s). The Request for Authorization (RFA) forms for these permits have only two pages and require minimal information. Department review of the RFAs is a simple administrative process that should take very little time (see the response to Comments 259 and 260 below). The Department also has ample experience administering NJPDES general stormwater permits for large numbers of facilities. For example, over 1800 facilities are currently regulated under the Department's existing "basic industrial" stormwater general permit (NJPDES Permit No. NJ0088315). The Department also plans to assign some additional staff to administer the Municipal Stormwater Regulation Program, and to provide some grant funds to municipalities as discussed in the response to Comments 120 through 128 below.

97. COMMENT: While the Department may seek to defend the rule proposal on the basis that it implements a Federal mandate, this representation is only partially true. The rule proposal expands the scope of Phase II in various ways. For example, retrofitting of stormwater inlets is not a requirement under current Federal rules, but a discretionary act that is applicable only if a community adopts the procedure as a Best Management Practice (BMP). Retrofitting is therefore a State mandate MS4 operators should select BMPs, and not have one or more BMPs dictated to them. The commenters believe they have the right to select BMPs. The Federal rules in essence set forth the goal that may be achieved with less effort, and therefore at less cost, when compared against the ambitious program proposed by the Department. (106, 154, 215)

98. COMMENT: The rules should be consistent with the USEPA rules. One must ask if the requirements proposed for the "urbanized" communities as designated by the Federal Census Bureau are excessive. For example, are the requirements for street sweeping within one week after a snowmelt USEPA mandated or Department mandated? If this requirement is Department mandated, the Department should replace this requirement with something reasonable. (42)

99. COMMENT: The State's position that these rules are being promulgated under a Federal mandate is faulty. The Federal rules require certain water improvement standards, but not the methodology to achieve them. Therefore, many of the methods that the State has imposed are unilateral State actions of State origin, and are not required under the Federal rules. One example is the very expensive requirement for additional street sweeping following a snow storm. Because nothing in the Federal rules requires municipalities to implement this intense street sweeping, this requirement is a State mandate. (34)

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RESPONSE TO COMMENTS 97 through 99: Like the USEPA Phase II stormwater rules for small MS4s, the NJPDES rules for small MS4s outline in broad terms what must be included in the discharge permits. Most of the specific BMP requirements of the Municipal Stormwater Regulation Program, such as requirements for retrofitting storm drain inlets and for street sweeping, are set forth in these permits rather than in NJPDES rule itself. For discharges to “waters of the United States,” this Program implements the Federal mandates; it does not go beyond them.

For discharges to “waters of the United States,” the Federal rules (40 C.F.R. 122.34) outline in broad terms what must be included in the permits for small MS4s. The Federal rules also list, in very general terms, the six “minimum control measures” that must be included in the permits. They further require permittees to “reduce the discharge of pollutants ... to the maximum extent practicable.”

All six of the Federal “minimum control measures” are integrated into the eight “Statewide Basic Requirements” (SBRs) listed in N.J.A.C. 7:14A-25.6(b), with revisions to language and organizational structure that interpret and clarify “minimum control measures,” facilitate their incorporation in NJPDES permits, integrate them with certain existing State and local municipal stormwater programs under New Jersey statutes, and recognize that the Department (the NPDES permitting authority in New Jersey) is itself responsible for implementing the SBR for “construction site stormwater runoff control.” Although the Federal rules provide that the states may go beyond the six “minimum control measures,” the Department believes that the eight SBRs are consistent with those six measures.

The USEPA has stated in litigation that the NPDES permits themselves “will prescribe *more specific means* by which the minimum measures are implemented and discharges of pollutants are reduced to the maximum extent practicable” (petition for rehearing filed by the USEPA on February 28, 2003, regarding the decision in *Environmental Defense Center, Inc. v. U.S.E.P.A.* (319 F.3d 398 (9th Cir. 2003) vacated and replaced by 344 F.3d 832 (9th Cir. 2003)). USEPA also stated in the Preamble to its Phase II rules (64 Fed. Reg. 68763; December 8, 1999) that “a State could require its permittees to follow its menu of BMPs” (in other words, prescribe more specific means). The contents of the NPDES permit are determined by the NPDES permitting authority, not the applicant or permittee. Neither Federal nor State law confers on an MS4 operator a right to determine the BMPs required by a NPDES or NJPDES permit.

Without the “more specific means,” the NPDES permits would not only be virtually unenforceable, they would also give permittees no real direction about how to meet the requirements of the Federal rules. New Jersey has taken care to include the “more specific means” in its program from the beginning, to create a simple road map toward compliance, rather than forcing each permittee to design its own “more specific means.”

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For discharges to “waters of the United States,” the control measures specified in the Tier A, Highway, and Public Complex Permits do not go beyond the Federal mandates. The control measures are the “more specific means” that the Federal rules require. For example, the Federal rules require permittees to develop and implement “an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.” The Federal rules list more specific means of achieving this goal, including “controls for reducing or eliminating the discharge of pollutants from streets, roads, and highways,” and “requirements to reduce floatables and other pollutants discharged from municipal separate storm sewers.” These correspond to certain requirements in the Tier A, Highway, and Public Complex Permits, such as requirements for increased street sweeping, and for retrofitting storm drain inlets “where such inlets are in direct contact with repaving, repairing, reconstruction or alterations” of roads and other municipal facilities. As explained in the response to Comment 147 below, the Department has changed the general permits as issued final by deleting requirements for street sweeping after application of deicing materials.

The Department chose to implement the Federal mandates by issuing general permits that clearly state the “specific means” and “interim milestones” to meet the Federal requirements. In contrast, some other states have required each applicant to prepare its own “notice of intent” containing an individually prepared BMP program and identifying how the applicant plans to meet the Federal mandates. In those states, the state agency must review each individual BMP program, and possibly require the applicant to revise the program significantly. This approach imposes up-front costs on the applicants to develop individual BMP programs and to negotiate those programs with the State agency. New Jersey’s approach, on the other hand, relieves municipalities and other applicants of the cost of engaging consultants to develop the BMP program, and the cost of working through individualized Department reviews. Instead, the general permits provide a clear, predictable, and consistent mechanism that requires municipalities and most other applicants to complete only a two-page Request for Authorization. In addition, New Jersey’s approach gives municipalities and other applicants assurance that their individual programs will meet the Federal requirements, and may encourage municipalities and other applicants to work together to share services.

100. COMMENT: The commenter understands that the State must develop a plan for Federal approval. Since some aspects of what must be in this plan are not clearly defined, the State should err in favor of fully considering the financial and operational impacts on its 566 municipalities. If part of the plan is rejected as not being responsive enough to the Federal legislation, then the State plan could be amended to address the Federal concern. If the State plan is overly aggressive and approved by the Federal government, it would be very difficult to go backwards to lessen the burden of the plan. Additionally, compliance is likely to be greater if the plan is designed not to overwhelm municipalities. (115)

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RESPONSE: The Department's consultations with stakeholders made it abundantly clear that the potential financial and operational burdens associated with the Federal program were of great concern to permittees. The Department therefore has taken pains to implement the Federal mandates in a way that is not "overly aggressive," but still satisfies those mandates. The Department has submitted and is submitting appropriate documents concerning the NJPDES rule amendments and general permits to USEPA in accordance with 40 C.F.R. 123.43 and 123.62. If the USEPA were to reject all or part of the Department's submittals as not being responsive to the Federal mandate, the uncertainty and delay that would result would not be helpful either to the regulated community or to those interests that are best served by the restoration, maintenance and preservation of the quality of the State's surface waters and groundwaters (see N.J.S.A. 58:11A-2a). If the Department later determines that one or more NJPDES rule or permit requirements is inappropriate, or goes farther than necessary to meet Federal requirements and the needs of the State, then the Department does not anticipate that USEPA would object to the Department's modifying or deleting those requirements.

Unfunded Mandates

101. COMMENT: The State is exempt from sharing of the costs because this is a Federal mandate. (163)
102. COMMENT: The proposed rules do not appear to be considered "State Mandate/State Pay" rules. (127, 212)
103. COMMENT: When the phrase "State Mandate State Pay" is mentioned, State officials call it a Federal mandate. Maybe they are embarrassed that New Jersey is one of the last states to follow the Federal guidelines. (109)
104. COMMENT: If the Department's program is more stringent, is more comprehensive, or is being phased in faster than USEPA requires, does that not make the Department's program subject to the State Mandate, State Pay statute? (128)
105. COMMENT: The commenter asks for information as to whether the proposed rules fall under New Jersey's "State mandate ... State pay" law and if so, what will be the procedures for Department compliance with that law. (15)
106. COMMENT: The appropriate agency should determine if the State will fund the local costs for implementing this program or, if not, investigate whether this is a violation of the State Mandate/State Pay provisions of the New Jersey Constitution. (19)
107. COMMENT: Until it can be demonstrated that these proposed rules do not in any way exceed the Federal rules, these rules must be considered to fall within the State mandate/State pay guidelines. (214)

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108. COMMENT: If the State rules go beyond the Federal mandate, this should be treated as “State Mandate, State Pay.” (69)

109. COMMENT: The State should pay the costs where the rules exceed Federal standards and/or guidelines. (113)

110. COMMENT: Five commenters representing municipalities, as well as one commenter representing a State university, described the rules as an unfunded mandate. (10, 29, 140, 169, 205, 216)

111. COMMENT: The significant economic impact of the proposed rules on municipalities is covered by the State mandate, State pay requirement. (200)

112. COMMENT: Since the State is including State waters and groundwater to be regulated by the proposed rules, they are State mandated, not Federally mandated. Therefore, an argument for State mandate, State pay may be made to provide financial assistance for the municipalities to comply with the rules. (114)

113. COMMENT: Retrofitting of stormwater inlets is not a requirement under current Federal rules, but a State mandate hidden within the rule proposal that does not identify a State funded program to support implementation. (106, 154, 215)

114. COMMENT: The proposed rules violate the New Jersey State constitutional provision for “State mandate/State pay.” Many of the methods that the State has imposed are unilateral State methods not required under the Federal rules. To the extent that these State methods impose substantial costs on local and county governments, these methods do come under the State constitutional provisions. For example, the very expensive requirement for additional street sweeping following a snow storm is a State mandate which should require State funding. (34)

RESPONSE TO COMMENTS 101 through 114: The expression “State mandate-State pay” refers to the New Jersey Constitution, Article VIII, Section II, paragraph 5, and N.J.S.A. 52:13H-1 et seq., which prohibit “unfunded mandates” on counties, municipalities, or school districts (but not on State universities or other State agencies). The appropriate agency to determine if a rule violates “State mandate-State pay” requirements is the Council on Local Mandates, which was created to resolve any dispute regarding whether a law or rule or regulation issued pursuant to a law constitutes an unfunded mandate. A rule cannot be considered an “unfunded mandate” if it is required to comply with Federal laws or rules or to meet eligibility standards for Federal entitlements; if it is imposed on both government and non-government entities in the same or substantially similar circumstances; or if it repeals, revises or eases an existing requirement or mandate.

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The Department believes that with respect to discharges to “waters of the United States” and underground injection, the NJPDES rules for the Municipal Stormwater Regulation Program are required to comply with Federal laws or rules, and would not trigger “State mandate-State pay” for this reason alone. This Program implements the Federal mandates; it does not go beyond them. See the responses to Comments 89 through 99 above, including the discussion of retrofitting storm drain inlets, street sweeping, and other BMPs in the response to Comments 97 through 99.

The Department also believes that the NJPDES rules do not trigger “State mandate-State pay” because they are imposed on both government and non-government entities in the same or substantially similar circumstances. The NJPDES rules for the Municipal Stormwater Regulation Program are part of a comprehensive set of NJPDES rules that require both government and non-government entities to obtain NJPDES permits for discharges of pollutants to the surface waters and groundwaters of the State (see N.J.A.C. 7:14A-2.1 and 2.4), including but not limited to stormwater discharges (see N.J.A.C. 7:14A-24.2 and, for other stormwater DGW, N.J.A.C. 7:14A-7 and -8).

The Department also believes that the NJPDES rule amendments, as adopted, do not trigger “State mandate-State pay” because these amendments revise existing requirements, and ease the impact on small MS4s. The NJPDES rules did not exempt discharges of pollutants to surface water or ground water from small MS4s. See N.J.A.C. 7:14A-2.1 and 2.4, and the limited exemptions that were in N.J.A.C. 7:14A-2.5, 7.4, 8.1(b), and 11.1(b). N.J.A.C. 7:14A-11.5(a)8 and (g) (repealed by this adoption) required operating entities for a wide variety of point source stormwater DSW (including DSW from small MS4s) to apply for a NJPDES permit no later than August 7, 2001. N.J.A.C. 7:14A-7 and -8 and earlier NJPDES rules have required NJPDES permits for stormwater discharges to groundwater since 1981. (The August 7, 2001 deadline was initially imposed on August 7, 1995, when 40 C.F.R. 122.26(a)(9) and (g) became effective (60 Fed. Reg. 40230), and were incorporated by reference under former N.J.A.C. 7:14A-1.10 and 3.8.) Large and medium MS4s were regulated under N.J.A.C. 7:14A-11.5 and former N.J.A.C. 7:14A-3.8.

Costs and Funding

115. COMMENT: Can the costs of implementing the MS4 program be exempt from the five percent cap on annual municipal budget increases? (34, 83, 110, 208)

RESPONSE: For both municipalities and counties, the Department is submitting a certification to the Local Finance Board for this purpose under N.J.S.A. 40A:4-45.3 cc and -45.4.r.

116. COMMENT: Is there a fee for the general permit? (83)

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117. COMMENT: How much will the initial MS4 permit application fee and the annual permit fee cost? (208)

RESPONSE TO COMMENTS 116 and 117: Pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and as noted in the Economic Impact statement at 35 N.J.R. 190, the Department intends to assess administrative fees to cover the costs of processing, monitoring and administering NJPDES permits for small MS4s. However, the proposed and adopted rule amendments do not specify these fees.

The Department intends to establish, for each of the four general NJPDES permits, an annual “minimum fee” (which for a general permit is the total fee) using the calculation method and Annual NJPDES Fee Schedule Report process specified in N.J.A.C. 7:14A-3.1(a)9iii and (b). The Department tentatively plans to establish a uniform annual minimum fee of several hundred dollars for the Tier B permit, and to establish annual minimum fees for the Tier A Permit, Public Complex Permit, and Highway Permit that range from several hundred dollars to around \$10,000, depending on municipal or public complex population (Tier A Permit, Public Complex Permit) or highway mileage (Highway Permit). Like the rest of the fees established by the Annual NJPDES Fee Schedule Report process, these minimum fees would be subject to a public hearing and public comment. The Department does not intend to establish any initial MS4 permit application fee.

118. COMMENT: Has the Department done a test case for a typical Tier A municipality to determine a cost for the program? (83)

119. COMMENT: Has the Department estimated the start-up and annual costs associated with the program for a typical small, medium or large Tier A municipality? (128)

RESPONSE TO COMMENTS 118 and 119: For the Statewide Basic Requirements applicable to Tier A municipalities, and based on USEPA cost estimates, the Economic Impact statement at 35 N.J.R. 189 included an estimated annual average cost of about \$3.50 per capita, and an estimated annual average cost of about \$61,000 per Tier A municipality. These annual costs include start-up costs, but do not include annual permit fees, which are discussed in the response to Comment 116 and 117 above.

Tier A municipalities vary so greatly in population, land use, extent and nature of existing municipal storm drainage systems, and existing municipal operations such as street sweeping, that there is no “typical” Tier A municipality, or even a “typical small, medium or large” Tier A municipality. A cost determination or estimate tailored for one or more particular Tier A municipalities would have limited relevance for many other Tier A municipalities.

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120. COMMENT: Is the State getting or seeking Federal money for MS4 compliance? (208)

121. COMMENT: Does the State anticipate any “pass-through monies” to support implementation? (108, 124)

122. COMMENT: Are loans and/or grants available to assist implementation? (128)

123. COMMENT: The commenter understands that there will be some Department grants to cover program costs. (144)

124. COMMENT: The Department has worked to get Section 319 funds (and is considering other funding sources) to assist municipalities in implementing this program. (151)

125. COMMENT: It would be a shame to use all Section 319 funds to assist municipalities in implementing this program. There should be some alternative funding sources to accompany or substitute for Section 319 funding, which has enabled watershed planning groups to correct some existing problems caused by stormwater runoff, and to perform some planning. (193)

126. COMMENT: Although the commenter supports the focus of funding under the Section 319(h) program for stormwater planning and implementation by municipalities, supplemental funding may help municipal governments already struggling to meet myriad obligations and responsibilities to more readily comply with these rules. To further promote the objectives of these rules, supplementary funding for mapping stormwater intakes and outfalls and retrofitting old, inadequate and/or failing stormwater systems using current technology would be helpful. (12)

127. COMMENT: There is much concern regarding costs to implement MS4 requirements by regulated municipalities, facilities and agencies. The commenters have heard of limited funding opportunities through existing programs such as “Clean Communities” funding and “Section 319” funding. Said funding is limited, and also must be used to fund other work initiatives besides MS4. Are other funding sources being developed for this work? (83, 110, 208)

128. COMMENT: The available funds are insufficient and would probably take care of just one big city. (44)

RESPONSE TO COMMENTS 120 through 128: One of the Department’s priorities is to identify and provide funding to assist in implementing the Municipal Stormwater Regulation Program. The Department will announce the amounts and other information concerning these grants. However, the Department is not in a position to defray the entire cost of this Program, nor do the NJPDES rules establish policies and

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procedures concerning these grants. Also, State funds for litter control, an essential component of the Municipal Stormwater Regulation Program, will be available from the recent reinstatement of the Clean Communities Program under L.2002, c. 128.

The Department and the New Jersey Environmental Infrastructure Trust provide low-interest loans (as low as one to two percent) under N.J.A.C. 7:22 to municipalities, counties, and certain other government agencies for implementation of a wide variety of stormwater/nonpoint source management projects. Through the Priority System, Intended Use Plan and Project Priority List Document, the Environmental Infrastructure Financing Program allocates a minimum of \$10 million in clean water funds to this project category annually. To support the Municipal Stormwater Regulation Program, the Department can readily finance such activities as purchase of street sweepers and catch basin cleaning equipment; retrofitting storm drain inlets; repairing erosion along roads and at stormwater outfall pipes; and constructing permanent indoor storage for deicing materials.

Grants for the Municipal Stormwater Regulation Program should not be spent on mapping stormwater intakes or retrofitting stormwater systems (except for certain storm drain inlet retrofitting), as these activities are not currently required under the Tier A or Tier B Permits. However, the Department can finance such retrofitting through the Environmental Infrastructure Financing Program. The general issue of costs and funding is discussed further in the response to Comments 136 through 140 below.

129. COMMENT: Municipalities are very concerned about program costs and could be helped by making developers pay their fair share. Impact fee policies are being advanced in the State Legislature, but such policies should be properly directed and not be an excuse to just build anything anywhere. (74)

130. COMMENT: The commenter supports proposed impact fee legislation to make developers bear program costs. (166)

131. COMMENT: Developers' impact fees could significantly reduce program costs. (144)

132. COMMENT: The commenter supports impact fees. (151)

RESPONSE TO COMMENTS 129 through 132: The Department acknowledges the commenters' concerns.

133. COMMENT: With will, creativity, and cooperation, and with local governments availing themselves of what is known already and what has been developed by watershed associations, the Department, and others, the cost to local governments of this very responsible, modest, and overdue nonpoint source control program need not be excessive. The program will be phased in over eight years, which provides opportunity to budget. It

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is unnecessary for each municipality to fulfill each program requirement on its own, and to turn the work over at tremendous cost to a consulting firm. Instead, municipalities should look at good examples of progressive local governments that save money by means such as sharing equipment and facilities, and using volunteers at very low cost to develop nearly complete projects, plans, and ordinances that are then polished by professionals.

If necessary, the State could make it easier for municipalities to undertake interlocal work and also to fund it, for example, through the New Jersey Environmental Infrastructure Trust, which has a very cumbersome financing process. There is opportunity there to purchase and then share some of the more expensive items. Changing storm drain inlet grates when roads are repaved does not have to be onerous; the more progressive municipalities probably have already started to do this for safety reasons.

If financing is an issue, consider how much the public spends on bottled drinking water so they feel they are drinking safe water. The State must harness that great public concern and develop public support for the municipal officials. This effort does not have to cost a fortune. Free space may be available for public service advertisements. Campaigns from other parts of the country can be copied. (8)

RESPONSE: It is more accurate at this time to say that the Municipal Stormwater Regulation Program will be phased in over five years (beginning with the effective date of NJPDES permit authorization). As discussed in the response to Comments 266 through 275 below, the Department has reduced the short-term burden on permittees by extending the implementation schedule for some requirements in Municipal Stormwater Regulation Program general permits.

The Department agrees that municipalities should seek to reduce the cost of their stormwater programs by means such as those discussed in this comment. However, some municipalities will probably find it necessary to use consulting firms for some technical portions of their stormwater program. As noted in the response to Comments 213 and 214 below, the Department plans to undertake a Statewide stormwater public education program.

While some view the financing process involved in obtaining a low-cost loan from the Environmental Infrastructure Financing Program as cumbersome, the general consensus is that the savings and benefits that municipalities receive through the Financing Program outweigh the burdens. The Financing Program has many advantages over local financing. For example, borrowers finance their projects at one-half to one-quarter of the market interest rate, are relieved of the need to purchase costly bond insurance, and are currently credited with income earned on the investments from the State's debt service reserve fund.

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134. COMMENT: There seems to be a great potential for shared services among adjacent municipalities in regards to requirements such as street sweeping, catch basin cleaning, and employee training. What can be done to facilitate this potential? (128)

135. COMMENT: The Department should investigate a variety of options to help municipalities address the costs and management difficulties of implementing these rules over time, such as increased emphasis on and support for shared services ventures, statutory authorization of stormwater fee systems by municipalities or counties, and even statutory authorization of stormwater utility authorities such as those used in other states. The functions mandated in these rules are all critical to the health of the State's waters; the next obvious step is to help local government develop the institutional capacity necessary for their implementation at the lowest possible cost and maximum success. (187, 201)

RESPONSE TO COMMENTS 134 and 135: The Department, too, believes that there is great potential for such shared services. The Legislature has facilitated sharing of services by municipalities (and by other local units) by enacting statutes such as the Interlocal Services Act, N.J.S.A. 40:8A-1 et seq., and the Regional Efficiency Development Incentive (REDI) Act, N.J.S.A. 40:8B-14 et seq. The Division of Local Government Services in the New Jersey Department of Community Affairs encourages and assists voluntary interlocal programs and shared services through technical assistance and the administration of the REDI Program. Subject to annual appropriations, REDI offers grants and loans to assist the study, development, and implementation of new joint programs and shared services.

The Department of Environmental Protection has facilitated shared services by adopting N.J.A.C. 7:14A-25.7 and the provision allowing sharing of responsibilities in N.J.A.C. 7:14A-25.8(e), by deleting the requirements in the draft Tier A Permit for street sweeping after leaf collection and the application of deicing materials, and by investigating the formation of fee-based stormwater utilities (as discussed below). The Department intends to work with municipalities and other government agencies to encourage cost-sharing among permittees at all levels of government.

The Department is already investigating the formation of fee-based stormwater utilities in New Jersey. In January 2003, the Department executed a grant agreement with Morris County to hire a consultant and establish a Technical Review Committee to recommend detailed statutory, regulatory, and other steps necessary to authorize the formation of fee-based stormwater utilities and ensure their success. These professional, New Jersey focused recommendations could be used as the starting point for dialogue with interested parties in local government, advocacy organizations, existing utilities authorities, and State government, including the Legislature.

136. COMMENT: Several commenters object to implementation of the rules without some method of additional funding or cost-containment measures so that communities

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can comply during the current municipal budgetary crisis without incurring enormous financial hardship and severely overtaxing their residents or curtailing other necessary government services. The mapping, washdown, and permit fee costs will be a huge burden for many local governments. The less obvious legal, administrative, engineering, and public works expenses, including payment for labor and materials/ equipment, will add up as well.

The statements accompanying the proposed rules concede that permit expenses for some municipalities may be as much as \$10,000 for one community. This is a drop in the bucket compared to the actual costs. Development of a stormwater management plan will involve legal expenses for research, writing, review, and advertisement of ordinances on subjects as diverse as pet waste disposal, the feeding of wildlife, fertilizer and pesticide use, and illicit sewer connections.

Engineering expenses will be even higher, possibly hundreds of thousands of dollars. These expenses would likely be millions of dollars for the financially pressed, more urbanized areas. Municipal engineers will have to map stormwater outfalls and systems, research illicit sewer connections, design retrofit storm grates, and deal with outfall pipe scouring remediation, road erosion, and maintenance yard upgrades. Administrative expenses will also be substantial. Pamphlets on measures to combat stormwater pollution must be prepared and distributed. Educational sessions must be planned and held for municipal employees and residents.

Public works departments will face the labor, equipment, and material costs of installing acceptable catch basins, grates, and riprap, as well as required routine cleaning, leaf collection, street sweeping, signage, and surveying work. These tasks, many of them to be undertaken repetitively and frequently, will require substantial expenditures. Additional equipment must be purchased and labor costs paid for street sweeping after each snow event, which is expensive in a snowy winter (and adds costs on top of snow clearing costs themselves). Required vacuuming and disposal of floatables (oil and debris) from catch basins will require more payments for labor and equipment.

The State should consider modifying current rules on related matters like natural leaf and grass composting, street sweeping testing and disposal, and blacktop reuse, so that municipalities can use money currently spent in these areas to comply with the proposed requirements. Establishment of stormwater utilities should be considered to lower costs through sharing of equipment, labor, and planning. The State must explore new funding sources for its local governments. These cost-alleviating measures must be put in place before the rules are adopted and deadlines for compliance are enforced.

Without modification of these proposed rules and help to defray the cost of municipal compliance, the State will be placing an impossible burden on financially strapped communities. Therefore, immediate attention should be paid to easing the

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financial burden on municipalities of these proposed rules, before they are adopted and implemented. (3, 55, 56, 85)

137. COMMENT: The commenter objects to implementation of the rules without some method of additional funding or cost-containment measures. Even for the commenter's Tier B municipality, the mapping, plan development, permit fee, and implementation of an education program will result in significant expense. The less obvious legal, administrative, engineering, and public works labor and materials expenses will add up as well.

The actual costs to a municipality will far exceed \$10,000, and development of a stormwater management plan will involve legal expenses. Engineering expenses will be even higher, possibly hundreds of thousands of dollars for Tier A municipalities. Municipal engineers will have extensive duties, administrative expenses will also be substantial, and public works departments will face many labor, equipment, and material costs.

The State should consider modifying current rules on related matters until cost-alleviating measures are put in place. The rules should not be adopted, nor should deadlines for compliance be enforced, until State or Federal funding assistance becomes available. Immediate attention should be paid to easing the financial burden on municipalities of these proposed rules, before they are adopted and implemented. (190)

138. COMMENT: The commenter objects to implementation of the rules without specific provisions for funding so that communities such as Hazlet Township, which is already financially burdened, can comply without being financially overburdened. Obvious expenditures for the requirements such as vehicle washdowns, mapping, retrofitting storm grates, and installing acceptable catch basins will unduly burden the Township's budget and the taxpayer. The less obvious financial costs of preparing a stormwater management plan, such as the legal, engineering, and public works expenses, will significantly compound the burden. Before the rules are adopted, municipalities need a commitment from the State for financial assistance to help defray the substantial compliance cost. (130)

139. COMMENT: In these times of financial hardship, high tax rates, and budget cuts on State, county, and municipal levels, Phase II rules will place additional hardship on these jurisdictions, and necessitate budget increases for attorney and engineering fees, and labor and material expenses. There is also a question of responsibility for systems owned by the State, counties, and developers or "Condo" associations. The MS4 rules establish a two-Tier system, "A" and "B." Currently, Tier A has more stringent requirements and includes larger municipalities. If history is any indication, Federal and State rules will later become more stringent. The only natural step is to increase the Tier B requirements so that in the not too distant future, Tier A requirements become the minimum for Tier B.

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Legal expenses for development of a municipal stormwater management plan, related to writing, reviewing and advertising the many new ordinances for pet waste disposal, feeding wildlife, fertilizer/pesticide use, and illicit connections, etc., were not included in the 2003 budgets and will drastically increase tax rates in the 2004 budget year. Engineering expenses related to development of this plan include mapping of storm water outfalls and systems, researching illicit sewer connections, design of retrofit storm grates, outfall pipe scouring remediation, road erosion, and maintenance yard upgrades, and will cost hundreds of thousands of dollars. Additional municipal expenditures and employees will be required to print and distribute literature and instruct municipal employees and the public on pollution prevention techniques. New Jersey is comprised mainly of small and medium size counties and municipalities in which employees have to assume additional responsibilities to fill the void due to cutbacks and attrition in job positions.

The installation of acceptable catch basins, grates and routine cleaning, leaf collection, street sweeping, riprap installation, signage, and surveying work will place an additional burden on shrinking Public Works Department budgets. Manpower requirements will increase, and additional expenses for new equipment purchases will inevitably increase tax rates Statewide. Purchase of additional equipment to sweep streets after each snowfall and vacuuming floatables (oils and debris) from catch basins could cost \$150,000 per unit, not including the disposal cost of the hazardous oils and debris collected from the catch basins.

The commenter understands that the Federal government is implementing these rules, and that the State must enforce them. The State should review its current rules on natural processes of leaf/grass composting, street sweeping testing and disposal, and blacktop reuse, etc., and institute rule changes that are more affordable and manageable by the counties and municipalities. The municipalities would save currently wasted funds, and have some of the needed funds for the implementation of Phase II rules. (44)

140. COMMENT: The commenter referred to the items discussed in Comment 139 above as a checklist of things that must be done, and that many New Jersey towns now do. Billions of dollars are spent to control point source pollution, and billions of dollars may have to be spent to control nonpoint source pollution, but waterways must be cleaned up and aquifers must be recharged. (112)

RESPONSE TO COMMENTS 136 through 140: The Department does not agree that changes to the proposed NJPDES rule amendments, additional funding (beyond that discussed in the response to Comments 120 through 128 above), and cost-containment measures, such as changes to solid waste/recycling rules and establishment of stormwater utilities, must be put in place before the NJPDES rule amendments are adopted and implemented, and compliance deadlines enforced. The Municipal Stormwater Regulation Program is, with limited exceptions (see the responses to Comments 89

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through 99 above), a Federally mandated program with Federal deadlines whose implementation in New Jersey is already overdue. Thousands of municipalities and other government agencies around the Nation will bear costs similar to those borne in New Jersey. In fact, most highly populated municipalities in other states have been regulated under the Federally mandated Phase I program for years, while highly populated municipalities in New Jersey have benefited from exemptions granted by the Department in 1991 and 1992.

As explained in the response to Comments 97 through 99, above, the Department is implementing the Federal Phase II mandates by clearly stating the specific means to meet the Federal requirements. A number of other states, and the USEPA itself, have taken the same approach. In contrast, the approach some other states are using requires each applicant to prepare its own “notice of intent” containing an individually prepared best management practices (BMP) program identifying how the applicant plans to meet the Federal mandates, which must be reviewed individually by the state agency. This approach imposes up-front costs on the applicants to develop individual BMP programs, whereas New Jersey’s approach relieves municipalities and other applicants of the cost of retaining consultants to develop the BMP program, and the cost of working through individualized Department reviews. New Jersey’s approach also may encourage municipalities to share services and to save costs.

The Federal program requires that stormwater discharges from construction activity be regulated. In most other states, the Phase II municipalities are responsible for doing so. In New Jersey, however, the Department administers a construction regulation program jointly with the soil conservation districts and the State Soil Conservation Committee. The Department also plans to establish a Statewide stormwater public education program that would relieve all 566 municipalities of most of the burden of developing their own individual public education programs, and to provide materials and guidance to enable municipalities to meet the remaining local public education requirements (see the responses to Comments 208 through 214 below).

The “stormwater management plan” referred to in Comments 136, 137, and 139 is the “stormwater pollution prevention plan” that is required by the Tier A Permit, but not by the Tier B Permit. Most Municipal Stormwater Regulation Program requirements identified in these comments and in comments summarized elsewhere in this adoption document under “Costs and Funding” are specific Statewide Basic Requirement (SBR) elements that are set forth in the Tier A Permit, but not in the Tier B Permit or the NJPDES rule amendments. That the rules might be revised sometime in the future to make Tier A requirements the minimum for Tier B is highly speculative and outside the scope of this rulemaking.

As discussed in the response to Comments 120 through 128 above, one of the Department’s priorities is to identify and provide funding to assist municipalities in implementing the Municipal Stormwater Regulation Program. In addition, the

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Department is providing or intends to provide other kinds of assistance that will reduce the cost to municipalities of such requirements as ordinance development and public education (see the responses to Comments 189 through 214 below).

The Department has also reduced the cost of the Municipal Stormwater Regulation Program to municipalities and other permittees by changing the general permits as issued final (see the responses to Comments 141, 147, and 266 through 275 below) to limit requirements for street sweeping to certain public streets in predominantly commercial areas; delete requirements for street sweeping after leaf collection and application of deicing materials; simplify the requirement for annual municipal distribution of educational material to residents and businesses; limit certain storm drain inlet labeling requirements to publicly operated storm drain inlets that are next to sidewalks or within plazas, parking areas, or maintenance yards; and extend the implementation schedule for certain requirements. In regard to equipment and vehicle washing, see the response to Comment 144 below.

In many instances, the costs identified in Comments 136 and 139 are equipment and labor costs that are already factored into permittees' budgets. The Department worked closely with the Municipal Stormwater Advisory Group and a subcommittee of municipal, county, NJDOT, and professional engineering organization representatives to ensure that the program would not be unduly burdensome.

The \$10,000 figure provided in the Economic Impact statement at 35 N.J.R. 190 and cited in Comments 136 and 137 is not an estimate of total program cost to a municipality, but the upper limit of the annual minimum fee per municipality that the Department tentatively plans to establish for the Tier A Permit. For the SBRs applicable to Tier A municipalities, and based on USEPA cost estimates, the Economic Impact statement at 35 N.J.R. 189 included an estimated annual average cost of about \$3.50 per capita, and an estimated annual average cost of about \$61,000 per Tier A municipality (or about \$305,000 per Tier A municipality for each five-year permit term). These annual costs are in addition to annual permit fees.

Because Municipal Stormwater Regulation Program permittees will not be receiving permit authorization before 2004, the Department believes that municipalities incurred few if any legal expenses for that Program in 2003. Two measures mentioned in Comments 136 and 139 – ordinances to control fertilizer and pesticide use, and mapping stormwater “systems” – are not SBRs in the Tier A Permit (or in the Highway or Public Complex Permits). As to leaf collection, an ordinance that prohibits placing yard wastes in the street (unless they are bagged or otherwise containerized) would cut costs. Most of the ordinances required by SBRs are simple, and should not be expensive to develop, particularly since the Department will provide specific guidance about them. Permittees should in most instances not have to design retrofit storm grates, because the permittees generally can comply by using the “NJDOT bicycle safe grate,” the grate most commonly now being installed.

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The Department also believes that some persons may have misinterpreted and, consequently, overestimated the cost of other draft permit SBRs. However, the draft SBRs do not require municipalities to sweep streets outside predominantly commercial and/or industrial areas; complete the repair of widespread roadside erosion and stormwater outfall pipe scouring within five years; or inspect and maintain existing private stormwater facilities.

The NJPDES rule amendments and the Tier A and Tier B Permits do not make municipalities responsible for separate storm sewer systems that are operated by the State or by counties rather than by municipalities. Municipal responsibility for separate storm sewers that are operated solely by developers or condominium associations is limited to the types of responsibility specified in the permits. These subjects are discussed in more detail in the responses to Comments 236, 238 through 240, and 279 below.

With regard to modifying current rules on matters like leaf and grass composting, street sweeping testing and disposal, and blacktop reuse, the public may comment on rule proposals that address these issues. In May 2002, for example, the Department readopted with amendments the Recycling Rules at N.J.A.C. 7:26A, after considering extensive comments related to, among other subjects, leaf and grass composting (see 34 N.J.R. 2088(a)). Also, while the Department agrees that establishment of stormwater utilities should be considered in New Jersey, equipment, labor, and planning can be shared under existing New Jersey statutes even without the formal establishment of stormwater utilities (see the response to Comments 134 and 135 above).

The Department recognizes that the Municipal Stormwater Regulation Program will impose costs on Tier A and Tier B municipalities, and on other government agencies. However, for many years stormwater discharges from construction sites, many industrial facilities, and most new development have been regulated by the NJPDES program or by other programs, while discharges from separate storm sewer systems operated by municipalities and other government agencies have been largely unregulated. The Municipal Stormwater Regulation Program will help to fill a large gap in New Jersey's water pollution abatement effort by providing significant control of much of the stormwater/nonpoint pollution, which accounts for nearly 60 percent of New Jersey's existing water pollution problems. As discussed in the Economic Impact statement at 35 N.J.R. 190, the Municipal Stormwater Regulation Program has economic benefits as well as costs.

Subject to the unfunded mandates provision of the New Jersey Constitution, the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (which applies to the Federal government), and provisions in statutes for individual programs, the financial burden of implementing State or Federally mandated requirements often is placed on municipalities and counties. However, the costs to municipalities of the Municipal Stormwater Regulation Program must be placed in perspective. Even at an annual per capita cost of

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\$7.76 (the upper end of the Reese et al. cost estimate, cited in the Economic Impact statement at 35 N.J.R. 189), which equates to an annual per household cost of about \$20, the cost of the stormwater program is only a fraction of the typical annual per household cost for secondary wastewater treatment (about \$68 to \$84, for example, for “activated-sludge process” treatment at a 10 MGD treatment plant, based on 1975 USEPA cost estimates converted to 1998 costs using the ENR Construction Cost Index). This secondary treatment cost does not include the cost of sludge management, or of raw sewage collection and pumping.

141. COMMENT: Bernards Township is a developed municipality of 24.5 square miles with a population of over 26,000, 110 miles of local roads with an estimated 2,500 catch basins, and over 100 stormwater outfalls. The State must reconsider the seemingly unreasonable financial requirements imposed by these proposed rules. The financial impacts on the Township are extremely severe, with an estimated initial cost of between \$2,780,260 and \$5,902,760, and an estimated annual maintenance cost of \$1,208,820. These costs far exceed the \$50,000 cost estimated by the Department, and are summarized as follows:

For local public education, the annual maintenance cost (four mailings/year to over 11,000 properties) is \$10,000/year. For storm drain labeling (2,500 catch basins), the initial and annual maintenance costs are \$33,300 and \$1,665/year, respectively. To address improper disposal of yard waste, the initial cost for equipment and annual maintenance cost is \$375,000 and \$514,395/year, respectively. For solids and floatable controls, the initial cost for street sweeping equipment and annual maintenance cost is \$640,000 and \$316,912/year, respectively. For storm drain inlet retrofitting, the initial cost is between \$622,500 and \$3,745,000. For maintenance of 2,500 catch basins, the initial cost for equipment and annual maintenance cost is \$160,000 and \$260,000/year, respectively. For road erosion control (11 miles) and outfall pipe stream remediation (100 outfalls), the initial costs are \$696,960 and \$200,000, respectively, and the annual maintenance costs are \$34,848/year and \$10,000/year, respectively. For maintenance yard operations, the initial cost for equipment and annual maintenance cost is \$52,500 and \$5,000/year, respectively.

It appears that the proposed rules require a yard wastes pickup program. The Township’s prior experience with a similar program (eliminated in favor of a drop-off program) showed that it was very disruptive and costly in terms of labor, lost time injuries, equipment, and disposal costs. If the proposed rules for street sweeping are interpreted leniently, the Township would almost be in compliance now. In its strictest interpretation, the Township may need to increase its sweeping six to twelve-fold. The disposal cost of sweepings is already increasing radically. To retrofit 2,500 storm drain inlets, replacement with “fish curb only” would cost an estimated \$249 each, and replacement with the full “B” inlet would cost an estimated \$1,498 each. The Township cleans catch basins as necessary. Yearly cleaning of all catch basins will require much additional labor and equipment. (159)

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RESPONSE: The Department acknowledges the amount of specific information in the comment (including additional background not included in the comment as summarized). However, the commenter's reference to "the \$50,000 cost estimated" by the Department is not accurate. It appears that the commenter may have multiplied the \$10,000 figure representing the anticipated upper limit of the annual minimum fee per municipality by five (the duration in years of the initial permit term). In the Economic Impact statement at 35 N.J.R. 189-190, and the response to Comments 136 through 140 above, the Department estimated an annual average cost of \$61,000 per Tier A municipality, not including the annual minimum permit fee.

The Department has changed the Tier A and Tier B Permits as issued final by replacing the requirement for annual mailings of multiple public education information sheets with a more simple requirement for annual distribution to residences and businesses of a single information document. In addition, some municipalities may be able to reduce local public education expenses further by using hand delivery rather than mailings, or by mailing the information document together with other material already being mailed to residences and businesses.

The Department has also changed the Tier A and Tier B Permits as issued final by limiting their storm drain inlet labeling requirements to municipally operated storm drain inlets that are next to sidewalks, or within plazas, parking areas, or maintenance yards. In addition, these permits require municipalities to coordinate their storm drain inlet labeling efforts, when possible, with watershed groups and volunteer organizations. Such coordination greatly reduces the cost of these requirements to municipalities.

The Municipal Stormwater Regulation Program does not require a yard wastes pickup program. Under the Tier A Permit, Tier A municipalities can avoid the costs of a yard wastes pickup program by adopting and enforcing an ordinance that prohibits placing yard wastes in the street, unless the waste is bagged or otherwise placed in containers.

In addition, the Department has changed the Tier A Permit as issued final by limiting requirements for street sweeping to certain municipally operated streets in predominantly commercial areas, and by deleting requirements for street sweeping after leaf collection and the application of deicing materials. It is also not clear whether the commenter understood that the draft Tier A Permit required street sweeping only on certain municipally operated streets in predominantly commercial and/or industrial areas.

The comment's listing of most or all costs for storm drain inlet retrofitting, road erosion control, and outfall pipe stream scouring remediation as "initial costs" implies that all these costs will necessarily be incurred in the initial five-year permit term, or even within the first year or two. However, under the Tier A Permit, retrofitting of existing storm drain inlets is required only where such inlets are in direct contact with municipally

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owned or operated facilities that are being repaved, repaired, reconstructed, or altered. Therefore, the costs of such retrofitting will usually be spread out over 10 or more years.

The Tier A Permit also requires each municipality to implement a Roadside Erosion Control Maintenance program, and an outfall pipe stream scouring detection, remediation and maintenance program. However, the Department does not expect that where existing erosion and scouring is widespread, such as the 11 road miles and 100 outfalls cited in the comment, these programs will result in the repair of all such erosion and scouring in the initial five-year permit term. Rather, the Department expects these programs to include an ongoing, good faith effort to accomplish such repairs, which may not be completed until many years after the initial permit term. For these reasons, the Department believes that costs for storm drain inlet retrofitting, roadside erosion control, and outfall pipe stream scouring remediation are more accurately described as ongoing “maintenance costs” rather than as “initial costs.”

The Department also believes that the commenter has overestimated the costs for storm drain inlet retrofitting. In the Department’s view, replacement with the full “B” inlet is not inlet retrofitting, but inlet replacement. The Department also believes that most inlets can be retrofitted, not by replacement with “fish curb only,” as the commenter suggests, but by simpler, less expensive methods, such as placing a flat bar across the curb opening inlet to restrict the opening to no greater than two inches across the smallest dimension. The Department provided examples of curb opening inlet retrofitting methods at the three regional seminars that it held for municipal officials on May 29, June 11, and June 18, 2003, and it will provide examples in the Department’s Guidance Documents for the Tier A and Tier B Permits. In addition, if the municipality determines that the retrofitting to the Tier A Permit design standard would cause inadequate hydraulic performance, then the municipality does not have to undertake the retrofit.

Also, if sediment, trash, or debris have not accumulated in a catch basin in a particular year, then under the Tier A Permit, that catch basin does not have to be cleaned that year. The commenter may also have overestimated the scope of the Tier A outfall pipe stream scouring detection, remediation and maintenance program. This program applies to locations where there is active scouring, but not to locations where scouring occurred in the past, but has now ceased.

142. COMMENT: These rules will place a heavy financial burden upon Galloway Township. The labor-intensive requirements are storm drain labeling; street sweeping; structural facility maintenance including yearly basin cleaning, etc.; the Roadside Erosion Control Maintenance program; the outfall pipe stream scouring detection, remediation and maintenance program; and retrofitting storm drain inlets. The administration-intensive requirements are pet waste, improper waste disposal, and wildlife feeding ordinances and litter control. The Township will be forced at a minimum to spend \$250,000 a year for five new employees (one office person, one foreman, and three laborers/operators), to train existing employees, and to purchase at least \$550,000 of new

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equipment including two street sweepers (\$130,000 each), three pickup trucks (\$30,000 each), one Jetor/Vactor truck (\$200,000), and water reclamation equipment.

No State or Federal money is being provided to implement this program. It is unfair to burden Township residents and taxpayers with excessive regulation when State and Federal governments are suffering record deficits. The commenter is opposed to this rule proposal unless and until the State funds the cost of implementation. (90)

RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. Also see, in regard to requirements, such as street sweeping, the response to Comment 141 above. Most of the ordinances required by SBRs are simple, and should not require extensive effort to establish, particularly since the Department will provide specific guidance about them.

143. COMMENT: The Economic Impact statement minimizes the serious financial impacts to municipalities of all facets of the rules. Following are general fiscal concerns for Millville City based on the Tier A Permit. Preparing the stormwater pollution prevention plan (SPPP), particularly with public comment and participation, can be very burdensome. Education, illicit connection detection, and enforcement of new construction and additional ordinances will require additional funding and professional personnel.

The additional maintenance burden for public works operations, including cleaning all catch basins annually, sweeping all local streets monthly, storm drain retrofitting, and certifications and reporting, is costly and unrealistic in light of staffing restraints and more imminent needs. The City would have to hire additional personnel, incur additional operating expenses, and immediately purchase a new vacuum truck (estimated at \$220,000) for catch basin cleaning. The requirements for maintenance yard operations are very severe for older facilities, and could render some facilities obsolete, particularly, as in Millville's case, if they are located near stream corridors. It would cost the City hundreds of thousands of dollars to upgrade the existing facility. Constructing a new facility could cost the City millions of dollars.

The Economic Impact statement does not begin to address any of the above concerns. Until an accurate impact statement is provided and/or State funds are available to achieve these mandates, these rules should not be adopted. (170)

RESPONSE: The Department believes that the Economic Impact statement adequately addressed the potential impacts on Tier A municipalities resulting from the proposed amendments. For the SBRs applicable to these municipalities, and based on USEPA cost estimates, the Economic Impact statement included an estimated annual average cost of about \$3.50 per capita, and an estimated annual average cost of about \$61,000 per Tier A municipality, or about \$305,000 per Tier A municipality for each five-year permit term. In addition, the Economic Impact statement noted that Reese et al.

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estimated costs that would be incurred by small MS4 permittees based on an interpretation of USEPA's Phase II stormwater regulations as applied to two hypothetical communities that differ in size and program complexity. The estimated total annual cost per capita for USEPA's minimum control measures ranged from \$1.33 to \$7.76 for the first five-year permit term, and from \$1.11 to \$5.63 for subsequent five-year permit terms.

The Economic Impact statement does not break down the cost of each and every element of the Tier A Permit, because Tier A municipalities vary so greatly in population, land use, extent and nature of existing municipal storm drainage systems, and existing municipal operations such as street sweeping. For that reason, a determination or estimate of the cost of each element of the Tier A Permit, tailored for one or more particular Tier A municipalities, would have limited relevance for many other Tier A municipalities. The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above.

The rule relating to SPPP, N.J.A.C. 7:14A-25.6(b)1, does not require a municipality to solicit public comment and participation for the SPPP as a whole. N.J.A.C. 7:14A-25.6(b)1 requires that when the municipality does provide for public participation in the development and implementation of the permittee's stormwater program, such as in establishing new ordinances, the municipality must comply with the existing applicable State and local public notice requirements.

In the draft Tier A Permit, the requirements for street sweeping were limited to certain municipally operated streets in predominantly commercial and/or industrial areas. As issued final, the Department has changed the draft Tier A Permit to further limit mandatory street sweeping to certain municipally operated streets in predominantly commercial areas. Also see, in regard to cleaning catch basins, storm drain retrofitting, and certifications and reporting, the responses to Comment 141 above and Comment 342 below.

The Department recognizes that the Tier A Permit requirements for maintenance yard operations may be more expensive for older maintenance yards with poor existing environmental practices, but also believes that correction of these practices is necessary. The commenter does not identify what it means by "stream corridors," or explain why the requirements for maintenance yard operations are particularly likely to render facilities obsolete if they are located near "stream corridors." Where regulatory programs for stream corridors exist, they generally regulate activities in, not near, stream corridors. If the commenter is referring to the Tier A Permit's "50-foot buffer requirement" for the outside storage of sand, this requirement does not apply to sand for which seasonal tarping is provided. If the commenter is referring to the 300-foot special water resource protection area, which is established under the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), this area is not intended to create obstacles to redevelopment of any already-disturbed areas. The Department believes that, in general, the permit requirements can be

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met by methods less expensive than replacement of an existing facility with a new facility. Besides upgrading an existing facility, such methods may include contracting with a private firm or another governmental entity for a particular function, or constructing a small satellite facility for a particular function.

144. COMMENT: Two commenters are concerned with the fiscal burden imposed on Somerset County and its municipalities, and recommend that the State provide adequate funding. The financial burden of implementing State and Federally mandated requirements should not be placed on local government.

The implementation cost may have been underestimated and should be further evaluated. Not only are there annual costs associated with implementing the rules, but significant capital expenditures may also be expected. Provisions for street sweeping, vehicle washing, and illicit dry weather connection detection may be especially costly. Because the NJPDES permit requirements differ from the Federal requirements, the Department should have performed a cost analysis based on the specific requirements of the proposed rules. Furthermore, the State should provide this cost estimate to the municipalities to help them understand their potential costs and to assist them in budgetary planning. (83, 155)

RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. The Department believes that the Economic Impact statement adequately addressed the potential impacts resulting from the proposed amendments.

Like the USEPA Phase II stormwater regulations for small MS4s, the NJPDES rules for small MS4s outline in broad terms what must be included in the discharge permits. As discussed in the Summary at 35 N.J.R. 187, the Department believes that the eight SBRs listed in N.J.A.C. 7:14A-25.6(b) are consistent with the six Federal “minimum control measures” listed in 40 C.F.R. 122.34(b). Street sweeping and illicit connection detection are requirements of the Tier A, Highway, and Public Complex Permits. Detection of illicit discharges is expressly required under 40 C.F.R. 122.34(b)(3). Also see, in regard to street sweeping, the response to Comment 141 above. Tier A municipalities vary so greatly (for example, in population, land use, extent and nature of existing municipal storm drainage systems, and existing municipal operations such as street sweeping), that a Department cost estimate would have limited relevance to budgetary planning for any particular municipality.

The Department has changed the Tier A, Highway, and Public Complex Permits as issued final by deleting provisions concerning equipment and vehicle washing at maintenance yards. However, discharge to small MS4s of equipment and vehicle washwater from maintenance yards (except for washwater from rinsing of certain deicing and beach maintenance vehicles and equipment as authorized in these permits) may be

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unlawful under the Water Pollution Control Act unless a separate NJPDES permit is obtained for such discharge.

145. COMMENT: The potential cost to municipalities is exorbitant. Costs include expenses for mapping, permit and legal review fees, engineering, extra labor, equipment purchases, and developing and distributing public information. The total initial costs for the East Brunswick Township will certainly exceed \$250,000. The Township's taxpayers should not be overburdened with extensive costs. (214)

146. COMMENT: The costs to implement this program would potentially exceed \$360,000 for East Brunswick Township, and would overburden both Township and State residents due to stagnant State aid and increasing property taxes. To alleviate some of the financial burden on municipalities, the State and/or the Counties should implement at their expense the educational component of the rules. The very aggressive implementation timetable should be delayed for certain capital-intensive components, so that municipalities can better budget their costs. The State should assist in paying some of the costs of implementation, including but not limited to the educational component, and where the rules exceed Federal standards and/or guidelines. (113)

RESPONSE TO COMMENTS 145 and 146: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. Under 40 C.F.R. 122.34(b)(1), the educational component is the responsibility of the municipality or other entity that operates the small MS4. However, the Department plans to establish a Statewide stormwater public education program, funded by NJPDES permit fees, that would relieve municipalities of most of the burden of developing their own individual public education programs, and to provide materials and guidance to enable municipalities to meet the remaining local public education requirements. Initial capital expenditures can be paid over multiple years through means such as low-interest loans from the Department and the New Jersey Environmental Infrastructure Trust, or use of the Local Bond Law, N.J.S.A. 40A:2-1 et seq. As discussed in the responses to Comments 89 through 99 above, the NJPDES rules for the Municipal Stormwater Regulation Program generally do not exceed Federal standards and/or guidelines.

147. COMMENT: There are estimates that implementing the required mapping may cost a municipality \$200,000 to \$300,000. Because street sweepers are very expensive to own and operate, many municipalities hire an outside firm to sweep their streets periodically, which seems consistent with State encouragement of municipalities to share costs and privatize certain functions to help hold down property taxes. Requiring 566 municipalities to sweep streets following a snowstorm will make it impossible for a municipality to privatize street sweeping. There are not enough street sweepers to go around. The costs to purchase and maintain a street sweeper plus the added labor costs will unnecessarily burden the property tax structure of all 566 municipalities.

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How does the State reconcile the Governor's claim that he wants to reduce property taxes with the additional costs mandated by unilateral State action ? There are many effective methods to improve water quality without imposing such dire economic hardships on local governments. (34)

RESPONSE: The Department does not anticipate that the cost to a municipality of the required mapping will approach \$200,000 to \$300,000. The requirements at N.J.A.C. 7:14A-25.6(b)5i are limited to mapping the location of the end of certain MS4 outfall pipes operated by the permittee, and the location (and name, where known to the permittee) of all surface water bodies receiving discharges from those outfall pipes. The Tier A Permit expressly provides that the municipality can satisfy N.J.A.C. 7:14A-25.6(b)5i by, among other methods, mapping this information on its existing municipal tax maps. N.J.A.C. 7:14A-25.6(b)5i does not require mapping of the entire separate storm sewer system or all separate storm sewer pipes, and does not apply to the Tier B Permit. The mapping required in the municipal stormwater management plan (see N.J.A.C. 7:14A-25.6(b)3iv and the Stormwater Management rules at N.J.A.C. 7:8-4.2(c)) can also be based on existing maps, including some mapping available at the Department website.

Based on the concerns regarding street sweeping expressed by commenters in this adoption document and in the Department's response to comments document for the general permits, the Department has changed the Tier A Permit as issued final by deleting requirements for street sweeping after leaf collection and the application of deicing materials. The response to comments document for the general permits is available from the Bureau of Nonpoint Pollution Control, Department of Environmental Protection, PO Box 029, Trenton, New Jersey 08625-0029, and on the Department's website at www.njstormwater.org.

The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. The Governor has publicly stated his support for strong stormwater regulations. With regard to concerns about "unilateral State action," see the responses to Comments 89 through 99 and 101 through 114 above.

148. COMMENT: An overview of the cost of these rules will cover administration/ personnel, engineering consultants, legal/regulatory establishment, sampling/laboratory testing/analysis, education/training, equipment purchase/maintenance, disposal costs, permitting/permit costs, and construction costs.

The cost range, dependent on the density of the community and service level, is:

- (1) \$600,000 to \$1,600,000 over six years per square mile
- (2) \$3.70 to \$9.87 per capita per year
- (3) \$75.00 to \$200.00 per household per year

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The current municipal trend of downsizing, along with the low CAP limits, and the general public outcry to reduce the current tax levy limits the ability of the municipalities to pay. The cost of this unfunded mandate is high. The short implementation periods will also drive the costs to the upper ranges. (10)

RESPONSE: For the Tier A Permit, the Department agrees that the commenter has identified relevant categories of costs, although some municipalities may not have to hire additional personnel or engineering consultants, may already have the required equipment, or may not incur any construction costs. The Tier B Permit as issued final will result in fewer kinds of costs, because the SBRs in this permit are limited to post-construction stormwater management in new development and redevelopment, and public education on stormwater impacts.

The cost range of \$3.70 to \$9.87 per capita per year that the commenter suggests is not much higher than the cost range that was estimated by Reese et al. and noted in the Economic Impact statement for Tier A municipalities (\$1.33 to \$7.76 per capita per year for the first 5-year permit term). The cost range of \$75.00 to \$200.00 per household per year that the commenter suggests is inconsistent with these per capita cost ranges, in light of the New Jersey average of approximately 2.54 persons per household. The cost range of \$600,000 to \$1,600,000 over six years per square mile that the commenter suggests is also out of proportion to the per capita cost ranges, except at very high population densities.

In regard to exempting the costs of implementing the MS4 program from the five percent cap on annual municipal budget increases, see the response to Comment 115 above. The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. With regard to the reference to unfunded mandates also see the response to Comments 101 through 114 above. The Department notes that it has also extended the implementation schedule for certain requirements (see the response to Comments 266 through 275 below).

149. COMMENT: The proposed rules will pose significant hardships on municipalities, including Sparta Township, which is over 39 square miles and includes 85 miles of local roads. Using the formula in the Economic Impact statement (annual cost to municipalities of between \$3.00 and \$7.00 per capita), the cost to the Township would be \$54,000 to \$126,000. Of particular concern are requirements established under N.J.A.C. 7:14A-25.6 for control of solid and floatable materials, including but not limited to, street sweeping and catch basin replacement. Either the rules should be amended to reduce the economic impacts, or a State funding source should be created. (200)

150. COMMENT: The commenter expresses dismay that the State selected this particular time to enact its version of the USEPA Phase II stormwater regulations published in December 1999. The commenter understands that it is the State's position that since its actions are pursuant to Federal regulation, there is no obligation to fund the

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exceptional costs that will be imposed by the MS4 requirements. The newly implemented rules will result in a significant expansion of local government responsibilities. The extensive requirements for planning and engineering will impose material costs without providing tangible municipal services. In some instances, heavy equipment and infrastructure costs could be devastating to communities that are not currently sweeping streets or upgrading stormwater inlets. Most disturbing is that the Governor has announced a continuing freeze in State aid and, for 2003, a one per cent cap. It is imprudent to impose these rules during a period of fiscal crisis. A program of this magnitude is beyond the resources of all but the largest jurisdictions, and should only be undertaken if it is accompanied by commensurate funding. (126)

151. COMMENT: The rules are not practical, and will unnecessarily burden the Moorestown Township financially, and severely tax the Township's existing resources. Many draft Tier A Permit criteria, and particularly the two described below, will financially burden the Township.

Modify the rules to reduce street sweeping frequency. By reference to the draft Tier A Permit criteria, the proposed rules require that certain municipally owned streets in predominantly commercial and/or industrial areas be swept once per month, and within one week of a complete snowmelt and of any leaf collection. Additional labor and equipment costs will be incurred for this requirement. These costs are greater in snowy winters, and are on top of snow clearing costs themselves. The Township will be forced to hire more personnel, and will likely have to purchase more street sweeping equipment. Chemical testing of street sweepings for hazardous substances adds to disposal cost and the cost of these rules. The Township now sweeps streets on an adequate but much less intensive schedule.

Also modify the rules to eliminate the criterion to inspect and maintain the stability of shoulders, embankments, ditches and soils along the streets to ensure that they are not eroding and contributing to sedimentation of receiving waters, the Township generally maintains the area between the curb lines in the street, but does not routinely police the entire Right-of-Way. The proposed rules will require hiring more personnel to inspect, maintain, and police the areas in question. (53)

RESPONSE TO COMMENTS 149 through 151: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. With regard to the per capita cost estimates, see the response to Comment 143 above.

As issued final, the Department has changed the Tier A Permit by limiting requirements for street sweeping to certain municipally operated streets in predominantly commercial areas, and by deleting requirements for street sweeping after leaf collection and the application of deicing materials. Also, as an alternative to each municipality's

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buying its own street sweeper, a municipality can contract with a private firm or another governmental entity for street sweeping.

Also see, in regard to storm drain inlet retrofitting and road erosion control maintenance, the response to Comment 141 above. The Tier A Permit's requirement for road erosion control maintenance is limited to streets, shoulders, embankments, ditches and soils for which the Tier A municipality has, alone or along with other persons, primary management and operational decision-making authority. In some instances, these areas may not include the entire municipally owned right-of-way.

152. COMMENT: These rules will be expensive to implement. According to experts, the "average" annual cost of implementation would be between \$60,000 to \$80,000 for a New Jersey municipality. For Glen Rock Borough, a one per cent increase in 2003 budget is \$100,000. The Federal and State governments have no money for this program.

Street sweeping is one of the ten most onerous provisions for 13 northwest Bergen County towns, which range from having no to several sweepers. The one sweeper in Glen Rock Borough is heavily used. With much more sweeping, the Borough would need either another sweeper or a much bigger maintenance budget. Under this program, the Borough will have to sweep after salt is applied and keep appropriate records, etc. Mapping all catch basins and outfalls may be the most expensive provision. The other eight onerous provisions concern the stormwater pollution prevention plan (SPPP), the annual public education event, storm drain labeling, the program to detect and eliminate illicit connections, cleaning and maintenance of stormwater facilities, retrofitting catch basins, and vehicle washing and yard maintenance.

Who does all of this work, who pays the tab, and can small towns with small staffs cope with one more set of deadlines? The commenter objects to higher levels of government deciding how small towns spend their time and money. (109)

RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. The average annual cost of implementation of between \$60,000 to \$80,000 that the commenter cites does not materially conflict with information in the Economic Impact statement for Tier A municipalities. As discussed in that statement, however, the average costs for Tier B municipalities are much lower.

The Department has changed the Tier A Permit as issued final by limiting requirements for street sweeping to certain municipally operated streets in predominantly commercial areas, and by deleting requirements for street sweeping after leaf collection and the application of deicing materials. In regard to vehicle washing, see the response to Comment 144 above. In addition, neither N.J.A.C. 7:14A-25.6(b) nor the Tier A Permit requires mapping of catch basins. Also see, in regard to the SPPP and other provisions, the responses to Comment 141 above and Comments 284, 324, and 329 below, and the

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Department's response to comments document for the general permits, which is available from the Bureau of Nonpoint Pollution Control, Department of Environmental Protection, PO Box 029, Trenton, New Jersey 08625-0029, and on the Department's website at www.njstormwater.org.

153. COMMENT: The Economic Impact statement does not consider the true economic impact on municipalities. Local governments will be responsible for funding the program. All levels of government are in a fiscal crisis where more must be done with less. If these new unfunded mandates are enacted, municipalities will have less money to complete road improvement and repair projects and other projects that more directly benefit residents. The impact on the fiscal planning of municipalities has not been adequately considered.

Including MS4s in NJPDES permits will lead to future discharge monitoring and limitations, which expose municipalities to unknown but potentially substantial future costs for monitoring and any required mitigation or treatment of stormwater discharges. Also, the Department must publish final SBRs, BMPs, and guidance documents before the rule is adopted, so that municipalities can review them to budget realistically for the unfunded burden, and avoid the fiscally irresponsible action of committing to a program beforehand. In addition, the Department must develop model ordinances and public information programs to reduce costs to municipalities, and common standards will result in substantial cost savings.

The proposed rules are unclear, and require substantial modification before adoption. It is impossible for municipalities to budget for the work required. First, the budget cycle is near its end, and it is impossible to include additional funds for this work. Second, the final rules are not ready. Third, the deadlines require municipalities to spend considerable funds this year or risk fines because of the vague rules. Many of the above concerns apply to Tier B as well as Tier A municipalities. The current fiscal crisis requires that the rules be clear, on point, and reasonable. (140, 205, 216)

154. COMMENT: The Economic Impact statement does not consider the true economic impact on municipalities. The proposed amendments would create an inordinate financial burden on Lebanon Borough, which is a very small, nearly built-out municipality that does not have the resources or ratables to offset the costs of gathering and monitoring the required databases. The Borough depends on outside contractors and shared services with adjoining municipalities for Public Works daily operations and maintenance (road repairs, street sweeping, leaf collection), so the impact to comply will be immense for the purchase and operation of the type and amount of equipment and contractual arrangements to handle the Tier A responsibilities. The current fiscal crisis requires that the rules be clear, on point, and reasonable. (29)

155. COMMENT: Placing the substantial burdens associated with Tier A designation on such a small municipality as Lebanon Borough creates significant hardships and places a

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very high tax burden on the residents. As noted in some of the publications about the rules, the costs estimated by the Federal government are \$65,000 annually per municipality. It is estimated that the costs to the Borough will be much greater for several reasons. The initial set-up costs for the inventory of stormwater outfalls and the labeling of structures will be significant. The Borough does not have a street sweeper or a police or public works department. (199)

156. COMMENT: The State is developing rules before completing the final version of the detailed rules and BMPs. This will lead to increased costs once all the requirements are known. The proposed rules do not give the municipality a clear and definitive course of action required by the Department. It is therefore not possible for the municipality to budget for the unknown work required. The budget cycle is already completed for 2003, therefore no work on these rules can be accomplished this year. (159)

RESPONSE TO COMMENTS 153 through 156: The Department believes that the Economic Impact statement adequately addressed the potential impacts on Tier A and Tier B municipalities resulting from the proposed amendments. The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. In regard to the issue of unfunded mandates, also see the response to Comments 101 through 114 above. The Department is also submitting a certification for the purpose of exempting costs of implementing the MS4 program from the five percent cap on annual municipal budget increases (see the response to Comment 115 above), so municipalities will not necessarily have less money to complete other projects.

The suggestion that including MS4s in NJPDES permits will lead to future discharge monitoring and limitations is speculative. N.J.A.C. 7:14A-25.6(a)1 expressly provides that BMP requirements (rather than numeric effluent limitations) are generally the most appropriate form of effluent limitations when designed to satisfy technology-based requirements, including reductions of pollutants to the maximum extent practicable, and to protect water quality. Also see the similar USEPA regulation at 40 C.F.R. 122.34(a). The Department stated in the proposal summary that the NJPDES permits will generally not require sampling and analysis of any discharges from small MS4s, except as part of a program to detect illicit connections (35 N.J.R. 187). Nor does USEPA encourage requirements for "end-of-pipe" monitoring for regulated small MS4s (64 Fed. Reg. 68769; December 8, 1999). In the event that there is a proposed future rule or permit change to require discharge monitoring and limitations, that change would be subject to public comment.

As issued final, the Department has changed the Tier A Permit by limiting requirements for street sweeping to certain municipally operated streets in predominantly commercial areas, and by deleting requirements for street sweeping after leaf collection and the application of deicing materials. In addition, Tier A municipalities can avoid the costs of leaf collection by adopting and enforcing an ordinance that prohibits placing yard waste in the street, unless the yard waste is bagged or placed in containers.

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N.J.A.C. 7:14A-25.6 and the Tier A Permit do not contain any specific requirement that municipalities maintain or keep any databases. Each SBR and associated BMP in the Tier A Permit includes a minimum standard, measurable goal, and implementation schedule. Each measurable goal requires some type of reporting back to the Department on the status of compliance with the SBR, through the annual submission of an Annual Report and Certification. As stated in the Tier A Permit, the Annual Report and Certification is to be submitted on a form provided by the Department. The Annual Report and Certification will be a “checklist” type form to simplify reporting for the Tier A municipalities and review by the Department. These municipalities do need to keep records throughout the year, to simplify completing the Annual Report and Certification; however, the recordkeeping may be very simple, and the Department does not envision any need to keep or maintain any special databases.

The Department is not aware of any Federal government publication that estimates annual costs of \$65,000 per municipality. However, that estimate is similar to the “average annual cost per municipality of about \$61,000” provided in the Economic Impact statement. The commenter’s reference to an “inventory of stormwater outfalls” appears to be a reference to the requirement in N.J.A.C. 7:14A-25.6(b)5i to map the location of the end of certain MS4 outfall pipes operated by the permittee. The Department does not believe that the costs for this mapping will be excessive. Under the Tier A Permit, the municipality can meet this requirement by, among other methods, marking these locations on a copy of its existing municipal tax maps.

The only structures that the Tier A Permit requires to be labeled are storm drain inlets. As issued final, the Department has changed the Tier A Permit by limiting its storm drain inlet labeling requirements to municipally operated storm drain inlets that are next to sidewalks, or within plazas, parking areas, or maintenance yards. In addition, the permit requires municipalities to coordinate their storm drain inlet labeling efforts, when possible, with watershed groups and volunteer organizations. Such coordination greatly reduces the cost to municipalities of these requirements.

Because final SBRs and BMPs are set forth in final NJPDES permits issued under the adopted NJPDES rule amendments, the Department cannot have issued final permits or published final SBRs and BMPs before the adoption and promulgation herein of the rule amendments. The Department does not agree that the rules are unclear, vague, or unreasonable. Like the USEPA Phase II stormwater regulations for small MS4s, the NJPDES rules for small MS4s outline in broad terms what must be included in the discharge permits. The final Tier A and Tier B Permits set forth specific means for complying with the rules.

These final permits are being issued concurrently with the promulgation of the NJPDES rule amendments. Tier A and B municipalities will have adequate opportunity to review the permits prior to applying for a permit by the applicable deadlines in

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N.J.A.C. 7:14A-24.4(a), 25.4, and 25.8(b). The Department will also make guidance, including example ordinances and public information documents, available to municipalities prior to those deadlines. Also see the response to Comment 215 below. In regard to any budget cycle that was nearing its end in early 2003, the Department believes that these municipalities made few if any expenditures in 2003 for this program. Since they will not be receiving permit authorization before 2004, there will be sufficient time for budgetary planning. If necessary, expenditures can be budgeted under such authority as N.J.S.A. 40A:4-46 et seq. (emergency appropriations) and, for certain expenditures, N.J.S.A. 40A:4-53 et seq. (special emergency appropriations) and the Local Bond Law, N.J.S.A. 40A:2-1 et seq.

157. COMMENT: The rules are extremely costly, and require an unaffordable amount of personnel for implementing and reporting. Time frames for action (approximately 12 months, generally) are not feasible when budget issues need to be considered. The State should run and fund the public education and employee training components of the rules. Permittees cannot rely on suggested volunteer groups for manpower and equipment. The Health Department will require additional personnel for enforcement and certification. Too many annual certifications are required. Sweeping up salt after snow or ice storms will severely shorten the sweeper's life expectancy. A maintenance yard vehicle wash reclamation system is costly. A program hastily applied without appropriate funds is doomed to failure. (61)

RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. As discussed in the response to Comments 266 through 275 below, the Department has extended the implementation schedule for some requirements in the Tier A Permit. Budget issues are addressed in the response to Comments 153 through 156 above.

Under 40 C.F.R. 122.34(b)(1), (3)(ii)(D), and (6), the public education and employee training components are the responsibility of the municipality or other entity that operates the small MS4. However, the Department also plans to establish a Statewide stormwater public education program, funded by NJPDES permit fees, that would relieve municipalities of most of the burden of developing their own individual public education programs, and to provide materials and guidance to enable municipalities to meet the remaining local public education requirements. Although the Department recognizes that permittees cannot rely on volunteer groups for all of the manpower and equipment required to comply with the Tier A Permit, at least some municipalities may be able to obtain useful assistance from watershed associations or other volunteer groups in meeting Tier A Permit requirements such as plan and ordinance development, local public education, and storm sewer outfall pipe mapping. Also see, in regard to reporting and certifications, the response to Comment 342 below.

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The Department has changed the Tier A Permit as issued final by deleting requirements for street sweeping after leaf collection and the application of deicing materials. In regard to vehicle washing, see the response to Comment 144 above.

158. COMMENT: Consider how residents in small towns in Gloucester County will pay for this program. Maybe the program needs to be implemented in steps so that many small towns, which are already in financial trouble, can afford it. The recordkeeping alone would require a full-time person. It would stretch small towns like Woodbury City to the breaking point. The commenter is not aware of any other program that would require street sweeping prior to pickups. Some towns do not even own sweepers. (30)

RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. The Department has also extended the implementation schedule for certain requirements (see the response to Comments 266 through 275 below). Also see, in regard to recordkeeping, the response to Comment 342 below.

With regard to the concern about street sweeping prior to pickups, the Department has changed the Tier A Permit as issued final by limiting requirements for street sweeping to certain municipally operated streets in predominantly commercial areas, and by deleting requirements for street sweeping after leaf collection and the application of deicing materials. Also, as an alternative to buying its own street sweeper, a town could contract with a private firm or another governmental entity for street sweeping.

159. COMMENT: Long Hill Township takes its stormwater management practices seriously, but within the confines of its budget. The Township already actively educates the public and its employees about stormwater, is a member of the Morris County Joint Insurance Fund (which provides employee training and an annual audit of public works department facilities), has an informal agreement with adjacent municipalities to borrow street sweeping machinery, has volunteers to assist with cleanups, and has contracted for goose control. While the commenter understands that the rules are Federal law, it is essential that any new activities be adequately funded by the State to assist with capital acquisition and operational resources. Existing effective relationships with neighboring municipalities may suffer since each municipality will have the same requirements. (189)

RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. Long Hill Township is currently a Tier A municipality. The Department has changed the Tier A Permit as issued final by deleting requirements for street sweeping after leaf collection and the application of deicing materials. The Department does not believe the other common requirements in the proposed rules or draft Tier A Permit discourage interlocal programs or shared services. On the contrary, these requirements may encourage such programs

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and services. In regard to the reference in the comment to Federal law, see the responses to Comments 89 through 99 above.

160. COMMENT: The commenters are concerned about the apparent economic impact of NPDES Phase II implementation on Hoboken City and Roseland Borough. The proposed rules exceed the scope of the Federal mandate in various ways, such as by including groundwaters and requiring universal retrofitting of stormwater inlets. Also, mandating such universal retrofitting ignores the fact that there are no universally applicable BMPs. Inlet retrofitting is not always suitable or necessary, especially since other techniques serving the same purpose are available. MS4 operators should select BMPs, and not have one or more BMPs dictated to them.

The minimum effort as defined by the Department fails to acknowledge that effective BMP implementation depends on, among other factors, determining the quantity of runoff directed to the BMP. Such determination requires an understanding of land use and a delineation of the area contributing runoff to the BMP. Thus, the true minimum effort and the apparent minimum economic impact are not fully presented.

The commenters question the soundness of attempting to do too much too soon while failing to acknowledge the limited resources available for effective implementation. The Federal regulations in essence set forth the goal that may be achieved with less effort and therefore, at less cost when compared against the ambitious program proposed by the Department. (106, 154, 215)

RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. In regard to the scope of the Federal mandate, see the responses to Comments 89 through 99 above. Hoboken City and Roseland Borough are Tier A municipalities. The Tier A Permit does not require universal retrofitting of storm drain inlets. See the "Hydraulic Performance Exemptions" and "Alternative Device Exemptions" in Attachment C of the permit.

The Department's decision to implement the Federal Phase II mandates by issuing general permits that clearly state the specific means to meet the Federal requirements is discussed in the responses to Comments 97 through 99 above and Comments 136 through 140 above. Also see the response to Comments 277 and 278 below. The Department believes that the Summary and Economic Impact statement adequately addressed the effect and potential impacts on municipalities resulting from the proposed amendments. The Department also notes in regard to Hoboken City that under N.J.A.C. 7:14A-24.2(g), combined sewer systems, and stormwater discharges to combined or sanitary sewer systems, are outside the scope of the Municipal Stormwater Regulation Program.

161. COMMENT: Give consideration to small towns such as Spring Lake Heights Borough, which do not have the storm water systems that larger cities have. The Borough has less than 50 percent of coverage with a storm water system. Making those

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facilities compliant will add an enormous cost in construction. Most of the Borough's surface water is along the curbs and eventually terminates in Wreck Pond or Black Creek. (1)

RESPONSE: What the comment refers to as a "storm water system" appears to be a system of storm sewer pipes. As defined in 40 C.F.R. 122.26(b)(8) and N.J.A.C. 7:14A-1.2, "municipal separate storm sewer" covers, in addition to storm sewer pipes, such "conveyances" as "municipal streets," "curbs," "gutters," "ditches," and "man-made channels." Therefore, the small MS4s subject to regulation under the USEPA Phase II stormwater regulations and N.J.A.C. 7:14A-25 include systems of storm sewer pipes as well as the other listed conveyances. The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. In regard to costs (including construction costs) incurred under the Tier A Permit for storm drain inlet retrofitting, roadside erosion control, and outfall pipe stream scouring remediation, see the response to Comment 141 above.

162. COMMENT: The commenter is very concerned that a number of the proposed SBRs will result in significant costs. The Department needs to provide more detailed information about funding sources for municipalities to ensure the long-term maintenance and function of stormwater systems. (92)

RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. There are various funding sources available, depending on the activity being funded. The Environmental Infrastructure Financing Program, discussed in the response to Comments 120 through 128 above, can fund such activities as municipal purchase of catch basin cleaning equipment, and municipal repair or replacement of stormwater facilities. Stormwater facilities operated or maintained by municipalities are also "flood control facilities," as defined in the Municipal and County Flood Control Financing Act, N.J.S.A. 40A:27-1 et seq., which sets forth methods of financing such facilities. Another funding source is maintenance guarantees for on-tract improvements posted (for a period not to exceed two years) under the Municipal Land Use Law in accordance with N.J.S.A. 40:55D-53. Municipalities may also require a developer to pay the pro-rata share of the cost of reasonable and necessary off-tract drainage and certain other improvements, including repair or replacement of infrastructure, if the municipality satisfies the requirements of N.J.S.A. 40:55D-42. Moreover, as discussed in the response to Comment 163 below, the municipality can adopt and enforce an ordinance to require a private entity, at its expense, to perform the operation and maintenance of BMPs on private property, with penalties if the private entity does not comply.

163. COMMENT: The requirement to inspect all stormwater devices and conduct periodic maintenance, as necessary, will be onerous and costly for Delaware Township. Counties may be better equipped to do these inspections, though they will incur the same expense. Compliance with the proposed rules will be a problem because individual lot

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owners, not the Township, own the detention basins. There are problems with monitoring facilities on private property. The Department should address detention facilities on private property without imposing a burden on municipalities to inspect, monitor, and repair them.

Developing ordinances containing specific design and performance standards for the construction and maintenance of stormwater control devices will also be costly. The State should provide model ordinances or the funding for municipalities to write them. The State should fund the significant expense to the Township of amending the land use ordinance and master plan. (4)

RESPONSE: Delaware Township is currently a Tier B municipality. N.J.A.C. 7:14A-25.8(e)1 and 2 and the Tier B Permit SBRs do not require the Tier B municipalities to inspect “all stormwater devices” and conduct periodic maintenance, as necessary. Instead, the Tier B Permit requires the municipality to “ensure adequate long-term operation and maintenance of BMPs” for new development and redevelopment projects that disturb one acre or more and discharge into the municipality’s small MS4. This requirement does not apply to any existing stormwater devices.

Moreover, as the Department will explain in its guidance document for the Tier B Permit, this requirement can be met in a number of ways, including, for example, requiring the property or easement to be dedicated to the Township (with the Township performing the operation and maintenance); making arrangements with counties or other governmental entities to perform the operation and maintenance; or adopting and enforcing an ordinance to require the private entity (for example, a homeowners’ association) to perform the operation and maintenance, with penalties if the private entity does not comply. If, for example, the private entity does not perform the required maintenance, the Township can perform the operation and maintenance and charge the private entity.

For new development and redevelopment projects, inspecting facilities on private property should not be a significant problem if the Township obtains the right of access for that purpose as a condition of approval under the Municipal Land Use Law. Municipalities have broader statutory authority than counties do to ensure adequate long-term operation and maintenance of BMPs on private property. Requiring municipalities to ensure such operation and maintenance makes use of their local presence, and enables the Department to concentrate on programmatic issues, rather than the management of individual detention facilities and other BMPs.

By obtaining the Tier B Permit, Tier B municipalities avoid designation, under the USEPA Phase II stormwater regulation at 40 C.F.R. 123.35(b), of small MS4s that they operate as small MS4s regulated under the NPDES stormwater program. As discussed in the Economic Impact statement at 35 N.J.R. 189, costs associated with the Tier B Permit are much less than costs to small MS4 permittees regulated under that program. In

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addition, the Department's guidance for the Tier B Permit will include an example stormwater control ordinance. The issue of funding is discussed in the responses to Comments 120 through 128 above.

164. COMMENT: Four commenters object to the proposed rules, and said that the rules should be revised so that the counties rather than the municipalities have the financial responsibility. The New Jersey State League of Municipalities has objected to the proposed rules. Every municipality would benefit if the costs of effecting the Federal rules were the obligation of the counties rather than the municipalities, because these problems are regional and not easily defined. The economic effect on individual municipalities would create many hardships. (59, 136, 178, 182)

RESPONSE: The Department does not have statutory authority to make counties financially responsible for MS4s that are operated not by counties but by municipalities. Under N.J.A.C. 7:14A-25.2(a), counties are responsible for small MS4s that counties operate at highways or other thoroughfares, and at certain public complexes. The Tier A and Tier B Permits set forth specific defined requirements for municipalities to implement. Where appropriate, the Department encourages municipalities to improve the effectiveness and reduce the cost of their stormwater programs by relying on or sharing responsibilities with other governmental or private entities including, but not limited to, counties, soil conservation districts, regional agencies, watershed management groups (as defined in N.J.A.C. 7:15-1.5), and watershed associations (see N.J.A.C. 7:14-25.7(a) and 25.8(e)). The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. The Federal rules are discussed in the responses to Comments 89 through 99 above.

165. COMMENT: The Department must provide adequate funding for implementation by the Department and regulated entities of the NJPDES rules and permits. More specifically, the NJPDES rules and general permits must provide for more oversight by the Department of, as well as incentives for permittees to comply with, permits through provision of adequate funding by the Department. The Economic Impact statement noted that "although there are no Federal or State grant funds directly available for the Municipal Stormwater Regulation Program, there are Federal and State programs that can provide some financial assistance," and listed examples of such programs. The Department must have a coordinated and comprehensive approach to stormwater, including guidance to provide funding. In fact, a Department staff member said that integration of stormwater planning to complete the requirements of Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) may make the Department eligible for even more Federal funding to carry out coastal stormwater programs. Additional funding from a coordinated and comprehensive program will achieve the goal of implementation and ensure protection of marine resources. (25, 41, 46, 50, 88, 122, 137, 213, 227)

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RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. The amount of State funding for permittees and the Department is determined through the State and Departmental budget processes, not through the NJPDES rules or general permits. The possibility of Federal Section 319 grant funding (for Federal Fiscal Year 2003 only) was not mentioned in the Economic Impact statement because the “Great Lakes and Lake Champlain Act of 2002” (P.L. 107-303), which authorized such funding, was not approved until November 27, 2002, just before the rule proposal was filed. In regard to integration of the Municipal Stormwater Regulation Program with other elements of the Department’s overall Nonpoint Source Pollution Program, see the response to Comment 281 below.

166. COMMENT: It is unclear whether the New Jersey Highway Authority has adequate funding sources to comply with the proposed rules. Initial start-up costs will range from \$7 million to \$10 million, and do not include soft costs, such as developing bid documents, procuring professional services, and legal fees. In addition, this initial cost estimate does not include long-term maintenance costs, and increased costs for retrofitting existing storm drain inlets during road resurfacing. The amount of the latter task is too excessive for the Authority to estimate accurately within the extended comment period. Prior to finalization, the Department should develop a grant program to assist transportation agencies. (185)

RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. Effective July 9, 2003, after publication of the rule proposal, all of the duties, obligations, and powers of the New Jersey Highway Authority were transferred to the New Jersey Turnpike Authority under P.L. 2003, c.79. This consolidation may increase available funding sources. Transportation agencies around the nation are facing new costs to comply with USEPA Phase II stormwater regulations. The Transportation Equity Act for the 21st Century (TEA-21, PL 105-178), which had a September 30, 2003 deadline for reauthorization, provided some Federal financial assistance for certain transportation related stormwater projects. The issue of a grant program to assist transportation agency compliance with these USEPA regulations is more appropriately addressed at the Federal level.

167. COMMENT: These rules provide no indication of financial or other support needed to implement the Stormwater Regulation Program, and thus would place a new and severe burden on institutions such as William Paterson University at a time when fiscal resources are already severely strained due to substantial reductions in State support. The “solution” to water pollution of merely assigning responsibility is unrealistic. Reconsider the proposal.

This new program would require the University to apply as a “Public Complex” for a permit to operate an expansive stormwater system, which has existed for decades.

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As part of the application, the University would need to certify that the water that enters waterways via any storm drain on the 370 acre, multi location campus, is free of any pollutant that the Department lists as reportable. Currently, the University does not know and cannot easily ascertain if a pollutant is on, near, or in soil that would wash into any of the many storm sewers on University property. This inability to report accurately the conditions on campus property does not reflect neglect, disregard, or lack of environmental concern. It is an appraisal representing an understanding of the historic development of the campus, as well as a full understanding of the nature and scope of daily activities.

The State acquired most of the property long before environmental due diligence became a matter of public concern and legal responsibility. Efforts to obtain such knowledge now would be overwhelmingly complex and costly. Without environmental assessment records associated with acquisition of the property, how is the University to certify its knowledge? Only extensive investigations and testing will enable that certification.

Tens of thousands of individuals go to and through the campus daily. With little to no resources available but much required to observe and report these individuals' activities, the University is not able to certify that an illicit material has not entered its stormwater system via their actions.

Further, if the waste generated by wildlife, such as Canada geese, washes into on-campus drains, it would be the University's responsibility to control. The University would also be responsible for the condition of storm and surface waters that drain from adjoining properties to the University's property, and for the action of those who allow effluent or fertilizer to percolate or runoff to the University's property. Simply put, any pollutants that flow onto campus and into University storm sewers from sources beyond its control would become the University's responsibility under the proposed rules.

Implementing University regulations and restrictions to help protect the institution from these incidents would be a massive effort. The University estimates that after the initial costs to establish the engineering information and development of plans and programs required by these rules, the ongoing compliance costs to the University for would exceed \$350,000 annually. The tasks of educating the appropriate people to implement the rules and maintain the required records, and of enforcing these rules, would require substantial resources.

The proposal would require the University to map and label every drain and storm sewer on campus, and to prepare a "Stormwater Pollution Prevention Plan" (SPPP) and a "Stormwater Management Program." The University would need to retain consultants to prepare these documents at substantial expense, estimated to be about \$300,000. (18)

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RESPONSE: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. The Department expects that like other almost all other Public Complexes subject to the Municipal Stormwater Regulation Program, State universities will meet their obligation to apply for a permit by submitting an RFA for the Public Complex Permit. Neither N.J.A.C. 7:14A-25.5(a) nor Part I.B.4 of this permit requires this RFA to include a certification that the water that enters waterways via any storm drain on the campus “is free of any pollutant that the Department lists as reportable,” or any similar certification. Nor is this or any similar certification required during the term of this permit.

Part I.A.3.b of the Public Complex Permit expressly states, “For discharges from a small MS4 authorized by this permit, the Public Complex is exempt from N.J.A.C. 7:14A-6.2(a)2. This exemption means that the discharge of any pollutant not specifically regulated in the NJPDES permit or listed and quantified in the NJPDES application or RFA shall not constitute a violation of the permit.”

In addition, neither the NJPDES rules nor the Public Complex Permit requires the Public Complex to certify that “an illicit material has not entered its stormwater system” via the actions of individuals. The N.J.A.C. 7:14A-1.2 definition of “illicit connection” is narrower than how the commenter appears to interpret it. This definition does not include, for example, casual littering by students or visitors. The NJPDES rules and Public Complex Permit also do not require the Public Complex to certify that illicit connections do not exist. Rather, Part I.F.6.b of the permit requires the Public Complex to certify annually that an appropriate regulatory mechanism is in place prohibiting illicit connections and is being actively enforced, and that an illicit connection elimination program has been developed in accordance with permit conditions to detect and eliminate illicit connections to the storm sewer system. The first such certification is not due until 485 days from the effective date of the permit.

The SBRs in the Public Complex Permit do not make Public Complexes generally responsible for controlling wildlife-generated waste that washes into their drains. Part I.F.5.d of the permit requires Public Complexes to adopt and enforce an appropriate regulatory mechanism that prohibits the feeding at the Public Complex of any wildlife (excluding confined animals), and to distribute information to appropriate users and employees of the Public Complex regarding the wildlife feeding prohibition.

The Public Complex Permit also does not make Public Complexes generally responsible for the condition of storm and surface waters that drain from adjoining properties to the Public Complex, or for the action of those who allow effluent or fertilizer to percolate or runoff to Public Complex property. The N.J.A.C. 7:14A-1.2 definition of “illicit connection” does not include any connections of stormwater or stormwater runoff to storm sewers. Part I.F.4.d of the permit requires Public Complexes to distribute information to appropriate users and employees of the Public Complex

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regarding the proper application, storage and disposal of fertilizers, and the benefits of using native or well adapted vegetation that requires little or no fertilization.

Part I.F.6.a.iii of the draft permit provided that if after investigation, an illicit connection (of domestic sewage, for example) cannot be located or is found to emanate from an adjacent MS4 operated by a separate entity, Public Complexes must submit to the Department a written explanation detailing the results of the investigation. The Department has expanded that provision in the permit as issued final to include illicit connections found to emanate from other adjacent facilities operated by a separate entity, and has also clarified Part I.F.6.a.iii to provide that only the illicit connections operated by the Public Complex must be eliminated within six months of discovery. The permit does not require Public Complexes to take formal enforcement action regarding activities occurring outside the Public Complex.

The Department changed the permit as issued final to require the Public Complex to label only those storm drain inlets that are along streets with sidewalks, and those storm drains within plazas, parking areas, or maintenance yards. The permit does not require the Public Complex to map every storm drain, or to label every storm sewer. (The Department has corrected a sentence in the Public Complex permit that incorrectly referred to storm sewer labeling.) Nor do the rules or permit require the Public Complex to map every storm sewer. N.J.A.C. 7:14A-25.6(b)5i is limited to mapping the location of the end of certain MS4 outfall pipes operated by the permittee, and the location (and name, where known to the permittee) of all surface water bodies receiving discharges from those outfall pipes.

Under N.J.A.C. 7:14A-25.6(a)3, the written “stormwater pollution prevention plan” (SPPP) describes the permittee’s “stormwater program.” The permittee is not required to prepare a separate “Stormwater Management Program” or “stormwater program” document. Although some Public Complexes may find it appropriate to use consulting firms for some technical portions of their stormwater program, it should generally not be necessary for Public Complexes to retain consultants to prepare entire SPPPs.

168. COMMENT: Municipalities will bear the burden of implementing these rules, which will require much time, money, and work. Nevertheless, the commenter supports the rules because of the impact that municipal development decisions have on water quality, water supply, floods, and droughts, and because the rules will implement smart growth consistent with the Governor’s initiative. However, the commenter does encourage the Department to provide maximum funding through, for example, grants and loans to municipalities to help them implement this program. (166)

169. COMMENT: The commenter urges swift adoption of the rules as long as there is grant money for implementation by the municipalities. Funding for municipalities in the

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Third Legislative District is necessary for them to manage the additional engineering and planning cost associated with such an extensive project. (197)

170. COMMENT: The commenter opposes adoption of the rules without the associated State or Federal funding to implement them, because the imposition of new stormwater mandates and rules without such funding will place a tremendous burden on, and is unfair to, Gloucester County municipalities. (28)

171. COMMENT: The amount of money the municipalities will need to meet the requirements will burden the taxpayers. (146)

172. COMMENT: These rules will impose a great expense on the taxpayer. There will be new staffing needs and capital expenditures to ensure compliance with BMPs. As the State is exempt from sharing of the costs because this is a Federal mandate, adoption will become a tremendous municipal burden. There has been no relaxation of budget “caps” or any other relief to help municipalities. (163)

173. COMMENT: The implementation strategy of the four separate general permits for county and municipal governments must be fair to all, and attainable. While the Department has clearly attempted to phase in compliance with these new rules, it has not gone far enough to anticipate full compliance, due in large part to the lack of resources available at the county and municipal levels, and the absence of any financial assistance to support the Federal and State mandates. Due to the proposal’s complexity, most municipalities will need to retain professional services to even begin developing a program to meet the goals. This is particularly acute given the current economic concerns at the State and National levels. (125)

174. COMMENT: The Department, under its Sewage Infrastructure Improvement Act program, authorized planning grants pursuant to approved applications. Because obtaining the Tier A Permit will necessitate additional expenditures, similar funding for implementing stormwater rules should be made available on a shared basis. Ridgefield Park Village, a small community with finite resources, continues to expend substantial sums of money to achieve the letter and spirit of prevailing relevant water quality rules. The proposed mandates must be accompanied by commensurate funding. (66)

175. COMMENT: The commenter protests these rules because of the extreme financial burden they would place on Hackettstown Town citizens at a time when property taxes are increasing due to the poor economy and reduced State aid to municipalities. The Department should bear the additional cost of these rules. The responsibility for environmental protection lies with the Federal and State government, not local government. (93)

176. COMMENT: The cost of implementing the requirements to South Bound Brook Borough, especially in this time of State and local budget constraints, is an issue of great

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concern, and will place an undue hardship on the Borough. The State should provide grants for the implementation and cost of construction, where applicable, of the requirements for solids and floatable controls, maintenance yard operations, and employee training. The State can obtain clean water without financially burdening its municipalities. (186)

177. COMMENT: The schedule for implementation of the rules could not have come at a time of greater adverse impact to the financial condition of municipalities. A quick calculation of implementation costs indicates that in a municipality the size of Manchester Township, the tax implication will be disastrous especially to the senior population, which is almost 80 percent of the Township's total population. The commenter very strongly supports the proposals put forth by the New Jersey State League of Municipalities. The Governor has repeatedly asked municipalities to contain spending, which the Township has done successfully for 12 years. The Department is now asking the Township to spend untold amounts of money in a very short time. (69)

178. COMMENT: Two commenters said that the proposed rules would impose a significant financial burden on Little Ferry and Wallington Boroughs, and urged the New Jersey State League of Municipalities to encourage the State Legislators to introduce funding to cover the cost of the rules. (127, 212)

179. COMMENT: The small municipalities of Brooklawn and Westville Boroughs are very much concerned with costs, as is everyone. (52)

180. COMMENT: Compliance is likely to be greater if the plan is designed not to overwhelm municipalities. The Governor has challenged municipalities to control expenses and to reduce workforces or at least curtail hiring. Any municipality complying with the proposed rules will have to increase its budget significantly, to pay for personnel, equipment, supplies, and facilities. (115)

181. COMMENT: Are the scope and timetable realistic, given the State deficit, the lack of local aid, rising property taxes, and the condition of the local economy? (128)

182. COMMENT: The financial impact to municipalities should be considered before the rules are adopted. (204)

183. COMMENT: Two commenters urge the Department to fund adequately the general permits, municipal planning and ordinances, SPPPs, and other measures that municipalities will be taking to comply with these rules and the USEPA Phase II NPDES stormwater regulations. The financial commitment that the State is making is not adequate to cover these costs to municipalities or counties, and further funds should be committed immediately. (27, 203)

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184. COMMENT: Funding for the public education component of the program, and for GIS mapping and planning, will, for the Haddon Township Environmental Commission as well as other municipal agencies and nonprofit groups, be effective and essential tools for making the Municipal Stormwater Regulation Program work. (116)

185. COMMENT: The commenter understands that the Department will not provide funding to counties. The Department should seek relevant funding streams, and distribute these funds proportionally among the 21 counties. Implementation of environmentally sound stormwater management practices will require counties to undertake additional measures that will require additional costs. In most instances, counties will have to restructure operations that will require additional personnel, equipment, professional services, and computer related applications. These additional costs will impact budget preparation, but at the same time may require cost cutting of existing quality services. (206)

186. COMMENT: The commenter is concerned that the new rules will have a major financial impact on Camden County College. Public entities need additional time to plan and budget for the financial impact. Ways to mitigate the commenter's concern include a longer implementation timeline or financial assistance. (95)

187. COMMENT: The commenter is concerned that considering the State's current economic situation, this "unfunded mandate" will be a financial burden on Rutgers University. Given the announced cuts in State support, public complexes should be afforded some sort of financial aid. Will either Federal or State funding sources be available to public complexes such as Rutgers? (169)

RESPONSE TO COMMENTS 168 through 187: The issues of costs and funding are discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. In regard to Federal mandates and "unfunded mandates," see the responses to Comments 89 through 114 above. In regard to exempting the costs of implementing the MS4 program from the five percent cap on annual municipal budget increases, see the response to Comment 115 above. Some municipalities may find it appropriate to retain professional services for some technical portions of their stormwater programs; however, in most cases it should not be necessary for municipalities to retain such services to begin developing these programs, except insofar as municipalities already retain such services to administer the Municipal Land Use Law. The Department has extended the implementation schedule for certain requirements (see the response to Comments 266 through 275 below). Although the Department encourages municipalities to use Geographic Information Systems (GIS) for mapping and planning where appropriate, N.J.A.C. 7:14A-25.6(b) and 25.8 and the Tier A and Tier B Permits do not require use of GIS.

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188. COMMENT: Financial incentives should be provided to municipalities and homeowners who minimize clearing, install BMPs, and correct existing water quality problems. (48)

RESPONSE: To the extent that the Municipal Stormwater Regulation Program requires municipalities to minimize clearing, install BMPs, and correct existing water quality problems, the general issue of financial incentives for municipalities is discussed in the responses to Comments 120 through 128 and Comments 136 through 140 above. Grant funds available to municipalities for the Municipal Stormwater Regulation Program should not be spent on BMPs or water pollution abatement projects that are not required by the Tier A or Tier B Permits. However, the Department can provide financial incentives to municipalities for some such BMPs and water pollution abatement projects through the Environmental Infrastructure Financing Program.

Any broad program of direct State financial assistance or relief to homeowners would probably require new State legislation. Also, if fee-based stormwater utilities were established in New Jersey (see the response to Comments 134 and 135 above), it may be appropriate to incorporate financial incentives for homeowners in the fee structure.

Other General Issues

189. COMMENT: Training needs to be provided to municipalities to implement the rules. (48)

190. COMMENT: The Department needs to work with towns on these rules, and provide them with background when questions arise. (D. O'Malley)

191. COMMENT: The State should provide adequate technical assistance and guidance, including guidance to help municipalities understand their potential costs and plan their budgets. (83, 155)

192. COMMENT: The Department should provide comprehensive stormwater management programs and workshops to aid in local and county implementation of the rules. (108, 124)

193. COMMENT: The Department should provide workshops/seminars to help the municipalities implement these very complex rules. (124)

194. COMMENT: The State should provide coordination, guidance, technical assistance, and training support to help transition to all new BMP requirements. (A. Pogorzelski)

195. COMMENT: The commenter strongly supports the development of model documents for use throughout the State. To reduce compliance costs in a time of

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increased economic stress on municipalities, the Department should provide model documents for the required stormwater plans, ordinances, and BMPs. Model documents, procedures, and practices avoid the time and resources need to recreate similar documents and strategies in multiple locations. These model documents should provide the minimal standards deemed appropriate by the Department, but can also be made site-specific by allowing modifications based on local conditions. Since many compliance dates may be 12 months away, these guidance documents need to be made available as soon as possible. The Department should also provide technical assistance to municipalities to ensure that they conform to these newly proposed standards. (87)

196. COMMENT: The Department should develop and make available standard educational materials, sample ordinances, model SPPPs and the like so that hundreds of municipalities do not duplicate efforts to develop these from scratch. (128)

197. COMMENT: The State should provide models for the SPPP, stormwater management plan, and stormwater control ordinance, and should provide and distribute information regarding the "Local Public Education" and "Improper Disposal of Waste" issues. (G. Schubert)

198. COMMENT: The Department should provide as much assistance to municipalities as possible with model ordinances, education material, and technical information. The Department should require much-needed clarification or guidance about the contents of the public education. (58)

199. COMMENT: Delaware Township will have to adopt ordinances containing specific design and performance standards for the construction and maintenance of stormwater control devices. Developing the ordinances will be costly. The State should provide model ordinances or the funding for municipalities to write them. (4)

200. COMMENT: To have 566 towns prepare an ordinance does not make sense, because Cape May is the same as Sussex County. (139)

201. COMMENT: Bernards Township will have to rely on model ordinances provided by the Department. (159)

202. COMMENT: The "guidance" referenced in N.J.A.C. 7:14A-25.6(a)5 should include model ordinances which will satisfy the SBRs. If the Department is to require a minimum standard for these ordinances, the standard would apply Statewide and then is more appropriately adopted in Department rules. (140, 205, 216)

203. COMMENT: Extensive professional development and training will be necessary for municipal staff, consultants, civic leaders and civic groups. The Department is urged, working in conjunction with State universities and other organizations, to afford training

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opportunities that allow municipal officials and staff to learn how to comply with these rules. (12)

204. COMMENT: Much of the details of implementing the program relies on “guidance” that will be provided by the Department. What specifically will be included in the guidance, in what format will it be, when will it be available, and will there be an opportunity to comment? (81, 92)

205. COMMENT: With respect to transportation agencies specifically, are there currently or will there be any guidance documents available to assist in the design and implementation of stormwater programs? (185)

206. COMMENT: The State could do much in providing the boilerplate and programmatic outlines to municipalities and counties to assure compliance in a predictable and uniform way. With so little direction suggested from the Department, it is anticipated that Statewide compliance with these rules will be: costly, both in development and implementation; sporadic, dependent upon local resources, interests and timetable; and uneven and inconsistent. More clear direction and assistance should be afforded by the Department to advance development and compliance in a paced, predictable manner, avoiding noncompliance to the maximum extent practicable. Such diligence should be afforded prior to the mandated Request for Authorization. (125)

207. COMMENT: The rules should provide for the Department to develop model plans rather than require each of 566 municipalities to develop a different plan from scratch. The model plan could then be tailored to the specific needs of a municipality. The municipal deadline for submission should be tied to Department distribution of the model plan. The Department should also provide sample ordinances and a fueling SOP, and should develop and run training opportunities at no cost to attendees. These measures will provide economies through avoiding duplication of effort. (115)

RESPONSE TO COMMENTS 189 through 207: For each of the four general permits (Tier A, Tier B, Highway and Public Complex) issued by the Department to implement the Municipal Stormwater Regulation Program, the Department is preparing a Guidance Document. Each Guidance Document will include, as appropriate, a discussion of each Statewide Basic Requirement (SBR) and the Best Management Practices (BMPs) associated with each SBR; example ordinances; a model Stormwater Pollution Prevention Plan and guidance; information, which can be used for local public education; and other relevant information. The Department believes that the Guidance Documents will promote cost-effectiveness and encourage each permitted entity to undertake the same activities in a similar manner. Each permit specifies the time for completion of each activity associated with the SBRs. Thus, each permittee will undertake the same activities at the same time, which will promote cooperative endeavors and also lead to cost savings. In accordance with N.J.A.C. 7:14A-25.6(g), the Guidance Documents will be made available before the Request for Authorization must be submitted under

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N.J.A.C. 7:14A-25.4. Therefore, regulated entities will have guidance materials and model plans and ordinances at least 12 months prior to most of the SBR implementation deadlines specified in these permits. Because these documents are guidance there is not a formal comment period for them. However, the Department will accept and consider suggestions for improvements or changes to them.

Minimum standards for the stormwater control ordinances are set forth in the Stormwater Management rules at N.J.A.C. 7:8. Other minimum standards for ordinances required by the NJPDES permit are set forth in the permit, which is subject to public comment. As with many other NJPDES permits, NJPDES permits for small MS4s prescribe specific conditions that implement requirements outlined in broad terms in the NJPDES rules. The Department will also provide example ordinances in the Guidance Documents, but the Guidance Documents do not establish minimum standards. A fueling SOP is included in the Tier A, Highway and Public Complex Permits as part of Attachment D: "Required Practices for Fueling Operations, Vehicle Maintenance, and Good Housekeeping SBRs."

The Department has begun and anticipates continuing the presentation of no-cost or low-cost seminars, workshops and training sessions for the staff of regulated governmental entities and agencies, their consultants, and interested civic and environmental groups. These sessions have been and will continue to be organized by the Department, through Cook College Continuing and Professional Education, professional organizations and similar entities.

208. COMMENT: Will the Department develop guidelines for each municipality so there is a cohesive, consistent program for distributing educational information to residents? (40)

209. COMMENT: The State should aid the municipality by supplying educational material that can be distributed as part of the local Public Education Program, otherwise there will be no conformity across the State. (72)

210. COMMENT: It does not appear to be cost-justifiable for each municipality to develop and print its own educational materials. The State should develop and print educational materials at a much lower cost and make them available to municipalities for distribution. Developing and printing individual and unique pamphlets to get the same message out seems redundant. (66)

211. COMMENT: To simplify the program for municipalities, the Department should prepare much of the educational materials, on which each municipality could just insert the municipality's name. (139)

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212. COMMENT: The Department should be the lead agency in the preparation and distribution of educational materials. In this manner, a consistent program can be established and maintained. (114)

RESPONSE TO COMMENTS 208 through 212: The Department agrees that it is most efficient for the Department to prepare standardized educational materials. These will be part of the Guidance Documents discussed in the response to Comments 189 through 207 above. However, the Department will not be able to print materials for each municipality or other entity to distribute. Instead, each entity will be able to customize and duplicate the master document that the Department provides.

213. COMMENT: The Department should develop the local public education component to avoid duplication of effort. A video that could be played on local cable access channels, printed material, and sample articles for newsletters should all be a part of this effort. These measures will provide economies through avoiding duplication of effort. (115)

214. COMMENT: The local education program should only be established after the Department has supplied base materials for the program. The Department should follow through with a total advertising campaign similar to the approach utilized during the establishment of the Statewide recycling program. The Department has dropped the entire program of public education on the municipalities without absorbing any responsibility but overview. (10)

RESPONSE TO COMMENTS 213 and 214: The Department will provide, in the Guidance Documents and, separately, educational materials for permittees to use as appropriate. This will provide for consistency and avoid duplication of effort. The Department also plans to undertake a Statewide public education program on stormwater and nonpoint pollution.

215. COMMENT: The rules have been published for comment prior to the completion of adequate planning by the Department. The Department must publish the final version of all SBRs, BMPs and guidance documents before adoption of the rules. These should be reviewed by municipalities in order for them to budget for the unfunded burden being created by these rules. The Department must develop model ordinances and public information programs to reduce the financial burden on municipalities. The Department will be reviewing the NJPDES permits and requiring counties to review the stormwater pollution prevention plans. The development of common standards will result in more consistent planning and substantial cost savings.

The guidance referenced in N.J.A.C. 7:14A-25.6(g) about measurable goals needs to be published sooner than within 30 days after adoption of the rules. This is the same date that the NJPDES permit applications are due. For both Tier A and Tier B municipalities, requiring submission of a permit application before the requirements of

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the permit are established places the burden on the municipality to comply with standards that are unknown. This requires municipalities to make a commitment to a program without being able to budget for the program. This would be a fiscally irresponsible action on the part of the municipality. (140, 205, 216)

RESPONSE: The Department published four draft general permits containing all SBRs and BMPs at the same time the proposed NJPDES rule amendments were published. The final permits are being issued at the same time the amendments are promulgated. Because the final permits are based on the promulgated amendments, the final permits could not be issued prior to the amendments' being promulgated. These permits are being made available to Tier A and B municipalities, which, based upon the timely final issuance of the permits, will have an adequate opportunity to review the permits prior to applying for a permit or authorization under one of the general permits. The measurable goals and other requirements of the permit are established in the permits, not in the Guidance Documents. The Guidance Documents will provide more detail, worksheets and information as appropriate. See the responses to Comments 189 through 214 above for information on Guidance Documents, example ordinances, and public education.

The Department expects that almost all municipalities will seek coverage under the Tier A or Tier B Permits, rather than submit an individual permit application. The RFA forms for these permits have only two pages and require minimal information. Department review of the RFA is an administrative process, which should not take an extended period of time. See the response to Comments 259 and 260 below. Counties will not review stormwater pollution prevention plans that municipalities prepare under the NJPDES permits and rules. Counties may, however, review the municipal stormwater management plans and ordinances prepared under the Stormwater Management rules (N.J.A.C. 7:8).

216. COMMENT: The Department's Manual of Best Management Practice (BMP) is not available to date. The BMP is a major part of implementation and should include guidelines, acceptable and unacceptable technology, typical legislation for municipalities, and serve to eliminate chaos. (10)

RESPONSE: In regard to the Stormwater Best Management Practices Manual, see the responses to comments in the adoption of the Stormwater Management rules, N.J.A.C. 7:8, published elsewhere in this issue of the New Jersey Register. The Guidance Documents for complying with the Municipal Stormwater General Permits issued under the New Jersey Pollutant Discharge Elimination System rules (N.J.A.C. 7:14A) will be made available before the deadline for submitting a Request for Authorization (see the response to Comments 189 through 207 above).

217. COMMENT: The Department should provide assistance to soil conservation districts to coordinate an evaluation and inventory existing stormwater basins as part of

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the requirement to map existing outfalls and basins. This evaluation will be beneficial in prioritizing basins for restoration. Soil conservation districts already have the plans and data basin sheets for all projects. (48)

RESPONSE: N.J.A.C. 7:14A-25.6(b) and the Tier A, Highway and Public Complex Permits limit outfall pipe mapping to outfalls operated by the permittee, and do not require the permittee to map existing basins. The SBRs in these permits require the permittee to maintain the existing basins only if the basins are operated by the permittee. While the Department agrees that an inventory and evaluation of existing stormwater basins by the soil conservation districts could be useful, this activity is not essential to the outfall pipe mapping and basin maintenance required by these permits. The permittee, in addition to the soil conservation districts, may already have plans and data for basins they operate.

218. COMMENT: Some counties may have already in place strategies and/or plans to deal with the proposed rules including using existing resources and/or regionally sharing services. It would appear to be a good government practice to share information among all counties so that the final outcome of promoting good environmental practices is achieved. Due to time constraints and the aggressive approach being undertaken with the proposed rules, duplicating efforts and reinventing the wheel would seem to be detrimental to the county's programmatic approach. Consider developing a periodic means of communication for all counties to use as a tool for regionalizing services. This could be accomplished through the New Jersey Association of Counties, the New Jersey Society of Municipal Engineers, the New Jersey State Association of County Road Supervisors and any other relevant organizations. (206)

RESPONSE: It is good practice to use and share existing resources not only between counties, but also between municipalities and other regulated agencies and entities. The Department will pursue means of developing communication links between permittees.

219. COMMENT: The commenter does not take issue with any elements of the proposed rules. The commenter understands that this a Federal mandate, and that the Department is obligated in delivering the directives of the Federal government. However, as the lead environmental agency, the Department should continue to work with not only the counties, but with all governmental agencies, to achieve the most conducive practices throughout implementation. The success of the proposal depends on the success of those involved. If agencies can work collectively to develop a strategy, the successes will outweigh the failures. (206)

RESPONSE: The Department will continue to work with governmental agencies to make this program a success. These efforts will include providing workshops, guidance, forums for sharing of information and ideas, and developing and providing a

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Statewide Public Education Program. In regard to the reference in the comment to a Federal mandate, see the responses to Comments 89 through 99 above.

220. COMMENT: Environmental commissions and watershed associations can support and assist in the planning and education process. Where outfalls must be mapped, environmental commissions, watershed associations and community volunteers can be enlisted to help GPS and map the outfalls. (87)

221. COMMENT: Communities concerned about how they are going to comply with these rules are strongly encouraged to reach out to their watershed associations, which everywhere in New Jersey can help communities to comply with many of the requirements. For example: the associations can advise on the municipality's stormwater management plan; can provide educational materials to inform residents of what is going on, what they can do, ordinance requirements and how the program impacts them; and can provide volunteers to stencil catch basins and map stormwater outfalls and basins using digital technology- more and more communities are sharing GPS technology. (192)

222. COMMENT: Watershed associations throughout the State are very eager to assist towns in carrying out the requirements. The associations are particularly prepared and experienced in providing education on these issues, nonpoint source pollution, and other water resource matters. They can provide materials, programs, public events, volunteer assistants and model ordinances to help implement the rules. (133)

223. COMMENT: The Association of New Jersey Environmental Commissions looks forward to working with environmental commissions to ensure that good nonpoint source prevention information is made available to the State's residents. The Association will be happy to help with educational material and ordinances. (58)

224. COMMENT: The Bordentown City Environmental Commission can help that City implement these rules, and looks forward to other environmental commissions in the State doing what they can to implement these rules. (97)

225. COMMENT: The Monmouth County Mosquito Extermination Commission looks forward to working with municipalities and the Department to implement certain aspects of the program. (81)

RESPONSE TO COMMENTS 220 through 225: The organizations mentioned in the comments can provide invaluable formal or informal assistance to municipalities in meeting permit requirements. The Department also notes that N.J.A.C. 7:14A-25.7(a) and 25.8(e) allow municipalities to share responsibilities with other governmental or private entities, such as mosquito extermination or control commissions and watershed associations, and thanks these organizations for their offers of assistance.

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226. COMMENT: N.J.A.C. 7:14A-25.7(a) and 25.8(e) provide that permittees of small MS4s may rely on other governmental or private entities to implement one or more stormwater control measures or components. The Department encourages this by stating that these entities could be, for example: other permittees; soil conservation districts; local health agencies; regional, State, or interstate agencies; watershed management groups and associations; and business or environmental organizations. However, numerous cuts in funding have been proposed to these organizations. It has been reported that funding for watershed planning and to support the activities of municipal environmental commissions will not be provided in 2003 in spite of the extra burdens placed on these entities by the NJPDES rules. The Department must provide for adequate funding to carry out the stormwater program, in particular to those entities on which the Department anticipates municipalities will rely. (25, 41, 46, 50, 88, 122, 137, 213, 227)

RESPONSE: To the extent funds are available, the Department must give funding priority to permittees. For additional information on funding, see the response to Comments 120 through 128 above. N.J.A.C. 7:14A-25.7(d) and 25.8 do not place any new burdens on other governmental or private entities, because these rule provisions apply only if such entities agree (or are required by law) to implement control measures. The Department also anticipates that significant assistance to permittees will be provided in many instances whether or not the Department makes funding available (see the response to Comments 220 through 225 above).

227. COMMENT: In the N.J.A.C. 7:14A-1.2 definition of “illicit connection,” change “(... a NJPDES permit other than the NJPDES permit for discharges from that system)” to “(... an NJPDES permit to the storm sewer system).” The quoted language from the rule proposal, is confusing and lacks a clear reference. (187, 201)

RESPONSE: The phrase “NJPDES permit other than the NJPDES permit for discharges from that system” is based on USEPA regulations at 40 C.F.R. 122.26(b)(2). The phrase refers to a separate NJPDES permit that authorizes a discharge, such as a discharge of industrial non-contact cooling water, to a municipal separate storm sewer system, as distinguished from a NJPDES permit for discharges from that system. The suggested change would not adequately refer to this separate NJPDES permit, because the phrase “NJPDES permit to the storm sewer system” might be construed as the NJPDES permit for discharges from that system.

228. COMMENT: In subparagraphs 5i and ii of the N.J.A.C. 7:14A-1.2 definition of “municipal separate storm sewer,” change “...that is at...” to “...that is contained within...” (187, 201)

RESPONSE: The commenters have not provided sufficient rationale to justify the change, nor have they indicated why such a change is necessary. Accordingly, the

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Department has not made the change suggested. The Department believes the language of the rule as proposed and adopted adequately conveys the meaning of the definition.

229. COMMENT: In regard to subparagraph 5ii of the N.J.A.C. 7:14A-1.2 definition of “municipal separate storm sewer,” the commenter does not agree with the proposal to exclude those portions of an MS4 which are within a construction site from the definition of MS4. Construction activities are temporary. Thus, it is not appropriate for the definition of the regulated MS4 area and jurisdiction to fluctuate. While the commenter understands that the Department is proposing to address construction differently than the USEPA proposed permit requirements, USEPA included construction site stormwater runoff as a minimum control measure due to the potential for construction activities to discharge pollutants into an MS4. Sediment and other pollutants entering an MS4 from construction activities, including those covered under a separate NPDES permit, may ultimately become a point source of pollutants from the MS4. (196)

RESPONSE: The “construction activity” stormwater general permit (and individual NJPDES permits, where applicable) provides an adequate framework for control of sediments and other pollutants in stormwater discharges from construction sites operated by public bodies. This NJPDES permit program provides a consistent control framework not only for these construction sites, but also for construction sites operated by private parties.

Including separate storm sewers at construction sites operated by public bodies in the definition of “municipal separate storm sewer” would provide no additional control of such pollutants. Under N.J.A.C. 7:14A-25.6(b)2 and 25.7(b), and pursuant to USEPA regulations at 40 C.F.R. 122.35(b), any NJPDES permit issued for a small MS4 must recognize that the Department is responsible for developing, implementing, and enforcing a NJPDES permit program under N.J.A.C. 7:14A-24.10 to reduce pollutants in stormwater runoff from construction activities. Therefore, NJPDES permits issued for small MS4s do not require permittees to control such pollutants.

Including separate storm sewers at such construction sites in this definition might give these permittees and others the misimpression that the Municipal Stormwater Regulation Program is establishing duplicative and potentially conflicting requirements for control of pollutants in stormwater runoff from construction activity. Moreover, duplication, confusion, and potential for conflicting regulatory requirements could result if discharges from separate storm sewers at such construction sites were subject to the different deadlines and permit application requirements for stormwater discharge associated with small construction activity (for example, N.J.A.C. 7:14A-24.4(a)6 and 24.7(a)2) and MS4s (for example, N.J.A.C. 7:14A-24.4(a)7, 25.4, and 25.5).

230. COMMENT: One commenter understands that the plan is to be approved by the county, and that the Department will only keep it on file. In addition, this commenter asked, how will the Department enforce the stormwater management plan and the

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program? Will the Department do spot checks, or will the towns have to submit large amounts of paperwork? (52)

231. COMMENT: How will the program be enforced? What are the penalties/fines for noncompliance? (128)

232. COMMENT: How are these rules going to be enforced? What are potential penalties, if any, for noncompliance or delayed compliance? (83, 110, 208)

233. COMMENT: Will these rules be enforced by Department municipal/facility inspections? County inspections? Other? (83, 208)

RESPONSE TO COMMENTS 230 through 233: The Municipal Stormwater Regulation Program is established and implemented through the NJPDES rules and through NJPDES permits issued under the NJPDES rules, including but not limited to the Tier A, Tier B, Highway, and Public Complex Permits. Failure to comply with the NJPDES rules (including the deadline to apply for a permit), or with NJPDES permits, is a violation of the State Water Pollution Control Act (State Act) (N.J.S.A. 58-10A-1 et seq.), and violators may be subject to penalties or other consequences specified in the State Act (see, for example, N.J.S.A. 58:10A-3.dd and -10). In addition, where the discharge is to waters of the United States and there is a failure to comply with the USEPA regulations for small MS4s, violators may also be subject to enforcement and penalties under the CWA (see, for example, 40 C.F.R. 122.36). If the discharge is through underground injection, violators may also be subject to enforcement and penalties under the Federal Safe Drinking Water Act.

N.J.A.C. 7:14A-25.6(b)3iv and the Tier A and Tier B permits require municipalities to adopt a stormwater management plan and ordinance in accordance with N.J.A.C. 7:8. That plan, pursuant to the Municipal Land Use Law and N.J.A.C. 7:8, is to be reviewed and approved by the appropriate county. The Tier A Permit also requires the preparation of a stormwater pollution prevention plan (SPPP) that describes the entire stormwater program required by the permit. The Highway and Public Complex Permits require SPPP preparation, but do not require the stormwater management plan and ordinance. The SPPP is not submitted to or approved by the county.

The Department intends to conduct a periodic review and inspection of each permittee's SPPP or stormwater program and regulated activities to evaluate whether the permittee is in compliance with its permit. In addition, each permit requires reporting back to the Department the status of compliance with the permit in meeting the Statewide Basic Requirements. This reporting is accomplished by the submission of an Annual Report and certification on a form provided by the Department. The Annual Report and Certification will be a checklist form to simplify reporting for the permittees and review by the Department.

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In accordance with the State Act and N.J.A.C. 7:14-8, Civil Administrative Penalties, the Department assesses civil administrative penalties for violations based on the seriousness of the violation and the conduct of the violator, not to exceed \$50,000 per day for each violation. Other (“informal”) enforcement actions are employed for less serious, minor violations. The Department takes an “informal” enforcement action by issuing a Notice of Violation directing the violator to take corrective action to comply. Any permit noncompliance is also subject to N.J.A.C. 7:14A-2.9, and is grounds for permit suspension, revocation, revocation and reissuance, modification, or for denial of a permit renewal application.

The Department anticipates working closely with small MS4 operating entities and permittees, providing seminars and workshops, and conducting site visits in order to help operating entities or permittees avoid non-compliance.

234. COMMENT: Will State highways have to follow the same rules that the towns that they run through have to follow? (208)

RESPONSE: N.J.A.C. 7:14A-25.2, 25.4, and 25.5 require municipalities as well as State highway agencies to apply for a NJPDES permit for stormwater discharges from small MS4s. N.J.A.C. 7:14A-25.6 sets forth requirements concerning the contents of NJPDES permits issued to Tier A municipalities and State highway agencies. However, the Tier B Permit for Tier B municipalities has fewer Statewide Basic Requirements, as specified in N.J.A.C. 7:14A-25.8.

The Department has issued a general permit (the Highway Permit) under N.J.A.C. 7:14A-25 specifically for highways and other thoroughfares operated by county, State, interstate, and Federal agencies. This permit identifies requirements that are specific to highways. While these requirements are similar in many respects to requirements in the Tier A Permit for Tier A municipalities, the required control measures are tailored to highway situations. Individual permits may also be obtained for highway facilities, but the application process will be more lengthy and more costly, and the individual permits may contain requirements that are more strict than the Highway Permit.

235. COMMENT: Two commenters support the inclusion of public complexes in N.J.A.C. 7:14A-25.2(a)2, and the Department’s regulation of county, State, interstate and Federal agencies through the Public Complex and/or Highway Permit. Since stormwater runoff from these entities is not adequately regulated by other means, it is crucial to capture them under these rules to ensure that pollution from these sources is addressed. A large amount of water pollution comes from MS4s operated by transportation projects and other government construction projects, and their stormwater runoff impacts have been difficult to regulate. (27, 203)

RESPONSE: The Department acknowledges the commenters’ support.

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236. COMMENT: Will the State be required to maintain and install stormwater facilities at State highways? If there is a problem with such facilities, will any of that burden fall back on the municipalities? The Brooklawn Circle with its New Jersey Department of Transportation (NJDOT) catch basins is always under water and the State does not maintain the flood gates. (52)

RESPONSE: The Municipal Stormwater Regulation Program applies to many State-owned separate storm sewer systems, particularly at State highways. As noted in the response to Comment 234 above, the Department has issued the Highway Permit specifically for highways and other thoroughfares operated by county, State, interstate, and Federal agencies. The Highway Permit requires each Highway Agency to develop and implement a program for cleaning and maintenance of all stormwater facilities (including flood gates in storm sewers) operated by the Highway Agency. Under most circumstances, SBRs in the Highway Permit do not require the Highway Agency to install stormwater facilities, unless such installation is necessary to control post-construction stormwater runoff from new development and redevelopment projects that disturb one acre or more on property owned or operated by the Highway Agency.

The State is responsible for the maintenance and operation of State-owned facilities. Flood gates in streams or other water bodies are not part of separate storm sewer systems, and are therefore not addressed by this Program. Complaints about maintenance of stormwater facilities operated by NJDOT should be forwarded to the NJDOT, with copies to the New Jersey Department of Environmental Protection.

237. COMMENT: One commenter thanked the Department for implementing the court mandate to be a leader in this effort. The Department is working with the New Jersey Departments of Agriculture and Community Affairs to establish uniform State agency policies (instead of conflicting Residential Site Improvement Standards, Department of Environmental Protection rules and technical documents, and soil conservation district standards) applying to every agency from the NJDOT down to the municipal public works department, and to the private and public sectors when they do development, redevelopment, public works, and maintenance. Without this effort, this program is not going to work.

State agencies, such as NJDOT, need to be leaders. Interstate highways were constructed with no real regard to water quality. The State or Federal government should consider redirecting other monies for retrofitting. Big highway retrofit projects cannot be done with Section 319 money. State and Federal agencies created the problems and they need to address them, not push them down to the municipal or volunteer level. The State can do more, but the Department is doing its part, and hopefully the Governor will support the Department. (8)

RESPONSE: The Department acknowledges the commenter's support. With regard to the commenter's concerns, the Municipal Stormwater Regulation Program is a

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high priority of the Governor's Smart Growth initiatives. The Governor has been very supportive of this Program, and is working with the affected cabinet officers to ensure that the Program is successfully implemented. The Governor and the Department are also working with the New Jersey congressional delegation to seek Federal funding to assist in the implementation of the Program. The Program does not make municipalities or volunteers responsible for separate storm sewer systems at interstate highways. See also, in regard to retrofitting, the response to Comments 20 through 22 above.

238. COMMENT: Regarding combined use of a storm drain (such as town and county), who is responsible, the end user where the system discharges or the upstream user who may be contributing most of the runoff? (83, 208)

239. COMMENT: Clarify who is responsible for mapping under N.J.A.C. 7:14A-25.6(b)5 if a drainage system is shared by NJDOT or a county with a municipality. (83)

240. COMMENT: Department guidance should clarify jurisdictional issues between county, municipal, State, Federal, and private entities regarding who will be responsible for implementing SBRs where jurisdictions meet or overlap. For example, in Monmouth County, bridges are owned and operated by the County and may contain an outfall to the waterway; however, the catch basin and pipes that lead to the outfall may be municipally or privately owned. Regarding public education, would the County or NJDOT be responsible for "educating" businesses and general public that were located along County or State roads? As written, the rules suggest that the answer is yes; however, this may not be the most cost-effective way to implement this requirement. (81)

RESPONSE TO COMMENTS 238 through 240: The responsibility for complying with permit requirements relating to stormwater systems depends on the specific requirement. For instance, with regard to the illicit connection requirements, the permittee that operates the outfall would be responsible for mapping the outfall and conducting the initial investigation for illicit connections. However, if it is determined that there is a problem, and that problem is traced to a system operated by another entity, then that other entity would be responsible for resolving the problem.

With regard to education requirements, the Department has changed the Highway Permit as issued final to require NJDOT, counties, and other Highway Agencies to distribute educational information to appropriate users and employees of the Highway Agency by locating information sheets at rest areas and service areas along the Highway Agency's small MS4. These information sheets will focus on activities occurring at these areas, and will complement the distribution of educational information to residents and businesses by municipalities under the Tier A and Tier B Permits. As issued final, the Highway Permit also requires Highway Agencies to label all storm drain inlets located at rest areas, service areas, maintenance facilities, and storm drain inlets along streets with sidewalks within the Highway Agency's small MS4. The Department encourages NJDOT and counties to coordinate storm drain inlet labeling efforts with municipalities

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where appropriate, and the Highway, Public Complex, Tier A, and Tier B Permits require permittees to coordinate these efforts with watershed groups and volunteer organizations when possible.

As with other programs where jurisdictions meet or overlap, the Municipal Stormwater Regulation Program will be more successful if there is coordination between the various governmental entities. The Department will work with all permittees to encourage such coordination. Privately owned and operated storm sewers are not “municipal separate storm sewers” as defined in N.J.A.C. 7:14A-1.2, and are therefore not “small MS4s” as defined in that section. However, NJPDES permits under this Program do require permittees to address certain discharges from private property to small MS4s (see, for example, the response to Comment 279 below).

241. COMMENT: Areas served by combined sewer systems should be excluded from the requirements of the Municipal Stormwater General Permit since these areas are regulated under the General Permit for Combined Sewer Systems. In regard to 40 C.F.R. 122.34(b)(5), an explicit exclusion of those municipalities managing stormwater runoff resulting from new development and redevelopment via a combined sewer system should be provided as guidance preparatory to Request for Authorization (RFA) and individual permit application. (66)

RESPONSE: As N.J.A.C. 7:14A-24.2(f) specifically provides, combined sewer systems that discharge to waters of the State, and stormwater discharges to combined or sanitary sewer systems, are not regulated under the Municipal Stormwater Regulation Program. Corresponding language in the Tier A, Tier B, Highway, and Public Complex Permits expressly allows permittees to exclude any “combined sewer area” from their stormwater programs under those permits. Discharges from combined sewer systems are regulated by general or individual NJPDES permits separate from the Municipal Stormwater Regulation Program.

242. COMMENT: In regard to N.J.A.C. 7:14A-25, are agricultural lands excluded from MS4 rules? (208)

242A. COMMENT: Municipalities should not be granted approval power over activities that fall within the definition of agricultural development. (174A)

RESPONSE TO COMMENTS 242 and 242A: Certain types of new development or redevelopment on agricultural lands, and certain types of “agricultural development” as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2, are potentially subject to municipal or other regulation pursuant to N.J.A.C. 7:14A-25.6(b)3 in that they may be subject to requirements established in stormwater control ordinances or standards pursuant to the Stormwater Management rules, N.J.A.C. 7:8. The applicability of N.J.A.C. 7:8 to agricultural lands and municipal regulation of agricultural development

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are discussed in the responses to comments in the adoption of N.J.A.C. 7:8, published elsewhere in this issue of the New Jersey Register.

243. COMMENT: Audubon Park Borough is owned by a Housing Authority. They are self-contained. Will they be exempt from the MS4 regulations under N.J.A.C. 7:14A-25? (208)

RESPONSE: Because Audubon Park Borough is a legally constituted municipality as defined in N.J.A.C. 7:14A-25.1(b), the Borough requires a NJPDES permit under N.J.A.C. 7:14A-25.2 if it is an “operating entity” (as defined in N.J.A.C. 7:14A-1.2) for a small MS4.

Waivers, Special Designations, and Assignment of Municipalities to Tier A or Tier B

244. COMMENT: In regard to N.J.A.C. 7:14A-25.2, clarify the conditions under which a duty to obtain a permit under Section 402 of the CWA is waived. Regarding the list of “Municipalities to which waiver applies and which are assigned to Tier B,” explain what responsibilities the Department expects these municipalities to meet, and how they differ from the Tier B requirements described in these rules, since this section also states that “this waiver does not exempt any Tier B municipality from the duty to obtain the Tier B municipal Stormwater General Permit where required under (b) above.” (12)

RESPONSE: The circumstances under which the duty to obtain a permit under Section 402 of the CWA is waived are set forth in detail at N.J.A.C. 7:14A-25.2(d). This duty is waived for all operating entities for each small MS4 that is owned or operated by a Tier B municipality, and located within an urbanized area as determined by the 2000 (or subsequent and superseding) Decennial Census. In all or practically all instances, these operating entities are the Tier B municipalities themselves. This waiver applies solely to stormwater DSW from these small MS4s. Tier B municipalities to which this waiver applies are subject to N.J.A.C. 7:14A-25.2(e), and to the rules that apply to all Tier B municipalities.

245. COMMENT: In regard to N.J.A.C. 7:14A-25.2(e), two commenters support “special designation” of pollution sources that are identified, regardless of whether they may be eligible for waiver. (27, 203)

RESPONSE: Although N.J.A.C. 7:14A-25.2(e) is limited to small MS4s to which a waiver applies, other NJPDES rule provisions allow “special designations” or special determinations regarding a broader range of stormwater discharges. See, for example, N.J.A.C. 7:14A-25.2(a)4, 2.5(d), 2.13(d), and 24.2(a)3, 4, 7, 8, and 9, and paragraph 2 of the N.J.A.C. 7:14A-1.2 definition of “stormwater discharge associated with small construction activity.”

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246. COMMENT: One commenter praised the Department for recognizing, through the tier system, that certain municipalities have different needs. (151)

RESPONSE: The Department acknowledges the commenter's support.

247. COMMENT: In regard to N.J.A.C. 7:14A-25.3, can a municipality be exempt under the definition of Urban Development? Under the Urban Development Law, can a town be defined in a redevelopment area? (83)

RESPONSE: In N.J.A.C. 7:14A-25.3, the term "urbanized area" is used in accordance with the USEPA Phase II rules at 40 C.F.R. 122.32 and 123.35 concerning identification of small MS4s that require a NPDES permit under the CWA. An "urbanized area" is determined by the Bureau of the Census and cannot be changed by the Department. Neither the Municipal Stormwater Regulation Program nor the USEPA Phase II rules provide an exemption based on a definition or presence of "urban development" or a "redevelopment area."

248. COMMENT: Ridgefield Park Village is primarily served through a combined sewer system regulated under NJPDES Permit #NJ0105023 and Individual Authorization #NJ0109118; therefore, most of the Village will not be regulated under the proposed General Permit for MS4s. It seems reasonable that municipalities with combined sewer systems, and small populations served by MS4s, be redesignated as Tier B. If needed, the Department should establish a service population or drainage area criterion under which such a municipality can request reclassification. (66)

RESPONSE: The Department has clarified N.J.A.C. 7:14A-24.3(c) upon adoption to address the commenter's concern. As proposed, N.J.A.C. 7:14A-24.3(c) allowed the owner of or operating entity for a municipal separate storm sewer system to petition the Department to reduce the "Census estimates of the population served by such separate system" to account for stormwater discharged to combined sewers. As adopted, N.J.A.C. 7:14A-24.3(c) allows a municipality to petition to reduce the "population within an urbanized area" to account for such stormwater. If this population (for a "municipality" as described in N.J.A.C. 7:14A-25.1(b)) is reduced to under 1,000, then the municipality no longer meets the criterion for assignment to Tier A in N.J.A.C. 7:14A-25.3(a)1i, and the municipality is reassigned to Tier B (unless the municipality meets at least one of the other criteria in N.J.A.C. 7:14A-25.3(a)1). The Department believes that petitions under N.J.A.C. 7:14A-24.3(c) may result in a small number of municipalities being reassigned from Tier A to Tier B.

249. COMMENT: Colts Neck Township reserves the right to petition the Department or the appropriate agency for redesignation as a Tier B municipality. (19)

250. COMMENT: West Milford Township's inclusion in Tier A appears unwarranted given its topography and development density and patterns. The Township contains

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approximately 80 square miles, with a population of less than 30,000. Although the Township is in densely populated Passaic County, the Township resembles its Sussex and Warren County neighbors (such as Vernon and Hardyston Township) “more than its fellow Passaic County communities that are in Tier B” [sic]. The Township comprises 41 percent of Passaic County’s area, but only 5.4 percent of the County’s population. The Township’s population density is 330 people per square mile. This compares to 348 people per square mile for Vernon Township, which is a Tier B municipality. There are at least 29 of the 99 Tier B municipalities that have higher population densities than West Milford Township. (91)

251. COMMENT: The designation of Union Township in Hunterdon County as a Tier A municipality should be reconsidered. The commenter understands that population density is one of the main criteria considered by the Department in classifying municipalities as Tier A or Tier B. Calculating population density using the Township’s total population figure from the 2000 Census is misleading, as this figure includes 1,809 State institutionalized persons within the Edna Mahon Women’s Prison and the Hunterdon Developmental Center. Each of these State Institutions is required to maintain its own Stormwater Management Plan, distinct from that of the Township. Therefore, these institutions’ Census population should not be included in the density calculation for the Township’s tier determination.

Also, the Township’s Development Regulations are a performance based, open space type Ordinance that is designed to preserve 78 percent of the Township as open space. The Township Master Plan and current development statistics reveal that 40 percent of the Township is preserved by way of State, county, and township parklands, the Spruce Run Reservoir, State owned fish and wildlife management areas, and preserved farmlands. Based upon the actual population density for non-institutionalized residents of 250 persons per square mile and the State’s permanently preserved public lands in excess of 3,000 acres, this predominantly rural Township should be reclassified as Tier B. (149)

252. COMMENT: Chesterfield Township should be a Tier B municipality since it is a rural and less developed community and certainly is not urbanized nor a coastal community. The Township is a farming community with a population of approximately 5,955 people, of which 3,341 are prisoners at two correctional facilities. The Township consists of over 8,000 acres, of which only 571 acres are identified in the Master Plan and Zoning Ordinance for development. Development of the Township has not occurred and it not likely to occur except in the 571 acres known as the Receiving Area, which accounts for less than seven percent of the land area. (104)

253. COMMENT: The commenter asked that Mendham Township be reassigned as a Tier B municipality. The commenter understands that category placement has largely been based on population density from the Census Bureau. Although a small portion of the urban area shading does extend into the Township on the Census map, it is not an

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accurate resource since it is based on averaging and much of the area encompassed is zoned 10 acres. The Township has zero commercial zoning, thus creating no potential for industrial pollution. Only three lots are zoned for business use: the post office, a church annex, and a residence, none of which harm the stormwater system. The Township has also been recently up-zoned to minimize effectively any further growth. For example: five-acre zone increased to 10 acres. The up-zoning was upheld by the Superior Court. The Township is more rural and has less of an environmental risk than most. (162)

254. COMMENT: Two commenters said that the assignment of Lebanon Borough to Tier A rather than Tier B is inappropriate, improper or unreasonable for various reasons summarized as follows. Lebanon Borough is one of only eight Tier A municipalities in Hunterdon County. Population density is one of the main criteria considered by the Department in classifying municipalities as Tier A or Tier B. Under N.J.A.C. 7:14A-25.3(a)1ii, the Borough is included in Tier A based on a population density of 1,000 per square mile. What was not considered is that the Borough is only about one square mile, and has no other landholdings or ability to expand. The Borough's 2000 census population is only about 1,065, and the Borough only falls into the Tier A rules by an excess population count of 65.

Thirty-four percent of Hunterdon County's land area and 54 percent of the population is in Tier A. Lebanon Borough accounts for only 0.2 percent of the County land area and 0.6 percent of the Tier A area. The Borough's population is 0.9 percent of the County and 1.7 percent of Tier A. The Borough is the smallest Tier A municipality in the County in both population and land area, and is not a center of major development. The only municipalities in the County with smaller land area (Stockton Borough) and population (Bloomsbury, Califon, and Stockton Boroughs) are in Tier B. Lebanon Borough is nearly built out and its impact on the surrounding resources is no different than that of other small Tier B municipalities in the County such as Califon, Frenchtown, and Glen Gardner Boroughs. Placing the Borough in Tier A creates an inordinate financial burden on the Borough and significant hardships. The benefits of putting such a small municipality in Tier A do not justify the very high tax burden that will be placed on the residents. (29, 199)

RESPONSE TO COMMENTS 249 through 254: N.J.A.C. 7:14A-25.3(a) assigns a municipality to Tier A if the municipality is located either entirely or partially within an "urbanized area" as determined by the 2000 (or subsequent) Decennial Census and has a population of at least 1,000 within an urbanized area as determined by that Census; has a population density of at least 1,000 per square mile, and a population of at least 10,000 as determined by the Census; has a stormwater sewer system discharging directly into salt waters of Monmouth, Ocean, Atlantic or Cape May Counties (as identified under the Sewage Infrastructure Improvement Act and N.J.A.C. 7:22); requests Tier A assignment; or receives a special designation under N.J.A.C. 7:14A-25.2(a)4.

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The USEPA Phase II stormwater regulations require operating entities for “regulated” small MS4s to apply for a NPDES permit under the CWA. A small MS4 is automatically “regulated” if that MS4 is located in an “urbanized area” as determined by the Bureau of the Census, unless that small MS4 receives a “waiver” from the NPDES permitting authority (see 40 C.F.R. 122.32(a) and 122.33(a)). If the population within the urbanized area is at least 1,000, the USEPA regulations at 40 C.F.R. 122.32(c) and (e) and 123.35(d)(2) allow states to provide a waiver only in certain very narrow circumstances. Based upon the information presently before it, the Department does not believe that any New Jersey municipalities qualify for this kind of waiver. Nor have any of the commenters provided evidence that the municipalities represented by these commenters qualify for the waiver.

The USEPA regulations also require the State to develop a process and criteria to designate small MS4s outside urbanized areas as “regulated” small MS4s (see 40 C.F.R. 122.32(a) and 123.35). Among the stormwater discharges that the Department has designated are all stormwater discharges from small MS4s in the non-urbanized portions of municipalities that are located partially within an urbanized area, and that have a population of at least 1,000 within an urbanized area. These municipalities are assigned in their entirety to Tier A to avoid the difficulty that these municipalities and other small MS4 operating entities might otherwise have in focusing efforts on just the “urbanized area” portion, and due to the contiguity to urbanized areas of the non-urbanized portions.

All of the municipalities represented by these commenters have a population of at least 1,000 in the urbanized area as determined by the 2000 Census. In contrast, none of the other municipalities mentioned in Comments 249 through 254 (Vernon and Hardyston Townships, and Bloomsbury, Califon, Frenchtown, Glen Gardner, and Stockton Boroughs), and none of the other 99 municipalities assigned to Tier B, meet this population criterion.

Municipalities that believe that they have been incorrectly assigned to Tier A may write to the Bureau of Nonpoint Pollution Control, Department of Environmental Protection, PO 029, Trenton, NJ 08625, and explain why the Census information or other pertinent information is incorrect. The burden of proof is on the municipality to demonstrate that the Department has erred. The only basis for changing Tier assignment would be a mistake in the Census information or other pertinent information used in the application of N.J.A.C. 7:14A-25.3(a). The Department will review requests for redesignation and will respond directly to the municipality. If a municipality is assigned to Tier A under N.J.A.C. 7:14A-25.3(a)1v, then the administrative and public notice procedures in N.J.A.C. 7:14A-25.2(f) apply.

Applying for and Issuing Permits

255. COMMENT: The commenter has encountered some confusion concerning the interpretation of the general permit application process and the deadline for an individual

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permit application. The USEPA regulations provide specific NPDES permit application instructions for small MS4 operators seeking to be covered under a general permit already issued by the NPDES permitting authority, but the USEPA regulations and existing State rules do not provide any instruction for small MS4 operators who intend to apply for a general permit that has been proposed but not yet issued. Some instruction is provided in N.J.A.C. 7:14A-6.13(b)1 and proposed N.J.A.C. 7:14A-25.4(a), 25.5(a), and 25.6(a), but the commenter is not sure what procedure to follow until these proposed rules are effective.

The USEPA regulations require that the municipality and/or county submit either a request to be covered under an issued general permit, or an application for an individual permit, by March 10, 2003. In the Summary, the Department recognizes that to provide reasonable notice the adopted amendments will not become effective prior to the March 10, 2003 deadline, and is proposing another deadline 30 days from the effective date of the proposed rules. Implicit in the Summary is the Department's recommendation that it will not take enforcement action for compliance with the proposed rules deadline in lieu of the March 10, 2003 deadline.

In a letter to the Department dated January 31, 2003, the commenter asked if the Department could provide additional guidance with regard to the date it will enforce in the interim (until the proposed rules are effective) for permit applications filed under the above referenced categories. Based upon the proposed rule, none of the general permits will be available by March 10, 2003, and rules about how to apply for an individual permit will not be in place then either. The Department does not have enough staff to process all of the individual permit requests that municipalities would submit, and has stated that it prefers that municipalities apply for the general permits. The commenter is concerned with the legal ramifications of not applying for a permit by March 10, 2003, and requests a response to its letter by that date at the latest. (49)

RESPONSE: The Department replied to the commenter's letter by a letter dated February 21, 2003. The Department recognizes that the adopted rules and the accompanying final general NJPDES permits will not be available until early 2004, and that regulated entities did not meet the March 10, 2003 deadline imposed by the USEPA rule. The Summary expressly stated that "the Department will not take enforcement action (for failure to comply with the USEPA deadline) against those who comply with the NJPDES deadline" (35 N.J.R. 171).

A similar situation occurred in 1992, when the Department was delayed in adopting rules and issuing final general permits to implement Phase I of the NJPDES Stormwater Statewide Stormwater Program. At that time the Department also declined to take enforcement action against industrial facilities in New Jersey that had not complied with the USEPA deadline. No legal problems occurred, and all affected industrial facilities were able to obtain authorization under the appropriate permits when they became effective. The Department recognizes that there is some small risk in this

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situation, but the delay reflects the complexity of the Municipal Stormwater Regulation Program and the time needed to adopt the appropriate rules and issue the final general permits.

Under N.J.A.C. 7:14A-6.13(d)2, the contents of the RFA under a general permit are specified in that permit. Therefore, the required contents of the RFA are not established until the Department issues the general permit as final. It is not possible to submit a valid RFA before the general permit is issued final, or before the Department makes available any RFA form required by that permit. The Department has not encouraged the submission of individual permit applications under the Municipal Stormwater Regulation Program, but has instead recommended that regulated entities wait for the final general permits to be issued.

256. COMMENT: The implementation of the 30-day stormwater permit deadline without the final rule and permit in place makes a realistic application submittal unrealistic. The permit requirements are too complex to compile and submit within the 30-day period. The permit should be in a Q/A format to expedite the initial submittal and review. Water Quality Management Plans and submittals are prepared within a six-month to one-year period and follow the rules established in a Manual of Best Management Practices. A Stormwater Pollution Prevention Plan (SPPP) properly prepared would require approximately the same period of time. (10)

257. COMMENT: The 30-day deadline is not a realistic timetable for each municipality to submit a NJPDES permit to the Department. The application will require a significant amount of work and manpower and cannot be accomplished in 30 days. Furthermore, it is unrealistic to think the Department can review the hundreds of applications submitted. It is recommended that a phased submittal process (by size of municipality) be implemented with the larger municipalities being given more time. (159)

258. COMMENT: In regard to N.J.A.C. 7:14A-24.4(a)7 and 25.4, the 30-day deadline for submission of the NJPDES permit is unrealistic and too short. The application process will require a significant amount of work and expenditures by the municipalities that will be difficult to accomplish in 30 days. Additionally, unless the Department creates a substantially larger staff to deal only with these permits, the Department will not be capable of handling the hundreds of applications that will be submitted 30 days after the adoption of the rules. A phased in application process is more realistic where applications are due over a longer period of time. The commenters understand that some of the deadlines are based on USEPA requirements placed on the State; however, the failure of the Department to adopt its rules in a timely manner should not unfairly shift the burden of meeting the deadline to the municipalities.

It will take time to put the required data together and it is not fiscally responsible to begin this work before the final rules are adopted. The rule allows submission in 180 days for the municipalities re-assigned from Tier B to Tier A, and the same 180 days

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should apply to all municipalities that are being “re-assigned” from no current tier to Tier A. In regard to N.J.A.C. 7:14A-25.8, many of the same schedule, deadline and budget concerns also apply to Tier B municipalities. (140, 205, 216)

RESPONSE TO COMMENTS 256 through 258: The Department has issued four final general NJPDES permits (the Highway, Public Complex, Tier A, and Tier B Permits) to implement the Municipal Stormwater Regulation Program, and expects that almost all regulated entities will seek coverage under the appropriate general permits. The Department has developed simple two-page “request for authorization” (RFA) forms to enable such entities to apply expeditiously for these permits.

The Municipal Stormwater Regulation Program has been designed to minimize the “up-front” effort envisioned in the USEPA Phase II rules. The USEPA rules at 40 C.F.R. 122.33(b)(1) require applicants for general permits to “submit a Notice of Intent (NOI) that includes the information on your best management practices and measurable goals required by §122.34(d).” The Department has specified BMPs and measurable goals in its four general permits, in accordance with N.J.A.C. 7:14A-25.6(c) and 25.8(f). In addition, the RFAs for these permits include a certification acknowledging the specified BMPs and measurable goals, in accordance with N.J.A.C. 7:14A-25.5(a)1 and 25.8(d). In this manner, the Program enables regulated entities to apply for these permits and satisfy this USEPA requirement (where applicable) without completing complex permit applications, preparing detailed plans, performing significant work, or incurring significant expenditures.

The Department is sending all information necessary to complete the RFA forms to potential applicants in advance of the deadline to apply (March 3, 2004), and applicants have sufficient time to complete and submit the RFA forms. The Department has also conducted a number of training sessions designed to acquaint regulated entities with their responsibilities under the Program, and will continue to provide such training. The Department expects that regulated entities will incur few costs associated with completing and submitting the RFA forms. The Department anticipates reviewing the RFAs and issuing authorizations under the general permits within 30 to 60 days of receipt of complete RFAs. The Highway, Public Complex, and Tier A Permits do not require SPPPs until 12 months after the effective date of permit authorization. The Tier B Permit does not require a SPPP.

The Municipal Stormwater Regulation Program is, with limited exceptions, a Federally mandated program with Federal deadlines whose implementation in New Jersey is already overdue. With regard to the commenter’s statement that municipalities reassigned from Tier B to Tier A are provided 180 days to apply for a permit, N.J.A.C. 7:14A-25.4(a)1, which provides for that time period, is based in part on a USEPA rule at 40 C.F.R. 122.26(a)(9)(iii) that only applies to discharges designated under 40 C.F.R. 122.26(a)(9)(i)(C) and (D), and that generally does not apply to small MS4s within “urbanized areas.”

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259. COMMENT: The Department should clearly state a timeframe for the Effective Date of Permit Authorization (EDPA) after an applicant applies for a NJPDES general permit for small MS4s. N.J.A.C. 7:14A-24.4(b)1 states that “the Department shall issue or deny individual NJPDES permit (or authorization under general NJPDES permits) for stormwater discharges associated with *industrial activity*... one year after receipt of a complete NJPDES individual permit application or request for authorization (unless the general permit specifies a shorter time period).” Does this one-year timeframe apply to the four NJPDES general permits for small MS4s? Although the Department clearly gives a deadline of 30 days after rule adoption for a Request for Authorization to be submitted, it is unclear when the Department will authorize the permit. Since the timeframe to comply with the permit requirements begins with the EDPA, knowing the approximate EDPA is necessary for budgeting and planning purposes. (81, 92)

260. COMMENT: In regard to N.J.A.C. 7:14A-25.6(a)5, the Department should impose a limitation for its review of the NJPDES permits. It is unfair to municipalities to create a process for applying for a permit, with deadlines for submission and implementation, when the municipality has no assurance when the permit may be issued. The proposed Statewide Basic Requirements (SBRs) have implementation time periods, but the rules indicate that the Department could require additional measures (AMs). It is inefficient and may result in duplication of efforts if the AMs are required after the work for the SBRs is complete. The permit process will necessarily be very general when so much of the State is in Tier A. There is no reason why the permits could not be approved in 90 days. (140, 205, 216)

RESPONSE TO COMMENTS 259 and 260: Because the RFA forms for the Highway, Public Complex, Tier A, and Tier B Permits are only two pages long and require limited information, the Department anticipates reviewing RFAs and issuing authorizations within 30 to 60 days of its receipt of complete RFAs. This process should not unduly impair the applicant’s ability to budget and plan. If a regulated entity submits an individual permit application rather than an RFA, however, the time for the Department to review the application and issue a draft and final individual permit will be significantly greater and more variable.

N.J.A.C. 7:14A-24.4(b)1 applies only to “stormwater discharge associated with industrial activity,” and does not apply to small MS4s. This rule provision is based on USEPA regulations at 40 C.F.R. 122.26(e)(7) that do not apply to small MS4s. USEPA Phase II rules for small MS4s address deadlines to apply for a permit and the time period that permittees have from the date of permit issuance to develop and implement their programs (see, for example, 40 C.F.R. 122.32(c) and 123.35(e)), but do not impose a specific time limit for reviewing RFAs or individual permit applications.

It is important to distinguish between the process of obtaining authorization under a general permit and the process of complying with the permit. The RFA process is an

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administrative process that should take very little time. On the other hand, complying with the Statewide Basic Requirements (SBRs) in the permit can take up to five years, and will continue indefinitely. The Department's general permits set forth SBRs in detail to enable permittees to understand their responsibilities under the permit. Additional Measures (AMs) may be imposed pursuant to N.J.A.C. 7:14A-25.6(e) only after the AMs go through the public process of being adopted in water quality management plans (WQM plans). The process to adopt AMs in WQM plans includes significant opportunity for public involvement. The affected entity should take advantage of that opportunity in order to comment on the appropriateness of the AM, and to prepare for compliance with the AM.

261. COMMENT: Before a municipality can agree to comply at its own municipal facilities at the time of permit application, an explanation and specific detail of the terminology "Best Management Practices" is needed. (72)

RESPONSE: N.J.A.C. 7:14A-1.2 defines the term "best management practices" or "BMPs." The specific detail of BMPs in each Municipal Stormwater Regulation Program general permit is found in the descriptions of Statewide Basic Requirements and any Additional Measures (AMs) in the permit. These descriptions, along with guidance information, are provided by the Department to enable municipalities to understand their responsibilities under the permit. Because some BMPs may be specified in AMs adopted after permit authorization is requested or obtained, affected municipalities should actively participate in the process under which AMs are adopted in WQM plans.

262. COMMENT: The public must be made aware of and involved in the renewal of stormwater NJPDES general permits. As proposed, renewal of the permits is automatic. Renewal must be linked to the permit holders' compliance with the recordkeeping and annual reporting requirements. (137)

263. COMMENT: The NJPDES rules and general permits must provide for more oversight by the Department of, as well as incentives for permittees to comply with, permits by requiring additional steps for renewal. As proposed, N.J.A.C. 7:14A-25.4(a) states that the general permits "will provide for automatic renewal of authorization when those general permits are renewed." This renewal must not be automatic, but must be linked to the permit holder's compliance with the submission requirements of the NJPDES rules, in particular the annual reporting, certification, and recordkeeping requirements.

In addition, the commenters recommend that every five years or prior to renewal, a permit holder must certify that all requirements of the permit are being met. This can be achieved through the annual report and suggested accompanying certification. The Department must confirm that all permit requirements are being met prior to reauthorization. Due to the heavy reliance on BMPs and the resources needed by the Department to enforce the NJPDES rules, there must be additional incentives, such as the

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suggested renewal process, built into the NJPDES rules and general permits to encourage compliance.

Therefore, add the following to the end of the last sentence of N.J.A.C. 7:14A-25.4(a)3: “provided that the permittee has certified that all requirements of the current permit are being met and the Department has confirmed such compliance,” and make corresponding changes to the draft Tier A, Tier B, Highway, and Public Complex Permits. (25, 41, 46, 50, 88, 122, 137, 213, 227)

RESPONSE TO COMMENTS 262 and 263: Renewal of NJPDES general permits is not automatic, but is subject to public notice and comment. Authorizations under the NJPDES general permits issued under the Municipal Stormwater Regulation Program are automatically renewed when the general permits are renewed, as are authorizations under most other NJPDES general permits issued by the Division of Water Quality.

This automatic renewal of authorization is an administrative process. Actual compliance with the requirements of this Program’s general permits is addressed both through annual reports and certifications by the permittee, and through inspections by the Department’s Water Compliance and Enforcement Element. As discussed in the response to Comment 344 below, the general permits require permittees to complete an Annual Report summarizing the status of compliance with the permit. This report shall include a certification that the permittee is in compliance with its permit except for any incidents of noncompliance identified in the Annual Report and Certification. The report shall identify the steps being taken to remedy any noncompliance and to prevent such incidents from recurring. The inspection is a check by the Department on the permittee’s compliance with the permit, and on the accuracy of the permittee’s reports and certifications.

Under N.J.A.C. 7:14A-2.9(a), any permit noncompliance is grounds for enforcement action, including penalties, permit suspension, revocation, revocation and reissuance, modification, or denial of permit renewal. The potential for enforcement action under the Water Pollution Control Act provides sufficient incentive for permittees to comply with permits. In most cases it would be more environmentally beneficial to regulate discharges from a small MS4 under the appropriate general permit and enforce the specific requirements of that permit than it would be to withhold renewal of authorization.

264. COMMENT: There is no clear policy that the Department may use for the period between rule adoption and the approval of municipal BMPs. During this period, it will be the municipality’s responsibility to comply with the new rules, and it is possible that the Department could take exception to the municipality’s decisions, and take some form of action against the municipality. Since many municipalities rely on the advice of professionals who will be certifying matters on behalf of the municipalities as it relates to

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these rules, it is possible that this lack of guidance could result in action taken against the professional who believes the correct action is being taken. (163)

RESPONSE: Under the new rules, the initial responsibility of municipalities that operate small MS4s is to apply for authorization under one of the general permits, or apply for an individual permit by March 3, 2004 (see, for example, N.J.A.C. 7:14A-25.4). The municipality has no other responsibility with regard to the permit until it receives authorization under a general permit or is issued a final individual permit. The Department expects that almost all municipalities will seek coverage under the Tier A or Tier B Permit. The BMPs required by these permits are clearly articulated in the Statewide Basic Requirements set forth in the permits, and the Department will make guidance materials available in hard copy and on the Internet at www.njstormwater.org. Related questions may be forwarded to the Bureau of Nonpoint Pollution Control at 609-633-7021.

Contents of NJPDES Permits; Monitoring and Evaluation

General Provisions or Issues

265. COMMENT: The five-year allowance for compliance is certainly reasonable and should allow municipalities ample time to comply. (39)

RESPONSE: The Department acknowledges the commenter's support.

266. COMMENT: The rules should be implemented over a five-year period, minimum. If the State implemented these rules over this period, there could be significant benefits. Statewide training programs could be created to help Public Works Departments understand BMPs and how they need to be implemented. There could be Statewide organizational efforts by all municipalities to review shared assets and services to help defray costs. There would be time for all other State and local legislation to be revised to mirror the new rules to prevent ambiguity, inconsistency, delays and resulting lawsuits. (163)

267. COMMENT: The Department should provide greater flexibility in the implementation timetable. The 566 municipalities have widely different abilities to meet the different deadlines. (58)

268. COMMENT: The Department needs to provide some flexibility, acknowledging that some municipalities are much closer to meeting these rules than others. (151)

269. COMMENT: The program should be implemented in steps so that the small towns could afford it. (30)

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270. COMMENT: Additional time is needed for public entities such as Camden County College to plan and budget for the financial impact. Ways to mitigate the commenter's concern include a longer implementation timeline or financial assistance to support implementation. (95)

271. COMMENT: Ridgefield Park Village operates a combined sewer system and is under continuing new program deadline pressures. It is recommended, as corollary to the rules guiding the Tier A Permit, that the time frames assigned to the minimum standards be liberalized in an effort to reduce operational and fiscal pressures. (66)

272. COMMENT: Small towns have small staffs. Can they cope with one more set of deadlines for these onerous rules? (109)

273. COMMENT: Two commenters said that while they recognize that these rules are in response to Federal mandates, there must be sufficient time for counties and other affected entities to institute the necessary requirements. Ideally, the requirements should be phased in over a period of several years. (108, 124)

274. COMMENT: An indefinite extension of time is warranted for municipalities to prepare and be in compliance. (124)

275. COMMENT: Can the implementation schedule be phased-in over a longer period of time than five years? The costs may be prohibitive for a municipality. (83, 110)

RESPONSE TO COMMENTS 266 through 275: The Municipal Stormwater Regulation Program is, with limited exceptions, mandated by the USEPA as part of its national Phase II stormwater program. This program is being implemented in all NPDES-delegated states and in all states where the USEPA is the responsible NPDES entity, and has been designed to be implemented within the first five years of permit issuance, and to continue indefinitely.

Phase I of the USEPA program began to be implemented in 1992, and regulates many industrial facilities (over 2,000 in New Jersey) as well as all "large" or "medium" MS4s (generally those serving a population of 100,000 or more). New Jersey was able in 1991 and 1992 to exclude four municipalities originally identified as having "large" or "medium" MS4s (Newark, Jersey City, Paterson, and Elizabeth) from regulation under Phase I, because they were served mainly by combined sewers rather than by separate storm sewers (which serve less than 100,000 persons in each municipality). For most major cities and many counties in the remainder of the country, however, permits have been required for many years. USEPA's Phase II rules were designed to establish a comprehensive stormwater program for "small" MS4s, which in New Jersey include those in the four municipalities mentioned above, that need to be regulated under the CWA to protect water quality.

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As discussed in the response to Comment 89 through 92 above, USEPA regulations for small MS4s require permitting authorities to specify a time period of up to five years from the date of issuance of a NPDES permit for permittees “to fully develop and implement their storm water program.” USEPA expects those programs to include “interim milestones” that permittees are required to meet. The USEPA also stated that “full implementation of an appropriate program must occur as expeditiously as possible.” New Jersey is implementing these Federal mandates through N.J.A.C. 7:14A-25.6(a)1, (c), and (g), and by the implementation schedules specified in the Tier A, Highway, and Public Complex Permits, which clearly state the “interim milestones” that the Federal rules require.

The Department, with the concurrence of its Municipal Stormwater Advisory Group, determined that a phased approach to the Statewide Basic Requirements (SBRs) would result in the best implementation. As a result, while implementation of some SBRs must be started within 12 months of the effective date of permit authorization, the most complex SBRs are not required to be fully implemented until the end of five years. In response to comments, the Department changed the Tier A, Public Complex, and Highway General Permits as issued final to extend certain implementation deadlines beyond 12 months to make planning and budgeting easier for permittees. These include deadlines for the adoption of certain ordinances, as well as deadlines associated with road erosion control and stream scouring at outfall pipes. The Department also changed these general permits and the Tier B Permit as issued final to allow for some increased flexibility in deadlines associated with storm drain inlet labeling. For details, see the general permits and the response to comments document for the general permits. In general, the Department has tried to specify implementation schedules that will allow permittees to satisfy simpler requirements in the early years of the permit, and phase in more complex requirements over the full term of the permit.

The complexity of complying with SBRs is, in general, roughly proportional to the population of the municipality. For example, a lightly populated municipality will likely have fewer outfalls to map than a heavily populated municipality, and will thus require fewer resources. Although this is not true of every requirement, it is usually the case for the more resource-intensive requirements.

The Department is committed to providing guidance and training to permittees to ensure successful implementation of the program. The Department has already conducted a number of technical seminars and workshops and will continue to provide these throughout the early years of the program. In addition, Department staff are available by telephone during business hours at 609-633-7021 to provide answers to questions.

276. COMMENT: In N.J.A.C. 7:14A-25.6(a), replace the phrase “to the maximum extent practical” [sic], which is too low a standard, with “to the maximum extent feasible.” Increased stormwater runoff volume from new development causes increased

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flooding, flood damages, drought, erosion, habitat destruction, altered stream flow and water quality degradation. These impacts cost the public in terms of the health of the environment, public safety, economically and reduced quality of life. Any planning required by these rules must minimize stormwater runoff to the greatest extent possible. It is not acceptable to allow developers to increase stormwater runoff from a new development site simply because they or others have deemed it too costly or troublesome, which the term “practical” would suggest. The goal of this program should be to provide the greatest level of protection, not just the level of protection deemed practical – the environment and communities and flood and drought victims (human and nonhuman) deserve more. (27, 203)

RESPONSE: The terms “maximum extent practicable” and “maximum extent feasible” are used to describe the expenditure of effort required to achieve full compliance with the applicable requirement, taking into account the specific circumstances in question. Generally, “maximum extent feasible” requires the expenditure of greater effort than “maximum extent practicable”; however, both terms are fact-sensitive and cannot be reduced to a standard formula. The Department’s administrative discretion in applying N.J.A.C. 7:14A-25.6(a) will be guided by the purpose of this chapter and its statutory mandates.

The standard of “maximum extent practicable” is based on the standard in the USEPA rules at 40 C.F.R. 122.34(a) and in Section 402(p)(3)(B)(iii) of the CWA. Using a standard of “maximum extent feasible” in N.J.A.C. 7:14A-25.6(a) would make New Jersey’s program inconsistent with stormwater programs throughout the country that use the Federal standard.

The Department also notes that in regard to new development and redevelopment, N.J.A.C. 7:14A-25.6(b)3iv requires adoption and implementation of stormwater management plans and stormwater control ordinances in accordance in N.J.A.C. 7:8. As required by the Stormwater Management Act at N.J.S.A. 40:55D-95, N.J.A.C. 7:8-2.2 requires these plans and ordinances to be designed “to prevent, to the greatest extent feasible, an increase in nonpoint pollution.” Moreover, the requirements imposed on new development and redevelopment are determined primarily by N.J.A.C. 7:14A-25.6(b)3 and the design and performance standards established under N.J.A.C. 7:8, rather than by whether N.J.A.C. 7:14A-25.6(a) uses the phrase “maximum extent practicable” or “maximum extent feasible.”

277. COMMENT: Some provisions of the proposed new rules have very limited (if any) local value, for example, the Stormwater Pollution Prevention Plan (SPPP); illicit connections; mapping of catch basins and outfalls; yard maintenance; and the educational requirements; storm drain labeling; cleaning and maintenance of stormwater facilities; retrofitting catch basins; and vehicle washing. Efforts should be geared to the needs and geography of the local jurisdiction. (109)

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278. COMMENT: The Department's requirement for universal retrofitting of stormwater inlets ignores the fact, which a little research will reveal, that there are no universally applicable BMPs. Proper BMP implementation necessitates a selection process that considers site conditions, operation and maintenance capability of the responsible entity, economics, and other factors in addition to the apparent performance capability of the BMP. While inlet retrofitting may be desirable for some situations, it is not always suitable or necessary, especially since other techniques serving the same purpose are available. MS4 operators should select BMPs, and not have one or more BMPs dictated to them. The commenters therefore intend to retain the right to do so.

In addition, the minimum effort as defined by the Department fails to acknowledge that effective BMP implementation depends on, among other factors, determining the quantity of runoff directed to the BMP. Such determination requires an understanding of land use and a delineation of the area contributing runoff to the BMP. Thus, the true minimum effort is not fully presented. (106, 154, 215)

RESPONSE TO COMMENTS 277 and 278: As discussed in the response to Comments 97 through 99 above, the Department believes that the eight SBRs listed in N.J.A.C. 7:14A-25.6(b) are consistent with the six "minimum control measures" listed in the USEPA Phase II stormwater rules. For example, requirements in N.J.A.C. 7:14A-25.6(b)5 and (b)7 concerning illicit connections, mapping the end of MS4 outfall pipes, and maintenance yards are based on requirements in 40 C.F.R. 122.34(b)(3) and (6). Some control measures listed in Comment 277 are specific SBR elements that are set forth in the Tier A Permit, but not in the Tier B Permit or the NJPDES rule amendments. The commenters represent Tier A municipalities. The control measures specified in the Tier A Permit are the "more specific means" that the Federal rules require. The Department's decision to implement the Federal Phase II mandates by issuing general permits that clearly state the specific means to meet the Federal requirements is discussed in the responses to Comments 97 through 99 and Comments 136 through 140 above. Neither Federal nor State law confers on an MS4 operator a right to determine the BMPs required by a NPDES or NJPDES permit. In regard to vehicle washing, see the response to Comment 144 above.

Under the provisions for "additional measures" (AMs) in N.J.A.C. 7:14A-25.6(a)3 and (e), SBRs set forth in the Tier A Permit can be modified based on water quality management (WQM) plans, including TMDLs or other WQM plan components that may be developed for particular geographic areas. Any SBR modified by an AM must still, at a minimum, satisfy the requirements of N.J.A.C. 7:14A-25.6(b). For further response in regard to the SPPP and particular control measures, see the responses to Comments 284, 324, and 329 below, and the response to comments document for the general permits.

The Tier A Permit as issued final does not require universal retrofitting of storm drain inlets. See the "Hydraulic Performance Exemptions" and "Alternative Device

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Exemptions” in Attachment C of the permit. As broadly defined in N.J.A.C. 7:14A-1.2 and used in N.J.A.C. 7:14A-25.6, the term “BMP” includes many operation and maintenance procedures, prohibitions of practices, and other management practices that do not require determining the quantity of runoff. Usually, the BMPs requiring such determinations are structural stormwater management measures, such as most of the measures listed in N.J.A.C. 7:8-5.9(a)1. Department recognition of the need for such determinations is apparent in provisions such as N.J.A.C. 7:8-5.6 and the New Jersey Stormwater Best Management Practices Manual referenced in N.J.A.C. 7:8-5.9(a)1. For new development and redevelopment, these determinations are generally made by the applicant rather than by the municipality. The Tier A Permit as issued final does not otherwise require retrofitting of any BMPs listed in N.J.A.C. 7:8-5.9(a)1. The Department’s view, after consultation with local and regional planners and stormwater managers, is that extensive structural retrofits of small MS4s should not be implemented before completion of regional analysis and planning.

279. COMMENT: In regard to N.J.A.C. 7:14A-25.6(a), is there any municipal responsibility for condominium association property and/or private lands or corporate parks? (83, 110)

RESPONSE: Municipal responsibility for private property is limited to the types of responsibility specified in the permit. Many elements of the Statewide Basic Requirements in the Tier A Permit are limited to property operated by the Tier A municipality, and do not apply to private property. For example, the SBRs do not require municipalities to label privately operated storm drain inlets, map or repair stream scouring at privately operated storm sewer outfall pipes, or sweep or repair erosion along privately operated streets.

On the other hand, municipalities are responsible under some of the SBRs for addressing certain discharges from private property into their municipal separate storm sewer system. For example, controlling stormwater runoff from new development and redevelopment projects, and prohibiting and eliminating illicit connections, will require some regulation of private property. For new development and redevelopment projects, most of these responsibilities are consistent with functions commonly performed under the MLUL. Operation and maintenance requirements for BMPs on private property are discussed in the responses to Comments 163 above and 316 below.

280. COMMENT: Three commenters are concerned how municipalities will react when they are issued NJPDES permits under N.J.A.C. 7:14A-25 and are subject to mandatory Clean Water Enforcement Act (CWEA) fines and penalties. Under N.J.A.C. 7:14A-25.6(a), the Department proposes that municipalities develop, implement and enforce a stormwater program designed to reduce the discharge of pollutants from the permittee’s system. Language is needed in the rules that states that if a facility has a NJPDES permit from the Department, then they are exempt from additional requirements imposed at the local level. These rules would allow a municipality to issue their own Water Quality

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permits, in addition to the Department permits. If a facility is complying with all permit conditions and water quality standards prior to their discharge into the storm sewer system (via a NJDPES permit), then they should not be subject to additional requirements at the local level. (5, 57, 180)

RESPONSE: Municipalities are subject to enforcement action under the New Jersey Water Pollution Control Act, but exposure to mandatory penalties under the CWEA (P.L. 1990, c.28) is a separate issue. The Department expects that almost all municipalities will seek coverage under either the Tier A or Tier B Permit. These permits as issued final do not impose numeric effluent limitations or require Discharge Monitoring Reports, which are the potential “triggers” for mandatory penalties under the CWEA (see N.J.S.A. 58:10A-10.1 and the N.J.S.A. 58:10A-3 definitions of “serious violation” and “significant noncomplier”).

These rules do not create any new legal authority for municipalities to regulate facilities or issue “Water Quality permits.” Municipalities do have a responsibility under the Tier A and Tier B Permits to develop and enforce ordinances to carry out the provisions of those permits. In accordance with N.J.A.C. 7:14A-6.2(a)7, NJPDES permits do not authorize any infringement of local law or regulations (see also 40 C.F.R. 122.5(c)).

281. COMMENT: Add N.J.A.C. 7:14A-25.6(b)9, which should state: “Within 12 months of the effective date of this Rule, the Department will finalize the outstanding requirements to meet Section 6217 of the Federal Coastal Zone Act Reauthorization Amendments and will integrate the Municipal Stormwater Program with the requirements of all applicable Federal and State nonpoint source programs, including but not limited to, the New Jersey Coastal Nonpoint Pollution Control Program under Section 6217 of the Coastal Zone Act Reauthorization Amendments and the Nonpoint Source Pollution Program under Section 319 of the Clean Water Act.”

The NJPDES rules and general permits must clarify the relationship between the NJPDES program and other applicable Federal requirements that address nonpoint source pollution, in particular sections of the Coastal Zone Management Act (CZMA) and the CWA, to ensure a clear, coordinated, concerted, and comprehensive approach to stormwater management in New Jersey.

Numerous Federal provisions require control of nonpoint source pollution. With regard to the coastal zone, Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990 requires that states with a Federally-approved coastal zone management program develop, and submit for approval to the National Oceanic and Atmospheric Administration (NOAA), a Coastal Nonpoint Pollution Control Program. CZARA requires that the Coastal Nonpoint Pollution Control Program Plans be coordinated closely with Sections 208, 303, 319 and 320 of the CWA (the Water Quality Management Program, Total Maximum Daily Load calculations for specific water

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bodies, the Nonpoint Source Pollution Program, and the National Estuary Program, respectively). In addition, “the Program shall serve as an update and expansion of the State nonpoint source management program developed under Section 1329 of Title 33 (Section 319, the Nonpoint Source Pollution Program), as the program under that section relates to land and water uses affecting coastal waters.”

New Jersey’s Coastal Zone Management Program was Federally approved by NOAA in 1980; however, it has not been substantially reworked in the last 20 years. Further, the State has not yet integrated the requirements of Section 6217 into its Coastal Zone Management Program even though the statute requires the submission to NOAA of a Coastal Nonpoint Pollution Control Program Plan for approval 30 months after the date of publication of final guidance. The final guidance was published in 1993.

In addition, Section 319 of CWA requires that each state prepare, and submit for approval to USEPA, a “management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.” The management program is required to include “an identification of the best management practices and measures which will be undertaken to reduce pollutant loadings...”

Although the NJPDES rules are regulating MS4s as a point source discharge through the use of BMPs, the potential overlap between the NJPDES rules, Section 6217 of CZARA, and Section 319 of CWA is obvious. A clear, coordinated, concerted, and comprehensive approach to stormwater management, including guidance to provide funding, is needed through the NJPDES rules to begin stemming the toxic influx of pollutants from stormwater into the waters of the State, either point or nonpoint discharges. Such an approach should meet all the requirements of Section 6217 of CZARA, Section 319 of CWA, and any other applicable stormwater provisions. In particular, to meet the mandate of Section 6217, special consideration for coastal waters must be more fully included. In fact, a Department staff member said that integration of stormwater planning to complete the requirements of Section 6217 may make the Department eligible for even more Federal funding to carry out coastal stormwater programs. Additional funding from a coordinated and comprehensive program will achieve the goal of implementation and ensure protection of marine resources. (25, 41, 46, 50, 88, 122, 137, 213, 227)

RESPONSE: The Municipal Stormwater Regulation Program is part of the Department’s National Environmental Performance Partnership Agreement with the USEPA, and is also part of its overall Nonpoint Source (NPS) Pollution Program that includes programs under Section 6217 of CZARA and Section 319 of the CWA. The Department has made the commitment to both the USEPA and to NOAA that the Municipal Stormwater Regulation Program will be fully integrated with the other elements of its NPS Pollution Program. In addition, all municipalities that have a stormwater sewer system discharging directly into the salt waters of Monmouth, Ocean,

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Atlantic, or Cape May counties, as identified under the Sewage Infrastructure Improvement Act, are specifically assigned to Tier A under the Municipal Stormwater Regulation Program because of their unique environmental significance. Specific questions regarding the Coastal Management Program should be directed to the Department's Coastal Management Office at 609-292-2662.

Stormwater Pollution Prevention Plan

282. COMMENT: In regard to N.J.A.C. 7:14A-25.6, clarify the difference(s) between the stormwater pollution prevention plan (SPPP) and the stormwater management plan. The SPPP described in N.J.A.C. 7:14A-25.6 and the municipal stormwater management plan described in N.J.A.C. 7:14A-25.6(b)3iv(2) and in the proposed Stormwater Management rules at N.J.A.C. 7:8 each appear to describe a plan for reducing stormwater runoff and pollution that is to be implemented through municipal ordinance(s), so it is unclear why they are described as two separate and distinct requirements in this rule proposal. (12)

283. COMMENT: In regard to N.J.A.C. 7:14A-25.6, clarify how the stormwater management plans and SPPPs are different. Why are two plans needed, and can they be integrated? Clarifying the differences will save municipalities time and money in hiring consultants to interpret the rules, in developing these plans, and in complying with the proposed rules in a timely manner. N.J.A.C. 7:14A-25.6(a)3 states that the NJPDES permittee shall prepare and implement a written SPPP that describes the permittees' stormwater management program and identifies who is responsible for implementing or coordinating that program. It is unclear how the SPPP is different from the stormwater plan, and it appears duplicative.

N.J.A.C. 7:14A-25.6(b)3iv(2) states that if the NJPDES permittee is a municipality, it shall prepare and adopt a municipal stormwater management plan in accordance with N.J.A.C. 7:8, but the requirement for a SPPP is not addressed in N.J.A.C. 7:8. N.J.A.C. 7:14A-24.7(a)14xii describes what shall be included in a SPPP for construction activities, and these items seem very site specific to prevent pollution from a site. The items do not seem clearly relevant to a general municipal stormwater plan. Please clarify these discrepancies, and consider eliminating the SPPP from the municipal requirements at N.J.A.C. 7:14A-25.6(a)3. (87))

RESPONSE TO COMMENTS 282 and 283: N.J.A.C. 7:14A-25.6(b)3iv(2) uses the term "municipal stormwater management plan" to refer solely to plans prepared by municipalities under N.J.S.A. 40:55D-93 in accordance with N.J.A.C. 7:8. These plans are implemented by stormwater control ordinances prepared by municipalities under N.J.S.A. 40:55D-93. In contrast, the SPPPs described in N.J.A.C. 7:14A-25.6 are prepared not only by municipalities, but also by Federal, interstate, State, and county agencies that do not prepare plans or ordinances under N.J.S.A. 40:55D-93. SPPPs

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prepared by entities other than municipalities are usually not implemented through municipal ordinances.

SPPPs prepared by municipalities under N.J.A.C. 7:14A-25.6 may be implemented through stormwater control ordinances prepared under N.J.S.A. 40:55D-93 and other municipal ordinances. They also may be implemented through municipal actions other than ordinances. For example, municipalities may undertake public works maintenance and public education activities, which might not be considered stormwater control ordinances under N.J.S.A. 40:55D-93. Additionally, to satisfy one provision of the Tier A Permit for example, municipalities can enforce the existing State litter statute (N.J.S.A. 13:1E-99.3), which is not a municipal ordinance. SPPPs prepared by municipalities may also be implemented through reliance on other governmental or private entities in accordance with N.J.A.C. 7:14A-25.7(a). SPPPs prepared by municipalities will refer to municipal stormwater management plans and control ordinances prepared under N.J.S.A. 40:55D-93, but must also satisfy requirements of N.J.A.C. 7:14A-25.6 that might be considered outside the scope of those plans and ordinances.

To prevent duplication of and potential inconsistencies with N.J.A.C. 7:14A-25.6, the N.J.A.C. 7:8 provisions for municipal stormwater management plans are concerned solely with plans prepared under N.J.S.A. 40:55D-93, and do not attempt to address all of the NJPDES stormwater program requirements of N.J.A.C. 7:14A-25.6. Also, a municipality may prepare a stormwater management plan under N.J.A.C. 7:8 even if the municipality does not operate a small MS4 regulated under N.J.A.C. 7:14A-25.6.

“Stormwater pollution prevention plan” or “SPPP” is a general term used in different contexts in several different NJPDES rule provisions. N.J.A.C. 7:14A-24.7(a)2iv, which appears to be the provision intended by the commenter’s reference to N.J.A.C. 7:14A-24.7(a)14xii, describes the SPPP required in an application for an individual NJPDES DSW permit for stormwater discharge associated with construction activity and is unrelated to the SPPP requirements for small MS4s in N.J.A.C. 7:14A-25.6.

284. COMMENT: Wholly residential municipalities should not have to pay for a SPPP, which is onerous and has been labeled consultants’ delight. Instead, local Departments of Public Works (DPWs), which have been coping with this problem all along, should prepare a five to ten page report. (109)

RESPONSE: N.J.A.C. 7:14A-25.6(a)3 requires an SPPP that describes the permittee’s stormwater program, and identifies the person or persons responsible for implementing or coordinating that program. This requirement is based on USEPA regulations at 40 C.F.R. 122.34(d) and (g) that require wholly residential municipalities and other entities that operate regulated small MS4s to provide such description and identification. SPPPs will help Tier A municipalities to organize and keep track of the

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many separate activities undertaken to implement their stormwater programs, and will help the Department and the public to understand and evaluate these activities. (N.J.A.C. 7:14A-25.8 does not require an SPPP for the less complex Tier B Permit, which is not subject to 40 C.F.R. 122.34.)

The Department will make guidance available to assist Tier A municipalities in preparing SPPPs, including sample forms that municipalities may use at their option. Although some municipalities may find it appropriate to use consulting firms for some technical portions of their stormwater programs, municipalities may not find it necessary to retain consultants to prepare entire SPPPs. Many municipalities may choose to have their DPWs prepare the portions of their SPPPs that the DPWs will implement. The Department notes, however, that DPWs are not responsible for implementing some activities described in SPPPs, such as adopting the municipal stormwater management plan and control ordinance(s) required under N.J.A.C. 7:14A-25.6(b)3iv(2) and (3).

285. COMMENT: The NJPDES rules and general permits must provide for more Department oversight of permits. Therefore, add the following to the end of the last sentence of N.J.A.C. 7:14A-25.6(a)3: “The permittee shall submit a copy of this plan to the Department and the Department shall make it available to the public on a central Departmental website,” and make corresponding changes to the draft Tier A, Highway, and Public Complex Permits. (25, 41, 46, 50, 88, 122, 137, 213, 227)

286. COMMENT: Two commenters support the concept of SPPPs, but more accountability, monitoring, public input, and oversight is needed in order to make this concept work. New Jersey does not need any more plans that do not get implemented.

The commenters are concerned that the lack of accountability and evaluation of the effectiveness of the measures and plans that are taken to improve the stormwater runoff management from MS4s will result in a failure of the NJPDES rules and continued stormwater pollution. In regard to N.J.A.C. 7:14A-25.6(j), the proposed SPPPs should be submitted, reviewed by, and subject to approval by the Department. These plans need to be made available to the public for comment and review, and will be improved by Department review and wide public input. (27, 203)

RESPONSE TO COMMENTS 285 and 286: For permits that require SPPPs, the Department is providing for public input, accountability, oversight, and monitoring in the Municipal Stormwater Regulation Program by several methods. The two primary methods are summarized below. First, the Department has, with public input, issued the Highway, Public Complex, and Tier A Permits, which establish the basic substance of the SPPPs by specifying BMPs and measurable goals that permittees must implement, and which require permittees to submit to the Department annual reports that include the status of compliance with permit conditions.

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Second, the Department intends that its Water Compliance and Enforcement staff will conduct reviews and inspections of each permittee's SPPP and regulated activities to evaluate whether the permittee is in compliance with its permit. This review and inspection will include a review of the SPPP retained at the permittee's facility. A permittee who fails to comply with permit conditions regarding SPPPs may be subject to enforcement actions or other adverse consequences (see the response to Comments 230 through 233 above). This review and inspection process, coupled with the specification of BMPs and measurable goals in the permits, makes a separate requirement for Department "approval" of SPPPs unnecessary, and also makes it unnecessary in most cases for permittees to send copies of their SPPPs to the Department for Department review.

Permittees shall make SPPPs available to the public as required by N.J.A.C. 7:14A-25.6(j)2, and the Department shall make SPPPs available to the public at the offices of the Department when required under N.J.A.C. 7:14A-18.1. In regard to making SPPPs available to the public on a central Departmental website, see the response to Comment 87 above.

Because the permits specify BMPs and measurable goals, and to avoid further delays in implementing the Municipal Stormwater Regulation Program, an increased administrative burden on permittees or the Department, and exceeding the minimum requirements of 40 C.F.R. 122.34(b)(2)(i) and other USEPA regulations, the Department is not requiring public comment for each SPPP. The Department notes, however, that some of the stormwater program elements described in SPPP, such as municipal ordinances and stormwater management plans, have their own public comment requirements under State law.

Specific Statewide Basic Requirements

287. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)1, the Department should impose public hearing requirements as well as the applicable public notice requirements. Minimum public participation requirements should also be described. (58)

288. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)1, the Department should provide more specific and comprehensive public involvement/participation requirements. Throughout this proposal there is little regard for public participation. Here, where public participation is specifically called for as a Statewide Basic Requirement (SBR), there is no further requirement from the Department besides compliance with applicable State and local public notice requirements. What provisions has the Department provided to ensure meaningful public participation in this process? (217)

RESPONSE TO COMMENTS 287 and 288: N.J.A.C. 7:14A-25.6(b)1 is based on the USEPA regulation at 40 C.F.R. 122.34(b)(2)(i), which requires only that the permittee "at a minimum, comply with State, Tribal and local public notice requirements

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when implementing a public involvement/participation program.” The Department provides for meaningful public participation in the Municipal Stormwater Regulation Program primarily by providing for public input in the development and issuance of the Highway, Public Complex, Tier A, and Tier B Permits, which specify BMPs and measurable goals that permittees must implement. This input occurs, for example, through the Municipal Stormwater Advisory Group described in the proposal summary at 35 N.J.R. 171, through the public comment process for draft NJPDES permits set forth in the NJPDES rules, and, for “additional measures” under N.J.A.C. 7:14A-25.6 and 25.8, through the public comment process for Water Quality Management Plans set forth in N.J.A.C. 7:15.

Because these general permits specify BMPs and measurable goals, and to avoid further delays in implementing the Municipal Stormwater Regulation Program, an increased administrative burden on permittees, and exceeding the minimum requirements of USEPA regulations, N.J.A.C. 7:14A-25.6(b)1 does not impose public hearing requirements or other more specific and comprehensive public involvement/participation requirements. However, Department guidance for this SBR, which will be available from the Department as noted in the response to Comments 189 through 207 above, will recommend that the public be included in developing, implementing, and reviewing permittees’ stormwater programs. In addition, some stormwater program elements, such as municipal ordinances and stormwater management plans, have their own public hearing or participation process under State law. See also the responses to Comments 19 and 86 above and to Comment 352 below.

289. COMMENT: The requirement for reduction of pollutants in stormwater discharge in N.J.A.C. 7:14A-25.6(b)2 should apply to disturbances of 5,000 square feet or more, regardless of whether they are part of a larger common plan of development. Cumulatively, control of pollutants from 5,000 square feet can be very serious. One acre and more is too large an area to establish as the threshold for applicability of N.J.A.C. 7:14A-25.6(b)2. (58)

289A. COMMENT: The county’s practice of acquiring wider Rights-of-Way (ROWs) as a condition for allowing land sales or transfers, and requiring landowners to grade their ROW to the county’s specifications, exacerbates a condition that the Department does little to correct: runoff and erosion from road ROWs, including severely eroded roadsides and accumulations of sediment in the roads. This problem would not be corrected under the new regulations, which allow the county to disturb up to one acre of soil without a permit. The Department should reduce the allowable soil disturbance without permit in county road department building projects to 5,000 square feet, which is the soil conservation district’s threshold. (93A)

RESPONSE TO COMMENTS 289 and 289A: N.J.A.C. 7:14A-25.6(b)2, which pertains to stormwater runoff to small MS4s from construction activities, and paragraph 1 of the N.J.A.C. 7:14A-1.2 definition of “stormwater discharge (or stormwater DSW)

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associated with small construction activity,” use a one acre threshold for consistency with the one acre threshold in the USEPA regulations at 40 C.F.R. 122.26(b)(15)(i) and 122.34(b)(4)(i). Sediment is generally the most significant pollutant in such stormwater. The Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., already provides a basis for comprehensive and coordinated Statewide control of sediment in stormwater from construction projects that disturb 5,001 square feet or more of the surface area of land, including projects that do not require NJPDES stormwater permits and are not subject to N.J.A.C. 7:14A-25.6(b)2. NJPDES permits for stormwater discharges associated with construction activity also require compliance with that Act (see N.J.A.C. 7:14A-24.10(a)1). Thus, construction activities below the one acre threshold are already subject to the same kinds of erosion and sediment control requirements that are generally imposed on construction activities that require NJPDES stormwater permits and are subject to N.J.A.C. 7:14A-25.6(b)2, and lowering the one acre threshold in the NJPDES rules would probably do little to reduce sediment from those construction activities.

In addition, the Department or the USEPA Regional Administrator can require NJPDES permits for construction activities below the one acre threshold, based on the potential for contribution to a violation of a surface water quality standard, or for significant contribution of pollutants to waters of the State (see N.J.A.C. 7:14A-24.2(a)3 and the N.J.A.C. 7:14A-1.2 definition of “stormwater discharge (or stormwater DSW) associated with small construction activity”).

Moreover, the Highway, Public Complex, and Tier A Permits require counties and other permittees to develop a roadside erosion control maintenance program to identify and repair erosion along their streets (including roads or highways). These permittees are also 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 sedimentation of receiving waters. Repairs shall be made in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, N.J.A.C. 2:90-1 (or N.J.A.C. 16:25A where NJDOT is the permittee).

290. COMMENT: USEPA regulations for the Phase II municipal separate storm sewer system (MS4) program at 40 C.F.R. 122.34(b)(4) include management of construction site stormwater runoff as a minimum control measure that must be a component of the stormwater management program of a regulated small MS4. It is the commenter’s understanding, based on information received at meetings with the Department, that the Department is not requiring this as one of the Statewide Basic Requirements (SBRs). Instead, the Department is employing the provision made available by 40 C.F.R. 122.35(b), which allows the permitting authority to designate another entity as responsible for one or more minimum control measures.

The commenter understands from the summary of the proposed rules that the Department intends to use the existing framework provided by the county soil conservation districts, which provide plan review and site inspection functions for the

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current NJPDES “construction activity” stormwater general permit (NJPDES Permit No. NJ0088323), as a Qualifying Local Program. This approach is acceptable to the commenter, provided that the functions provided by the soil conservation districts meet the requirements outlined at 40 C.F.R. 122.34(b)(4). It is the commenter’s understanding that this is the justification for N.J.A.C. 7:14A-24.10 and Part I.F.10 of the Tier A, Highway, and Public Complex Permits, which relieve the regulated MS4s of the construction site stormwater runoff SBR. Please confirm that the commenter’s understanding of the regulatory justification is correct and that the functions provided by the county soil conservation districts are not a delegation of the Department’s NJPDES responsibilities as a state permitting agency. (196)

RESPONSE: Under N.J.A.C. 7:14A-25.6(a) and (b)2 and 25.7(b), construction site stormwater runoff control is an SBR, but the small MS4 permittee is not required to include this SBR in the permittee’s stormwater program. Instead, the Department is responsible for implementing this SBR through the NJPDES permit program for stormwater discharges associated with construction activity addressed under N.J.A.C. 7:14A-24.10, which is based on 40 C.F.R. 122.44(s) and 122.34(b)(4). Department responsibility for this SBR employs the provision made available by 40 C.F.R. 122.35(b), which allows the permitting authority to designate itself as responsible for one or more minimum control measures. It is the NJPDES permit program for these stormwater discharges, not merely the functions in that program provided by New Jersey’s 16 soil conservation districts, that meets the requirements outlined at 40 C.F.R. 122.34(b)(4).

These functions are not a delegation of the Department’s NJPDES responsibilities as a state permitting agency. All NJPDES permits, including the “construction activity” stormwater general permit and individual NJPDES-DSW permits for discharge of stormwater from construction activity, are issued solely by the Department. Soil conservation districts do not issue any NJPDES permits. When soil conservation districts certify Requests for Authorization under the “construction activity” stormwater general permit, review erosion and sediment control plans required by this permit, or inspect construction sites for compliance with erosion and sediment control requirements established under this permit, these districts are not issuing NJPDES permits or assuming responsibilities that properly belong to the Department. Rather, those districts are helping the Department to administer a NJPDES general permit already issued by the Department. The Department also retains its authority to inspect construction sites and to enforce the permit. Under the Soil Erosion and Sediment Control Act, moreover, the soil erosion and sediment control standards used by the soil conservation districts are subject to Department approval (see N.J.S.A. 4:24-42).

291. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)3, the commenter has commented separately on N.J.A.C. 7:8, and supports the proposal with recommendations for strengthening it. (58)

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292. COMMENT: Many commenters said that requiring towns to adopt stormwater plans as part of their master plans will help towns manage stormwater, and noted that the Department will be offering grants to help towns with their plans. (2, 62, 77, 78, 94, 131, 148, 165, 175, 191, 197, 202, 219)

293. COMMENT: Many commenters said that requiring towns to adopt stormwater plans as part of their master plans would insulate towns from lawsuits from builders when the towns require improvements to handle stormwater. (2, 62, 78, 94, 148, 165, 175, 191, 197, 202, 219)

294. COMMENT: Grants to help towns with stormwater plans to be adopted as part of their master plans are important so that no undue burden will be placed on the municipalities. (202)

295. COMMENT: Coordination of municipal governments with stormwater plans will be an important step in the overall effort to develop effective stormwater regulations. (102)

296. COMMENT: The commenter supports the proposed rules because they promote municipal planning, an indispensable tool for wise stormwater management. (82)

297. COMMENT: It is critical for towns to be part of this process to do good planning, and to adopt stormwater plans as part of their master plans. The existing program is broken. Some towns do good stormwater planning, some towns do bad stormwater planning, some towns do nothing, and some towns try to do a good job but get frustrated by the Residential Site Improvement Standards. Having towns prepare stormwater management plans is a way to get beyond site-specific developments, and to start looking more holistically at towns in dealing with stormwater. The existing system is not working, especially on a site-specific basis. This proposed program will help towns to plan better, get water recharged, evaluate stormwater more regionally and handle stormwater and water quality issues better, and guide their future.

Adopting these plans will help towns to be better insulated from lawsuits and to collect impact fees under the Municipal Land Use Law (MLUL) for drainage improvements, which towns currently have a hard time doing. One town lost in court because a required improvement was not identified on the master plan. Even under the existing MLUL, towns can charge developers their pro-rated share of off-site stormwater improvements adopted as part of their official map/plan. It is important to give grants to towns to help them with planning. Also, however, because towns adopt official maps, they can collect impact fees and better manage the stormwater. (198)

298. COMMENT: Preparing a municipal stormwater plan under Department leadership and guidance was a gratifying experience for the town's professionals and elected officials, who identified problems they had not known about, and identified causes of

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and help for flooding issues. Preparing such a plan is a wonderful exercise for a municipality, and fits in with any existing municipal master plan process. (58)

299. COMMENT: The commenter strongly supports the implementation of the Federal mandates on municipal planning, given the municipalities' role in land use decisions. Municipalities have to be at the forefront and a central part of this process. (45)

300. COMMENT: These rules will help towns to "plan your work and work your plan." Some towns have been very proactive, including, for example, Mount Olive Township (which passed a strong town ordinance), Harding and Edison Townships, and Chatham. Certainly not all counties are proactive. This is why there is a Federal mandate, and why the Department is acting to ensure that there is not half protection for waterways across the State just because one town has better rules. The Department is working to ensure that there is adequate implementation on a municipal level. Municipalities will be responsible for local implementation once 90 percent of the cost of the stormwater plan has been made available by the Department. (151)

301. COMMENT: Giving municipalities the tools and strength they need to create community specific regulations for implementing these rules provides municipalities powerful and needed support for effective land use planning and community quality of life protection. These rules are the first effective step towards that desperately needed municipal planning effort. The State planning system has failed because it is not being implemented. These rules help the municipalities to put in place stormwater plans to implement it. (27)

302. COMMENT: The requirements for developing a stormwater plan are reasonable, and lay the framework for reducing stream flooding and pollution. Flooding in New Jersey can be a serious problem. Using excess precipitation to recharge groundwater and trap waters for surface supply are necessary goals to sustain the State's population and life style. The stormwater ordinances required to control new construction are necessary as well. (39)

RESPONSE TO COMMENTS 291 through 302: The Department acknowledges the commenters' support for the rules. The content of municipal stormwater management plans and ordinances is governed by the Stormwater Management rules (N.J.A.C. 7:8). The Department has responded to comments regarding these rules in the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register.

The Department also plans to provide some grant funds for the Municipal Stormwater Regulation Program to municipalities, as discussed in the response to Comments 120 through 128 above. The Department notes, however, that N.J.A.C. 7:14A-25.6(b)3 and 25.8(e)1 and, where applicable, USEPA regulations at 40 C.F.R. 122.34(b)(5), require municipalities to address stormwater from new development and redevelopment projects even if the Department does not make a 90 percent grant for the

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preparation of a municipal stormwater management plan available to the municipality. In regard to the references to Federal mandates, see the responses to Comments 89 through 99 above. The Department also notes that to require a developer to pay the pro-rata share of the cost of reasonable and necessary off-tract drainage (and certain other) improvements, the municipality must satisfy the requirements of N.J.S.A. 40:55D-42.

303. COMMENT: General permit requirements for “post-construction stormwater management in new development and redevelopment” should be imposed and enforced by soil conservation districts, not municipalities. (115)

304. COMMENT: Denville Township should not be the enforcing agency for private development sites. (61)

RESPONSE TO COMMENTS 303 and 304: N.J.A.C. 7:14A-25.6(b)3 is based on the USEPA regulation at 40 C.F.R. 122.34(b)(5), which requires municipalities and other entities that operate small MS4s subject to that regulation to “develop, implement and enforce a program to address storm water runoff from new development and redevelopment projects” that disturb one acre or more, and that discharge into these small MS4s. Among other things, such municipalities must “use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law.” New Jersey municipalities have ample authority under State statutes, such as the Stormwater Management Act, N.J.S.A. 40:55D-93 to 99, other provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., the Municipal and County Flood Control Financing Act, N.J.S.A. 40A:27-1 et seq., and N.J.S.A. 40:48-1 et seq., to address post-construction stormwater runoff from new development and redevelopment projects. N.J.A.C. 7:14A-25.6(b)3 applies to private development sites only if such sites discharge stormwater runoff into the permittee’s small MS4.

Soil conservation districts also have some responsibility for post-construction stormwater runoff (primarily, the responsibility to apply the Standards for Soil Erosion and Sediment Control incorporated at N.J.A.C. 2:90-1.3, including Stormwater Runoff Treatment Standards, in reviewing and inspecting the execution of plans for projects under the Soil Erosion and Sediment Control Act). However, soil conservation districts do not operate small MS4s, and have narrower statutory authority than municipalities have to address post-construction stormwater runoff. Where appropriate, the Department encourages municipalities to improve the effectiveness and reduce the cost of their stormwater programs by relying on or sharing responsibilities with other governmental or private entities including, but not limited to, soil conservation districts (see N.J.A.C. 7:14-25.7(a) and 25.8(e)).

305. COMMENT: Stormwater management requirements for counties need to be more clearly stated. The proposed Stormwater Management rules (N.J.A.C. 7:8) do not appear to require counties to prepare stormwater management plans/regulations consistent with

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rule requirements in the same manner as is explicitly stated for municipalities. Yet, the companion NJPDES proposed rules (N.J.A.C. 7:14A) indicate that with regard to NJPDES permits for small MS4s, plans and regulations must be prepared consistent with stormwater measures established under N.J.A.C. 7:8 for major development. Both rules should clearly articulate the counties' responsibilities concerning the implementation of stormwater management design and performance standards contained in N.J.A.C. 7:8. In addition, if county stormwater management regulations differ significantly from those to be imposed by municipalities, this may create an unfair burden to future development applications. Also, in regard to N.J.A.C. 7:14A-25.6(b)3ii, clarify whether county compliance with N.J.A.C. 7:8 relates solely to water quality issues or to water quantity, rate, and recharge requirements as well. (108, 124)

RESPONSE: The Department has responded to comments regarding the proposed Stormwater Management rules in the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register. For purposes of the NJPDES Municipal Stormwater Regulation Program, the counties' responsibilities concerning implementation of design and performance standards established under N.J.A.C. 7:8 are limited to responsibilities set forth in NJPDES permits obtained by counties for discharges from small MS4s. The NJPDES rules for this Program, in conjunction with the Highway and Public Complex Permits issued under the NJPDES rules, clearly articulate these responsibilities.

N.J.A.C. 7:14A-25.2 identifies all small MS4s whose stormwater discharge to surface water or groundwater is regulated under this Program. These include small MS4s owned or operated by counties that are at certain "public complexes" or at "highways or other thoroughfares," or that receive "special designations." Counties that operate these stormwater discharges are required to apply for a NJPDES permit in accordance with N.J.A.C. 7:14A-25.4(a) and 25.5(a). The Department expects that all counties will seek coverage under the Highway Permit, and that all counties with regulated "public complexes" will seek coverage under the Public Complex Permit.

Under N.J.A.C. 7:14A-25.6(a), the stormwater program required under a general permit (including the Highway and Public Complex Permits) must include several SBRs, including the SBR for "post-construction stormwater management in new development and redevelopment" listed under N.J.A.C. 7:14A-25.6(b)3, and these SBRs may be set forth in more detail in the permit. Among other things, N.J.A.C. 7:14A-25.6(b)3 requires the permittee to "require compliance with the applicable design and performance standards established under N.J.A.C. 7:8 for major development as defined in N.J.A.C. 7:8-1" (with specified exceptions). In the Public Complex and Highway Permits, this requirement applies only to major development at the public complex or on property owned or operated by the Highway Agency. Therefore, these permits and the NJPDES rules do not require county-wide stormwater management plans and regulations analogous to the municipal stormwater management plans and ordinances addressed in

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N.J.A.C. 7:8. These permits also specify the implementation schedule for this requirement.

To prevent duplication of and potential inconsistencies with N.J.A.C. 7:14A-25 and these permits, N.J.A.C. 7:8 does not articulate the counties' responsibilities under the NJPDES Municipal Stormwater Regulation Program. Similarly, the NJPDES rules for this Program do not articulate any county responsibilities not directly related to regulation of counties under this Program. In addition, because the above-cited N.J.A.C. 7:14A-25.6(b)3 requirement applies to both municipalities and counties, and because the corresponding SBR in the Public Complex and Highway Permits applies only to major development at the public complex or on property owned or operated by the Highway Agency, these permits are unlikely to create any burden to future development applications submitted to municipalities.

The requirement in N.J.A.C. 7:14A-25.6(b)3ii for "compliance with the applicable design and performance standards established under N.J.A.C. 7:8" pertains to all applicable design and performance standards established under N.J.A.C. 7:8, not just to standards specifically labeled "water quality." Problems such as human-induced base-flow reduction (due to reduced recharge) and exacerbation of flooding and erosion also present water quality problems because they alter the chemical, physical, or biological integrity of the waters of the State, or otherwise contribute to water pollution.

306. COMMENT: This comment is offered as a means to promote consistency of the NJPDES municipal stormwater rules with the Pinelands Comprehensive Management Plan (CMP), N.J.A.C. 7:50, in recognition of the Pinelands Protection Act (N.J.S.A. 13:18A-10), which requires that no State approval, license, certificate, consent or permit may be issued unless it is consistent with the requirements of the Pinelands CMP. N.J.A.C. 7:14A-25.6(b)3iv(2) and (3) should indicate that no ordinance shall take effect in the Pinelands Area except as provided in N.J.A.C. 7:50. Ordinances that implement municipal stormwater management plans must be reviewed and approved by the Pinelands Commission as to conformance with the CMP, whether or not the Pinelands Commission is acting as the Lead Planning Agency for any concurrent regional stormwater management planning process. Therefore, to ensure consistency with relevant Pinelands standards, the Pinelands Commission should be included in the review process for municipal stormwater planning.

The commenter recognizes the value of employing consistent standards throughout the State so that the unique and significant Pinelands resources are adequately protected. To this end, it is the commenter's intention to work with the Department and other State and local agencies and organizations during the next year to review Pinelands regulations and develop appropriate model provisions and ordinances that achieve the goals of the Department's new rules, promote consistency between Department and Pinelands stormwater rules, maximize ground water recharge, and minimize nonpoint source pollution. (12)

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RESPONSE: N.J.S.A. 13:18A-10c states that “Subsequent to the adoption of the comprehensive management plan ... no State approval, license, consent, permit, or financial assistance for the construction of any structure or the disturbance of any land within such [pinelands] area shall be granted, unless such approval or grant conforms to the provisions of such comprehensive management plan ...” The Department does not consider the general permits subject to N.J.A.C. 7:14A-25.6(b)3, or the authorizations that the Department issues under these general permits, to be permits or approvals for the “construction of any structure” or the “disturbance of any land.”

These general permits authorize discharges from small MS4s only. These general permits do not approve the construction of structures or the disturbance of lands, even if such structures or lands are small MS4s or discharge into small MS4s, and even if such construction or disturbance is undertaken to implement the stormwater pollution prevention plan or stormwater program required by these general permits. Rather, where approval for such construction or disturbance is required by law, such approval is granted under the various other regulations and laws that directly regulate such construction or disturbance. It is the permittee’s responsibility to comply with those other regulations and laws. As Part I.J.2 of the Highway, Public Complex, Tier A, and Tier B Permits stipulates, in accordance with N.J.A.C. 7:14A-6.2(a)7, these general permits do “not authorize any infringement of State or local law or regulations, including, but not limited to the Pinelands rules (N.J.A.C. 7:50)”

In addition, the Department believes that the relationship of municipal master plans (including municipal stormwater management plans) and land use ordinances (including stormwater control ordinances) to the Pinelands Protection Act and the Pinelands Commission should not be addressed in the NJPDES rules, but should continue to be governed solely by that Act (see N.J.S.A. 13:18A-12.b), and by the Pinelands Comprehensive Management Plan (see N.J.A.C. 7:50-3). This relationship includes issues of whether ordinances take effect or must be reviewed and approved by the Pinelands Commission. The Pinelands Commission is included in the review process for municipal stormwater planning by having opportunity under N.J.A.C. 7:14A to comment on draft NJPDES permits for the Municipal Stormwater Regulation Program, and by administering provisions in the Pinelands Protection Act and N.J.A.C. 7:50 that pertain to municipal master plans and land use ordinances. The Department looks forward to working with the Pinelands Commission on matters related to the Municipal Stormwater Regulation Program.

307. COMMENT: Many older towns in Camden County have adopted laws for flood prevention, and are already supposed to have stormwater management plans to participate in the National Flood Insurance Program. However, these towns did not comply with these plans, which have almost the same procedures as those the Department is now proposing. Flooding has been a problem in Collingswood Borough for many years. The State has been lifting a sewer ban imposed in the Borough in 1971 and allowing new

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development, knowing that the sewer does not have the capacity to handle new development. Without adequate drainage and sewer facilities, these towns will not be able to meet the new capacities when they cannot even meet the capacities that they have now.

Also, the commenter's house in Collingswood Borough was flooded by stormwater that previously had been conveyed in a combined sewer system. In 1986 the municipality told the homeowners to remove the stormwater from the combined sewer. But under law enacted in 1918, all roof water from houses has to go into a sewer. The stormwater was removed from the sewer, but a modified plan to handle the stormwater was never approved, so the municipality most likely ran the water onto open ground so that it would percolate into the ground. Now with all the new housing development, the ground capacity was taken away, resulting in more stormwater with nowhere to go. If the State could not do anything after all these years with a town like Collingswood Borough, which has such severe problems and never adopted a management plan to handle them, then the commenter does not see how the Department's plan is going to be any different. (17)

RESPONSE: Municipalities are not required to have stormwater management plans to participate in the National Flood Insurance Program. Instead, municipalities are required to have floodplain management regulations that comply with 44 C.F.R. 60 Subpart A, which differs considerably from the requirements in the NJPDES Municipal Stormwater Management Program and N.J.A.C. 7:8.

The Department has not rescinded in part or in whole the sewer connection ban in Collingswood Borough. The Department does grant sewer connection ban exemptions in accordance with N.J.A.C. 7:14A-22, which is outside the scope of this rulemaking. Stormwater management requirements should be established in the NJPDES Municipal Stormwater Management Program and N.J.A.C. 7:8 rather than through Department rules for sewer connection bans.

Reducing stormwater flows to combined sewers is often a necessary and appropriate measure to reduce or eliminate discharge of raw sewage in combined sewer overflows and/or improve the performance of sewage treatment plants, and such flow reduction has sometimes not been accompanied by stormwater planning. Through the NJPDES Municipal Stormwater Regulation Program, however, the Department is making its most comprehensive effort ever, backed by the authority to enforce NJPDES permits, to require the adoption and implementation of municipal stormwater management plans throughout the State. Such implementation should substantially prevent the aggravation of existing flooding problems by new development.

308. COMMENT: In regard to the requirement to adopt and implement stormwater control ordinances in accordance with N.J.A.C. 7:8, the Department needs to encourage ordinances that are flexible with regard to the water quality/quantity objectives and the

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minimum standards discussed in N.J.A.C. 7:8 due to the lack of specific guidance provided in the rules to evaluate the effectiveness of proposed measures. (48)

309. COMMENT: N.J.A.C. 7:14A-25.6(b) places an unfair burden on the municipality. This subsection states that one of the SBRs is that projects in the municipality comply with the new stormwater rules under N.J.A.C. 7:8. The nature of the requirements is that the municipality must interpret such phrases as “to the maximum extent practicable.” If an individual or group does not feel that the municipality has been diligent and appeals to the Department, is the municipality liable for violations of the NJPDES permit? Additionally, the rules state that residential projects must be designed in accordance with the Residential Site Improvement Standards (RSIS). If a municipality grants a de minimis exception, as permitted under RSIS, is the municipality in violation of the NJPDES permit? (M. Metelski, 205, 216)

310. COMMENT: Because development proposals are submitted by developers who try to reduce costs, and are reviewed by volunteer planning boards, the Department needs to be very explicit about what it wants, particularly for commercial development and redevelopment projects. Providing general concepts and assuming good intentions will not suffice. (8)

RESPONSE TO COMMENTS 308 through 310: The content of municipal stormwater management plans and ordinances is governed by the Stormwater Management rules (N.J.A.C. 7:8). The Department has responded to comments regarding these rules in the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register. As adopted, these rules include several provisions to provide flexibility, including provisions concerning variances or exemptions, waivers from strict compliance with standards, and exceptions from the requirement to incorporate nonstructural stormwater management strategies (see, for example, N.J.A.C. 7:8-2.5, 4.2(c)11, 4.6, 5.2(d) and (e), and 5.3(a)). These rules also refer to and identify sources of technical guidance, including the New Jersey Stormwater Best Management Practices Manual which may be obtained from the Department (see N.J.A.C. 7:8-5.3(d), 5.5(b) and (f), 5.7(c), 5.8(b), and 5.9).

There is precedent in stormwater law for use of such phrases as “to the maximum extent practicable” in N.J.A.C. 7:8. The RSIS, for example, state that “development shall use the best available technology to accommodate stormwater management by natural drainage strategies where possible and practicable” (N.J.A.C. 5:21-7.5(a)). The Stormwater Management Act requires that stormwater management plans and ordinances be designed “to induce water recharge into the ground where practical” and “to prevent, to the greatest extent feasible, an increase in nonpoint pollution” (N.J.S.A. 40:55D-93). Section 402(p)(3)(B) of the CWA requires that NPDES permits for discharges from municipal separate storm sewers “shall require controls to reduce the discharge of pollutants to the maximum extent practicable.” The above mentioned technical guidance would also help municipalities and others to interpret such phrases. In addition, the

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requirements in N.J.A.C. 7:8 do include design and performance standards, applicable to commercial and other development and redevelopment projects, expressed in quantitative or other specific terms (see, for example, N.J.A.C. 7:8-5.4(a) and 5.5(a)). Also, many development proposals are reviewed by the Department as well as volunteer planning boards.

A municipality that violates any condition of its NJPDES permit for its small MS4, including any condition requiring compliance with N.J.A.C. 7:8, is in violation of the New Jersey Water Pollution Control Act (State Act), and may be subject to penalties or other consequences specified in the State Act or elsewhere (see the response to Comments 230 through 233 above). However, the mere assertion by an individual or group that the municipality has not been diligent does not establish that a permit condition has been violated. The Department will perform its own investigation before finding that any municipality is in violation. The Department anticipates working closely with municipalities, and providing seminars, workshops, and site visits, in an effort to avoid a situation developing where a municipality is out of compliance with its permit. In general, however, the Department does not anticipate working with municipalities in the review of individual applications for development.

The Department recognizes that in circumstances set forth in N.J.A.C. 5:21-3, Exceptions, Waivers, and Special Area Standards, the RSIS allow certain deviations from the standards. In light of this, on adoption the Department has revised N.J.A.C. 7:14A-25.6(b)3iv(1) by adding, “(including any exception, waiver, or special area standard that was approved under N.J.A.C. 5:21-3).”

311. COMMENT: Development projects with preliminary approvals, but not yet under construction, should be required to comply with the proposed rules. This will prevent the burden of future retrofitting and associated costs from being placed on the municipalities. (114)

312. COMMENT: To what extent will N.J.A.C. 7:14A-25.6(b)3ii be applied to projects that have already been designed but are not yet constructed, and to projects where construction has begun but is not yet complete? Applying this provision to these specific types of projects would require extensive project redesign, and could result in extensive project delays and public expenditures. The commenter understands that this provision would apply to any new projects, including those projects where design is underway but has not yet been completed. (185)

RESPONSE TO COMMENTS 311 and 312: N.J.A.C. 7:14A-25.6(b)3ii and some other provisions of N.J.A.C. 7:14A-25.6(b)3 require compliance with the Stormwater Management rules (N.J.A.C. 7:8), either expressly or through requirements incorporated in the RSIS at N.J.A.C. 5:21-7.5. The Department proposed to repeal and replace the Stormwater Management rules under a separate proposal published in the January 6, 2003 issue of the New Jersey Register (35 N.J.R. 119(a)).

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Under a separate proposal published in the September 15, 2003 issue of the New Jersey Register (35 N.J.R. 4220(a)), the Department re-proposed the definition of “major development” in the then-pending Stormwater Management rule proposal, and also proposed a new applicability section, N.J.A.C. 7:8-1.6. The Department re-proposed the definition and the new applicability section (a “grandfathering” provision) to clarify the Department’s intent regarding the applicability of the new Stormwater Management rules to major development. Among the issues addressed in the September 15, 2003 proposal is grandfathering of projects that received preliminary approval (or certain other kinds of approval) under the MLUL, or which have secured certain Department permits. The Department has responded to comments regarding this issue in the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register.

At N.J.S.A. 40:55D-49, preliminary approval under the MLUL confers upon the applicant certain rights that cannot be eliminated by Department rules, including any provision in N.J.A.C. 7:14A-25.6(b)3. However, N.J.S.A. 40:55D-49 does not prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety.

Some projects undertaken by county, State, interstate, and Federal agencies do not require approval under the MLUL or any of the Department permits listed in N.J.A.C. 7:8-1.6, but may still be subject to the SBR set forth in the Highway or Public Complex Permits for “post-construction stormwater management in new development and redevelopment.” To clarify the Department’s intent regarding the applicability of the SBR in these permits to such projects, the Department has added language to the SBR in these permits as issued final which provides that projects that do not require any Department permits under the Flood Hazard Area Control Act, Freshwater Wetlands Protection Act, Coastal Area Facility Review Act, or Waterfront and Harbor Facilities Act are not considered “new development or redevelopment projects” if construction began prior to the implementation deadline for this SBR, or if the projects went to bid or had right-of-way authorization prior to the date on which the permittee received authorization under the Highway or Public Complex Permits.

313. COMMENT: The SBR for “Post-construction stormwater management in new development and redevelopment” would require new development and redevelopment projects disturbing one acre or more to comply with the Stormwater Management rules (N.J.A.C. 7:8). Projects less than one acre could also be subject to this SBR in certain cases. A Department representative indicated in conversation that resurfacing projects could be considered redevelopment projects and could be subject to this SBR. Pavement resurfacing projects should be exempted from the requirement to comply with N.J.A.C. 7:8. Also, clarify what types of projects constitute new development and redevelopment projects.

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The New Jersey Turnpike Authority performs resurfacing projects each year, typically by milling the existing pavement surface, avoiding disturbance of the underlying soil. The effort and expense of complying with the requirements of N.J.A.C. 7:8 (which include standards for flood and erosion control, groundwater recharge, and stormwater runoff quality and quantity) when performing these projects would be exorbitant. (174)

RESPONSE: The Department does not consider resurfacing projects that do not disturb the underlying or surrounding soil, remove surrounding vegetation, or increase the area of impervious surface to be “redevelopment projects.” This interpretation of “redevelopment” is consistent with USEPA’s statement that it “intends the term ‘redevelopment’ to refer to alterations of a property that change the ‘footprint’ of a site or building in such a way that results in the disturbance of equal to or greater than 1 acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse storm water quality impacts and offer no new opportunity for storm water controls” (64 Fed. Reg. 68760; December 8, 1999). USEPA also stated in July 1993 guidance that repaving is not regulated as construction activity under the Phase I NPDES stormwater program “unless five or more acres of underlying and/or surrounding soil are cleared, graded or excavated as part of the repaving operation.”

In addition, only new development or redevelopment projects that are “major development as defined in N.J.A.C. 7:8-1” are required by N.J.A.C. 7:14A-25.6(b)3ii to comply with the applicable design and performance standards established under N.J.A.C. 7:8 for such major development. On September 15, 2003, the Department re-proposed the definition of “major development” in the then-pending Stormwater Management rules (see 35 N.J.R. 4220(a)). The Department has responded to comments regarding these rules in the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register.

The Department expects that the New Jersey Turnpike Authority will apply for the Highway Permit. As discussed in the response to Comments 311 and 312 above, the Department has added language to the SBR in that permit as issued final to clarify the Department’s intent regarding the applicability of the SBR in that permit.

314. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)3, the Department recognizes the importance of riparian corridors and has outlined these benefits in the proposed Stormwater Management rules at N.J.A.C. 7:8-5.5(h). The commenter strongly supports the requirement in these rules for a 300-foot Special Water Protection Area for Category One waters. In addition, the Department should include the requirement for a general stream corridor protection ordinance in the list of SBR ordinances. A stream corridor protection ordinance is designed to protect public health and safety, and is especially important for streams that lead to surface water drinking supplies.

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The commenter also recommends the development of a model stream corridor ordinance for use in towns, and several members of the New Jersey Council of Watershed Associations (NJCWA) have developed model stream corridor ordinances. The NJCWA would be delighted to work with the Department to create a Statewide model, which communities can modify as necessary to protect their headwater streams or waterways. (87)

RESPONSE: The Department acknowledges the commenter's support. Besides N.J.A.C. 7:8-5.5(h), the Stormwater Management rules have other provisions that help to protect stream corridors, including N.J.A.C. 7:8-3.3(b)2 and 5.3(b). In addition, N.J.A.C. 7:8-5.5 recognizes forested buffers as a BMP for total suspended solids removal. To achieve the benefits of integrating N.J.A.C. 7:14A-25.6(b)3 with the Stormwater Management Act, N.J.S.A. 40:55D-93 to 99, stormwater management requirements that help to protect stream corridors should be in stormwater control ordinances required under N.J.A.C. 7:14A-25.6(b)3, rather than in stream corridor ordinances that are not stormwater control ordinances. The contents of stormwater control ordinances are governed by the Stormwater Management rules (N.J.A.C. 7:8). The Department has responded to comments regarding these rules in the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register.

Developing stream corridor protection guidelines that protect riparian buffer areas implementable through Department rules (watershed, wetlands, stream encroachment), watershed management plans, and local ordinances is one of the activities identified in the Department's "Nonpoint Source and Stormwater Management Program Plan" issued in December 2000. In addition, the New Jersey Stormwater Best Management Practices Manual cited in N.J.A.C. 7:8-5.9 includes guidance related to forested buffers.

315. COMMENT: Through N.J.A.C. 7:14A-25.6(b)3i(3) and (b)6, the Department finally addresses the operational aspects of stormwater systems versus focussing on their design and construction. These rules establish a mechanism to ensure that stormwater facilities will be maintained, a concept the commenter wholeheartedly supports. Too often, stormwater systems are neglected and become significant mosquito-breeding habitats. In addition to improving water quality, actions such as maintaining stormwater management facilities and cleaning catch basins reduce mosquito-breeding habitat and reduce the public health threat imposed by mosquitoes. (81)

RESPONSE: The Department acknowledges the commenter's support.

316. COMMENT: Within the MS4 rules there is a reference that municipalities must, within 24 months of the effective date of permit authorization, "ensure adequate long-term operation and maintenance of BMPs on property not owned or maintained by the municipality." Please elaborate as to specific municipal obligations under this requirement. What leverage does the municipality have in enforcing non-municipal stormwater facility compliance? What liability does a municipality have if private BMPs

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are not in compliance? Two of these commenters asked if the municipality is required to guarantee operation and maintenance of private storm sewer systems and basins within private property, businesses, private associations, or others. (83, 110, 208)

RESPONSE: The quoted provision is in the Tier A and Tier B Permits, not the NJPDES rule text. N.J.A.C. 7:14A-25.6(b)3i(3), which is part of the SBR for “post-construction stormwater management in new development and redevelopment” listed under N.J.A.C. 7:14A-25.6(b)3, requires permittees to “ensure adequate long-term operation and maintenance of BMPs.” This SBR is set forth in more detail in the permits. N.J.A.C. 7:14A-25.6(b)3i(3) is based on the USEPA regulation at 40 C.F.R. 122.34(b)(5)(ii)(C).

The requirement to “ensure adequate long-term operation and maintenance of BMPs on property not owned or maintained by the municipality” does not apply to public property, such as county, State, or Federal property, that municipalities have no statutory authority to regulate. However, the Department believes that for other property, including private property, municipalities have the authority under the Stormwater Management Act or N.J.S.A. 40:48-1 et seq. and 40:49-1 et seq., to adopt and enforce an ordinance to require the entity operating the property (for example, a private business or association) to perform the operation and maintenance, with penalties if the entity does not comply. For example, if the entity does not perform the required operation and maintenance, the municipality can perform it and back charge the entity.

A municipality that violates any condition of its NJPDES permit for its small MS4, including any condition requiring the municipality to ensure adequate long-term operation and maintenance of BMPs, is in violation of the New Jersey Water Pollution Control Act (State Act), and may be subject to penalties or other consequences specified in the State Act or elsewhere (see the response to Comments 230 through 233 above). The Department anticipates working closely with municipalities, and providing seminars, workshops, and site visits, in an effort to avoid a situation developing where a municipality is out of compliance with its permit.

The Department also notes that N.J.A.C. 7:14A-25.6(b)3i(3) and the cited permit condition generally do not require municipalities to guarantee operation and maintenance of all private storm sewer systems and basins within the municipality. The rule provision and permit condition are limited to ensuring operation and maintenance of BMPs to prevent or reduce water quality impacts from new development and redevelopment projects that disturb one acre or more and discharge into the municipality’s small MS4. For further discussion of operation and maintenance of BMPs, see the response to Comment 163 above.

317. COMMENT: Reliance on BMPs must be coupled with adequate monitoring and enforcement to ensure that all water quality standards are being met. Therefore, add to the end of N.J.A.C. 7:14A-25.6(b)3i(3): “The permittee, or a third party, must monitor

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BMPs for new and re-development projects quarterly to ensure proper operation and maintenance, for example, that expected removal rates of TSS are being achieved.” Also make corresponding changes to the Tier A, Highway, and Public Complex Permits. (25, 41, 46, 50, 88, 122, 137, 213, 227)

RESPONSE: N.J.A.C. 7:14A-25.6(b)3i(3) is based on the USEPA regulation at 40 C.F.R. 122.34(b)(5)(ii)(C), which does not require monitoring of BMPs. The Department also assumes that the commenters are referring to the kind of monitoring (sometimes called “end of pipe” monitoring) that includes stormwater sampling, and that in this instance would also include stormwater flow measurement. Under N.J.A.C. 7:8-5.5(a), stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) from the water quality design storm by 80 percent, expressed as an annual average. TSS loads in stormwater runoff cannot be measured without measuring stormwater flows.

As discussed in the response to Comment 354 below, USEPA does not encourage requirements for “end of pipe” monitoring for regulated small MS4s. See also in that response the discussion of water quality standards. To require quarterly, site-specific stormwater sampling and flow measurement for all the new development and redevelopment projects subject to N.J.A.C. 7:14A-25.6(b)3i(3) would be overly burdensome to permittees and/or third parties such as private property owners or the Department. Moreover, such quarterly monitoring would not produce TSS load data for the water quality design storm, expressed as an annual average, that could be compared against the TSS standard in N.J.A.C. 7:8-5.5(a). That standard was intended to be used for regulatory purposes at the project design stage only, and was not intended to be enforced through post-construction monitoring.

318. COMMENT: One commenter said the cooperation of the State’s citizens will be required to meet these objectives. The public education requirements seem sensible; simple steps, adopted by many, can have far-reaching positive effects. Another commenter said public education and outreach are critical to managing ordinary things such as lawn care, pet waste, and trash. The strong emphasis placed on public education for nonpoint source pollution prevention is encouraging. Another commenter stated these rules will help towns educate their citizens on how to deal with nonpoint issues such as fertilizers and pesticides, and how to do things around their property that will actually help the environment. It is important for towns to be able to work more on stormwater issues, especially nonpoint pollution. Two commenters said they strongly support the public education component of the proposed program. One of these commenters further said that the Haddon Township Environmental Commission has strongly emphasized public education. (39, 58, 116, 198, 211)

RESPONSE: The Department agrees that public education is an important component of the program and acknowledges the commenters’ support. The Department

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also notes that the Tier A and Tier B Permits require public education on various specific topics including fertilizer and pesticides, pest waste, litter, and yard waste.

319. COMMENT: The additional requirements for mapping infrastructure and outfalls are reasonable and lay the framework for reducing flooding and pollution in rivers and streams. (39)

320. COMMENT: The commenter strongly supports the encouragement of GIS mapping and planning, which the Haddon Township Environmental Commission has strongly emphasized. (116)

RESPONSE TO COMMENTS 319 and 320: The Department acknowledges these commenters' support, and also believes that outfall pipe mapping will provide planning and environmental benefits. The Department also encourages regulated entities to use GIS for mapping and planning where appropriate. However, N.J.A.C. 7:14A-25.6(b)5 and the Tier A, Public Complex, and Highway Agency Permits do not require the use of GIS for outfall pipe mapping, and do not require mapping of infrastructure other than outfall pipes.

321. COMMENT: The stormwater mapping, MS4 outfall pipe mapping, and illicit connection identification requirements put the cart before the horse. Most stormwater systems are not identified on consolidated mapping. The stormwater systems must be mapped first, which will identify the outfall pipes. The outfall pipes can be identified by USGS coordinates during the mapping process. The illicit connections can then be researched. (10)

RESPONSE: N.J.A.C. 7:14A-25.6(b)5i only requires permittees to develop a map showing the location of the end of all MS4 outfall pipes that are operated by the permittee and that discharge within the permittee's jurisdiction to a surface water body. Neither Federal nor State regulations require the mapping of stormwater systems. The stormwater systems do not need to be mapped first in order to identify the outfall pipes. Regulated entities may locate outfall pipes by simply performing stream walks or through other investigations. The Department does recommend that regulated entities inspect outfall pipes for illicit connections while mapping outfall pipes, rather than after the mapping process is completed. However, the mapping does not need to be completed prior to beginning the illicit connection detection program.

322. COMMENT: N.J.A.C. 7:14A-25.6(b)5i requires permittees to develop a map showing the locations of all MS4 outfall pipes operated by the permittee and the receiving waters. Under N.J.A.C. 7:8, this detailed mapping was only required for regional stormwater plans. Clarify whether municipalities need to map all MS4 outfall pipes for their permit compliance and municipal stormwater plan. (87)

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RESPONSE: N.J.A.C. 7:14A-25.6 (“Contents of NJPDES permits for small MS4s”) requires that the permittee develop a map showing the location of the end of all MS4 outfall pipes that are operated by the permittee and that discharge within the permittee’s jurisdiction to a surface water body. Based on this rule, the Tier A, Highway Agency and Public Complex Permits each contain an Illicit Connection Elimination and MS4 Outfall Pipe Mapping SBR. The permittee must meet the SBR minimum standard and implementation schedule for outfall pipe mapping regardless of any other mapping required under N.J.A.C. 7:8.

The contents of municipal stormwater management plans are governed by N.J.A.C. 7:8, not the NJPDES rules. To prevent duplication of and potential inconsistencies with N.J.A.C. 7:14A-25.6, the N.J.A.C. 7:8 provisions for municipal stormwater management plans are concerned solely with plans prepared under N.J.S.A. 40:55D-93, and do not attempt to address all of the NJPDES stormwater program requirements of N.J.A.C. 7:14A-25.6. Also, a municipality may prepare a stormwater management plan under N.J.A.C. 7:8 even if that municipality does not operate a small MS4 regulated under N.J.A.C. 7:14A-25.6.

323. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)5i, the New Jersey Department of Transportation (NJDOT) and Turnpike Authority, and possibly many counties, should have the data and maps available which identify locations and engineering specification (size, volume and design flows) for the stormwater outfalls associated with their authorized roadways. These outfalls may be the largest source or conveyors of stormwater runoff in many communities. These agencies should act as role models and provide these data sets and mapping not only to the Department of Environmental Protection, but also to each municipality within their jurisdiction as soon as possible. In order for communities to incorporate this data into their own stormwater plans, the data should be provided to municipalities within six months from the adoption of the rules. (12, 87)

RESPONSE: N.J.A.C. 7:14A-25.6(b)5i only requires permittees to develop a map showing the location of the end of all MS4 outfall pipes that are operated by the permittee and that discharge within the permittee’s jurisdiction to a surface water body. Maps or data in the possession of the NJDOT and other authorities and counties may not provide municipalities much assistance. The outfalls on these maps and data sets are likely to be operated by the NJDOT, authorities, or counties, not the municipalities. However, the Department does agree that in certain circumstances these maps and data sets may prove to be a valuable resource and should be made available to the municipality, if requested. The Department does not intend to make it a regulatory requirement to produce such maps and data sets within any specified time frame. It is important to note that this type of sharing of information and resources, communication and interaction between regulated entities will make not only compliance with the outfall mapping requirement easier but also a number of other permit requirements including,

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but not limited to, local public education, street sweeping, and illicit connection elimination.

324. COMMENT: Efforts should be geared to the needs and geography of the local jurisdiction. For example, Glen Rock Borough is 90 percent residential, without any known polluting factories. In the past five years, the commenter is aware of only one incident where an industry put in a larger drainage pipe than allowed, so what does the Department expect to gain by the Borough's "search for illicit connections"? How about nearby cities such as Paterson or Hackensack that still have combined sanitary and storm sewers? Would not the environment gain more if all this money and attention went to cities to clean up these real floatables? A requirement to find potential pavement collapses or unsafe sidewalks or buses or trucks with unsafe brakes would be more valuable than the onerous program to detect and eliminate illicit connections.

Mapping all catch basins and outfalls is also onerous and may be the most expensive requirement. Who does this serve other than an inspector coming to town? Municipalities know what is on a particular street, and either have a regular maintenance program or else they clean by complaint. This was a local "quality of life issue" dependent on the budget and manpower of a particular department, but not any more. (109)

RESPONSE: The Federal regulations at 40 C.F.R. 122.34(b)(3) ("Illicit discharge detection and elimination") require operators of a regulated small MS4 to develop, implement and enforce a program to detect and eliminate illicit discharges into the permittees MS4 and to develop, if not already completed, a storm sewer system map, showing the locations of all outfalls and the location of all waters of the United States that receive discharges from those outfalls. Based on these regulations, N.J.A.C. 7:14A-25.6(b)5i requires permittees to develop a map showing the location of the end of all MS4 outfall pipes operated by the permittee that discharge within the permittee's jurisdiction to a surface water body. N.J.A.C. 7:14A-25.6(b)5ii requires permittees to develop, implement and enforce a program to detect and eliminate illicit connections to the permittee's small MS4.

The USEPA in the December 8, 1999 Federal Register (64 Fed. Reg. 68727-68728) stated that studies have shown that discharges from MS4s often include wastes and wastewater from non-stormwater sources. Sources of illicit non-stormwater discharges may include sanitary wastewater, car wash, laundry and other industrial wastewaters, as well as indirect connections like infiltration into the MS4 from cracked sanitary systems. USEPA also stated that the Nationwide Urban Runoff Program (NURP) study noted particular problems with illicit discharges of sanitary waste, which can be directly linked to high bacterial counts in receiving waters and can be dangerous to public health. In regard to combined sanitary and storm sewers, see the response to Comment 26 above.

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The NJPDES rules and the Tier A Permit do not require municipalities to map all catch basins. N.J.A.C. 7:14A-25.6(b)5i is limited to mapping the location of the end of certain MS4 outfall pipes operated by the permittee and the location (and name, where known to the permittee) of all surface water bodies receiving discharges from those outfall pipes. Mapping of the end of outfall pipes should be the first step in an illicit connection detection and elimination program. During the mapping process municipalities should inspect the end of outfall pipes for dry weather flows and evaluate whether there is an illicit connection. The Tier A, Public Complex and Highway Permits contain guidance in Attachment B (“Procedures for Detecting, Investigating, and Eliminating Illicit Connections”) and the Department will make additional guidance available as noted in the response to Comments 189 through 207 above.

325. COMMENT: Change the last sentence of N.J.A.C. 7:14A-25.6(b)5i to read: “The permittee shall submit a copy of this map to the Department and the Department shall make it available to the public via the internet on a central Departmental website” and make corresponding changes to the draft Tier A, Highway, and Public Complex Permits. (25, 41, 46, 50, 88, 122, 137, 213, 227)

RESPONSE: The Department anticipates that it will conduct inspections of each permittee. During each inspection enforcement staff will review the permittee’s SPPP to evaluate whether the permittee is in compliance with its permit. This review will include a review of the outfall pipe map retained by the permittee. This review and inspection process, coupled with the submittal of an Annual Report and Certification, makes the submittal of the outfall pipe map generally unnecessary. However, the permittee must submit a copy of the outfall pipe map to the Department upon request.

Permittees shall make the outfall pipe map available to the public as required by N.J.A.C. 7:14A-25.6(j)2, and the Department shall make outfall pipe maps available to the public at the offices of the Department when required under N.J.A.C. 7:14A-18.1. In regard to making outfall pipe maps available to the public on a central Departmental website, see the response to Comment 87 above.

326. COMMENT: The Statewide recycling program has already established proper handling and disposal. Municipal operations are currently following those guidelines. This is an overlapping redundant program. (10)

RESPONSE: The Federal regulations at 40 C.F.R. 122.34(b)(3) require the operators of a regulated small MS4 to effectively prohibit non-stormwater discharges into the storm sewer system and to inform public employees, businesses, and the general public of the hazards associated with illegal discharges and improper disposal of waste. Based on the Federal regulations, N.J.A.C. 7:14A-25.6(b)4 and 5 require permittees to prohibit the improper disposal of waste and inform public employees, businesses and the general public of the hazards associated with illicit connection discharges and improper disposal of waste. The existing Statewide recycling program administered by the

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Department mainly deals with the recycling of solid waste, whereas USEPA Phase II regulations for stormwater control focus on illicit discharges and improper disposal of waste into small MS4s, and on public education about stormwater.

327. COMMENT: There appears to be a typographical error in N.J.A.C. 7:14A-25.6(b)5. The words "Public Complexes" should be changed to "Highway Agencies" in Part I.F.5.d.ii of the draft Highway Permit. (83, 155)

RESPONSE: N.J.A.C. 7:14A-25.6(b)5 is correct. However, the Department has corrected the Highway Permit itself, as issued final, to replace the erroneous reference to "Public Complexes" with the correct reference "Highway Agencies."

328. COMMENT: For reasons discussed below, the NJPDES rules and general permits must require permittees to abate pollutants from stormwater discharges directly into salt waters, and actively require coastal towns to identify pollutant sources and cease discharges into coastal waters.

Add N.J.A.C. 7:14A-25.6(b)5v to read: "Permittees with discharges from small MS4s directly entering salt waters of the state, as that term is defined in the Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq. and implementing regulations, N.J.A.C. 7:22A-1.1 et seq., shall abate pollution from stormwater through the retrofit of small MS4s to meet the same storm drain inlet design standards required by the Department for major development. Within 12 months of the effective date of this Rule, the Department must identify additional pollution abatement mechanisms, including manufactured treatment devices, and require retrofit by small MS4s directly entering salt waters of the state to reduce total suspended solids and petroleum from these discharges." Also make corresponding changes to the draft Highway, Public Complex, and Tier A Permits in regard to these storm drain inlet design standards.

The Department estimates that the New Jersey coastal zone provides \$16 billion in revenue from tourism each year, in addition to revenue from fishing. However, serious water quality problems plague coastal waters, threatening these important industries. For example, beach closings are common due to bacteria in stormwater. According to 2001 data from USEPA, 92 percent of New Jersey beach closures are due to bacteria in stormwater. Pathogens, nutrients, sediments, hydrocarbons, and metals are just a few culprits in stormwater that impact marine water quality and human and ecological health. Due to the extraordinary benefits that marine waters and the ocean coastline provide citizens and wildlife, and due to the cumulative effect of development in the coastal zone, the proposed NJPDES rules and general permits must do more to protect coastal water quality and eliminate these toxic inputs. Additional special consideration for coastal waters is also required to meet the mandate of Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

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Since 1988, with the passage of the Sewage Infrastructure Improvement Act (SIIA), coastal municipalities have been required to map storm sewer outfall pipes that discharge to salt water, eliminate illicit connections to storm sewers, monitor water quality at outfall lines, and abate nonpoint sources of pollution directly entering salt waters. State money has been provided to coastal municipalities to meet these requirements. The SIIA also requires that “any stormwater collection system constructed by the Department of Transportation or any other state agency that may discharge stormwater into surface waters, shall be designed to abate, to the greatest extent practicable and feasible, any adverse environmental impact on the quality of the surface water into which the stormwater may be discharged.” Despite these requirements, SIIA implementation has been slow. For example, according to a 1999 Department report, only 75 percent of coastal municipalities have completed mapping and initiated monitoring.

Requiring all small MS4s whose discharges directly enter salt waters to take the next step and abate pollutants in stormwater is particularly important in light of the Department’s “BIG Map” proposal (see 35 N.J.R. 1308(b); March 3, 2003). In drafts of the “BIG Map,” the Department has generally given coastal areas north of Barnegat Bay the green light for development. Marine waters must be protected from the deluge of stormwater and its pollutants from State-targeted development in coastal areas. (25, 41, 46, 50, 88, 122, 137, 213, 227)

RESPONSE: The Department recognizes that pollution from stormwater affects the coastal waters and recreational beaches, on which a significant percentage of New Jersey tourism is based. The Department considers the Municipal Stormwater Regulation Program established by these rules to be the primary means for implementing the pollution abatement requirements of the SIIA (except for combined sewer overflow abatement), and expects that this Program will reduce pollutant loading to coastal and other surface waters. All 94 municipalities that have a stormwater sewer system discharging directly into salt waters of Monmouth, Ocean, Atlantic or Cape May Counties are assigned to Tier A. Pursuant to N.J.A.C. 7:14A-25.6(b), the SBRs in the Tier A Permit require Tier A Municipalities to detect and eliminate illicit connections to their small MS4s; prohibit improper disposal of waste into their small MS4s and provide appropriate enforcement; inventory and control pollutant sources in municipal maintenance yards; and take other specific actions to reduce pollutant loading. The Department also recognizes its obligations under Section 6217 of CZARA. The Municipal Stormwater Regulation Program is part of the Department’s overall Nonpoint Source (NPS) Pollution Program under Section 6217 of CZARA and Section 319 of the CWA.

Section 6217 of CZARA does not mandate that N.J.A.C. 7:14A-25.6(b)5 be expanded and that coastal towns be required to cease discharges into coastal waters. In regard to retrofitting to meet storm drain inlet design standards, small MS4s subject to N.J.A.C. 7:14A-25.6(b)5 will generally be regulated under the Highway, Public

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Complex, or Tier A Permits. Pursuant to N.J.A.C. 7:14A-25.6(b)6, these permits require retrofitting of existing storm drain inlets to meet the storm drain inlet design standards contained in these permits, where such inlets are in direct contact with repaving, repairing (excluding routine repair of individual potholes), reconstruction or alterations of facilities owned or operated by the permittee. The retrofits are therefore required only as part of a substantial construction project, where they add minimal incremental cost to the project. Through this requirement, existing storm drain inlets will, over time, be retrofitted to meet these standards (except as provided under the exemptions set forth in these standards), and the costs of such retrofitting will usually be spread out over 10 or more years. Different retrofitting requirements could be established through “additional measures” (see discussion below) where appropriate.

The storm drain inlet design standards contained in these permits include different “Hydraulic Performance Exemptions” for new development and redevelopment projects than for retrofitting of existing storm drain inlets. The difference recognizes that using additional or larger storm drain inlets is often practicable for new development and redevelopment projects, but does not constitute “retrofitting of existing storm drain inlets,” and tends to entail extra expense and disruption in existing developed areas not undergoing redevelopment.

In regard to additional pollutant abatement mechanisms (including manufactured treatment devices) and additional retrofits, there is a limited capacity for government agencies to fund such devices and retrofits. The Department’s view, after consultation with local and regional planners and stormwater managers, is that extensive structural retrofits of small MS4s, including manufactured treatment devices, should not be implemented before completion of regional analysis and planning. The provisions in N.J.A.C. 7:14A-25.6 for “additional measures” (AMs) create an orderly framework for requiring, through water quality management plans (WQM plans), additional pollutant abatement mechanisms or retrofits to protect coastal waters or other waters of particular concern. Where appropriate, development of such AMs should be guided by the future results of the Department program for monitoring ambient water quality, including coastal water quality. The Department will rely on such monitoring to evaluate the overall effectiveness of the Municipal Stormwater Regulation Program.

The Department also notes that stormwater from most new development and redevelopment projects in coastal areas will be subject to control under N.J.A.C. 7:14A-25.6(b) and/or N.J.A.C. 7:8, and that ceasing discharges into coastal waters is often impracticable, especially at times or locations where infiltration of all stormwater discharge into the soil is impracticable due to the large amount of rain, unfavorable soil conditions, or other factors. Stormwater almost always contains some pollutants, including pollutants contained in rain, and complete elimination of pollutants from stormwater is generally impossible.

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329. COMMENT: Years ago yard maintenance was a problem in many communities. This is now tightly regulated, especially for communities that have fleets of garbage trucks. Why is this onerous provision necessary as oil or hydraulic fluid is not being washed down the storm drains? (109)

RESPONSE: The Federal regulations at 40 C.F.R. 122.34(b)(6) (“Pollution prevention/good housekeeping for municipal operations”) require the operators of a regulated small MS4 to develop and implement an operation and maintenance program that has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. This program must include employee training to prevent and reduce stormwater pollution from such activities as fleet and building maintenance. The Federal regulation lists means of meeting these requirements, including controls for reducing or eliminating the discharge of pollutants from maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage areas, and waste transfer stations.

Based on these Federal regulations, N.J.A.C. 7:14A-25.6(b)7 requires that the permittee develop and implement an operation and maintenance program that prevents or reduces pollutant runoff from maintenance and highway service areas owned or operated by the permittee. Maintenance yards are often used for vehicle/fleet repairs and service activities. These maintenance activities use materials like oil, grease, hydraulic fluids, solvents and fuels that if not properly stored, handled, and disposed of can significantly impact stormwater runoff quality. In addition, similar types of maintenance yards at large and small industrial facilities (see the N.J.A.C. 7:14A-1.2 definition of “stormwater discharge associated with industrial activity” for a list of regulated categories of facilities) have been regulated through the Department’s industrial stormwater permitting program since 1993. Inspections and data from these regulated industrial facilities suggest that oil and other fluids are being exposed to stormwater runoff and washed down storm drains.

330. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)8, employee training for stormwater system maintenance is critical for stormwater facilities being properly maintained. The Department should explore developing a certification system to enhance the skills of employees or subcontractors during this work. (81, 92)

331. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)8, the rules should require that a licensed, certified municipal official be responsible for stormwater management locally. This official would receive continuing education regarding proper maintenance, operations, and new technologies. (92)

332. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)8, professional development and training should be provided for municipal staff, leaders, planning boards, and environmental commissions, as well as for public works employees. After running workshops on stormwater runoff over two years for municipal appointed and elected officials, the commenter has found that there is a substantial lack of understanding. (58)

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333. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)8, extensive professional development and training will be necessary for municipal staff, consultants, civic leaders, and civic groups. The Department is urged, working in conjunction with State universities, watershed associations, and other organizations, to provide subsidized training to allow municipal officials and staff to learn how to develop the necessary documents, review stormwater basin and BMP designs, and comply with the requirements of these rules. (87)

334. COMMENT: In regard to N.J.A.C. 7:14A-25.6(b)8, in addition to training employees responsible for implementing the Statewide Basic Requirements for prohibiting improper disposal of waste, solid and floatable material control, and the prevention and reduction of runoff from maintenance yards and highway service areas, professional development and training should be provided for municipal staff, leaders, planning boards, and environmental commissions. These persons will be responsible for implementing not only these proposed rules, but also those proposed under N.J.A.C. 7:8. (217)

RESPONSE TO COMMENTS 330 through 334: The training provisions in USEPA regulations at 40 C.F.R. 122.34(b)(3)(ii)(D) and (b)(i) are limited to employee training regarding illegal discharges, improper disposal of waste, and operation and maintenance activities. For consistency with these provisions, and to avoid increasing administrative burdens on permittees and the Department, the Department has not expanded or supplemented the training requirements in N.J.A.C. 7:14A-25.6(b)8. However, the Department anticipates continuing to work with existing licensed professionals such as municipal engineers and planners. The Department has begun, and plans to continue, professional development and training through the presentation of free or low-cost seminars, workshops and training sessions for the staff of regulated governmental entities and agencies, their consultants, planning boards, environmental commissions, and interested civic and environmental groups. These sessions are and will continue to be organized by the Department, through Cook College Continuing and Professional Education, professional organizations and similar entities.

Qualifying State or Local Program

335. COMMENT: To promote consistency of the NJPDES municipal stormwater rules with the Pinelands Comprehensive Management Plan, N.J.A.C. 7:14A-25.6(d) should include an explicit statement indicating that municipalities within the Pinelands Area shall ensure compliance with Pinelands Commission regulations at N.J.A.C. 7:50. To ensure coordination between Department and Pinelands requirements, the Pinelands Commission should be designated as a reviewing agency for "Phase II" NJPDES permits issued to entities within the Pinelands Area.

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The commenter recognizes the value of employing consistent standards throughout the State so that the unique and significant Pinelands resources are adequately protected. To this end, it is the commenter's intention to work with the Department and other State and local agencies and organizations. (12)

RESPONSE: The Department does not consider the permits subject to N.J.A.C. 7:14A-25.6(d), or the authorizations that the Department issues under these permits, to be within the scope of the requirements in N.J.S.A. 13:18A-10.c for consistency with N.J.A.C. 7:50 (see the response to Comment 306 above). The Department also believes that municipalities in the Pinelands Area are familiar with their responsibilities under N.J.A.C. 7:50, and that it is unnecessary for the NJPDES rules to refer to those responsibilities. However, Part I.J.2 of the Tier A and Tier B Permits does stipulate, in accordance with N.J.A.C. 7:14A-6.2(a)7, that these general permits do "not authorize any infringement of State or local law or regulations, including, but not limited to the Pinelands rules (N.J.A.C. 7:50) ..."

The Pinelands Commission has opportunity under N.J.A.C. 7:14A to comment on drafts of Phase II NJPDES stormwater permits. In addition, N.J.A.C. 7:14A-24.10(a)6 requires the NJPDES permit program for stormwater discharges associated with construction activity to include implementation of applicable provisions of the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50-4.81 through 4.85 (coordinated permitting in the Pinelands Area). Such implementation is provided through provisions such as N.J.A.C. 7:14A-24.7(a)2iii and Part I.C.2 of the Department's "construction activity" stormwater general permit (NJPDES Permit No. NJ0088323). The Department looks forward to working with the Pinelands Commission on matters related to Phase II NJPDES stormwater permits.

Additional and Optional Measures

336. COMMENT: Regarding N.J.A.C. 7:14A-25.6(e)1, two commenters requested clarification on who will be responsible for developing measurable goals for BMPs specified in water quality management plan (WQM plan) amendments and enforceable as additional measures (AMs) under the NJPDES permit. Will this be the responsibility of the Department, designated water quality planning agency, lead planning agency (regional stormwater management plans) and/or the entity proposing the WQM plan amendment? (81, 92)

337. COMMENT: Regarding N.J.A.C. 7:14A-25.6(e)1, developing the measurable goals may be a controversial burden placed on entities that may or may not have the authority to develop enforceable goals. With input from the permittee on what is technically and economically feasible, the Department should develop or at least approve the measurable goals that will be its responsibility to enforce. (81)

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RESPONSE TO COMMENTS 336 and 337: Because N.J.A.C. 7:14A-25.6(e)1 requires the WQM plans to specify the measurable goals, the entity that develops the WQM plan amendment is responsible for developing the measurable goal(s) that is an integral part of that amendment. This entity could be the Department, a “designated planning agency” (as defined in the Water Quality Management Planning rules at N.J.A.C. 7:15-1.5), a “regional stormwater management planning committee” (see the Stormwater Management rules at N.J.A.C. 7:8-3.2(b)) through a “lead planning agency” (as defined in N.J.A.C. 7:8-1.2), or some other entity. Under N.J.A.C. 7:15-3.4(d) and (g), for example, any interested person may petition the Department or designated planning agency, as appropriate, to amend a WQM plan.

However, N.J.A.C. 7:14A-25.6(e) does not require or place a burden on any entity to develop WQM plan amendments. Responsibility and authority for developing WQM plans or plan amendments is addressed in the Water Quality Management Planning Rules (N.J.A.C. 7:15) rather than in the NJPDES rules. Stormwater is already part of the subject matter of WQM planning (see, for example, the Water Quality Planning Act at N.J.S.A. 58:11A-5). Any entity that has no legal authority to develop a measurable goal for an AM has no obligation or ability to develop the WQM plan amendment for an AM.

The Department has changed N.J.A.C. 7:14A-25.6(a)2 and (e) and 25.8(e) upon adoption to identify the WQM plan in question as an “areawide” or “Statewide” WQM plan. This change prevents any AM from being adopted only in a “county WQM plan” (as defined at N.J.A.C. 7:15-1.5). This change is consistent with the N.J.A.C. 7:15-1.5 definition of “adoption,” which is limited to adoption of areawide WQM plans or the Statewide WQM plan (or amendments or revisions thereof). In addition, this change is consistent with N.J.A.C. 7:15-2.2(e)3, which provides that “consistency of projects and activities with county WQM plans shall be required under N.J.A.C. 7:15-3.1 or 3.2, only to the extent that county WQM plans or components thereof are adopted into areawide WQM plans pursuant to N.J.A.C. 7:15-3.4 or 3.5.” Although county WQM plans are “water quality management plans” as defined in N.J.A.C. 7:14A-1.2, county WQM plans are not subject to the WQM plan amendment procedures in N.J.A.C. 7:15-3.4, including procedures for public involvement and State oversight.

N.J.A.C. 7:15 does not include any specific provisions regarding AMs. However, WQM plan amendments regarding AMs are subject to N.J.A.C. 7:15 provisions concerning amendments to areawide WQM plans or the Statewide WQM plan (see, for example, N.J.A.C. 7:15-3.4). Every designated planning agency has authority under N.J.A.C. 7:15 and the Water Quality Planning Act to develop WQM plan amendments, including amendments that include measurable goals for AMs.

Regional stormwater management plans are also addressed by N.J.A.C. 7:8-3, which does not include any specific provisions regarding AMs. A regional stormwater management plan prepared under N.J.A.C. 7:8-3 may or may not include one or more AMs, depending on the selected stormwater management measures and implementation

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strategy (see N.J.A.C. 7:8-3.7 and 3.8). Every regional stormwater management planning committee recognized by the Department under N.J.A.C. 7:8-3.2(e) has authority to prepare, through a lead planning agency, a regional stormwater management plan, including a plan that includes measurable goals for AMs. However, development of that plan is voluntary.

Amendments to areawide WQM plans or the Statewide WQM plan are subject to the WQM plan amendment procedures in N.J.A.C. 7:15-3.4. Permittees can provide input by submitting comments on proposed amendments (see N.J.A.C. 7:15-3.4(d)5 and (g)6), and may be asked to issue written statements of consent (see N.J.A.C. 7:15-3.4(d)3 and (g)4). For TMDLs, permittees may also participate in the public process required under N.J.A.C. 7:15-7.2(f). In addition, permittees may participate on regional stormwater management planning committees that (through lead planning agencies) prepare regional stormwater management plans. Regardless of what entity develops the WQM plan amendment, that amendment cannot be proposed for public comment without the agreement of the Department, and can be adopted only by the Governor or his designee (see N.J.A.C. 7:15-3.4(d)2, (f), and (g)2, 8, and 9).

338. COMMENT: The commenters support the effort to address TMDLs and the degraded condition of many State waterways as additional measures (AMs) to be addressed under these rules through the permitting program, but do not consider this effort to be all that is needed to achieve TMDLs. Obviously, that requires a much more comprehensive effort. The measurable goals and implementation measures called for in these rules need to be more specific, and a program of accountability for meeting the goals of cleaning up these streams must be developed – the proposal in these rules is too vague. Monitoring and reporting needs to be mandatory and applied to all municipalities consistently. Since numeric effluent limitations are not required, the Department needs to make more effort to ensure that TMDLs are effectively addressed through the Phase II general permits. (27, 203)

RESPONSE: Like the USEPA Phase II rules for small MS4s, the NJPDES rules for small MS4s (including provisions in N.J.A.C. 7:14A-25.6 and 25.8 concerning AMs, measurable goals, SBRs, and other permit provisions) outline in broad terms what must be included in the discharge permits. Most of the specific BMP requirements of the Municipal Stormwater Regulation Program are set forth in these permits, rather than in NJPDES rule text. N.J.A.C. 7:14A-25.6(a) and 25.8(e) expressly provide that SBRs listed in the NJPDES rule text may be set forth in more detail in the NJPDES permit. For example, the SBR listed in N.J.A.C. 7:14A-25.6(b)6 (control of solid and floatable materials) is set forth in much more detail as five elements in the Tier A Permit (street sweeping, retrofitting of storm drain inlets, stormwater facility maintenance, road erosion control maintenance, and outfall pipe stream scouring remediation). The permits also specify corresponding BMPs and measurable goals for SBRs, as required under N.J.A.C. 7:14A-25.6(c) and 25.8(f). WQM plans shall specify the time periods for AM

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implementation, and specify (for AMs other than numeric effluent limitations) the corresponding BMPs and measurable goals (see N.J.A.C. 7:14A-25.6(a)2 and (e)1).

Implementation of TMDLs is a complex, long-term process that cannot be standardized in NJPDES rule text for small MS4s. Many TMDLs have been established, and many more remain to be established. Achievement of TMDLs will, in many instances, require control not only of small MS4s, but also of other sources such as agriculture or wastewater treatment plants. For small MS4s, the Department's program of TMDL implementation consists primarily of the establishment and implementation of SBRs, and, where appropriate, the development, adoption, and implementation of carefully selected AMs. An adopted TMDL may or may not lead to one or more AMs, depending, for example, on follow-up monitoring for the TMDL, or on Lake Restoration Plans, regional stormwater management plans, or other implementation activities discussed in the TMDL document. In some instances, TMDL implementation may require extensive structural retrofits of small MS4s that should not be implemented before completion of regional analysis and planning beyond that provided in the TMDL document. The pace of AM development will also be affected by the resources available for AM development.

In regard to monitoring and reporting, N.J.A.C. 7:14A-25.6(j)1 and 25.8(i)2 require small MS4s to submit annual reports and evaluate progress towards achieving measurable goals for BMPs specified in the permits, including BMPs specified for AMs and SBRs. However, the Department considers these "measurable goals" to be specific actions taken to implement BMPs, rather than specific conditions of stormwater or receiving water quality that are supposed to result from implementing BMPs. In regard to sampling as a form of monitoring, see the responses to Comments 68 through 71 above.

339. COMMENT: The commenters support the implementation of additional measures (AMs) identified in regional stormwater management plans through municipalities' permits. Cooperative inter-municipal planning and public input into that planning through an iterative planning process must be accomplished to give veracity to the identified AMs. This part of the proposed rules needs more accountability. (27, 203)

RESPONSE: The development of regional stormwater management plans is governed by the Stormwater Management rules (see, especially, N.J.A.C. 7:8-3). Opportunities for public input in such development are provided through regional stormwater management planning committees recognized under N.J.A.C. 7:8-3.2, and through the WQM plan amendment process (see N.J.A.C. 7:8-3.9 and N.J.A.C. 7:15-3.4). The Department has responded to comments regarding these rules in the adoption of N.J.A.C. 7:8 published elsewhere in this issue of the New Jersey Register.

340. COMMENT: In regard to N.J.A.C. 7:14A-25.6(i), the Department should be flexible in allowing optional measures (OMs), such as adoption of an orphaned

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stormwater basin, to substitute for Statewide Basic Requirements (SBRs) if the permittee can demonstrate that the OM will result in water quality and/or stormwater system improvement. Some of the SBRs may require significant capital and long-term budgeting; others may be time-consuming and costly and not directly result in water quality improvement. (81)

RESPONSE: The SBRs listed under N.J.A.C. 7:14A-25.6(b) are minimum requirements that are based on the six Federal “minimum control measures” at 40 C.F.R. 122.34(b). Permittees cannot substitute OMs for these listed SBRs because the Federal requirements (where applicable) would not be met, and because N.J.A.C. 7:14A-25.6(i) provides that failure to implement an OM shall not be considered a violation of the NJPDES permit.

However, NJPDES permits may set forth these listed SBRs in more detail (see N.J.A.C. 7:14A-25.6(a)), and N.J.A.C. 7:14A-25.6(e) provides that “additional measures” (AMs) adopted in an areawide or Statewide WQM plan may modify these listed SBRs. The Department believes that to at least some degree, the commenter is concerned not with the SBRs as listed in N.J.A.C. 7:14A-25.6(b), but with SBRs set forth in more detail in the Highway, Public Complex, or Tier A Permits. The AM process provides flexibility to modify SBRs in these permits, provided that the modified SBRs satisfy the requirements of N.J.A.C. 7:14A-25.6(b). In addition, permittees who fail to implement AMs are subject to enforcement action.

Furthermore, with the exception of the SBR for “public involvement/participation,” which is a procedural requirement, the SBRs listed in N.J.A.C. 7:14A-25.6(b) and set forth in these permits will directly result in water quality improvements. The Department’s responses to comments about the cost and other issues concerning particular SBRs is provided in other responses above, and in the response to comments document for the general permits. However, the Department would welcome permittees’ implementation of OMs that afford water quality improvements that exceed those afforded by the SBRs, and the Department encourages permittees and other interested entities to suggest OMs that could be discussed in Department guidance.

341. COMMENT: In regard to N.J.A.C. 7:14A-25.6(j)3iii, the commenters support optional measures (OMs) being used to bolster a municipality’s SPPP. Native plantings and conversion of turf to native plantings at public complexes, parks, and publicly owned land and open space should be supported by the Department by suggesting such plantings as an OM. The Department should reward OMs through funding, relief of certain monitoring or reporting requirements, and other incentives. Vegetation is a very effective means for managing stormwater runoff. Native plant species, particularly forest species, are more effective than lawns and non-native species. (27, 203)

RESPONSE: Department guidance will identify planting of native vegetation in existing public or private developed areas and open space as an OM. For new

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development and redevelopment projects subject to N.J.A.C. 7:14A-25.6(b)3 and N.J.A.C. 7:8-5, planting of native vegetation is one of the nonstructural stormwater management strategies identified in N.J.A.C. 7:8-5.3(b). Compliance with N.J.A.C. 7:8 is part of the SBR for such projects. In addition, the SBR for public education in the Public Complex, Tier A, and Tier B Permits requires permittees to distribute information regarding the benefits of using native or well adapted vegetation that requires little or no fertilization.

Grants for the Municipal Stormwater Regulation Program should not be spent on OMs, as OMs are not required under the NJPDES permits. However, the Department can finance some OMs through the Environmental Infrastructure Financing Program. Providing relief from certain monitoring or reporting requirements is not an appropriate incentive for OMs, because such relief reduces Department and public oversight of the implementation of NJPDES permit conditions. Such relief might also in some instances conflict with USEPA rules at 40 C.F.R. 122.34(g). However, the Department is committed to recognizing successful OMs so that others know they work and might use them.

Reporting

342. COMMENT: The Annual Report should be a Q/A form to expedite reporting and assure compliance. Four hundred sixty-seven, one hundred page reports will be costly and overwhelm the review staff. The goal of these rules should be to minimize bureaucracy and maximize results. Municipalities presently are inundated with mandated reports and more intense reporting diverts funds from the physical goal of compliance. (10)

RESPONSE: The Department has designed the Annual Report to be a checklist that summarizes the status of compliance with the permit including measurable goals and the status of the implementation of each Statewide Basic Requirement (SBR) contained in the permit. Each SBR has a separate checklist to indicate the status of its implementation, including a space to provide information, such as the date an item was completed, or the percent of a project completed. The information needed to complete the Annual Report can be taken from any records kept throughout the year.

343. COMMENT: To whom are the annual reports submitted? (83, 110, 208)

RESPONSE: The Annual Report is submitted to the Department, as stated in N.J.A.C. 7:14A-25.6(j)3 and 25.8(i)2. The form provided by the Department will specify a particular Department unit and mailing address.

344. COMMENT: The NJPDES rules and the general permits must provide more incentives for permittees to comply with permits. N.J.A.C. 7:14A-25.6(j)3, which requires the permittee to submit an annual report, including the status of compliance with

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the NJPDES permit conditions, also should require “a certification by the responsible official that the permittee is in compliance with all permit conditions.” This additional requirement creates a higher standard of responsibility and an incentive for the responsible official to adequately oversee the permit conditions. Also make corresponding changes to the draft Tier A, Tier B, Highway and Public Complex Permits. (25, 41, 46, 50, 88, 122, 137, 213, 227)

RESPONSE: Pursuant to N.J.A.C. 7:14A-25.6(j)3 and 25.8(i)2, the Tier A, Tier B, Highway and Public Complex Permits require permittees to complete an Annual Report summarizing the status of compliance with the permit, including measurable goals and the status of implementation of each SBR. This report shall include a certification that the permittee is in compliance with its stormwater program, SPPP (where applicable), and permit except for any incidents of noncompliance. Any incidents of noncompliance with permit conditions shall be identified in the Annual Report and Certification. If there are incidents of noncompliance, the report shall identify the steps being taken to remedy the noncompliance and to prevent such incidents from recurring.

The Department believes that it is important to know about any instances where the permittee has not met a permit condition. The wording suggested by the commenters would preclude the submittal of the certification if there were any instance of noncompliance. The Department believes that the potential for enforcement action under the Water Pollution Control Act provides sufficient incentive to the permittee to meet all permit conditions.

345. COMMENT: Municipalities involved in the FEMA Community Rating System under the CRS 540 Program are presently required to maintain the stormwater systems. The recordkeeping requirements include all stream maintenance activities, storm drain maintenance, repairs, street sweeping, litter control, and public information activities. Additional reporting requirements for the municipalities with established CRS 540 programs should be waived. (10)

RESPONSE: The Department cannot waive the Annual Report and Certification submittal requirement contained in the general permits, as they serve as the means for reporting back to the Department compliance with measurable goals for each SBR or BMP contained in the permit, including SBRs or BMPs not mentioned in this comment. Reporting is simplified for permittees by the use of the Department’s Annual Report and Certification form. If a municipality keeps records for the FEMA Community Rating System, those records may be helpful in completing the Annual Report and Certification.

346. COMMENT: The Department should accept electronic submission of the extensive annual reporting requirements. (58)

RESPONSE: The Department is moving in this direction and, while the option for electronic submission is not available now, it should be within the next few years.

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Sharing of Responsibility

347. COMMENT: In regard to N.J.A.C. 7:14A-25.7(a), the commenter agrees that it is a good idea to allow other governmental agencies to satisfy the municipality's NJPDES permit obligations. The Monmouth County Mosquito Extermination Commission (MCMEC) hopes to work with permittees in cleaning catch basins and rehabilitating stormwater management measures to meet the requirements of solids and floatables control as well as to eliminate mosquito-breeding habitat. (81)

RESPONSE: The Department acknowledges the commenter's support. Where appropriate, the Department encourages municipalities and other permittees to improve the effectiveness and reduce the cost of their stormwater programs, and to integrate their stormwater programs with watershed management efforts or other stormwater management efforts, by relying on other governmental or private entities such as the MCMEC. The Department believes that good relationships like the one envisioned by this commenter may proliferate, since they may be beneficial to both parties.

348. COMMENT: Under N.J.A.C. 7:14A-25.7, a municipality or other permittee may rely on another governmental or private entity to implement one or more control measures. The commenters are concerned that this section will give municipalities the right to shift their responsibilities onto industry. Elucidate this section to define better what a municipality can or cannot do with regard to shifting the compliance burden. (5, 57, 180)

RESPONSE: Under N.J.A.C. 7:14A-25.7(a), a municipality may rely on another governmental or private entity to implement one or more control measures only if, among other things, the other entity agrees, or is required by law, to implement the measure(s). A municipality cannot require industry or other private parties to implement a control measure unless the municipality has legal authority to impose that requirement. This section does not give municipalities such legal authority, which, where it exists, comes from another source. In addition, the Department believes that municipalities could not have legal authority to require an industrial facility to implement a control measure unless that requirement is directly and reasonably related to activities or conditions at that facility.

349. COMMENT: N.J.A.C. 7:14A-25.7(a) states that "a permittee may rely on another governmental or private entity (for example, a watershed association) to satisfy the permittee's NJPDES permit obligations ..." Watershed associations are nonprofit organizations. Clarify that nonprofit organizations are eligible to provide assistance to satisfy permit obligations, along with for-profit enterprises. (87)

350. COMMENT: In regard to N.J.A.C. 7:14A-25.7(a), the Department needs to clarify that nonprofit organizations are eligible to provide assistance to permittees to satisfy

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permit obligations. Conservation, advocacy, and watershed organizations are nonprofit organizations. (58, 217)

RESPONSE TO COMMENTS 349 and 350: In various New Jersey statutes and State agency rules, “private entity” or a similar term sometimes includes nonprofit organizations, and sometimes does not. In N.J.A.C. 7:14A-25.7(a), the phrase “(for example, a watershed association)” immediately after “private entity” was intended to make it clear that, for purposes of this subsection, the term “private entity” includes non-governmental, nonprofit organizations including, but not limited to, watershed associations or organizations and conservation or advocacy organizations. Upon adoption, the Department has clarified this subsection by changing “governmental or private entity” to “governmental, private, or nonprofit entity.”

351. COMMENT: In regard to N.J.A.C. 7:14A-25.7(a)3, additional monitoring and reporting responsibilities should be required when another entity is responsible for any part of a municipality’s responsibilities. N.J.A.C. 7:14A-25.7 should have additional requirements for consistent mandatory monitoring and reporting. The commenters are concerned that the lack of accountability and evaluation of the effectiveness of the measures and plans to improve stormwater runoff management from MS4s will result in a failure of the NJPDES rules and continued stormwater pollution. (27, 203)

RESPONSE: Under N.J.A.C. 7:14A-25.6(j), the municipality or other permittee must evaluate and report on compliance with NJPDES permit conditions, including progress towards achieving all measurable goals specified in the permit, even if the permittee is relying on another entity to implement some (or one) control measures pursuant to N.J.A.C. 7:14A-25.7(a). If the permittee is relying on another entity to satisfy all of its NJPDES permit obligations, then that entity must evaluate and report on compliance with NJPDES permit conditions (see N.J.A.C. 7:14A-25.6(j) and 25.7(a)3).

N.J.A.C. 7:14A-25.7(a) also maintains accountability by providing that the permittee is responsible for compliance with the permittee’s NJPDES permit obligations if the other entity fails to implement the control measure. In addition, N.J.A.C. 7:14A-25.7 is based on 40 C.F.R. 122.35, which does not impose additional requirements for monitoring and reporting when a municipality or other permittee relies on another entity. For further discussion of monitoring, evaluation, and accountability in regard to MS4s, see the responses to Comments 68 through 73 and Comments 285 and 286 above.

Tier B Permit

352. COMMENT: There appears to be no opportunity for public involvement in N.J.A.C. 7:14A-25.8. This is unacceptable. At a minimum, Tier B Permit applications should be made available for public comment. This section also has no specific provisions requiring the permittee to make records required by the Tier B Permit available to the public at reasonable times during regular business hours. (217)

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RESPONSE: The Department made the draft Tier B Permit available in January 2003 for public comment in accordance with N.J.A.C. 7:14A-15, and will continue to make draft permit actions regarding the Tier B Permit available in this manner. To request authorization under the final Tier B Permit, Tier B Municipalities submit “requests for authorization” (RFAs) in accordance with N.J.A.C. 7:14A-25.8(d). These RFAs are not permit applications, but items of procedural correspondence that represent a formal acceptance of terms elaborated in the Tier B Permit. Therefore, and in accordance with N.J.A.C. 7:14A-6.13, these RFAs are not made available for public comment. However, N.J.A.C. 7:14A-6.13 does provide for public involvement in certain aspects of the NJPDES program for general permits including the Tier B Permit.

In addition, the stormwater management plans and ordinances required by the Tier B Permit have their own public involvement process under State law. Also, because P.L. 2001, c. 404, also known as the Open Public Records Act (OPRA), requires municipalities to make records readily accessible to the public in accordance with that Act, it is unnecessary for N.J.A.C. 7:14A-25.8 to address such access.

353. COMMENT: These rules outline clearly the stormwater requirements for Tier A Municipalities. However, it is difficult to determine the specific requirements for Tier B Municipalities, mainly because the Tier B Permit is very different from the rules themselves, and because N.J.A.C. 7:14A-25.8 primarily explains the timeframes for program compliance but not the substance. It appears that Tier B Municipalities and Tier A Municipalities need to adopt stormwater plans and ordinances with the same requirements (N.J.A.C. 7:14A-25.6(b)3iv(2) and (3)). Note that N.J.A.C. 7:8 also does not distinguish between Tier A or Tier B requirements. Also, it appears that Tier B Municipalities will not have to address runoff during construction. Clarify the requirements for Tier B Municipalities within N.J.A.C. 7:14A-25.8. (87)

RESPONSE: Like other NJPDES permits, the Tier B Permit includes more details than the NJPDES rules under which NJPDES permits are issued. It is unnecessary to add these details to N.J.A.C. 7:14A-25.8 itself. Similarly, the Tier A Permit includes many details, including SBR elements and implementation schedules, not found in the NJPDES rules themselves.

In regard to the substance of the requirements for Tier B Municipalities, N.J.A.C. 7:14A-25.8(e) lists the two SBRs that the Tier B Permit stormwater program must include. The first is the SBR for post-construction stormwater management in new development and redevelopment. The program for this SBR shall meet the requirements listed in N.J.A.C. 7:14A-25.6(b)3, which include but are not limited to the requirements for stormwater management plans and stormwater control ordinances listed in N.J.A.C. 7:14A-25.6(b)3iv(2) and (3). Under N.J.A.C. 7:14A-25.6(b)3 and 25.8(e)1 and the Tier A and Tier B Permits, Tier A and Tier B Municipalities are subject to the same requirements for this SBR.

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The other SBR that N.J.A.C. 7:14A-25.8(e) lists is for public education on stormwater impacts. The Tier B Permit sets forth this SBR in more detail. Similarly, the Tier A Permit sets forth in more detail the corresponding SBR listed in N.J.A.C. 7:14A-25.6(b)4. In addition, N.J.A.C. 7:14A-25.8(e) requires the Tier B Permit stormwater program to include any “additional measures” (AMs) required under N.J.A.C. 7:14A-25.8(g). The substance of any such AMs will be set forth in water quality management plans (WQM plans).

N.J.A.C. 7:14A-25.8 and the Tier B Permit do not include any SBR for construction site stormwater runoff control. Under N.J.A.C. 7:14A-25.6(a) and (b)2 and 25.7(b) and the Tier A Permit, Tier A Municipalities are also not required to include that SBR in their stormwater programs. Instead, the Department is responsible for developing, implementing, and enforcing a NJPDES permit program under N.J.A.C. 7:14A-24.10 to reduce pollutants in stormwater runoff from construction activities.

Water Quality Standards and Program Monitoring and Evaluation

354. COMMENT: For reasons discussed below, add N.J.A.C. 7:14A-24.9(c) to read: “Under N.J.A.C. 7:14A-25.7(b), any NJPDES permit issued for small MS4s shall recognize that the Department is responsible for developing, implementing, and funding a phased-in comprehensive monitoring program for pathogens, total suspended solids, and nutrients, as well as other toxic pollutants associated with stormwater runoff for which there are Surface Water Quality Standards. Within five years, or upon the beginning of reauthorizations, whichever is earlier, the State must demonstrate that the Stormwater Program is meeting all Surface Water Quality Standards across the State through the suggested monitoring program.”

For purposes of this comment, the “Stormwater Program” includes provisions in the NJPDES rules, the general permits, and the Stormwater Management Rules (N.J.A.C. 7:8). The proposed Stormwater Program does not require monitoring of stormwater outfalls to ensure that water quality standards are being met. Rather, proposed N.J.A.C. 7:14A-24.9(a) provides that “monitoring requirements shall be established on a case-by-case basis depending upon the nature and effect of the discharge.” Under proposed N.J.A.C. 7:14A-25.6(j), permittees for small MS4s must comply with requirements of evaluation, recordkeeping, and reporting, but are not required to sample and analyze any discharges except as part of a program to detect illicit connections.

However, USEPA’s Phase II rules guide states on the approach USEPA will use for NPDES stormwater permits. The State of New Jersey should take a similar approach. The USEPA rules state, based on USEPA’s Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits, that “... EPA will use an interim permitting approach for NPDES storm water permits. The interim permitting approach uses best management practices (BMPs) in first-round storm water permits, and expanded

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or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards” (64 Fed. Reg. 68788; December 8, 1999). Specifically, as stated in USEPA’s Interim Permitting Policy, “Each stormwater permit should include coordinated and cost-effective monitoring program to gather necessary information to determine the extent to which the permit provides for attainment of applicable water quality standards and to determine the appropriate conditions or limitations for subsequent permits” (61 Fed. Reg. 43761; August 26, 1996).

Based on USEPA’s guidance regarding monitoring by small MS4s, the Department must set up the phased-in monitoring program described above in this comment. The goal of improved water quality through the successful implementation of the proposed Stormwater Program depends on appropriate monitoring. Monitoring data are essential for gauging progress and understanding the effects of control strategies. The government cannot set standards of performance, determine controls, and establish goals unless it has data upon which to base those decisions.

The Sewage Infrastructure Improvement Act (SIIA) requires coastal municipalities to monitor outfalls discharging into salt waters. According to a 1999 Department report, only 75 percent of coastal municipalities have initiated monitoring as a result of the SIIA. Enforcement of this requirement, pursuant to N.J.A.C. 7:22A-4.8, and penalty assessment in accordance with N.J.A.C. 7:14-8, or other enforcement action provided in the Water Pollution Control Act, is lacking. If the State continues not to enforce existing law requiring monitoring, sampling, and testing by municipalities of stormwater, then the State should itself perform such monitoring in the proposed Stormwater Program.

As proposed in the NJPDES rules, the Department plans to assess administrative fees to cover the cost of processing, monitoring, and administering NJPDES permits for small MS4s. These fees will range from several hundred dollars to more than several thousand dollars for the Tier A, Tier B, Public Complex, and Highway Permits. Part of these funds should be used for the five-year phased-in State monitoring program. In addition, the NJPDES rules and general permits must require the Department to create a central website to display all monitoring data gained in this program. One of the six minimum controls that USEPA required states to address in the Phase II rules is public education and outreach (see 40 C.F.R. 122.34(b)(1) and (2)). Increased public access to information will result in a more effective program due to the public’s ability to assist the State and regulated entities in carrying out the program. Another benefit is better access by regulated entities and Department staff to this information. (25, 41, 46, 50, 88, 122, 137, 213, 227)

RESPONSE: The requirements in N.J.A.C. 7:14A-24.9, 25.6(j), and 25.7(b) concerning monitoring, evaluation, recordkeeping, reporting, and recognition of Department responsibility for control measures are based on 40 C.F.R. 122.44(i), 122.35(b), and 122.34(g), which do not require the Department to develop, implement, or

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fund the comprehensive monitoring program suggested by the commenters. The USEPA Phase II rules for small MS4s intentionally provide flexibility to the Department and other NPDES permitting authorities to determine whether and what type of monitoring needs to be conducted. See, for example, the “Note to Paragraph (g)(1)” in 40 C.F.R. 122.34(g), and the reference in 40 C.F.R. 122.34(g)(3)(ii) to “monitoring data, if any.”

The quoted USEPA statements about the Interim Permitting Policy are not in USEPA’s Phase II rules, but in the Preamble to those rules, and must be read together with other statements about monitoring in that Preamble. USEPA states, for example, that it “does not encourage requirements for ‘end-of-pipe’ monitoring [that is, outfall monitoring] for regulated small MS4s,” and that for the first permit term “in general, NPDES permits for small MS4s should not require the conduct of any additional monitoring beyond monitoring that the small MS4 may be already performing.” In the second and subsequent permit terms, USEPA “expects that some limited ambient monitoring might be appropriately required for perhaps half of the regulated small MS4s.” USEPA expects that such monitoring will “only be done in identified locations for relatively few pollutants of concern” (64 Fed. Reg. 68769; December 8, 1999).

In addition, USEPA’s Interim Permitting Policy does not envision that when monitoring is conducted in the first permit term, which generally is five years, Surface Water Quality Standards will necessarily be met within five years from the beginning of that term. Rather, that Policy envisions that subsequent permits would require expanded or better-tailored stormwater BMPs where necessary to provide for attainment of these Standards. Implementation of these BMPs would often take additional years, especially if these BMPs include extensive structural retrofits or extensive changes to existing land uses.

Implementation of Surface Water Quality Standards is a very complex, long-term process. In many instances, meeting the Standards would require control not only of small MS4s and other discharges regulated in the “Stormwater Program,” but also of other sources such as agriculture, wastewater treatment plants, atmospheric deposition, existing bottom sediments, and channel or riparian area modifications. There is a limited capacity for government agencies to fund the monitoring, planning, stormwater BMPs, and other controls required to implement these Standards. The Department’s view, after consultation with local and regional planners and stormwater managers, is that extensive structural retrofits of small MS4s should not be implemented before completion of regional analysis and planning.

For small MS4s, the Department’s program to make progress towards attaining Surface Water Quality Standards consists primarily of the establishment and implementation of SBRs, and, where appropriate, the development, adoption, and implementation of carefully selected “additional measures” (AMs), including AMs based on TMDLs or equivalent analyses. Many TMDLs have been established, and many more remain to be established. The provisions in N.J.A.C. 7:14A-25.6 and 25.8 for AMs

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create an orderly framework for requiring, through water quality management plans (WQM plans), additional control measures to make such progress. WQM plans including TMDLs also provide a basis to make such progress through enhanced control of other stormwater discharges regulated in the “Stormwater Program” (see, for example, N.J.A.C. 7:14A-24.2(a)7 and N.J.A.C. 7:8-3.5(c)).

Where appropriate, development of AMs and other enhanced stormwater control measures should be guided by the Department program for monitoring ambient water quality, including follow-up monitoring that the Department intends to institute for TMDLs. The Department will rely on such monitoring to evaluate the overall effectiveness of the “Stormwater Program” including the Municipal Stormwater Regulation Program. However, because of factors such as the huge number of stormwater discharges regulated in the “Stormwater Program,” the huge number of surface water bodies receiving these discharges, the large number of storm events producing these discharges, the highly variable character of these discharges, and the large number of pollutants that are present in these discharges and addressed in the Surface Water Quality Standards, the cost of implementing a monitoring program capable of demonstrating that “the Stormwater Program is meeting all Surface Water Quality Standards across the State” is beyond the realm of feasibility.

The total of the administrative fees discussed in the Economic Impact statement at 35 N.J.R. 190 would not fund more than a small fraction of that cost, and these fees are also required for other activities such as enforcement of the Highway, Public Complex, Tier A, and Tier B Permits. In addition, the amount of funding for Department monitoring programs is determined through the State and Departmental budget processes, not through the NJPDES rules or general permits. The limited funds available for these programs should, when possible, be allocated to monitoring activities that are expected to provide the most useful data.

The periodic monitoring required by N.J.A.C. 7:22A-4.8 and the SIIA is considerably less extensive than the comprehensive monitoring program the commenters suggest. The SIIA requires coastal municipalities, not the Department, to provide for this monitoring.

The Department relies on its program for monitoring ambient water quality to evaluate the overall effectiveness of the “Stormwater Program.” Given the cumulative nature of the thousands of facilities with stormwater general permits, the Department believes that the ambient monitoring approach gives a better picture of the comprehensive success of the program, and helps to identify sources that create obstacles to water quality improvement. That information can then guide targeted action by the Department.

40 C.F.R. 122.34(b)(1) and (2) require permittees to implement a public education program, and, at a minimum, to comply with State, Tribal and local public notice

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requirements when implementing a public involvement/participation program. The USEPA regulations do not require the NPDES permitting authority to make monitoring data available to the public on a central website or by any other means. However, surface water quality monitoring data is displayed on the Department's website at <http://www.state.nj.us/dep/wmm>.

355. COMMENT: The Department should feel heartened by the recent landmark court ruling in California in which the Superior Court dismissed objections, raised by the San Diego Building Industry Association, to a municipal stormwater permit. The Association contended that the rules could dramatically increase the cost of new housing and may not result in clean water. In upholding the permits, the court held that the permit-issuing agency has the discretion to determine whether to require strict compliance with water quality standards. The commenter hopes that this ruling's impacts resound in New Jersey. (217)

RESPONSE: The Department recognizes that it has authority to issue NJPDES permits under the Municipal Stormwater Regulation Program that require compliance with water quality standards. In regard to implementation of such standards, see the response to Comment 354 above.

356. COMMENT: The Department should periodically evaluate the successes and/or failures of these rules. Both during early implementation and throughout actual operation, the Department should maintain an open mind to determine the realities of these rules. The requirements may have detrimental effects on governmental operations, and it would be equitable for the Department to exercise flexibility and to make revisions where necessary. (206)

RESPONSE: The NJPDES rules for small MS4s outline in broad terms what must be included in the discharge permits. Most of the specific BMP requirements of the Municipal Stormwater Regulation Program are set forth in these permits rather than in NJPDES rule itself. The Department recognizes that as implementation proceeds, some rule or permit provisions might need to be revised to improve their effectiveness. The Department is expecting to maintain an ongoing outreach program with permittees, and will welcome feedback from the permittees about the rules and the permits.

Summary of Agency-Initiated Changes:

The Department has made the following modifications to the rules upon adoption:

1. At paragraph 3 of the N.J.A.C. 7:14A-1.2 definition of "large municipal separate storm sewer system," "Director" was replaced in the second sentence with "Department" for consistency with the first sentence.

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2. At paragraph 4 of the N.J.A.C. 7:14A-1.2 definition of “small municipal separate storm sewer system,” the Department has corrected “county, State, interstate, or Federal agencies” to “county, State, interstate, or Federal, or other agencies” for consistency with N.J.A.C. 7:14A-25.2(a)4, which this paragraph cross-references, and the N.J.A.C. 7:14A-1.2 definition of “municipal separate storm sewer.”

3. The Department has clarified paragraph 3 of the N.J.A.C. 7:14A-1.2 definition of “stormwater” to expressly include water resulting from precipitation “that is conveyed by snow removal equipment,” since the latter is a common means of transport of water originating as snow or ice.

4. At N.J.A.C. 7:14A-6.13(c), in an administrative change as provided for in this subsection, the Department has revised the list of general permits to reflect general permit actions taken since this list was promulgated in January 2002, including the issuance of the Tier A, Tier B, Public Complex, and Highway Permits for purposes of the newly adopted Municipal Stormwater Regulation Program.

5. At N.J.A.C. 7:14A-24.4(a)1vii(1) and 24.7(a)1viii(3), the Department has corrected printing errors.

6. The Department has modified N.J.A.C. 7:14A-24.4(a)6 to include a new subparagraph i that establishes the deadline to obtain NJPDES permit authorization for stormwater discharge associated with small construction activity at oil and gas exploration, production, processing, and treatment operations or transmission facilities as March 10, 2005, or the date on which construction commences, whichever is later. As noted in the proposal summary at 35 N.J.R. 180, N.J.A.C. 7:14A-24.4(a)6 is based on USEPA regulations at 40 C.F.R. 122.26(e)(8) and 122.21(c)(1). As modified on adoption, N.J.A.C. 7:14A-24.4(a)6 incorporates the March 10, 2005 deadline for such oil and gas facilities established in the amendment to 40 C.F.R. 122.26(e)(8) promulgated by USEPA in the March 10, 2003 Federal Register (68 Fed. Reg. 11325). March 10, 2005 is the USEPA deadline to obtain (as opposed to request) permit authorization. Consequently, N.J.A.C. 7:14A-24.4(a)6i sets December 10, 2004 as the deadline for submitting an individual permit application, consistent with the requirement in 40 C.F.R. 122.21(c)(1) that individual permit applications be submitted at least 90 days before the date on which construction is to commence.

7. At N.J.A.C. 7:14A-24.7(c)4, “Director” was replaced with “Department” for consistency with N.J.A.C. 7:14A-4.3(e), which is cited in that paragraph.

8. The Department has modified N.J.A.C. 7:14A-24.9(a)1 to recognize that some small municipal separate storm sewer systems are subject to the Tier B requirements at N.J.A.C. 7:14A-25.8, and that for those systems, requirements for evaluation, recordkeeping, and reporting are set forth in N.J.A.C. 7:14A-25.8(i) rather than in N.J.A.C. 7:14A-25.6(j).

9. The Department has modified N.J.A.C. 7:14A-25.2(a)2i to clarify that when applied to colleges and universities, the term “public complex” is limited to a “campus,” and thus does not apply to locations, such as isolated field stations and research farms, that are not commonly referred to as a “campus” or as part of a “campus.” Such locations generally have few employees and students, and are not similar to college and university campuses. This change is consistent with use of the phrase “college or university campus” elsewhere in N.J.A.C. 7:14A-25.2(a)2.

10. At N.J.A.C. 7:14A-25.2(a)2ii, the Department has corrected “on weekday” to “on weekdays.”

11. At N.J.A.C. 7:14A-25.2(a)3, the Department has clarified the first sentence by listing “rest area” as another example of a location that is part of a “highway or other thoroughfare.” This clarification is consistent with the express references to “rest areas” in the Highway Permit as issued draft and final.

12. The Department has modified N.J.A.C. 7:14A-25.6(b)8 to list the program under N.J.A.C. 7:14A-25.6(b)3 for post-construction stormwater management in new development and redevelopment as one of the programs that shall include employee training. This modification is consistent with the reference in N.J.A.C. 7:14A-25.6(b)8 to new construction and land disturbances, which are addressed by N.J.A.C. 7:14A-25.6(b)3. The requirement in N.J.A.C. 7:14A-25.6(b)8 for employee training regarding new construction and land disturbances is limited to new construction and land disturbances undertaken by the permittee.

13. The Department has clarified N.J.A.C. 7:14A-25.6(d) by changing “at the time the NJPDES permit is issued” to “at the time the NJPDES permit is issued, modified, revoked and reissued, or renewed,” consistent with similar procedural provisions elsewhere in the NJPDES rules. If N.J.A.C. 7:14A-25.6(d) were to remain as proposed, then, arguably, the Department could incorporate the conditions from qualifying programs as substitutes for the N.J.A.C. 7:14A-25.6(b) or (e) requirements only at the initial issuance of the permit. Such an interpretation would not allow a permit to change to incorporate the requirements of new or modified qualifying programs that come into being after the permit is initially issued. Accordingly, it is appropriate to propose conditions of qualifying programs not only at the time of issuance, but also during modification, revocation and reissuance, or renewal, at which times the permit is otherwise subject to public notice and comment.

14. At N.J.A.C. 7:14A-25.7(a)3, the Department has clarified the first sentence to provide that any agreement by the other entity to implement the measure must be in writing.

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15. At N.J.A.C. 7:14A-25.8(a) and the title of N.J.A.C. 7:14A-25.8, the Department has replaced “Tier B Municipal Stormwater Permit” with “Tier B Municipal Stormwater General Permit,” which is the correct name of the permit. Also at N.J.A.C. 7:14A-25.8(a), the Department has capitalized the short name, “Tier B Permit” for consistency with N.J.A.C. 7:14A-25.8(c), (e), and (f).

16. At N.J.A.C. 7:14A-25.8(g), the Department has corrected the cross-references to N.J.A.C. 7:14A-25.8(e)1 and 2.

Federal Standards Analysis

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65), require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

Most of the adopted regulations are consistent with USEPA regulations and other Federal law that govern permits for stormwater discharges or concentrated animal feeding operations (CAFOs) under the National Pollutant Discharge Elimination System (NPDES) authorized by the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., or with USEPA regulations for the Federal Underground Injection Control (UIC) Program created pursuant to Part C of the Federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300(f) et seq.). USEPA regulations specific to NPDES stormwater discharge and CAFO permits and the Federal UIC Program are found mainly at 40 C.F.R. 122.23, 122.26, 122.30 through 122.37, 123.35, and 40 C.F.R. 144-148. Other relevant USEPA regulations and Federal law are found in various provisions of 40 CFR 122.4, 122.21(a), (c), (d), (f), and (g), 122.28(b), 122.41(j), 122.42(c), 122.44(a), (i), (k), and (s), 122.62(a), 124.52, and 130.12; Section 208(e) of the Federal Clean Water Act (33 U.S.C. §1288(e)); and (for the Pinelands Area) Section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §471i.

Because of the limited scope of USEPA’s jurisdiction under the Federal Clean Water Act and the Federal Safe Drinking Water Act, the Federal NPDES stormwater and CAFO permit programs are limited to discharges from point sources to “waters of the United States” as defined in 40 C.F.R. 122.2 (most surface waters), and the Federal UIC Program is limited to underground injection through wells. In these adopted rules, however, the Department is exercising its broader authority under the New Jersey Water Pollution Control Act and Water Quality Planning Act to regulate not only those point source discharges and underground injection, but also certain stormwater discharges from nonpoint sources, and certain stormwater and CAFO discharges to other waters of the State including groundwater with or without underground injection. For example, the adopted amendments concerning the Municipal Stormwater Regulation Program regulate stormwater discharges to surface water and groundwater from small MS4s in a unified

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and consistent manner, and some provisions in adopted Subchapter 24 regulate certain stormwater discharges from nonpoint sources.

Other provisions in the adopted regulations for which there are no Federal counterparts include requirements in N.J.A.C. 7:14A-3.1(j) (fee for the “construction activity” stormwater general permit), 24.4(a)3 (permit application deadlines for certain large or medium municipal separate storm sewer systems), 24.5 (requests for information about stormwater discharges associated with industrial activity), 24.7(c) (identifying information required in individual permit applications for certain stormwater DSW that are not from industrial or commercial facilities or from small MS4s), and 25.8 (Tier B Municipal Stormwater General Permit). All provisions in the adopted regulations for which there are no Federal counterparts do not exceed any standards or requirements imposed by Federal law.

To avoid re-authorizing injection wells that are currently unlawful and pose a substantial risk, adopted N.J.A.C. 7:14A-8.4(a)3 does not apply the deadlines in 40 C.F.R. 144.87 and 144.88 to large-capacity cesspools and motor vehicle waste disposal wells that are not authorized by Subchapter 8. This does not result in any new costs, and has the benefit of protecting the groundwaters of the State.

Under 40 C.F.R. 144.88(B)(1)(iv), UIC permits for motor vehicle waste disposal wells must include requirements to meet maximum contaminant levels (MCLs) and other health based standards at the point of injection. Adopted N.J.A.C. 7:14A-8.4(a)3 includes a requirement to meet Ground Water Quality Standards (N.J.A.C. 7:9-6) at the point of injection. Under the existing NJPDES rules, permits for discharges to groundwater (including UIC permits) are required to comply with the Ground Water Quality Standards. Any applicable requirements in the Ground Water Quality Standards that are not MCLs or health based standards are necessary to achieve the objectives of the Water Pollution Control Act and the Water Quality Planning Act.

Some provisions of adopted N.J.A.C. 7:14A-24.6 (“Permanent No Exposure” of industrial activities and materials to stormwater) exceed requirements in 40 C.F.R. 122.26(g) to help ensure that industrial facilities maintain “no exposure” on a permanent basis and thereby protect water quality. Industrial facilities that do not qualify for exclusion under N.J.A.C. 7:14A-24.6 can still in many instances qualify for the Department’s “basic industrial” stormwater general permit, which provides substantial environmental benefit with minimum regulatory burden.

N.J.A.C. 7:14A-24.9(a) does not incorporate 40 C.F.R. 122.44(i)(4)(iv), which provides that permits for stormwater discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility

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is in compliance with the permit, or alternative requirements. There are no inactive mining operations in New Jersey that are so remote and hard to reach that annual inspections are impracticable.

N.J.A.C. 7:14A-25.9(d) provides in part that an operating entity that seeks to implement a stormwater program under N.J.A.C. 7:14A-25.6 may seek authorization to discharge under an individual NJPDES permit in certain cases only. This aspect of N.J.A.C. 7:14A-25.9(d) might be considered to exceed 40 C.F.R. 122.33(b)(2)(i), which allows any operating entity that seeks to implement a stormwater program under 40 C.F.R. 122.34 to apply for a individual permit. The Department is restricting individual permit applications because the conditions of the individual and general permit are likely to be similar, and the greater amount of Department staff time required for issuing an individual permit when an authorization under a general permit would achieve the equivalent stormwater control would be an inefficient use of resources for no additional environmental benefit.

Full text of the adopted rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. ABBREVIATIONS, ACRONYMS, AND DEFINITIONS

7:14A-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings:

...

“Large municipal separate storm sewer system” means all municipal separate storm sewers, other than those owned or operated by the United States, that discharge to surface water and are either:

1. - 2. (No change.)
3. Owned or operated by a municipality other than those described in paragraph 1 or 2 of this definition and that are designated by the Department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph 1 or 2 of this definition. In making this determination the *[Director]* ***Department*** may consider the following factors:

- i. - v. (No change.)

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4. (No change.)

...

“Small municipal separate storm sewer system” or “small MS4” means all municipal separate storm sewers (other than “large” or “medium” municipal separate storm sewer systems as defined in this section) that are:

1. – 3. (No change.)

4. Owned or operated by county, State, interstate, *[or]* Federal*, **or other*** agencies, and receive special designation under N.J.A.C. 7:14A-25.2(a)4.

...

“Stormwater” means water resulting from precipitation (including rain and snow) that:

1. - 2. (No change.)

3. Is captured by separate storm sewers or other sewerage or drainage facilities*, **or conveyed by snow removal equipment***.

“Stormwater discharge (or stormwater DSW) associated with industrial activity” means:

1. A discharge to surface water, from a point source or a nonpoint source, of stormwater that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NJPDES program under N.J.A.C. 7:14A-2.5. For the categories of industries identified in this paragraph, the term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined in 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for treatment, storage, or disposal of by-product or waste product; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater

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drained from the above described areas. The term also excludes discharges that qualify for “Permanent No Exposure” exclusion under N.J.A.C. 7:14A-24.6. Industrial facilities include industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in subparagraphs 1i through 1xi below. The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this paragraph:

i. – ix. (No change.)

x. Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more*. **For a facility (other than an airport, powerplant, or uncontrolled sanitary landfill) that is owned or operated by a municipality with a population of less than 100,000, this subparagraph does not include construction activity that commenced prior to (the date 30 days after the effective date of N.J.A.C. 7:14A-24), unless such activity required, but did not have, certification or approval issued under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., prior to (the date 30 days after the effective date of N.J.A.C. 7:14A-24)*;** and

xi. (No change.)

2. (No change.)

“Stormwater discharge (or stormwater DSW) associated with small construction activity” means the discharge to surface water, from a point source or a nonpoint source, of stormwater from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include *[routine]**:

i. Routine* maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility*; **or**

ii. Construction activity that commenced prior to (the date 30 days after the effective date of N.J.A.C. 7:14A-24), unless such activity required, but did not have, certification or approval issued under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., prior to (the date 30 days after the effective date of N.J.A.C. 7:14A-24)*; and

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2. (No change.)

...

SUBCHAPTER 4. PERMIT APPLICATION REQUIREMENTS

7:14A-4.4 Additional application requirements for discharges to surface water

(a) (No change.)

(b) All applicants for an individual NJPDES permit shall provide as part of their application, information on the discharge of pollutants in accordance with this subsection (except information on stormwater discharges, which is to be provided as specified in N.J.A.C. 7:14A-24.7, 24.8, 25.9 and 25.10).

1. – 4. (No change.)

5. *[Applicants]* **The applicant*** shall report the presence of *[known]* pollutants **that it knows or has reason to believe are present*** as follows:

i. – iii. (No change.)

6. – 7. (No change.)

SUBCHAPTER 6. CONDITIONS APPLICABLE TO ALL NJPDES PERMITS

7:14A-6.13 General permits

(a) – (b) (No change.)

(c) General permits may be issued, modified, revoked and reissued, suspended, or revoked in accordance with applicable requirements of N.J.A.C. 7:14A-15, 16 and 17. The Department shall publish in the New Jersey Register a notice of administrative change revising the list of general permits in the table below to reflect any of these general permit actions. The list in this table is for informational purposes only. The Department advises prospective applicants to obtain a copy of the most recent general permit list from the Department's Division of Water Quality at P.O. Box 029, Trenton, New Jersey 08625, or from the Division's website (<http://www.state.nj.us/dep/dwq>). A copy of any general permit on the list may be obtained from the same address.

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<u>Permit No.</u>	<u>Category</u>	<u>Name of General Permit</u>	<u>Discharge Type¹</u>	<u>Year Issued</u>
NJ0108308	I1	Stormwater Basins at Sanitary Landfills	DGW	2001
NJ0108642	I2	Filter Backwash Water from Potable Water Treatment Plants	DGW	*[1996]* * 2003 *
NJ0130281	T1	Existing Sanitary Septic Systems	DGW	*[1998]* * 2003 *
* <u>NJ0142051</u> *	* <u>LSI</u> *	* <u>Lined Surface Impoundment</u> *	* <u>DGW</u> *	* 2003 *
* <u>NJ0138631</u> *	* <u>R8</u> *	* <u>Concentrated Animal Feeding Operation (CAFO)</u> *	* <u>DGW/DSW</u> *	* 2003 *
NJ0107671	SM	Scrap Metal Stormwater	DGW/DSW	1999
NJ0088315	5G2	Basic Industrial Stormwater	*[DSW]* * <u>DGW/DSW</u> *	*[1997]* * 2002 *
* <u>NJ0141852</u> *	* <u>R9</u> *	* <u>Tier A Municipal Stormwater</u> *	* <u>DGW/DSW</u> *	* 2004 *
* <u>NJ0141861</u> *	* <u>R10</u> *	* <u>Tier B Municipal Stormwater</u> *	* <u>DGW/DSW</u> *	* 2004 *
* <u>NJ0141879</u> *	* <u>R11</u> *	* <u>Public Complex Stormwater</u> *	* <u>DGW/DSW</u> *	* 2004 *
* <u>NJ0141887</u> *	* <u>R12</u> *	* <u>Highway Agency Stormwater</u> *	* <u>DGW/DSW</u> *	* 2004 *
NJ0088323	5G3	Construction Activity Stormwater	DSW	*[1997]* * 2002, modified in 2004 *
NJ0108456	CPM	Concrete Products Manufacturing Stormwater	*[DSW]* * <u>DGW/DSW</u> *	*[1995]* * 2003 *
NJ0134791	R5	Newark Airport Complex Stormwater	DSW	2000
NJ0070203	CG	Non-contact Cooling Water	DSW	2000
NJ0102709	B4B	Groundwater Petroleum Product Clean-up	DSW	*[1998]* * 2003 *
NJ0105023	CSO	Combined Sewer Overflow	DSW	2000
NJ0128589	B6	Swimming Pool Discharges	DSW	1998
NJ0132993	BG	Hydrostatic Test Water	DSW	1999
NJ0134511	B7	Construction Dewatering	DSW	1999
NJ0105767	EG	Land Application Food Processing Residuals	RES	*[1998]* * 2003 *
NJ0132519	ZG	Residuals Transfer Facilities	RES	1999
* <u>NJ0132501</u> *	* <u>4G</u> *	* <u>Residuals - Reed Beds</u> *	* <u>RES</u> *	* 2002 *

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¹Acronyms identifying “Discharge Type” have the following meanings:

DGW	Discharge to Groundwater
DSW	Discharge to Surface Water
RES	Residual Use or Disposal

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(d) – (o) (No change.)

SUBCHAPTER 7. REQUIREMENTS FOR DISCHARGES TO GROUND WATER (DGW)

7:14A-7.4 Exemptions

(a) Persons responsible for the following discharges are exempt from the requirement to obtain a discharge to groundwater permit:

1. – 4. (No change.)

5. The following stormwater discharges, if such discharges are not through underground injection regulated under N.J.A.C. 7:14A-8, and do not require a permit under N.J.A.C. 7:14A-24.2(a)9:

i. (No change.)

ii. Stormwater discharges from residential areas (including residential streets, parking lots, easements, and open space), ***or from commercial areas (other than areas of high pollutant loading),*** unless N.J.A.C. 7:14A-25.2(a) or (b) requires the operating entity to apply for a NJPDES permit for the discharge*. **For purposes of this subparagraph and N.J.A.C. 7:14A-8.5(b)9 and 24.2(c)3, high pollutant loading areas are commercial areas where solvents and/or petroleum products are loaded/unloaded, stored, or applied; commercial areas where pesticides are loaded and/or unloaded or stored; commercial areas where hazardous materials are expected to be present in greater than “reportable quantities” as defined by the USEPA at 40 C.F.R. 302.4; commercial areas where recharge would be inconsistent with a Department approved remedial action work plan or landfill closure plan; and commercial areas where the risk for spills of toxic material is high, such as gas stations and vehicle maintenance facilities***; and

iii. (No change.)

SUBCHAPTER 8. ADDITIONAL REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL (UIC) PROGRAM

7:14A-8.5 Authorization of injection into Class V wells by permit-by-rule

(a) (No change.)

(b) An owner or operator of any of the Class V injection wells described in (b)1 through 10 below is deemed to have a permit-by-rule under this subsection if the owner or operator complies with the applicable requirements specified in this subsection.

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1. – 8. (No change.)

9. Underground injection of stormwater discharges from residential areas (including residential streets, parking lots, easements, and open space), ***or from commercial areas other than areas of high pollutant loading as described under N.J.A.C. 7:14A-7.4(b)5ii,*** unless N.J.A.C. 7:14A-25.2(a) or (b) requires the operating entity to apply for a NJPDES permit for the discharge; and

10. (No change.)

(c) - (i) (No change.)

SUBCHAPTER 24. ADDITIONAL REQUIREMENTS FOR CERTAIN STORMWATER DISCHARGES

7:14A-24.2 Stormwater discharges for which a NJPDES permit is required under this subchapter; exemptions

(a) - (b) (No change.)

(c) The following stormwater discharges are exempt from the requirement to obtain a NJPDES permit from the Department:

1. - 2. (No change.)

3. Stormwater DGW that are from municipal separate storm sewers, residential areas (including residential streets, parking lots, easements, and open space), ***commercial areas other than areas of high pollutant loading as described under N.J.A.C. 7:14A-7.4(b)5ii,*** or animal feeding operations, but that are not through underground injection regulated under N.J.A.C. 7:14A-8 and not identified under (a) above.

(d) (No change.)

(e) For stormwater discharges associated with industrial activity which discharge through a privately owned and operated separate storm sewer system (private conveyance system), the Department shall ***[issue]* either*:**

1. Issue* a single NJPDES permit (or a single authorization under a general NJPDES permit) ***to the operating entity for the portion of the private conveyance system that discharges to surface water***, with each discharger ***to the private conveyance system*** a co-permittee to ***[a]* *that*** permit (or to an authorization under a general permit) ***[issued to the operating entity for the portion of the private conveyance system that discharges into surface water,]** or**

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2. Issue individual permits (or authorizations under a general permit) to each discharger of stormwater associated with industrial activity through the private conveyance system.

[1. All stormwater discharges associated with industrial activity that discharge through a private conveyance system shall be authorized by an individual permit (or by a single authorization under a general permit), or a permit (or authorization under a general permit) issued to the operating entity for the portion of the private conveyance system that discharges to surface water, with each discharger to the private conveyance system a co-permittee to that permit (or to that authorization under a general permit).]

[2. - 3.] ***3. - 4.*** (No change in text.)

(f) - (g) (No change.)

7:14A-24.3 Petitions

(a) - (b) (No change.)

(c) The owner of or operating entity for a municipal separate storm sewer system may petition the Department to reduce the Census estimates of the population served by such separate system ***or the population within an urbanized area*** to account for stormwater discharged to combined sewers as defined by 40 C.F.R. 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NJPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) - (e) (No change.)

7:14A-24.4 Deadlines to apply for NJPDES permit for stormwater discharges

(a) Any operating entity for a stormwater DSW or DGW identified under (a)1 through 8 below that does not have an effective NJPDES permit authorizing its stormwater discharges shall submit a request for authorization for a general NJPDES permit, or an application for an individual NJPDES permit, in accordance with the following deadlines:

1. Except as provided in (a)1i through vii below, for any “stormwater discharge associated with industrial activity” as defined in N.J.A.C. 7:14A-1.2 that is not authorized by a stormwater general permit, the request for authorization for a stormwater DSW

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general permit, or an application for an individual stormwater DSW permit made pursuant to N.J.A.C. 7:14A-24.7, shall have been submitted by April 1, 1993.

i. – vi. (No change.)

vii. The following is applicable to entities proposing new discharges of stormwater associated with industrial activity. General permits for such discharges shall specify deadlines for submitting requests for authorization under such permits. An entity submitting an individual permit application for such a discharge shall submit an application at least 180 days before that entity intends to commence industrial activity which may result in a discharge of stormwater associated with that industrial activity (unless (a)1vii(1) below is applicable, or the Department approves a later date).

(1) An entity submitting an individual permit application for a stormwater discharge from construction activity as described under subparagraph *[1_x]* ***1x*** of the definition of “stormwater discharge associated with industrial activity” in N.J.A.C. 7:14A-1.2 shall submit an application at least 90 days before the date on which construction is to commence (unless the Department approves a later date).

2. – 5. (No change.)

6. *[The]* ***Except as provided in (a)6i below, the*** deadline to obtain NJPDES permit authorization for all stormwater DSW identified under paragraph 1 of the definition of “stormwater discharge associated with small construction activity” in N.J.A.C. 7:14A-1.2 is (the date 30 days from the effective date of this subchapter), or the date on which construction commences, whichever is later. General permits for such discharges shall specify deadlines for submitting requests for authorization under such permits. An entity submitting an individual permit application for such discharges shall submit an application at least 90 days before the date on which construction is to commence (unless the Department approves a later date), or by (the date 30 days from the effective date of this subchapter), whichever is later.

i. The deadline to obtain NJPDES permit authorization for stormwater discharge associated with small construction activity at oil and gas exploration, production, processing, and treatment operations or transmission facilities is March 10, 2005, or the date on which construction commences, whichever is later. General permits for such discharges shall specify deadlines for submitting requests for authorization under such permits. An entity submitting an individual permit application for such discharges shall submit an application at least 90 days before the date on which construction is to commence (unless the Department approves a later date), or by December 10, 2004, whichever is later.

7. - 8. (No change.)

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(b) (No change.)

7:14A-24.6 “Permanent No Exposure” of industrial activities and materials to stormwater

(a) - (e) (No change.)

(f) To qualify for this exclusion, a permanent building or permanent structure is not required for:

1. Dumpsters *[containing]* ***or other rigid containers of similar or larger size, that are used only for routine collection and temporary storage of*** industrial ***or other waste*** materials ***generated at the facility, and*** that are watertight, leak proof, and covered*, **with no visible residue or contamination on the external exposed surfaces***;

2. - 3. (No change.)

(g) - (j) (No change.)

7:14A-24.7 Permit application requirements for stormwater discharges associated with industrial activity or small construction activity, and for certain other stormwater DSW

(a) Operating entities for stormwater discharges associated with industrial activity or small construction activity (from point or nonpoint sources), and for industrial or commercial stormwater DSW (from point or nonpoint sources) identified under N.J.A.C. 7:14A-24.2(a)1 or 7, shall apply for an individual NJPDES DSW permit or request authorization under a final stormwater general NJPDES DSW permit in accordance with the deadlines set forth at N.J.A.C. 7:14A-24.4. Any such operating entity that is required or seeks to obtain an individual DSW permit shall submit an individual permit application in accordance with the requirements of N.J.A.C. 7:14A-4 as modified and supplemented by this section and N.J.A.C. 7:14A-24.8. Except as provided in (a)2 and (b) below, this individual permit application shall include (for discharges composed entirely of stormwater) the NJPDES-1 Form, NJPDES Form RF, and NJPDES Form R, Part A (the facility’s residual use or residual disposal practices may require the completion of additional sections of Form R). If this individual permit application is for a stormwater discharge mixed with domestic sewage and/or an industrial nonstormwater discharge that requires a NJPDES-DSW permit, the operating entity shall comply with N.J.A.C. 7:14A-4, but is exempt from the requirements of (a)1 and 2 below, and shall not submit NJPDES Form RF.

1. Except as provided in (a)2 through 4, (a)6 and (b) below, an individual permit application for a stormwater DSW under this subsection shall include the following:

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i. - vii. (No change.)

viii. Quantitative data based on samples collected during storm events and collected in accordance with N.J.A.C. 7:14A-24.8 from all outfalls (and all drainage areas not served by outfalls) containing a stormwater discharge associated with industrial activity for the following parameters:

(1) - (2) (No change.)

(3) Oil and grease, pH, *[BOD⁵]* ***BOD₅***, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(4) - (6) (No change.)

ix. - xii. (No change.)

2. - 5. (No change.)

(b) (No change.)

(c) Operating entities for stormwater DSW (from point or nonpoint sources) that are identified under N.J.A.C. 7:14A-24.2(a)1 or (a)7, but that are not from industrial or commercial facilities or from small MS4s, shall apply for an individual NJPDES DSW permit or request authorization under a final stormwater general NJPDES DSW permit in accordance with the deadlines set forth at N.J.A.C. 7:14A-24.4(a)4. Any such operating entity that is required or seeks to obtain an individual DSW permit shall submit an individual permit application in accordance with the requirements of N.J.A.C. 7:14A-4 (except N.J.A.C. 7:14A-4.3(a)11, (a)15 through 24, (c) and (d) and 4.4). This individual permit application shall include:

1. - 3. (No change.)

4. Such other information as the *[Director]* ***Department*** may reasonably require under N.J.A.C. 7:14A-4.3(e).

7:14A-24.9 Monitoring requirements for certain stormwater discharges

(a) For small municipal separate storm sewer systems, and for stormwater discharges associated with industrial activity or small construction activity that are not subject to an effluent limitation guideline that establishes monitoring requirements or numeric effluent limitations, monitoring requirements shall be established on a case-by-case basis depending upon the nature and effect of the discharge. The permittee shall be required to monitor such discharges in accordance with N.J.A.C. 7:14A-11.2(a)2, or, at a minimum:

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1. For small municipal separate storm sewer systems subject to N.J.A.C. 7:14A-25.6 ***or 25.8***, the permittee shall comply with the requirements for evaluation, recordkeeping, and reporting in N.J.A.C. 7:14A-25.6(j) ***or 25.8(i), respectively***.

2. (No change.)

(b) (No change.)

SUBCHAPTER 25. MUNICIPAL STORMWATER REGULATION PROGRAM

7:14A-25.2 Identifying municipalities, public complexes, and highways or other thoroughfares regulated under the small MS4 program

(a) A NJPDES permit is required for the stormwater discharges to surface water or groundwater identified in (a)1 through (a)4 below. The operating entities for those discharges shall apply for a NJPDES permit in accordance with N.J.A.C. 7:14A-25.4(a) and 25.5(a).

1. (No change.)

2. Public complexes: All stormwater discharges from small MS4s that are owned or operated by a county, State, interstate, or Federal agency at a “public complex” located entirely or partially in a municipality that is assigned to Tier A under N.J.A.C. 7:14A-25.3(a)1, or in a municipality that receives a waiver under (d) below. For purposes of this subsection, a “public complex” is a single lot (or two or more lots that are contiguous or on a college or university campus) which contains at least two buildings owned or operated by the same governmental entity, and:

i. Is at a ***campus of a*** college or university which Statewide has a combined total of at least 1,000 employees (usually present at least six hours per day on weekdays) or full-time students; or

ii. Is at any other public facility (for example a military base, hospital, prison, or general administration facility), and has a combined total of at least 1,000 employees, military personnel, or residents (including patients or prisoners) usually present at least six hours per day on ***[weekday]* *weekdays***.

3. Highways or other thoroughfares: All stormwater discharges from small MS4s that are owned or operated by a county, State, interstate, or Federal agency at a highway or other thoroughfare (including a maintenance or service facility ***or rest area*** for such a thoroughfare). For purposes of this subsection, a “highway or other thoroughfare” does not include:

i. - iii. (No change.)

4. (No change.)

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(b) - (f) (No change.)

7:14A-25.6 Content of NJPDES permits for small MS4s

(a) The NJPDES small MS4 permit shall require at a minimum that the permittee develop, implement, and enforce a stormwater program designed to reduce the discharge of pollutants from the permittee's small MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Federal Act and the State Act. The stormwater program required under a general permit shall include the Statewide Basic Requirements (SBRs) that are listed under (b)1 and (b)3 through 8 below (and that may be set forth in more detail in the NJPDES permit). The stormwater program shall also include any additional measures (AMs) required under (e) below, and any other control or evaluation measures specified in the NJPDES permit. At the permittee's discretion, the stormwater program may also include optional measures (OMs) in accordance with (i) below. Except as provided in N.J.A.C. 7:14A-25.8(e)1 and (g), this section and N.J.A.C. 7:14A-25.7 do not apply to the Tier B Municipal Stormwater Permit.

1. (No change.)

2. The NJPDES permit shall specify (for the permittee's first permit term) a time period of up to five years from the date of notification of general permit authorization (or the date of individual permit issuance) for the permittee to fully develop and implement its stormwater program for SBRs, and for any other measures specified in the NJPDES permit. For an AM required under (e) below, the ***areawide or Statewide*** water quality management plan will specify a time period for the permittee to fully develop and implement its stormwater program for that AM, and that time period will be listed in the permit when the permit is issued or in a minor modification to the permit.

3. - 5. (No change.)

(b) The Statewide Basic Requirements (SBRs) are as follows:

1. - 2. (No change.)

3. Post-construction stormwater management in new development and redevelopment:

i. - iii. (No change.)

iv. If the permittee is a municipality, the municipality shall, in its program under (b)3i above:

(1) Ensure that any residential development and redevelopment projects that are subject to the Residential Site Improvement Standards for stormwater management (N.J.A.C.

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5:21-7) comply with those standards ***(including any exception, waiver, or special area standard that was approved under N.J.A.C. 5:21-3)***;

(2) – (3) (No change.)

4. – 7. (No change.)

8. Employee training: Using training materials that are available from USEPA, the Department or another State agency, or other organizations, the programs under ***(b)3,*** (b)5iii, (b)6 and (b)7 above shall include (where applicable) employee training to prevent and reduce stormwater-related pollution from activities such as park and open space maintenance, vehicle fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

(c) (No change.)

(d) If, at the time the NJPDES permit is issued* **, modified, revoked and reissued, or renewed***, a qualifying State or local program requires the permittee to implement one or more of the SBRs (or SBR components) listed under (b) above, or of the AMs (or AM components) required under (e) below, the Department may include conditions in the NJPDES permit that direct the permittee to follow that qualifying program's requirements rather than the corresponding requirements under (b) above or (e) below. For purposes of this subsection, a qualifying State or local program is a State or local municipal stormwater program that imposes, at a minimum, the relevant requirements under (b) above or (e) below. This subsection does not apply to the requirements in (b)2 above (construction site stormwater runoff control), or to the requirements in (b)3 above for compliance with the Stormwater Management Rules, (N.J.A.C. 7:8, and the Residential Site Improvement Standards, N.J.A.C. 5:21.

(e) The permittee's stormwater program shall include any additional measures (AMs) required under this subsection. AMs are non-numeric or numeric effluent limitations that are expressly required to be included in the stormwater program by ***[a]* *an areawide or Statewide*** water quality management plan (WQM plan) adopted in accordance with N.J.A.C. 7:15. AMs may modify, or be in addition to, SBRs listed under (b) above.

1. AMs may be adopted in ***[a]* *an areawide or Statewide*** WQM ***[Plan]* *plan*** before or after the Department issues the NJPDES permit. The Department shall provide written notice of the adoption of the AM to each permittee whose stormwater program must include that AM, and shall list each adopted AM in the permit when the permit is issued or in a minor modification to the permit. For AMs other than numeric effluent limitations, the ***areawide or Statewide*** WQM plan shall specify the BMPs that the permittee or another entity (see (a)3 above and N.J.A.C. 7:14A-25.8(e)) will implement, and the measurable goals for each of those BMPs. AMs may be required by:

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i. – ii. (No change.)

iii. Other elements of ***areawide or Statewide*** WQM plans adopted in accordance with N.J.A.C. 7:15.

(f) – (j) (No change.)

7:14A-25.7 Sharing of responsibility to implement control measures for a small MS4

(a) A permittee may rely on another governmental*;* [or]* private* **or nonprofit*** entity (for example, a watershed association) to satisfy the permittee's NJPDES permit obligations to implement one or more control measures (or component(s) thereof) for that permittee's small MS4 if:

1. – 2. (No change.)

3. The other entity agrees **in writing*** (or is required by law) to implement the measure(s), or component(s) thereof, on the permittee's behalf. The permittee is responsible for compliance with the permittee's NJPDES permit obligations if the other entity fails to implement the measure(s), or component(s) thereof. In the annual reports the permittee must submit under N.J.A.C. 7:14A-25.6(j)3, the permittee shall specify that it is relying on another entity to satisfy some of the permittee's NJPDES permit obligations. If the permittee is relying on another entity regulated under the NJPDES permit program to satisfy all of that permittee's NJPDES permit obligations, including that permittee's obligation to file annual reports required by N.J.A.C. 7:14A-25.6(j)3, the permittee shall notify the Department of this reliance in writing, and shall also note this reliance in the permittee's SPPP.

(b) (No change.)

7:14A-25.8 Tier B Municipal Stormwater **General*** Permit

(a) Each municipality that is assigned to Tier B under N.J.A.C. 7:14A-25.3(a)2, and that operates a small MS4 that discharges to surface water or groundwater, shall apply for the Department's Tier B Municipal Stormwater **General*** Permit (Tier B *[permit]* **Permit***). The Department shall make this general NJPDES permit available to Tier B municipalities throughout the State. This general permit is not in any respect a permit under section 402 of the Federal Act (33 U.S.C. §1342).

(b) – (f) (No change.)

(g) The Tier B municipality's stormwater program shall include any additional measures (AMs) required under this subsection. AMs are non-numeric or numeric effluent limitations that are expressly required to be included in the stormwater program by *[a]*

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an areawide or Statewide water quality management plan (WQM plan) adopted in accordance with N.J.A.C. 7:15. AMs may modify, or be in addition to, SBRs listed under *[(d)1]* ***(e)1*** and 2 above. AMs required under this subsection are subject to N.J.A.C. 7:14A-25.6(e)1.

(h) – (i) (No change.)

ADOPTrul (1/21/04)