

RESPONSE TO COMMENTS – MUNICIPAL STORMWATER REGULATION PROGRAM

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

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

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

Highway Agency Stormwater General Permit – NJ0141887 (Highway Agency Permit)

The New Jersey Department of Environmental Protection (Department or NJPDEP) accepted comments on the draft renewal of these four general permits through January 23, 2009.

This Summary is by reference part of the response to comments document for these general permits. Comments on the draft NJPDES general permits are addressed below. The following persons submitted timely comments in writing.

List of Commenters:

1. Paul W. Ferriero P.E., P.P., CME, LEED AP
President
Stormwater Compliance Solutions,
Ferriero Engineering
2. Christopher Gulics, Senior Project Scientist
Kristi Sorrentino, Staff Scientist
Birdsall Services Group
3. James M. Helb, P.E., L.S., P.P.
Township Engineer
Township of Verona
4. J. Michael McGee, C.P.W.M.
Director
Township of Berlin
5. Connac Morrissey, P.E., P.P., C.M.E.
Dixon Associates Engineering
6. Chuck Riebel Jr. P.E., P.P., P.L.S., CME
Key Engineers, Inc.
7. Joseph Sabatini
Township Manager
Township of Byram

8. Jennifer Samson, PhD, Principal Scientist
Cindy Zipf, Executive Director
Heather Saffert, PhD, Staff Scientist
Clean Ocean Action
9. Robert J. Shaefer, P.E.
Township Engineer
Township of Livingston

The timely submitted comments and the Department's responses are summarized below. The number assigned each commenter identifies the respective commenter(s) in the summaries below.

Equipment and Vehicle Washing

1. **COMMENT:** Several commenters that asked to extend the February 29, 2009 deadline for municipalities to be in compliance with the vehicle and equipment wash wastewater Statewide Basic Requirement in Part 1, Section F, 8. (b) of the Tier A Permit (and similar sections in the other general permits). (4) (6)

One commenter stated that many municipalities will not be in compliance with SBR by February 28, 2009, (6).

Several commenters stated that during the current fiscal crisis municipalities do not have the funds available to install a vehicle/equipment wash wastewater reclaim systems before the February 29th deadline. (1), (4), (6), (7).

One commenter asked the Department of Environmental Protection (Department) to establish treatment parameters for the discharge of vehicle/equipment wash wastewater to drywells or to make the vehicle/equipment wash wastewater discharge water more readily acceptable to wastewater treatment plants. (1)

One commenter agreed with the vehicle/equipment wash wastewater permit conditions and stated that BMP requirement "is important to reduce wash wastewater pollution." (8)

RESPONSE:

These comments are outside the scope of this permit renewal. The requirement for municipalities to properly manage their vehicle and equipment wash water discharges was contained in the September 1, 2005 permit modifications of the Tier A, Tier B, Public Complex and Highway Agency general permits. The compliance date of February 29, 2009 is within the effective dates of that permit and outside of the expected effective date (March 1, 2009) of this renewal.

The Department will consider extensions to the deadline to properly manage vehicle and equipment wash water discharges; however such requests are outside the purview of this

permit renewal action. Any extension needs to be negotiated through an Administrative Consent Order with the Department's Water Compliance and Enforcement Element.

The currently effective general permits allow for permittees to obtain a separate NJPDES permit which would authorize the discharge of vehicle and equipment wash water to surface or ground waters of the State. A discharge of vehicle and equipment wash water to a dry well would either require a separate NJPDES Discharge to Ground Water permit or may be prohibited altogether depending on how vehicle and equipment washing is done. If it is determined pursuant to N.J.A.C. 7:14A-8.2 that the dry well is a class V well a NJPDES DGW permit may be a viable option. However the permit would require that the discharge not contravene Ground Water Quality Standards. If it is determined that the discharge is likely to contain hazardous wastes (automotive fluids) the dry well may be considered a Class IV well which is specifically prohibited by N.J.A.C. 7:14A-8.4 due to its potential to contaminate drinking water and adversely affect public health and welfare. A pre-application meeting can be scheduled by contacting the Department's Bureau of Nonpoint Pollution Control at 609-633-7021.

Each wastewater treatment plant or sewerage authority is regulated under their own NJPDES permit with its own set of conditions and requirements. Operators must manage the wastewater that they accept to ensure that the biological nature of the plant is not upset, that effluent limitations and sludge quality criteria are met and that adequate capacity is available. It is up to each operator to make those decisions and it is outside the Department's authority to require the acceptance of these wastes.

Lastly, the Department agrees that it is important to eliminate unpermitted discharges of wash water to the waters of the State. These discharges have the potential to contain significant toxic pollutants that can have a detrimental affect on receiving water quality and contaminate drinking water supplies.

De-icing Material Storage

2. **COMMENT:** Two commenters asked the Department to clarify whether permanent de-icing material storage buildings require doors. (2), (5).

One commenter asked the Department to ask that the construction requirements of permanent de-icing material structures be included in the permits; specifically specifications for fabric framed structures. (2)

RESPONSE:

The Department agrees with the commenters and has changed, upon adoption, permit requirements to clarify that doors are recommended, but not required on deicing material storage structures. In addition, the Department has added a definition for a "permanent structure" to the definition section which includes our previously posted policy on fabric framed structures. The new definition is as follows:

"Permanent structure" means a permanent building or permanent structure that is anchored to a permanent foundation with an impermeable floor, and that is completely

roofed and walled (a door is recommended, but not required). A fabric frame structure is a permanent structure if it meets the following specifications:

1. structure must be designed to withstand at least 110 mph winds;
2. structure must be covered by a PVC or other similar fire rated material with a minimum twenty (20) year warranty;
3. concrete blocks, jersey barriers or other similar material must be placed around the interior of the structure to protect the side walls during loading and unloading de-icing materials;
4. the design must prevent stormwater run-on and run through;
5. structure must be erected on an impermeable slab;
6. structure cannot be open sided; and
7. must have a roll up door or other means of sealing the access way from wind driven rainfall.

Refuse Container / Dumpster Ordinance

3. **COMMENT:** Part 1, Section F. 5 (f). One commenter asked that this section be clarified to indicate the exact definition of a refuse container and what constitutes an acceptable cover. (5)

This commenter asks if this ordinance applies to private residences, homeowner associations' public housing authorities and apartment complexes and if all refuse containers/dumpsters are include in this ordinance regardless of the contents.(2)

One commenter asks that the Department provide a model ordinance for the Refuse/Dumpster Ordinance requirement. (5)

A commenter stated that it the Refuse/Dumpster Container Ordinance that their township does not have the funding or the manpower to enforce this ordinance. (3)

This commenter agreed with the new permit condition with the Refuse/Dumpster Container Ordinance as a "progress in reducing pollution, but asks that the implementation date moved up from 18 months to six months. In addition this permit condition should be included in the Tier B permit as well. (8)

RESPONSE:

The Department has attempted to clarify the definition of a refuse container and dumpster by providing some specific exclusions within the permit language as follows "... (excluding permitted temporary demolition containers, refuse containers at industrial facilities authorized to discharge stormwater under a valid NJPDES permit, litter receptacles, individual homeowner trash and recycling containers)." An acceptable cover is one which prohibits the spilling, dumping, leaking or otherwise discharge of solid waste or liquid waste from such containers.

The Department will provide additional guidance when it updates the Municipal Stormwater Guidance Documents. The Department expects those revisions to be posted on the web soon after the issuance of the permit renewal. A model Refuse Container/Dumpster Ordinance will be posted on the Department's web site on the same day the general permit renewal becomes effective (March 1, 2009).

The Department is aware of the fiscal constraints facing municipalities during the current economic downturn. That is one of the major reasons the Department did not require any new capital projects in this renewal permit. Instead the Department, along with the Municipal Stormwater Advisory Group, tried to find ways to improve stormwater runoff quality while limiting additional costs to municipalities. It was felt that municipal ordinances accomplished that goal. The costs associated with the adoption of an ordinance is small in comparison to designing, building and maintaining structural best management practices and the enforcement of such ordinances should be able to be done within the municipalities existing framework. The Department does not expect municipalities to hire additional staff to enforce these ordinances. Municipalities are expected to enforce these ordinances as they enforce any existing municipal ordinance already in place.

Due to the multitude of statutory requirements, it would be very difficult for a municipality to adopt a municipal ordinance within 6 months. The Department believes that the 18 months to adopt a municipal ordinance is necessary to ensure that the regulated community and the public have sufficient time to review and understand the ordinance. This timeframe is also consistent with the implementation timeframes contained in the original municipal permits. It is important to note that the reason for the disparity in the implementation schedules between the Refuse Container / Dumpster Ordinance and the Fertilizer Management Ordinance is because the 6 month schedule was set in the adopted Non-Tidal Passaic River Basin Addressing Phosphorus Impairments TMDL and cannot be changed without a re-adoption of the TMDL.

Lastly, the Department is limited to what it may place in the Tier B general permit by the regulations at N.J.A.C.7:14A-25.8(e). The content of the permit is limited to post construction stormwater management in new development and redevelopment and public education on stormwater impacts. The suite of municipal ordinance required in the initial general permit and those proposed in the renewal permit fall outside those areas. The Department will consider amending the NJPDES regulations to allow more flexibility in the contents of Tier B permits when the NJPDES regulations are proposed for re-adoption.

Authorized Non-Stormwater Discharge from the Small MS4

4. **COMMENT:** The commenter requests an expansion of the authorized non-stormwater discharges from the small MS4 contained in Part I, Section A.2(c) of the Tier A Permit (and similar sections in the other general permits) to include power washing of buildings. The commenter believes this activity is similar to the allowable discharge of sidewalk, driveway and street wash water. (2)

RESPONSE:

The list of authorized non-stormwater discharges from the small MS4 contained in Part I, Section A.2(c) of the Tier A Permit (and similar sections in the other general permits) comes primarily from the Federal Phase II stormwater rule at 40 CFR§122.34(b)(3). This section of the Federal rule states that municipalities only need to address those listed non-stormwater discharges or flows as illicit discharges if they are determined to be a significant source of pollutants. Street washing is specifically listed; power washing of buildings is not.

The Department believes that the discharge of wash water from power washing of buildings has the potential to contain significantly more pollutants in higher concentrations than other authorized non-stormwater discharges, in part because power washing is done with water under significant pressure. Therefore the Department will continue to consider such discharges to the MS4 an illicit connection and not a non-stormwater discharge that should be authorized under the general permits.

Fertilizer Management Ordinance

5. **COMMENT:** Part 1, Section F. 5(g) of the Tier A Permit and Part 1, Section F.4 of the Tier B permit. This commenter states that it would be impossible “to monitor or manage the fertilizer used by the residents”. Their township does not have the funding or the manpower to enforce this ordinance. The commenter would suggest that an easier way to manage the fertilizer is to ban the sale of phosphorous based fertilizers in the region. (3)

Another commenter asks that the fertilizer ordinance be adopted statewide. (8)

RESPONSE:

The requirement to adopt a fertilizer management ordinance is a requirement of the Non-Tidal Passaic River Basin Addressing Phosphorus Impairments TMDL and is limited to those municipalities identified in the TMDL. In accordance with N.J.A.C. 7:14A-25.6(e) the adopted Non-Tidal Passaic River Basin Addressing Phosphorus Impairments TMDL qualifies as an additional measure (AM) and must be included in affected municipality’s stormwater programs. In addition the Department must include the AM as part of the Tier A and Tier B general permit. The Department is providing a model ordinance to address the AM. Comments on the Non-Tidal Passaic River Basin Addressing Phosphorus Impairments TMDL should have been submitted during the public notice period of the adoption of the TMDL. Additional information on the Model Ordinance can be provided by the Department’s Division of Watershed Management.

The Department does agree that preventing the sale of fertilizers containing phosphorus is an effective control mechanism. To that end the Department has entered into a Memorandum of Agreement with major fertilizer manufacturers to provide low and no-phosphorus fertilizer to stores in New Jersey.

The Department will only be requiring the adoption of the fertilizer management ordinance when expressly required by an areawide or statewide water quality management plan. However, municipalities may elect to adopt one voluntarily.

Private Catch Basin Retrofitting Ordinance

6. **COMMENT:** This commenter states that the Private Catch Basin Retrofitting ordinance required by Part I, Section F.5(h) of the Tier A permit is appropriate. (8)

One commenter stated that municipalities do not have the funding or manpower to enforce this ordinance. (3), (5)

This ordinance would entail an involved process to ensure that private homeowners and private businesses comply with this proposed ordinance. In the end this may be counterproductive. The resulting fees may actually discourage private owners/businesses to upgrade their properties, resulting in continued runoff of fines into streams as is often seen in deteriorated parking lots. (5)

This commenter states that since repaving and resurfacing do not require local permits, municipalities may never be aware of the projects and may “not be able to certify that all projects have been completed in accordance with the stormwater regulations.” (7)

RESPONSE:

The Department appreciates the support and believes that it is cost effective to tie the retrofitting of catch basins to repaving projects. By requiring private entities to retrofit when repaving through a municipal ordinance, the Department can accelerate water quality improvements without significant costs to municipalities or residents.

For the Department’s position on funding, manpower and enforceability see the Department’s response to comment #3.

The Department is not mandating any fees to be paid by private businesses to municipalities or requiring municipalities to create a “process” or local permitting requirement. The cost of replacing the curb opening inlets and storm grate or retrofitting such openings to comply with the design standard is relatively minor when compared to the total cost of a repaving project. The Department does not believe the increased cost of retrofitting would delay any repaving projects. Please note that individual single family homes are exempt from this ordinance and are unlikely to have private catch basins on their property.

Local Public Education

7. **COMMENT:** Part 1, Section F. 4(a)-of the Tier A Permit and Part 1, Section F. 3(a) of the Tier B Permit-Local Public Education. This commenter suggests that the bulk mailing of the brochure and the annual event, municipalities can accrue five (5) points and have the additional five points in phased in over the final years of the permit. He gives the example of six points in 2010, etc. (2)

The Department should provide for more guidance “to establish more definitive standards of compliance for each of the Local Public Education Approved Activities: as the previous Local Public Education requirements led to variable interpretation by Water Compliance and Enforcement officers. (5)

RESPONSE:

The changes to the Local Public Education program are designed to give municipalities more options and flexibility in providing for local public education while also reducing cost. It was strongly felt by the Municipal Stormwater Advisory Group and the Department that the annual educational mailing and annual event were ineffective in getting the intended message out to the public. In addition, it was felt that during these difficult economic times, public education was one area where municipalities could be doing more at a local level without a significant increase in costs. In fact, by eliminating copying and mailing costs and instead posting materials on a web site or visiting local schools, a municipality may actually reduce costs while complying with this statewide basic requirement, saving taxpayers money.

The new local public education options provided in the permit renewal for Tier A and Tier B municipalities are fairly simple to implement and do not require any long term planning. The Department does not believe a phased implementation is warranted.

The Department will provide additional guidance by updating the existing Tier A and Tier B guidance manuals to supplement and further clarify the new Local Public Education Approved Activities and Point Totals and will provide the Department’s Water Compliance and Enforcement Element training on all general permit changes including Local Public Education.

Catch Basin Inspection and Cleaning

8. **COMMENT:** One commenter suggested that the Catch Basin Inspection and Cleaning requirement contained in the Tier A, Highway Agency and Public Complex permits should be reduced due to municipalities shrinking public works budgets. (5)

This commenter believes that a minimum standard should be set that requires 20% of the catch basins to be inspected and cleaned each year for municipalities with more than 5,000 catch basins and Highway Agencies with over 10,000 catch basins. The commenter claims that no justification is given why these larger municipalities and highway agencies should be exempted from the current minimum requirements. (8)

RESPONSE:

The Department has modified the catch basin inspection and cleaning in response to concerns expressed by municipalities, highway agencies, and the Department's Water Compliance and Enforcement Element. The initial permit requirement to inspect and clean all owned or operated catch basins annually was overzealous. While there is no doubt that the concept of annual cleaning of catch basins is good from an environmental standpoint, it proved impossible for many municipalities to implement. Data submitted with the Annual Reports and Certifications from Tier A Municipalities and Highway Agencies indicated that even the most aggressive municipalities and highway agencies could only inspect and clean approximately 1,000 catch basin each year. The Department cannot mandate a standard that is not reasonably implementable.

From a regulatory standpoint, it rational to change a requirement that is unachievable to one that is implementable and still protects the environment. To that end, the Department separated the inspection and cleaning of catch basins into two tiers that the Department feels can be reasonably met by the regulated entities. The new requirement ensures that smaller systems, those with less than 1,000 catch basins, be inspected and cleaned annually. This allows larger systems a longer time to complete the inspection and cleaning, but still ensures that they inspect and clean at least 1,000 catch basins each year. The Department will be maintaining an aggressive catch basin cleaning program that will clearly have a positive water quality impact and at the same time will ensure that municipalities are in a position to be able to comply with the requirement.

Illicit Connection Elimination Program

9. **COMMENT:** The Illicit Connection Program Elimination Program requirements need some clarification. In one section of the permit illicit connections must be eliminated within in six months of discovery, and in Attachment B of the permit it states that once the illicit connection is detected the responsible party shall be cited for the violation and has thirty days to cease the non-stormwater discharge. (2)

RESPONSE:

The two requirements that the commenter mentions are two different conditions under the Illicit Connection Elimination and MS4 Outfall Pipe Mapping SBR. Once a municipality discovers evidence that there may be an illicit connection to their MS4, the municipality has six (6) months to locate the suspected illicit connection. After the six (6) months if the municipality has not located the illicit connection (after a documented good faith effort) the municipality may close out the investigation. If the municipality discovers the source of an illicit connection (e.g. connection of a floor drain from an auto repair shop) they shall cite the offending party for violating the local ordinance and give thirty days to eliminate the illicit discharge (in this example to seal or reconnect the floor drain as appropriate). If the offending party fails to comply with the citation then the municipality must prosecute or handle as they would a violation of any municipal ordinance.

Updating the Stormwater Pollution Prevention Plan (SPPP)

10. **COMMENT:** One commenter requests that the revision date for the SPPP be pushed back from on or before June 1, 2009 because of the numerous changes to the permit. (9)

RESPONSE: The Department disagrees with the commenter. The deadline of June 1, 2009 to update Stormwater Pollution Prevention Plan (SPPP) to reflect changes in the renewal permit would not require substantive changes to the already existing document. Many of the changes are relatively minor changes to existing permit. Most of the SBRs (e.g. Street Sweeping, Standard Operating Procedures, and Stormwater Facility Maintenance) remain unchanged. It is important to remember that the SPPP is a planning document that describes a municipalities stormwater program, however the actual implementation date for a requirement is independent of the June 1, 2009 SPPP update deadline.

Consistency with Pinelands

11. **COMMENT:** This commenter asks whether or not Pinelands Commission has endorsed the proposed changes to the permit. Should additional changes be anticipated for the Pineland municipalities? (5)

RESPONSE:

None of the proposed requirements in the permit renewals would be inconsistent with Pinelands regulations. The Department does not anticipate any conflicts which would require additional changes for Pinelands municipalities.

Grants

12. **COMMENT:** Will additional grant monies be available from the State to offset the additional costs of the proposed permit changes? (5)

RESPONSE:

The Department does not believe that the proposed permit changes represent any additional cost to municipalities. In fact the Department believes that changes to the permits will result in savings for municipalities. However, the Department loan money is available to municipalities for stormwater capitol projects as a result of President Obama's Economic Stimulus Package. The Department recently emailed all municipalities with a Call for Projects which included details on the stimulus package. The Department encourages all municipalities to take advantage of this opportunity.

Road Erosion Control Maintenance SBR

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

RESPONSE:

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

Employee Training

14. **COMMENT:** Tier A, Tier B, Highway Agency and Public Complex permits allow for new permittees a year to implement the Employee training Program. New permittees should have to implement the Employee Training Program six months from authorization. (8)

RESPONSE:

The implementation schedule for Annual Employee training for new permittees is consistent with the initial permit requirement for employee training. The Department believes that this is an appropriate amount of time for such training.

Public Review and Comment

15. **COMMENT:** The evaluation of the BMPs should be available for public review and comment and only BMPs found to effective should be part of the stormwater program. (8)

RESPONSE:

The Department took a different approach when developing the Municipal Stormwater Permitting Program than the U.S. Environmental Protection Agency (USEPA) by mandating Statewide Basic Requirements. The USEPA set up six minimum measures and each permittee was required to implement a stormwater program to address those six minimum measures. This would have required each municipality to develop a program, most likely with different management measures, in order to satisfy the USEPA requirements. The Department's approach of mandating Statewide Basic Requirements for all regulated entities ensured that every permittee met the USEPA six minimum control measures in a consistent and equitable manner. The approach also ensured that the SBRs were subject to adequate public review and comment through the permit process..

The Department requires annual reports which are used, in part, to determine the effectiveness of the SBRs. We then evaluate the data from the reports to determine the need for changes to the SBRs which are implemented through either modifications or permit renewal changes as with the Roadside Erosion Control SBR which was removed from the general permit mandatory requirements and changed to an optional measure.

Applicability Endangered Species Act

16. **COMMENT:** The Department should require the permittees to assess the impacts of stormwater from their MS4s to endangered and threatened species habitats. Doesn't the Department have to comply with the Endangered Species Act? (8)

RESPONSE:

Storm water discharges regulated under the Federal Phase II regulations and State regulations are not subject to the Endangered Species Act.

Storm drain Inlet Retrofitting

17. **COMMENT:** Part I, Section F.7 of the Tier A, and similar provisions of the Public Complex and Highway Agency Permits require the retrofitting of catch basins in contact with repaving. The Department now states that seal coating or micro-surfacing is repaving. This new requirement will impose significant expenses on municipalities. (9)

RESPONSE:

The new permit clarifies the permit language defining what constitutes repaving, repairing, reconstruction, and alterations of facilities owned and operated by the municipality, Public Complex or Highway Agency. There were numerous questions raised during the previous permit cycle and there was need to clarify the language in the permit. The permit language is now consistent with Department policy that was established early in the process and shared with the Department's Water Compliance and Enforcement Element.

Top coating or chip sealing with asphalt emulsion or a thin base of hot bitumen is not commonly done in New Jersey. Primarily it is done in rural locations to extend the life of asphalt pavement. These rural roads do not typically have storm sewers, and when they do have storm sewers those catch basins typically discharge onto the ground or to "dead men" (infiltration pits). It is important to note that catch basins only need to be retrofitted if they discharge to surface water. Given the above, the Department does not believe that that this requirement will actually affect many projects, and thus the costs should not be significant.