

VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
RESPONSE TO COMMENTS ON DRAFT GENERAL PERMIT 3-9014 FOR
STORMWATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER
SYSTEMS
December 5, 2012

Comments received on draft General Permit 3-9014

Identification	Submitted by:	Signed by:
B	City of Burlington	Megan Moir, Stormwater Superintendent
CO	Town of Colchester	Bryan Osborne Director of Public Works
EJ	Village of Essex Junction	Jim Jutras Director of Public Works
EPA	US Environmental Protection Agency	Stephen Perkins, Director Office of Ecosystem Protection
ES	Town of Essex	Dennis Lutz, Director of Public Works
MS4	12 MS4s currently regulated under GP 3-9014	Jim Jutras Chairman, Regional Stormwater Education Program Steering Committee
RC	City of Rutland	Honorable Chris Louras, Mayor
RT	Town of Rutland	Stanley F. Rhodes III Selectboard Chairman
SB	City of South Burlington	Tom DiPietro Stormwater Superintendent
SC	City of St Albans	Dominic Cloud City Manager
ST	Town of St. Albans	Christine Murphy Town Manager
UVM	The University of Vermont	Bob Penniman
VLCT	VT League of Cities and Towns	Karen Horn Director Public Policy and Advocacy
VTrans	Vermont Agency of Transportation	Craig DiGiammarino Operations Environmental Program Manager
WIL	Town of Williston	Bruce Hoar Director of Public Works
WIN	City of Winooski	Steve Palmer Director of Public Works Erik Bailey Wastewater/Stormwater Superintendent

The permit citations for each comment below reference the updated permit structure, unless otherwise noted. Following each numbered comment below, the () identifies the commenter's identification.

Comments pertaining to Section I, A. Permit coverage

0a. (I.A) We suggest you reference the regulation – 40 CFR 122.32(a)(1) as part of the explanation of MS4s covered by the permit. (EPA)

Response: The suggested federal code regulation has been inserted into the permit.

0b. (I.A.2) It's not clear how the MS4s described in this subpart are different from the MS4s located in urbanized areas, described in Part A.1. Is this a designation of non-urbanized areas of MS4s when they are in watersheds of stormwater impaired waters? If so, a separate designation process is needed. (EPA)

Response: This designation is for MS4s with stormwater impaired watersheds which were not automatically designated by the US census. The designations were made consistent with the state's Procedure for Designation of Regulated Small MS4s (1/20/2010).

0c. (I.A) In the last paragraph of this section, we suggest you delete the word “municipalities” and just list the MS4s that are regulated by the permit. (EPA)

Response: This change has been made to the permit.

0d. (I.A and I.B) We suggest adding the word “small” before MS4. (EPA)

Response: This change has been made to the permit.

0e. (I.A) ANR should list these (stormwater impaired) watersheds (under I A.2., IV C, IV C. 1. , IV C. 1 d) and IV C.2) as they have done in the “Fact Sheet” (VTrans)

Response: The 303(d) list includes the stormwater impaired waters.

0f. (I.A) VTrans MS4 also includes state highways in Jericho and Underhill. (VTrans)

Response: The description of the jurisdiction has been amended to include the fact that VTrans has a small MS4 in Jericho and Underhill.

Comments pertaining to Section I.B. Eligibility criteria

1a. (I.B.2) Under the subparagraph: “B.2 The following discharges are eligible for authorization under this general permit:”.. Add item “...Other discharges that may be identified by the Secretary of

the Agency that do not contribute substantial contributions of pollutants to the impaired waterway...”(E) (SB) (MS4) (UVM) (WIN)

Response: This is implicit in new Section I.C.1.a.1&2. of the permit. Rhodamine has been deleted from the list in I.B.2.

1b. (I.B.2) The list should include items such as bridge washing and de icing as well as a category of “other acceptable discharges” or some language that makes clear that this is not an exhaustive list. (VLCT)

Response: See above response.

1c. (I.B.1&2) We recommend the eligibility section be divided into two sections. One section, describing who is eligible for the permit, could contain Part B.1.a – e. The other section, describing allowed discharges, could contain Part B.1.f.(Part B.2) (EPA)

Response: The permit has been modified in response to this comment.

1d. (I.B.2) Rhodamine dye is allowed to be commingled with stormwater discharges. Given that Rhodamine is not one of the pollutants with which stormwater can be commingled under 40 CFR 122.34(b)(3), this provision should be deleted. (EPA)

Response: Rhodamine dye has been deleted from the permit.

Comments pertaining to Section I.C. Limitations on Coverage

2a. (I.C) The term "pollutant" is used throughout this document. The presumption throughout is that all stormwater is "polluted". The term "pollutant" could be interpreted to mean a whole host of things across a wide spectrum. Depending upon many factors, runoff may in fact have no impurities at all and still be considered "polluted" by some standards. What are the standards for this permit? We can only directly impact parameters such as flow and sediment with current BMPs. There appears to be a basic definition of "pollutants" in Section I.E.1. b) (2), however this section only applies to municipalities who apply and gain a permit waiver through the Secretary. Was the intent to use this definition throughout the document? Regardless, the definition in I. E. 1. (b)(2) is also subjective. The definition in this section includes BOD and pathogens. Again, we cannot directly impact parameters such as BOD and/or pathogens with the stormwater treatment technologies currently available. Our recommendation is to globally strike the word "pollutant" from the document and replace it with "stormwater runoff". Sections referring to impurities that may be contained within stormwater runoff should be referred to as such. (WIN)

Response: “Pollutant” and “pollutant of concern” have been included in the definition section of the permit. The MS4 permit is issued pursuant to Vermont’s federally delegated National Pollutant Discharge and Elimination System (NPDES). NPDES MS4 permits are issued for “pollutants” as defined in federal law. The Department disagrees with the basic premise of this comment. Available BMPs can treat a range of pollutants in addition to sediment and flow.

2b. (I.C.1.c) What is meant by...”SWMP must include a description of the BMPs that will be used to ensure that this will not occur.” Isn’t there a presumption that stormwater treatment systems designed to the 2002 State Guidance document will meet this threshold? If the BMP is a recognized BMP by EPA and the State in furtherance of the goal, isn’t this sufficient. How does the permittee “ensure” the standard is met? Suggest that another word replace the word “ensure.” (E)

Response: A change has been made to the permit based on this comment.

2c. (I.C.1.a.2) Who makes the determination whether a discharge is a “substantial contributor of pollutants”? This should be stated in the permit. (EPA) (VTrans)

Response: The permit has been revised to indicate that the Agency Secretary makes this determination.

3a. (I.C.1.d) Does this mean that no added discharges from new development will be allowed unless the discharge is consistent with the WQ remediation plan and the TMDL – in effect, does construction of facilities meeting the 2002 design standards meet the WQ remediation plan and the TMDL? Or does this imply a continuation of “offsets” for new discharges? (E)

Response: This condition is not limited to new discharges. All discharges must be consistent with any TMDL or Water Quality Remediation Plan. Stormwater offsets may be required under 10 V.S.A. 1264a until the Flow Restoration Plans are completed. This is consistent with the Secretary’s authority under the Department’s Stormwater Management Rule for Stormwater-Impaired Waters (Environmental Protection Rules Chapter 22).

3b. (I.C.1.d) The permit does not authorize “discharges of any pollutant for which a WQRP or a TMDL has been established or approved by EPA...unless the discharge is consistent with that WQRP and TMDL”. With respect to the federal part of that provision, we recommend using the regulatory language from 40 CFR122.44(d.) (VII)(B): that the permit does not authorize discharges that are not consistent with the assumptions and requirements of any available wasteload allocation for the discharge approved by EPA pursuant to 40 CFR 130.7. (EPA)

Response: The permit has been revised to include the recommended language.

4. (I.C.1.d) Does this mean that new discharges have to be monitored? It mentions monitoring frequency and reporting and this appears to therefore imply rather than state a requirement. (E)

Response: The permit has been changed in response to this comment.

5a. (I.C.2) The section, as currently written, doesn’t appear to fit well with the heading of the section. We suggest the text be changed to something similar to: “The following stormwater discharges are not authorized by this permit, and require coverage under other permits:” Then continue with the list. (EPA)

Response: No change made. The Department does not agree with this change. In some cases, post-construction stormwater runoff, once treated in accordance with a post-construction state stormwater permit, may enter a MS4 system prior to eventual discharge to the receiving water. In this instance, this post-construction discharge is also part of the MS4 discharge covered by this permit. Therefore, the current language in the permits is more accurate than EPA's suggested change.

5b. (I.C.2.c) What is the tie between the two permits and isn't this a duplicative process long term. For example, a new development has to apply for individual permits but once up and operating, why don't those permitted facilities fold into the MS4 permit? MS4 permit holders will be required to "report" on these facilities and a separate annual report will be needed to comply with a site specific permit. This permit duplicity is a waste of time and effort. (E)

Response: Both the MS4 General Permit and 10 V.S.A. §1264 regulate post-construction stormwater. These are two separate Department permitting programs applicable to discharges within MS4 jurisdictional boundaries.

5c. The last item on the list in part I.C.2 concerning post construction stormwater management could be misleading since one of the minimum control measures addresses post construction stormwater management. The permit and the fact sheet should indicate which post construction stormwater is managed under the MS4 and which is managed by a different permit. (EPA)

Response: See section IV.H.5 of the permit.

Comments pertaining to I.D. Application for Permit Coverage

6a. (I.D.1) There should be a maximum time allowed for comment as well as a minimum -- suggest 10 day min and 30 day max. (E)

Response: The Department acknowledges the comment but has not altered the subject condition.

6b. (I.D.2) If coverage under the permit is denied by the Secretary, 60 days is a short time frame to submit an application for an individual permit. We suggest 120 days minimum.

Response: The Department acknowledges the comment but has not altered the subject condition.

7a. (I.D.3) The re-filing of a new NOI requires more work than just a signature and a transfer. The entire NOI should not have to be resubmitted. The State needs to provide a simple transfer of responsibility form to avoid having to file an entire new NOI with all the NOI requirements. Simplify the process!

Response: The Department concurs and will provide this form. A change in operator could affect implementation of the SWMP. A new NOI is warranted.

7b. (I.D.3) When does the operator of an MS4 change? Is this a provision that is intended only to apply to non-municipal MS4s? (EPA)

Response: The Department has yet to encounter a change in operator, but we expect it is most likely to apply to a non-municipal MS4.

Comments pertaining to I.E. Waivers from Permit Coverage

8. (I.E.1.a) Why is population the only criteria for a waiver? Is there a concern about low “population areas” with high concentration of impervious area – such as a concentrated business center with significant impervious area? (E)

Response: DEC has issued a designation criteria for MS4s: “Procedure for Designation of Regulated Small MS4s” (1/20/2010). MS4s can be designated either automatically or potentially. The automatic designation was created by Congress and operates by using the US Census defined Urban Census Designated Area (UA) which is revised every 10 years. An MS4 within the UA is automatically designated. In addition DEC has, formally through the designation criteria procedure, included MS4s or portions of MS4s that are outside the UA but discharge stormwater to waters of the state that are listed as stormwater impaired on the EPA-approved State of Vermont 303(d) List of Waters.

9. (I.E.1.b) What is the basis for determination of evaluation? Evaluated for what? -- stormwater flow, pollutant load? What are the criteria or test needed to pass the bar for Secretary evaluation? (E)

Response: DEC assesses the water quality of lakes, ponds, rivers and streams through a variety of chemical and biological monitoring protocols. Waters of the state that do not consistently meet water quality criteria as outlined in the Vermont Water Quality Standards are listed on the EPA-approved State of Vermont 303(d) List of Waters. This is the basis for evaluation.

10. (I.E.1.b.3) This paragraph is out of context. Isn't (3) a subcomponent of (2) defining what is a pollutant of concern? Paragraph (3) is not a criteria. (E)

Response: The Department acknowledges the comment but has not altered the subject condition.

11. (I.E.1.c) There appears to be a conflict in this paragraph between the 2nd and 3rd sentences -- Sentence 2 states that the time frame for review of waivers will be on the re-issuance of the permit. Sentence 3 states that the Secretary will review when the petitioner provides evidence. (E)

Response: Any waivers that DEC has already issued during a permit cycle will be automatically reviewed at the time of the reissuance of the permit. A petitioner can request a review of the waiver at any time provided there is evidence of a change in the data.

Comments pertaining to II, A. Deadlines for Submission of Notice of Intent

12a. (II.A.1) Six months is okay for the NOI but the SWMP will take a lot longer -on the order of 270 days at a minimum. There should be a time frame for development of the NOI for selection of BMPs and then added time to incorporate the BMPs noted in the NOI into a stormwater management plan. The NOI in our opinion really identifies the BMPs and the full discussion of integration of the BMPs into an overall management plan should come after this first stage. (E) (EJ) (UVM) (WIN) (ST) (RT)

Response: DEC does not expect the new SWMPs to require substantial modification from the revised SWMP for the six minimum measures filed with DEC in March, 2008. DEC recognizes that there will need to be some revisions and additions to the SWMP but believes that 180 days is adequate to make the required changes.

12b. (II.A.1) Please consider a longer period of time for the SWMP such as 270 days or provide the ability for an MS4 to request an extension, for cause, beyond the stated 180 days with extensions not to exceed 270 days. This comment also pertains to co-permittees under a single NOI. (EJ)

Response: See response to 12a.

12c. (II.B.2.a) We strongly suggest deleting “if available” when asking to identify the number of outfalls to each receiving water. This information should have been gathered during the previous permit term and should be available. (EPA)

Response: No change made to permit. This permit is written to cover both newly designated MS4s and previously authorized MS4s. The Department agrees that for all previously authorized MS4s this information already exists. However, for newly designated MS4s (e.g. Rutland and St. Albans), this information may not exist.

12d. (II.A) It is unclear when the Storm Water Management Plan is due. We think we need 36 months to complete public and local official education, evaluation of alternatives, and drafting the plan. Solutions in dense urban areas are complex both from an engineering perspective and a political perspective, with the latter likely being the more difficult. Creation of a storm water utility may play a key role in our strategy, but it will take us some time to evaluate this alternative. We do think we could have our SWMP up and running at the end of five years. To that end, we encourage the Agency to establish reasonable timelines for compliance, with incentives for earlier compliance. (SC)

Response: St Albans City is a newly designated MS4 and their NOI and SWMP is due 270 days from the date of issuance of the MS4 permit. The City has 5 years to fully implement the 6 minimum measures. The City has 3 years from the date of permit issuance to establish a FRP

for Stevens Brook with St Albans Town and no later than twenty years from the date of permit issuance to implement the Flow Restoration Plan (FRP).

Comments pertaining to II.B. Contents of the Notice of Intent

13. (II.B.2.c) This is repetitive with item II.B.1.b and is unnecessary. There should be one place in the permit to identify the responsible party, unless another party is mentioned for a specific measure. The permit contains language to identify the person under each minimum measure and it is repetitive and unnecessary. (E)

Response: In the NOI form the primary responsible entity for implementation of the SWMP should be entered. If the entity is the primary responsible entity for all 6 measures then this can be noted at the beginning of the SWMP. However for a number of MS4s different parties are assigned as the primary responsible party for a minimum measure; therefore, DEC will retain this requirement.

14a. (II.B.2.d) Change the NOI format if necessary to include all that is required on one form; if the NOI doesn't include TMDL information, add a line to the NOI. Make the NOI much clearer with all the specific permit requirements identified either on the NOI or on a checklist attachment to the NOI keyed to sections of the permit. Make the permit application a "complete" document so it is easier for a permittee to ensure that all required actions have been addressed. (E)

Response: The Department will seek to improve the NOI form and supporting materials.

14b. (II.C.) How much are the permit fees are going to be? We object strongly to an open ended permit fee structure that the State can change as they desire and the wording of this section appears to be intentionally left open. Many of the MS4's are already going to absorb millions of dollars of costs related to this permit. Asking that we also pay the Agency a permit fee that will be set at some point in the future by the State, which is subject to change at anytime at the Agency's discretion, is not reasonable. The State must financially support its own programs, not through more cost shifting to local level. We believe there should be no permit fees. (WIN)

Response: Permit fees are established by the legislature. Per 3 VSA Sec 2822(j)(2)(A)(iii)(V), the application fee has been increased to \$1200. Per 3 VSA Sec 2822(j)(2)(B)(iv)(IV) the annual operating fee is \$80.

14c. (II.B.2.d) This should be more specific about expected information relating to requirements to protect water quality. There is no section in the NOI that relates to this. For example, the NOI should request information about receiving waters and impairments, numbers of outfalls, all applicable wasteload allocations (WLAs), and what practices and programs will be used (and perhaps have already been used) to meet requirements of applicable TMDLs. (EPA)

Response: No change made to permit. This section requests the permittee to provide a list of receiving waters, status and nature of any impairment and the number of outfalls to each water.

All applicable WLAs and what practices and programs will be used to meet the requirements of applicable TMDLs are addressed in Section IV.C. and D of the permit.

Comments pertaining to II, E. Co-Permittees Under a Single NOI

15a. (II.E) If there is a joint NOI, does the legal compliance responsibility still fall on each MS4? If under a joint MS4 and there is a failure to perform on the part of one MS4, what happens to the other MS4? How does this apply on a watershed approach? It appears duplicative in areas where a joint community effort is taken. Do federal or state law /regulation prohibit the issuance of one MS4 permit to two communities? (E)

Response: See permit section IV.I. Sharing Responsibility and II.E. Co-Permittees Under a Single NOI. A permittee may rely on another entity or MS4 to meet a minimum measure requirement and the reporting requirement for that measure. However, in the event that the entity fails to implement the best management practices the permittee is still responsible. Failure to comply with the terms of the permit is discussed in VI.B. Penalties for Violations of Permit Conditions. Two MS4s may jointly develop a SWMP. Each MS4 must fill out a NOI form. The SWMP must clearly describe which permittees are responsible for implementing each of the measures in the SWMP.

15b. (II.E) It is unlikely in our opinion that that adjacent MS4's would agree on how to reasonably allocate these costs. (WIN)

Response: The Department acknowledges the comment but has not altered the subject condition in the permit.

Comments pertaining to IV.B Requirements to Meet Water Quality Standards

16a. (IV.A) The last sentence of this paragraph limits the water quality based requirements of the permit to "...requirements found in Subparts IV.B and C that relate to discharges to impaired waters for which an approved TMDL exists..." This limitation is not accurate. The requirements in Parts IV.A through IV.D are all water quality based requirements and should be referenced as such. The permit should also make clear that the requirements in Part IV.B apply to discharges to impaired waters, with or without an approved TMDL (this could be accomplished by simply deleting the phrase "for which an approved TMDL exists" from the last sentence in Part A). (EPA)

Response: A number of changes have been made in Part IV. to clarify the water quality based requirements of this permit and to address this comment. The permit has been amended to reflect the comments above and Part IV.D has been clarified with respect to requirements applicable to new dischargers to impaired waters with or without an approved TMDL.

16b. (IV.B) Vermont Water Quality Standards include items such as Phosphorous, nitrates, taste, color, odor, alkalinity, pH, carcinogens, pathogens, etc. etc. Many of these parameters could even be indigenous to the streams and not a "contaminant". As we have stated, even full implantation of the best BMPs can only have direct impact on parameters such as flow and sediment. This attempts to

address stormwater as though the MS4's had a wastewater treatment plant at each outfall location. These parameters are not practical, applicable or attainable for stormwater using current BMP technologies. We suggest that the parameters be limited ones that we can directly control using current BMPs. (WIN)

Response: The Department disagrees with this conclusion. Many pollutants are attached to sediment and by removing sediment there will be the concurrent reduction of phosphorus, nitrogen, toxics, etc. Bacteria also can be removed through BMPs via various physical processes such as exposure to sunlight and bioremediation. In addition, a municipal stormwater program includes nonstructural controls such as education and outreach that can address dissolved pollutants such as nutrients in lawn fertilizers, hazardous wastes like automotive fluids, pet waste disposal, Rv dumping, etc. The Department agrees that certain levels of pollutants are naturally occurring and can be considered "background condition."

16c. (IV.B.2) How can the measures and time frames be set in a SWMP for a future unknown event? What is meant here? What is the intent? Clarify with more specificity. Also, how do you know if there is an exceedance without some form of testing? For example, if a stormwater pond is constructed, where none exists today, and it meets the 2002 Standards for construction, is this considered evidence of compliance? Alternatively, under the same construction scenario, would the flow at the outfall have to be monitored for pollutants or flow to establish certainty on compliance? (E)

Response: The SWMP would be updated at the time the permittee becomes aware of the exceedance of standards.

16d. (IV.B.2) A time-frame between when the permittee becomes aware that a discharge is causing a problem and when the problem must be fixed or addressed should be stated in the permit. For example, EPA's draft North Coastal MA MS4 permit indicates that an MS4 must take corrective action as soon as possible but no later than 60 days after becoming aware of such a discharge. (EPA)

Response: Part IV.B.2. has been changed to address this comment. The permit is now similar to EPA's draft North Coastal permit.

Comments pertaining to IV.C Discharges to Impaired Waters

17a. (IV.C.1) It appears that the SWMP will need to address a solution for each discharge. A total of 180 days from permit issuance is not sufficient time to identify how each (i.e., any) discharge will be addressed. Per comment 12, change to 270 days. Also, is the SWMP requirement a disconnect with the Flow Restoration Plan? It appears that a single MS4 will have to address the "what do we do with this specific outfall" question in the SWMP but the longer term plan is to develop this question on a watershed basis in the FRP. If so, won't the SWMP plan have to be amended when the FRP is produced? If so, shouldn't this procedure be identified now? Or should the identification of the measures on a specific outfall be delayed until the FRP is produced? (E) (EJ)

Response: IV.C.1.a is general description of requirements for all impaired waters into which a regulated MS4 discharges, while IV.C.1.e articulates specific requirements for MS4s that

discharge to stormwater impaired waters. The FRP will be incorporated as part of the SWMP when it is prepared as described in IV.C.1.e (1). The requirement to describe all measures taken to address discharges to impaired waters in the notice of intent refers to the six MS4 minimum measures, the development of the FRP and any other measures that an MS4 will take to address discharges to impaired waters.

17b. (IV.C) The permit should identify applicable TMDLs and WLAs and the MS4s that are subject to them. The permit should identify MS4s that discharge to impaired waters. (EPA)

Response: No change has been made to the permit. The Department works closely with the MS4s subject to this permit and the MS4s are well aware of the impaired waters into which they discharge. MS4s are also identified when new impairments are listed on Vermont's 303(d) list. Applicable TMDLs may change during the permit term.

17c. (IV.C.1.b) This states that compliance with the permit should be sufficient to satisfy a TMDL where there isn't a specific WLA for the MS4. It isn't clear how the permit can say that its terms satisfy numeric and narrative water quality standards, and also meet TMDL requirements such as an aggregate WLA, including an appropriate portion of an aggregate WLA, without requiring any additional work. One way to address this would be to remove this presumption. Alternatively, the permit could include the presumption only if it required an analysis indicating that selected BMPs are sufficient to meet TMDL requirements. See comment pertaining to the Lake Champlain TMDL. (EPA)

Response: A change has been made to the wording of Part IV.C.1.b in response to this comment. Part IV.C.1.b. requires the permittee to undertake measures and document them in the SWMP to address the pollutants identified in the TMDL. As stated in Part IV.C.1.b., if there is no individual or categorical (i.e. aggregate) WLA applicable to a MS4, then the permittee will enjoy the presumption if it documents measures necessary to address the pollutants of concern in the SWMP. These measures may include efforts within the six minimum measures and other measures identified by the MS4 as addressing the pollutant(s) of concern in the applicable TMDL.

18a. (IV.C.1.c) What is the "basis" that is being requested? Testing of outfalls, implementation of BMPs consistent with the 2002 standards? This section needs to be expanded. What we are looking for is a cooperative effort between the Agency and the MS4 community that #1) provides input into and feedback from the TMDL model used by the Agency followed by #2) a defined plan for TMDL attainment based on the model and #3) assurance that if the MS4 constructs or adopts the model-driven BMP solution, that this becomes the certification of TMDL compliance during the permit period. (E)

Response: IV.C.1.c applies to discharges to any water with an approved TMDL; it is not limited to stormwater impaired waters. The "basis" refers to the rationale for selecting the BMPs in question, and would be specific to the impairment. The term "basis" been replaced with the term "rationale" in the permit. See IV.C.1.f regarding the assessment of whether the SWMP is consistent with TMDL recommendations.

18b. (IV.C.1.c) This states that where a WLA exists, the permittee shall describe in its annual reports what it has done to control discharges. Consistent with comment 17c., it should state that the permittee

must control discharges consistent with the WLA, and then provide in its annual report, proof that it is undertaking actions that meet that goal. (EPA)

Response: The permit has been modified in response to this comment.

18c. (IV.C.1.d) and (IV.C.2) Change the sentence to: “ For those MS4s that discharge to stormwater-impaired waters with EPA-approved stormwater TMDLs, within the limits of a designated MS4 the permittee shall comply with the following requirements:” (VTrans)

Response: The extent of permit coverage is described in Section I.A. of the permit.

19a. (IV.C.1.e.1) Define what additional watershed information will be requested by the Secretary (more specificity). We have already provided the infrastructure information and updated versions can be readily provided. The issue is that the watershed information requirement can be a “black hole” with respect to increased costs. Please define the extent of the requirement. (E) (WIN) (VTrans)

Response: The permit has been revised to delete this requirement.

19b. We request that the language throughout the permit be revised to indicate that the FRP shall be submitted no later than three years after the state's completion of all required modeling work, or the effective date of the permit, whichever is the later. (CO) (SB) (MS4) (EJ) (WIN) (VTrans)

Response: The requirement to provide the FRP within three years is not changed. However, the permit has been changed to require that an MS4’s FRP is due three years from the date that the MS4 receives an authorization to discharge under the general permit, rather than three years from the date of issuance of the general permit. The Department will provide technical assistance to MS4s to the extent possible.

19c. We request that the state’s modeling efforts must take into consideration all proposed watershed improvements (including the RDA permits) prior to the models use in the development of the FRPs. (CO) (SB) (MS4) (EPA) (VTrans)

Response: The responsibility to develop FRPs belongs to the permittees and not the Department.

19d. The three year requirement for municipalities to prepare the FRP should not begin until ANR has completed these updates and has met with the effected municipalities to discuss the baseline model and FRP. (SB) (MS4)

Response: The permit has been changed to provide that an MS4’s FRP is due three years from the date that the MS4 receives an authorization to discharge under the general permit.

19e. The ability of municipalities to meet the three year FRP deadline will depend on ANR's ability to update the watershed model based on information it receives from the municipalities, input this information into the watershed model, and provide updated model results to municipalities. If it takes ANR an extended amount of time to provide municipalities with model output the result will be that

municipalities exceed the three year FRP deadline and violate the terms of the 3-9014 permit. The permit should recognize this fact and require ANR to respond to data submissions within 2 weeks, or the time spent by ANR to enter BMPs into the watershed model and produce new model output should not be counted when evaluating the three year deadline for municipalities. (SB) (WIN) (VTrans)

Response: See response to 19b.

19f. (IV.C) Regulated MS4 entities that contain multiple stormwater impaired watersheds will have to prepare multiple FRPs in the same three year time period. The draft 3-9014 permit does not recognize the cumulative time and cost for a single municipality to prepare multiple FRPs concurrently. The final permit should include language that gives municipalities in this situation additional time to prepare FRPs, or allow some flexibility for municipalities in this situation to work with the Agency and prepare a schedule for FRP creation that exceeds the three year deadline, but is less than five years. (SB)

Response: The Department acknowledges the comment but the permit remains unchanged.

19g. (IV.C.1.e.1) The draft permit anticipates that municipalities discharging to the same impaired watershed work together to submit a comprehensive Flow Restoration Plan (FRP) for the stormwater impaired watershed. Does this mean there may be only one permit from all contributors to an impaired watershed? How will this work? (VLCT)

Response: The municipalities are encouraged to work together to develop an FRP that controls their respective contribution to the impairment as demonstrated via acceptable hydrologic modeling, but each MS4 must retain their own permit coverage.

19h. (IV.C.1.e.1) Getting the MS4's to agree on the right BMP or how to allocate costs on a multi-million dollar FRP (for instance) without defining the basis for the cost allocations in the permit is not practical. Will it be by watershed area? Impervious surface? The MS4 the improvement is built in? What if one MS4 implements their improvements in a timely manner and the other does not? Does this put both MS4's out of compliance? (WIN)

Response: See response to 19g and 15a. Permittees will be responsible for their commensurate share of necessary BMP implementation based on percent impervious land cover.

19i. (IV.C) On meeting TMDLs, the permit doesn't provide upfront instructions to undertake any specific actions other than procedural requirements such as to develop plans, report on progress, etc. The permit needs to state that the permittee shall meet the reductions consistent with the assumptions and requirements of the TMDL. It should then lay out a process by which the permittee must satisfy concrete permit conditions. As currently drafted, the permit lays out a process by which a plan is developed, and then requires implementation of the plan. Instead, the permit should set specific enforceable requirements to meet the applicable WLA, and then lay out a process. (EPA) (VTrans)

Response: The permit has been modified in response to this comment.

19j. (IV.C.1.e.1) Requires that the MS4 “shall work cooperatively with other MS4s that discharge to the same impaired watershed” to develop a comprehensive Flow Reduction Plan (FRP). “Work cooperatively” isn’t a defined term, and even if it were, it would be difficult to enforce. Again, the permit should set out specific, concrete requirements, and let the permittee work cooperatively with another MS4 so long as it achieves the reductions. Additionally, given all the prior work and analysis completed for these watersheds by DEC and the municipalities, three years seems longer than necessary for development of the FRP. Two years may be reasonable, but the permit needs to include a justification for why the time period selected represents the quickest pace possible. (EPA)

Response: The Department has removed the language regarding cooperation among MS4 permittees. Each MS4 is individually responsible for meeting the requirements of this permit. As for the proposed timeframe, the Department believes that three years to develop all required Flow Reduction Plan requirements is an aggressive schedule. Although baseline modeling may have been largely completed, identification of the preferred restoration scenario for each watershed, including identification of funding and the associated public outreach (and budgeting process) cannot reasonably be completed in less than three (3) years.

19k. (IV.C.1.e) In order to account for newly designated MS4s, consider linking due dates to the authorization date rather than the designation date, because there may be a lag time between the two. In another section the date of issuance is used. Is the date of issuance different than the effective date? Whichever time is used, it should be used consistently throughout the permit. (EPA)

Response: The permit has been modified in response to this comment. For designated MS4s the NOI and SWMP due dates are linked to the effective date of the permit which is the date it is signed by the Secretary. The effective date and the date of issuance are the same. The term “effective date of issuance” is only used in VI.R. That language has been corrected. For newly designated MS4s the NOI and SWMP are linked to the date of the notice of designation formally notifying them of regulated MS4 status.. The FRP due dates for both designated MS4s and newly designated MS4s are linked to the permittee’s date of authorization to discharge under the permit.

19l. (IV.C) The permit ought to build in alternatives for achieving compliance under Section IV for non-traditional MS4’s. Or it must be very clear on the expectation that municipal MS4s within designated TMDLs will need to include non-traditional MS4s located within the same watershed/municipal limits in the FRP process in order to achieve permit compliance. Can ANR define this further in the permit – possibly stating that the MS4 municipality shall take the lead role and non-traditional MS4s shall participate as stakeholders and cost share? This condition (as written) appears to force co-permittee status for VTrans (and other non-traditional MS4s) with each municipal MS4 with no alternative to achieve compliance under Section IV of the Permit on its own. (VTrans)

Response: See response to 19g.

19m. (IV.C) We would request that the State consider lengthening all the time frames listed under this section to accommodate the learning curve for newly designated (MS4) entities. (ST) (RT) (SC)

Response: The timeframe for development of FRPs has not changed with the exception that the permit language has been changed to provide that the FRP is not due until 3 years after the issuance of an authorization under the general permit. The Department has revised the permit to require implementation of Flow Restoration Plans (FRPs) as soon as possible, but no later than 20 years. See response to comment 21.d.

19n. Compliance difficulties would be further exacerbated by ANR's inability, due to budgetary constraints, to provide the required and necessary assistance to the Town as implied or stated in the draft MS4 permit. (RT)

Response: The responsibility to develop Flow Restoration Plans (FRPs) belongs to the permittees and not the Department.

20. (IV.C.1.e.1.a) Reference comment # 19a. The "suite of necessary improvements" should be based on the Agency model. Once the model results have defined the plan, then that plan should be the presumption evidence of compliance of flow restoration target attainment (providing the BMPs are constructed per the plan). (E) (WIN)

Response: The selection of necessary improvements is the responsibility of the permittee. The Department will provide permittees with all information created related to the "BMP tool" and will continue to provide technical assistance to the extent resources allow.

21a. (IV.C.1.e.1.b) The design and construction schedule should also include land acquisition requirements. (E)

Response: The acquisition of land is not necessarily required; however if acquisition is anticipated on the part of the permittee it is appropriate to account for it in the schedule included in the FRP. See response to comment 21.d.

21b. (IV.C.1.e.1.b) We request that the language throughout the permit be revised to indicate that the measures necessary to achieve the FRP shall be implemented within 10 years after the state's completion of all required modeling work, or the effective date of the permit, whichever is the later. (CO)

Response: The deadlines for submittal of the FRP and full implementation of the FRP have been changed in the permit. See response to comments 19.m. and 21.d.

21c. (IV.C.1.e.1.b) The draft 3 -9014 permit requires implementation of stormwater BMPs identified in the FRP be installed no later than ten years from the effective date of the permit. We request that language throughout the permit be revised so that the ten year clock for BMP implementation does not start until the Agency has approved the FRP for that watershed. (SB) (WIN) (B) (VTrans)

Response: See response to comment 21b. The Department has revised the permit to require implementation of Flow Restoration Plans (FRPs) as soon as possible, but no later than 20 years.

21d. (IV.C.1.e.1.b) The final permit should include language that gives municipalities that are required to implement multiple FRPs additional time to implement stormwater BMPs, or allow some flexibility for municipalities in this situation to work with the Agency and prepare a schedule for FRP implementation that exceeds the ten year deadline, but is less than twenty years. (SB) (VLCT) (EJ) (WIN) (B) (WIL) (SC)

Response: (IV.C.1.e.3) The permit has been revised to include a table summarizing the compliance schedule provided by this permit. The time for preparing a FRP is still three years, but the three year period commences on the receipt of an authorization under the general permit. The Department has revised the permit to require implementation of Flow Restoration Plans (FRPs) as soon as possible, but no later than 20 years. See response to comment 21.e.

21e. Consideration should be given to the fact that a "one size fits all" implementation deadline (10 years) may not be appropriate given the varied levels of deviation from watershed targets, available funding, available space etc. Chapter 22 mentions this variability and acknowledges that the time needed for remediation may vary greatly across the watersheds when discussing a potential general permit: 22-307 c (5) shall be reasonably designed to implement the TMDL or WQRP, taking into account the unique characteristics of each watershed, the scientific uncertainty in remediating stormwater-impaired waters and that the time needed for remediation may vary greatly across watersheds; (MS4) (B)

Response: Based on comments received, the Department has reconsidered the implementation timeframe necessary for the MS4s to implement the BMPs necessary to meet the reductions consistent with the assumptions and requirements of the TMDLs. The Department has decided to revise the compliance schedule in the draft permit and to lengthen the time period for implementation as described below.

Pursuant to the federal Clean Water Act (CWA) and state law, the Department has the discretionary authority to include compliance schedules in discharge permits issued pursuant to the Department's federally-delegated NPDES program. Compliance schedules are a tool for bringing dischargers into compliance with new, revised, or newly interpreted water quality standards. The purpose of a compliance schedule is to give an existing discharger time to make necessary changes in its facilities or operations in order to comply with a more stringent water quality-based permit limitation. For example, a discharger may not be able to immediately meet a newly adopted water quality objective that has resulted in more stringent permit limitations, but may need time to design, build, and put into operation additional treatment facilities in order to achieve compliance. A compliance schedule is included in the discharger's permit and lays out an enforceable sequence of actions or operations to be taken by the discharger in order to comply with permit limitations as soon as possible.

Compliance schedules may be included in NPDES permits only if there is explicit authorization in the state's water quality standards or implementing regulations. Section 1-04(C) of the Vermont Water Quality Standards includes explicit authorization for the inclusion of compliance schedules in NPDES permits. Compliance schedules are also authorized in Section 13.4.d of the Vermont Water Pollution Control Permit Regulations.

In order to grant a compliance schedule in a NPDES permit, the permitting authority has to make a reasonable finding that the compliance schedule will lead to compliance to meet a water quality based effluent limitation (WQBEL) by the end of the compliance schedule as required by sections 301(b)(1)(C) and 502(17) of the federal Clean Water Act. Additionally, the permitting authority has to make a reasonable finding that the discharger cannot immediately comply with the WQBEL upon the effective date of the permit, the compliance schedule is appropriate and the compliance with the final WQBEL is required as “soon as possible.” Factors relevant to whether a compliance schedule is “appropriate” under 40 CFR 122.47(a) include: how much time the discharger has already had to meet the WQBEL(s) under prior permits, the extent to which the discharger has made good faith efforts to comply with the WQBELs and other requirements in its prior permits; whether there is any need for modification to treatment facilities, operations or measures to meet the WQBEL and if so, how long would it take to implement the modifications to treatment, operations or other measures, or whether the discharger would be expected to use the same treatment facilities, operations or other measures to meet the WQBEL as it would have used to meet the WQBEL in its prior permit. Factors relevant to a conclusion that a particular compliance schedule requires compliance with the WQBEL “as soon as possible” as required by 40 CFR 122.27 include consideration of the steps needed to modify or install treatment facilities, operations or other measures and the time those steps would take.

It is expected that it will take numerous years and perhaps decades for MS4s to implement the BMPs necessary to meet the reductions consistent with the assumptions and requirements of the TMDLs. BMP implementation will include numerous complex steps, including identification of required BMPs, construction, financing, permit acquisition, coordination with numerous private landowners, and land acquisition. The reductions required in the TMDLs are new to the MS4s and have not been included in previous MS4 permits. Meeting these reductions will require numerous BMPs spread across entire watersheds.

The general permit requires that each MS4 develop as part of its Flow Reduction Plan, a design and construction schedule for the stormwater BMPs that have been identified by the permittee as necessary to achieve the reductions in the TMDL. The schedule shall provide for implementation of the required BMPs “as soon as possible,” but no later than twenty years from the effective date of the permit or from the date of the permittee’s designation as a regulated small MS4, which is later. The TMDL implementation effort will require numerous new and modified stormwater treatment facilities, operations and measures. The Department finds that it is reasonable to conclude that twenty years is an appropriate length of time for this complex BMP implementation effort. However, during the Department’s evaluation and approval of each individual MS4’s FRP, the Department will evaluate the MS4’s implementation schedule and shorten the schedule as necessary in the approved FRP to ensure that the work will be completed “as soon as possible.”

21f. (IV.C.1.e.1) There is no practical way to address a financing plan for private entities not under the jurisdiction of the MS4. We suggest the design and construction schedule (b) and financing plan (c) be limited to the items owned or legally controlled (lease, maintenance agreement, etc) by the MS4.
(WIN)

Response: The Department disagrees. An MS4 does not need to own or control a facility in order to develop cost estimates, schedules, etc. Additionally, as part of the FRP the MS4 needs

to identify any additional regulatory authority it requires to implement the FRP, and where it needs regulatory assistance from the Secretary to effectively implement the FRP.

21g. (IV.C.1.e.1.b) This sets a design and construction schedule “as soon as practicable, but no later than ten years from the effective date of the permit or the permittee’s designation as a regulated MS4, whichever is later.” The regulations require that where a compliance schedule is appropriate, it require compliance “as soon as possible.” So “practicable” should be changed to “possible”, and there should be a showing that a compliance schedule is appropriate. EPA has guidance on the latter, see “Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits” (2007), available at: <http://cfpub.epa.gov/npdes/docs.cfm>. However, more importantly, EPA is not aware of any basis for allowing compliance schedules at all in this permit to meet water quality based terms and conditions, because the Vermont water quality standards do not currently provide authority for compliance schedules. (EPA)

Response: The permit has been changed to substitute “as soon as possible” in place of “as soon as practicable.” EPA recently approved a change to Vermont’s Water Quality Standards to allow for the inclusion of compliance schedules in NPDES permits to meet water quality based terms and conditions.

21h. (IV.C.1.e.1) We realize that ANR must balance the common concerns of the implementation process “not going fast enough” – but this can be achieved by making the FRP approval process a public one (with a comment and appeal period) such that the necessary stakeholders can comment on the proposed schedule and the documented reasons for the length of the implementation period. (B)

Response: An MS4 may seek public comment on its FRP to the extent it believes is appropriate.

21i. (IV.C.1.e.1.b) We request clarification as to whether or not the deadline applies to 1) having fully implemented the approved FRP or 2) documenting that the flow targets have actually been met. There is no doubt that the goal of the FRP is indeed to generate a high flow reduction and a low flow increase in the stream. However, because the final FRPs will be based entirely on an expected response as predicted by the BMP optimization watershed model, there is no guarantee that even if the implementation of the chosen best management practices is a success that the flow targets will be met. The converse is true as well – it is possible that the flow targets may be met before the FRP is fully implemented. If the firm deadline is to remain in the permit, this nuance must be clarified so that the permittee can reasonably anticipate what is required for compliance with this condition and thus decide our response to the final permit. (B)

Response: The condition states “The schedule shall provide for implementation of the required BMPs as soon as possible, but no later than 20 years from the effective date of the permit...” Ongoing flow gauging, and biomonitoring, as part of the adaptive management approach, will determine whether implementation requirements need to be altered in future permit cycles. Additionally, Section IV.C.1.e. (3) allows the Secretary to adjust flow restoration targets based on monitoring data. The ultimate goal is to meet water quality standards in these streams. Both BMPs and TMDL flow targets may need to change over time to meet this goal.

21j. (IV.C.1.e) We suggest the requirement for local Flow Restoration Plans be eliminated until the resources can be identified to complete these projects. This would not prevent the agency from taking the lead on developing the FRPs and a requirement for the locals to collaborate on solutions. (SC)

Response: The development of Flow Restoration Plans requires development of a financial plan. The requirement will not be changed.

21.k. Part IV.C.1.d.2.a (Part IV.C.1.e.3)-- The FRP should also take into account reductions expected from parcels within the watershed that are regulated under the RDA permit.

Response: The permit effectively requires that the FRP account for these reductions. The development of a FRP must include the necessary controls, or BMPs, to achieve the flow restoration targets. This will necessarily require a watershed model that reflects the extent of existing and proposed BMPs. Such modeling efforts will need to include the upgraded condition of sites subjected to the RDA General Permit. There would be no advantage to the permittee to not account for these reductions.

The responsibility to develop FRPs belongs to the permittees and not to the Department. The compliance schedule in the FRP includes the following milestones:

In Month 6 - Submit to the Secretary for approval a plan for addressing expired state stormwater permits discharging to the permittee's MS4 system. This plan may include a request to the Secretary to exercise its Residual Designation Authority (RDA) pursuant to Clean Water Act §§402(p)(2)(E) and (6) and 40 C.F.R § 122.26 (a)(9)(i)(C) and (D) to require NPDES permits for stormwater systems with expired state stormwater permits. The permittee's plan for addressing the expired permits shall insure that all permitted facilities demonstrate compliance with the existing expired permit, at a minimum, and insure that these facilities are incorporated into the FRP.

Month 24 - Submit a report verifying that all existing stormwater systems with expired permits are now in compliance with the existing expired permit or subject to a NPDES RDA permit, including verification that all required maintenance has been performed.

22a. (IV.C.1.e.1.e) Shouldn't this be identified at least partially in the permit? The Agency should indicate in the permit that within the MS4 boundary, privately owned direct dischargers will be targeted for individual permits. In other words, this specific permit and compliance responsibility will not be the MS4. Although stated as the intent in numerous meetings on the permit with the Agency, nowhere is this spelled out. Within the FRP or actually within the MS4, there are three types of discharges – direct private to the stream, 100% municipal and a combination of municipal/private in the same outfall. Regulatory responsibility needs to be established in the permit by defining the MS4 responsibility with respect to each type of discharge. In my opinion, the direct private dischargers fall to the State to permit and manage, the second case is clearly the MS4 and the third case has always been cloudy. Substantive progress can only be made if the last group – the public/private mix is declared an MS4 responsibility. It will then force a solution and not leave an escape hatch for the private contributor to the combined public/private shared discharge in the MS4. As worded, this

paragraph places the responsibility on the MS4 to sort out; we do not concur with this designation.(E)
(WIN)

Response: The extent to which a given MS4 uses its authority to implement the FRP may vary by municipality. For some of the stormwater-impaired watersheds, the Department has already identified dischargers it believes clearly fall outside the jurisdiction of the MS4s in the RDA General Permit (#3-9030). These are direct discharges to these streams. All other discharges that enter or commingle with the MS4 system are considered the responsibility of the MS4. This is the Department's position with respect to all of the stormwater-impaired watersheds, even those without RDA permits. The Department intends to issue and RDA permit to all of the impaired watersheds in the near future to cover stormwater discharges that discharge directly to the impaired streams.

22b. (IV.C.1.e.1.e) Define "residual designation authority" (WIN)

Response: The permit has been clarified by including a cite to 40 CFR §122.26. For a further explanation of residual designation authority, please see section I.A.(Background) of General Permit 3-9030, available at http://www.vtwaterquality.org/stormwater/docs/swimpairedwatersheds/sw_rda_permit_FINAL.pdf.

22c. (IV.C.1.e)Overall, it sounds to us as if the agency is saying, “you do the work and we will look over your shoulder to make sure you do it the way we want.” The noxious nature of such an arrangement may only be mitigated by giving affected municipalities authority commensurate with their new responsibilities. (VLCT)

Response: MS4s may seek legislative change if they desire.

23a. (IV.C.1.e.3) We disagree with adjustments during the term of the permit. The permit needs certainty- not uncertainty. There is an identified target to be met based on best available current data and there is a time frame to meet the target. Factors beyond anyone's control such as climate and weather can influence the stream flow. Also, “relevant information” is an open-ended catch all for justifying any changes the Secretary wants to make, without any appeal mechanism on the part of the MS4's. There needs to be an appeal to be able to reopen the permit if the requirements change. Although this issue may be covered elsewhere under other State procedures, the ability to appeal unilateral permit changes by the Secretary by any MS4 should be noted in the permit. (E)

Response: A permittee may appeal any decision of the Secretary at any time pursuant to any available appeal routes.

23b. (IV.C.1.e.3) We request that the permit be revised to indicate that in the event that the flow restoration requirements are made more stringent during the term of this permit, that the permittee be granted not less than 3, but not more than 5 additional years to implement the revised measures. (CO)

Response: The Department acknowledges the comment; however the subject Section is not changed.

23c. (IV.C.1.e.3) The permit needs to anticipate the need to modify the FRPs during the implementation phase. (MS4)

Response: Per Section IV.C.1.e.2, the FRP becomes part of the SWMP upon approval by the Secretary. Changes to the SWMP are covered under Section IV.J.

23d. (IV.C.1.e) Comments were received indicating that the three and ten year deadlines for development of the FRP and its implementation, respectively should be linked to “release of baseline FRP modeling results.” (MS4) (WIN) (VTrans)

Response: Flow Restoration Plans (FRPs) are due three years from the date of a permittee’s authorization. The Department has revised the permit to require implementation of Flow Restoration Plans (FRPs) as soon as possible, but no later than 20 years. The Department’s information developed for use with the BMP DSS and any other modeling efforts is publically available.

23e. We suggest adding some supporting language that allows the Secretary the flexibility of being able to modify in any manner necessary all permit condition within the boundaries of the CWA and State law. (WIN)

Response: Section VI.Q. covers the ability of the Secretary to modify the permit; the permit may be modified in accordance with General Permit Rules Section 13.12 C.7.

23f. (IV.C.1.e.3) This states the Secretary may adjust the permittee’s flow restoration targets during the term of the permit if justified. This would need to follow the permit modification rules. (EPA)

Response: No change to permit. Any change in a flow restoration target will require an amendment of the applicable TMDL. This new target would then be reflected through an amendment of the Flow Restoration Plan that is approved as part of this permit. The permit itself would not need to be amended.

24. (IV.C.1.d.5 in Draft Permit) Quantifiable measures can mean “testing”. Is the intent to include testing out outfalls or flow monitoring of outfalls a component of this requirement? (E)

Response: The permit has been revised to delete this statement.

25a. (IV.C.1.e.3) The certification needs to be in compliance with the approved plans and State design standards. A designer cannot certify that the installation is in or out of compliance with the MS4 permit. An MS4 permittee could certify compliance with the MS4 permit but not the designer. His design is only one component of a larger mix for which he has no responsibility. Delete the words at the end “...and this general permit”. (E) (WIN)

Response: The Department concurs. The permit has been modified.

25b. (IV.C.1.e.3) Please consider deletion of the 60 day reporting requirement and modify the section to read: MS4's shall submit verifications of BMP project completion with the Annual Report of regulated activity. (MS4) (WIL) (VTrans)

Response: The Department concurs. The permit has been modified.

25c. (IV.C.1.e.3) This requires a statement from the permittee by the BMP designer 60 days after complete implementation of a BMP that it is operating in compliance with the plans and the permit, but there does not appear to be a requirement to subsequently review the operation of the BMP and provide updated information on its operation. The permittee should be required to periodically review the operation of the BMP and ensure that it is operating as designed. (EPA)

Response: The Department intends to include all authorized discharges from the MS4 to a stormwater impaired water (as well as unimpaired waters discharges with state discharge permits) under the MS4 permit through Minimum Measure #6. MS4s will be required to report in their annual reports on each BMP's maintenance as well as provide periodically (based on the BMP type) a restatement of compliance. This method has been well tested through the Department's post construction stormwater management program.

26a. (IV.C.1.e.4) Add the word "technical" between provide and assistance in line 3 of the paragraph. Assistance can mean other than technical (i.e. money). Also what type of program –define – educational, prescriptive, etc. (E)

Response: The Department acknowledges the comment and has made changes to the permit. See response to next comment.

26b. (IV.C.1.e.4) Clarify the wording to reflect that MS4's will provide assistance to but not specifically implement low impact BMPs for homeowners. Strike the word "implementation" (MS4) (VTrans)

Response: The subject section has been modified to clarify the intent.

26c. (IV.C.1.e.4) We suggest changing the words "assistance to landowners" to "education to landowners" (WIN)

Response: See response to comment 26b.

26d. (IV.C.1.e.4) Is this intended for municipalities with landowners within their MS4 jurisdiction. What does this mean for non-traditional MS4's with no landowners within its jurisdictional boundaries? (VTrans)

Response: If a permittee has no landowners within its boundaries, then it would not apply.

27a. (IV.C.1.e.7) NO on the stream monitoring. The waters of the state are the waters of the state and not the waters of the MS4. The State is the gatekeeper with respect to water quality and needs to remain in the role of the stream “monitor.” The stormwater flow contributed by the MS4 communities ultimately reaches the Lake. By inference, do the Towns also have to pay for the Lake testing? Wastewater treatment plants discharge into streams – are they next in line to pay for in-stream monitoring? The MS4’s cannot make the argument that they can’t afford to comply with the permit requirements. How can the State sustain the same argument with respect to their responsibilities as the “owner” of the State waterways? From discussions, it is assumed that the Agency will maintain its position of making the requirement a financial responsibility of the MS4’s. If this is the case, then the permit must be modified to place the actual flow monitoring on the Agency but the financial responsibility on the MS4’s and on any private dischargers. Any stormwater permit issued in the impaired watershed needs to have a cost of stream flow monitoring assigned to it. The system of charges needs to be equitable with no exceptions. The Agency will need to determine a five year stream flow monitoring budget and then assign the cost of the program to each watershed permittee as appropriate on an equitable basis. Without equity, the MS4’s could have a basis for appeal of this requirement. (E) (SB) (WIN) (WIL)

Response: Under the Clean Water Act discharges of pollutants from Small MS4s to waters are required to obtain NPDES permit coverage. The requirement to monitor flow is intended to ensure compliance with the conditions of the general permit (40 CFR 122.44). NPDES permits generally include some form of monitoring, including wastewater treatment plants. The requirement to include flow monitoring, versus sediment, chemical, or BMP efficiency performance data is intended to provide the most cost-effective means of ensuring compliance with permit conditions and assessing if the TMDL targets are being attained. The subject section has been modified to allow the permittee to develop its own flow and precipitation monitoring program.

27b. (IV.C.1.e.7) We request that this requirement be removed from the permit and that the Agency work within its budget and/or with the legislature to continue funding this state responsibility. In the event that these efforts fail, at a minimum, we would request that the MS4 's responsibility be limited to funding these activities, with all implementation and management responsibilities remaining with the state. (CO) (SB) (VTrans)

Response: See response to comment above.

27c. (IV.C.1.e.7) The ANR needs to maintain the ownership and the funding of the program for consistent and effective implementation of the stream monitoring and its impact on the adaptive management process.(MS4) (EJ)

Response: See response to comment 27a.

27d. (IV.C.1.e.7) There would be reason to dismiss (flow monitoring) data collected by the permittee because they may result in stiffer and more expensive requirements for BMP implementation. (VLCT)

Response: See response to comment 27a.

27e. (IV.C.1.e.7) Suggest adding the following paragraph "The State shall fund and manage biological stream monitoring which shall be conducted on an annual basis in each impaired waterway to evaluate progress and the need for continued "impairment" designation. The MS4 shall be notified of all testing schedules and be provided the opportunity to independently perform "split" sampling and analysis at their own cost and discretion. (WIN)

Response: The Department has conducted and is committed to long term biomonitoring assessments of the stormwater impaired watersheds. Annual sampling of the streams is unnecessary and will provide no new information unless significant changes in pollutant loading or the flow regime have been made since the most recent sample was taken. In watersheds where significant changes have been made the Department has made every effort to conduct follow up sampling in the next annual sampling effort. The Department does not object to the request to notify MS4s of the sampling schedule and have follow up "split" sampling done. The Department may accept sampling when the data is collected per a QA/QC plan approved by the DEC Biological and Aquatic Studies Unit. Various permitted facilities perform their own biological monitoring.

27f. (IV.C.1.f) This section states that a permittee must be consistent with the recommendations applicable to its MS4 in the implementation section of the Lake Champlain TMDL and any future TMDLs. We recommend that the permit indicate that if an MS4 becomes subject to a TMDL approved during the permit term, VANR will notify the MS4 of any additional requirements needed to comply with the new TMDL. (EPA)

Response: See changes made to permit in Part IV.C.1.f.

27g. (IV.C.1.f) The section should also reference applicable recommendations in the current (January 2010) Lake Champlain TMDL implementation plan posted on ANR's website. In addition, this section should be expanded to include specific phosphorus WLAs for each MS4 along with a specific process for addressing Lake Champlain TMDL requirements. The Lake Champlain TMDL identified runoff from developed areas such as the MS4s as a major portion of the phosphorus load to the lake. While the TMDL did not include MS4-specific WLAs, the permit should still include WLAs for each MS4 derived from information contained in the TMDL. For example, the WLA for developed land within the applicable lake segment watershed could be compared with available estimates of actual phosphorus loading from that developed land to calculate percent reductions needed for each MS4. Alternatively, the acreage of an MS4 area could be compared with the total acreage of developed land within the applicable lake segment watershed to determine a WLA for the MS4 proportional to the WLA for the larger developed land area. The MS4 permit could then require compliance with these established phosphorus WLAs, and lay out a process to meet these requirements similar to that proposed for the stormwater TMDLs, assuming the compliance schedule authorization issue raised (earlier)(see comment 21g.) is resolved. Where applicable, the flow restoration plans could be used as a starting place for phosphorus restoration plans, given that many of the BMPs used to reduce flow volume will also reduce phosphorus. In some cases, the FRP developed to meet the stormwater TMDL requirements might also meet the Lake Champlain TMDL requirements. In other cases, additional BMPs may need to be added into the plan to sufficiently address phosphorus reduction needs. (EPA)

Response: The Lake Champlain TMDL has been withdrawn by EPA since comments were received by the Department from EPA on the draft MS4 permit. The Department has made some appropriate changes in response to this new state of affairs in Part IV.C.1.f. In addition, Part IV.C.1.e.3 includes a requirement that each semi-annual FRP report include an estimate of any associated reductions in phosphorus loading that occur as a result of implementation measures undertaken by the permittee to meet the flow reduction targets. This will help track phosphorus reductions that can then be credited toward a MS4's WLA, if any, in the new Lake Champlain TMDL.

27h. (IV.C.1.e.7) ANR should list (the gaging stations) by location, municipality and watershed. (VTrans)

Response: The Department will provide this information when appropriate.

28a. (IV.C.1.g) The TMDL has established a load target. The State TMDL model needs to identify the suite of BMPs needed to achieve the target. Then the BMPs need to be constructed but the constructed BMPs are using the "estimates" from the model to achieve the target. Agree with the intent, but the word "estimate" should be changed or removed. The entire clean-up is based on estimates.

Response: The permit has been modified to address this comment.

28b. (IV.C.1.g) This section states that "The assessment of whether a SWMP is consistent with TMDL recommendations will be based on the implementation and maintenance of best management practices not on estimates or measurements of pollutant loading". We support this approach to SWMP assessment. (SB) (UVM)

Response: See response to comment above.

28c. (IV.C.1.g) It may not be possible to demonstrate consistency with the Lake Champlain TMDL without estimates of pollutant loading. The process described in the comment of 27g. would establish specific phosphorus reduction targets for each MS4, and progress toward meeting these targets would be tracked using estimates of the amount of phosphorus reduced with selected BMPs. (EPA)

Response: Part IV.C.1.g. has been changed on response to this comment. The Department is committed to developing a plan based on the implementation of best management practices for all stormwater discharges as well as measuring progress towards the goals of the TMDL through the implementation of best management practices rather than monitoring or modeling. The Department believes this is a more accurate way to assess progress.

Comments pertaining to (IV.E) Discharges to High Quality Waters

29a. (IV.E) Please provide an explanation as it relates to new discharges into an impaired waterway. Can they or can't they if they construct facilities meeting the 2002 State standard or is there a higher threshold (i.e., offsets or some mutation of offsets). Do not leave this issue open to interpretation. (ES)

Response: 10 V.S.A. 1264(f) sets forth the permitting standards applicable to the issuance of state stormwater permits after the issuance of a general permit implementing a TMDL for a stormwater impaired water. These standards require, in effect, compliance with the 2002 Vermont Stormwater Management Manual, and any additional requirements deemed necessary to implement the TMDL. The Department will make watershed-specific determinations regarding the need to continue with offsets for new discharges to stormwater-impaired waters for period following issuance of this permit and development of Flow Restoration Plans.

29b. (IV.E) ANR should indicate and list the presence of any “High Quality Waters” within the stream and lake watersheds listed as being subject to this permit. (VTrans)

Response: The Department acknowledges the comment; however the subject permit section is not changed. The permittee should consult the Department’s Interim-Anti-Degradation Implementation Procedure for further information on high quality waters.

Comments pertaining to (IV, G.) Requirements to Reduce Pollutants to the Maximum Extent Practicable

30a. (IV.G) Please explain what is meant by narrative effluent limitations -- define the term in the document in plain English. (E)

Response: Narrative effluent limitations are distinguished from numeric effluent limitations in that the former are met through a requirement to implement BMPs, whereas numeric effluent limitations establish specific pollutant rates or concentrations that may not be exceeded.

30b. (IV.G. 1) The University fully supports the following provision of the permit: Implementation of best management practices for purposes of the six minimum measures consistent with the provisions of the SWMP constitutes compliance with the standard of reducing pollutants to the “maximum extent practicable”. (UVM)

Response: Duly noted.

31a. (IV.G.2) Reword " The permittee must develop and fully implement its SWMP for the six minimum measures in accordance with this permit." to remove “fully.” (MS4) (EJ) (RT)

Response: A permittee has 5 years to fully implement the best management practices identified in its SWMP for the 6 minimum measures. 5 years is the typical permit cycle for a NPDES permit. Federal regulations (64 FR 68722) state: “full implementation of an appropriate program must occur as expeditiously as possible, and not later than five years.” An MS4 must implement the BMPs described in the NOI or request to replace a BMP following the

procedure described in Section IV J. Reviewing and Updating Storm Water Management Programs.

31b. (IV.G.2.c) It appears that EPA incorporated more detail into their goals as noted in the referenced web site. Many of the measurement “numbers” are now defined in terms of monitoring and testing. For example: “field tests”, “number of dry weather tests completed”, “ number of dry weather monitoring activities” all under illicit connections, “suspended solids level at the site outfall or in nearby receiving waters” under dust control for construction facilities, “changes in water quality of effluent from BMPs” under post construction runoff, “the water quality at outfalls near downstream (road salt) storage facilities”, “water quality at storm drain outfalls” under municipal operations. As written, using the words when possible provides a huge entry point for third parties to force this requirement. When possible, needs to be revised to technically and financially viable or some other wording. Virtually everything “is possible”. (E)

Response: EPA defines measurable goals as either “narrative or numeric standards used to gauge program effectiveness” and the goals should “reflect the needs and characteristics of the operator and the area served by its small MS4” (EPA Phase 2 Compliance Guide, 2000). For some minimum measures, goals defined in terms of monitoring or testing, such as the example with illicit discharges, make sense, for other minimum measures, such as public involvement and participation, they do not.

31c. (IV.G.2.c) Most BMPs other than flow reduction will not have quantifiable goals. Frequencies of many BMPs such as sweeping will vary based upon time of year, weather conditions, need, etc. and will need to be performed periodically based upon field conditions. We would not for instance be able to determine timeframes of sweeping or cleaning of a stormwater pond years in advance to put in a plan. Most BMPs will be performed based upon need. This paragraph should be replaced with "Discuss the monitoring steps that will be performed to determine whether any BMPs need to be performed." (WIN)

Response: See response to question 12a. Measurable goals for the 6 minimum measures are as previously approved in the 2008 NOI and typically involve things such as the percent of the public that (as measured through a statistically valid survey) understand that the improper disposal of pet waste is a problem, the tons of sediment removed from catchbasins, the miles of street swept, etc. The flow reduction BMPs will most likely be measured in terms of volume of storage created or water infiltrated. Monitoring to support the FRP progress will most likely be based on stream gage data and periodic biological assessment.

32a. (IV.G.3) Two points need to be raised #1 – the MS4 permittee shall determine the measurable goal from EPA’s extensive laundry list, subject to state approval and #2 – the measurement should be a stand-alone compliance criteria – drop the sentence on trying to relate the measure to “water quality, stream channel stability, ground water recharge, flood protection, etc.” the item to be measured is what will be measured choosing from the EPA laundry list. No further description, outcome, impacts on receiving stream are warranted. It is an added and unnecessary compliance task piled on top of actual measuring and reporting. Also, why does an MS4 have to justify why another BMP was not selected? Is this an attempt to expand the BMPs that a community undertakes? What is the basis the State will use to judge a permit response that doesn’t include a particular BMP? How is anyone going to

quantify the BMPs in terms of a water quality outcome? The whole purpose of using BMPs is that they are presumptive to improving the water quality. Of the four items keep 1 and 3; drop 2 and 4. (E)

Response: This requirement simply requires that there be a nexus between what the permittee is doing, how it is doing it (the measurable goal) and the expected outcome (improved water quality, reduced flooding, cleaner beach, etc.). The requirement that the permittee justify their choice of best management practices is again necessary to insure that the permittee reviews the available alternatives and develops a basis for their choice. There are numerous BMPs that can be used to address any one problem, therefore there may be several ways to address a particular requirement. DEC will only make recommendations on the choice of practices where we believe the choice to be inadequate to improve water quality, technically infeasible, or there is a lower cost option that can accomplish the same end. Water quality outcomes can be quantified in many ways, both scientifically or through social measures.

32b. (IV.G.3) With limited time and resources to dedicate to improving water quality, the University recommends dedicating those limited resources to items that result in effective stormwater management instead of administrative duties. These discussions could occur more effectively and efficiently when the Agency is reviewing the SWMP. (UVM)

Response: See response 12a and 32a. The Department recognizes the administrative burden.

32c. (IV.G.3) Remove the word "measurable." Add as final sentence of this paragraph "Cost can be deemed a reasonable criterion in selection of specific BMPs." (WIN)

Response: "Measurable goals" as a basis for showing progress in implementing the six minimum measures is a requirement of the Federal Phase 2 Stormwater Rule (64 FR 68722).

32d. (IV.H) Overall comment: All ordinances required by the previous permit should be in place. Additional time should not be given in this permit; instead, the permit should note the deadline(s) specified in the previous permit. For other provisions not required to be completed under the previous permit, the permit should include expected time frames for completion of activities. (EPA)

Response: No change to permit. The Department is in agreement with this comment and believes the permit requirements do build on previous accomplishments of the previously authorized permittees. This permit, however, is written to cover both newly designated MS4s and all MS4s previously authorized by the 2003 MS4 permit. For all of the MS4s subject to the 2003 permit, all permit requirements were met by 2008. The Department reviews all new and revised NOIs and measurable goals in light of the permit requirements and will approve a reasonable time frame within the five year permit cycle for completion of the activities. The Department does not feel it warranted to establish those time frames upfront but will allow any new MS4s maximum flexibility in its initial proposed stormwater management plan.

32e. (IV.H) These requirements are very similar to those in the 2003 permit. The new permit should not just require the same actions and level of effort as was required under the 2003 permit. The requirements in the new permit should build on work accomplished during the first term. For example, basic illicit discharge detection and elimination elements (including mapping) should have been put in

place during the first term, and no additional time should be provided to develop these elements. These provisions could be referenced as items required to be put in place under the previous permit. The new permit should focus on things like tracking accomplishments of the provisions put in place during the first term – for example, the number of illicit discharges found, the number eliminated, volume of sewage removed, etc. For education programs, the permit should ensure that all the options presented provide for the identification of specific messages, target audiences for these messages, and expected outcomes (as is required in PartH.1.b). (EPA)

Response: See response 32d.

32f. (IV.G.3) mentions “behavioral and institutional changes necessary to implement the BMP” – who is expected to initiate these changes? What is an MS4 expected to do with this information? (EPA)

Response: This requirement more specifically refers to Minimum Measures # 1-3. The permittee is expected to show, where possible, how BMPs will effect behavioral and institutional changes. For example with Minimum Measure #1 an education outreach program in order to be successful must change an individual or institutional view of vehicle washing on impervious cover in order to have successfully conveyed the message that the activity is deleterious to aquatic ecosystems. That behavioral change must be verified with a scientifically valid survey of public behavior. The percent of surveyed residents that have changed their behavior as measured by the survey is a measurable goal and targets can be set using the survey data. Increased recycling or proper disposal of hazardous wastes are other good examples of behavioral changes that can be successfully linked with education outreach or public involvement environmental programs.

Comments pertaining to IV.H.1 Public Education and Outreach

33a.(IV.H.1.a.5) Items a) through e) appear to be more prescriptive than in earlier permits. Why not let the MS4 decide? Also, the wording needs to be changed. The goal is not developing or acquiring brochures but disseminating them – combine a) and b) together. Item d) is a no go from a management and legal point of view. This requires municipalities to develop educational curricula for the schools over which the MS4 have no statutory control and to teach teachers over which the MS4 has statutory control. Item d) needs to be deleted from the permit, even though it appears to be in a previous version. We have no basis on which to effect compliance with school curricula. (E) (SB) (VLCT) (MS4) (EJ) (WIN) (ST)

Response: There has been no substantive change in this requirement between the 2003 and 2010 draft permit. The suggestion to combine a) and b) has not been made. The permittee is required to do either (2), (3), (4) or (5) of IV.G.1.a; the permittee is required only to do one of the items. Any MS4 doing (2) does not have to do (5). (5) (d) is potentially an option for some municipalities. For example South Burlington and Burlington through their stormwater utility credit system could or already does have participating schools develop a stormwater education outreach program. It is understood that most MS4s have little control over the school districts

but that could change in the future such as through the example given above. For the next permit cycle the requirement will be retained.

33b. (IV.H.1.a.5) The second half of this requirement should be revised so that it reads, "For municipalities: develop educational materials for elementary, middle school, or high school curricula regarding local stormwater concerns and make this information available on the internet". (SB)

Response: The permit has been modified based on the comment.

33c. (IV.H.1) We are concerned that the requirement to implement a public education program specific to the MS4 and that is focused on pollutants of concern associated with impaired waters affected by discharges from the small MS4 may require duplicative efforts on the part of municipalities that are permittees (Minimum Measure #1). (VLCT)

Response: To avoid duplicative efforts the original 12 designated MS4s were encouraged to form a regional education program. This is also the reason that the new permit allows for additional regional education strategies to be formed in the newly designated MS4 areas. It is also the reason the Department is encouraging a regional collaboration on public involvement (Minimum Measure #2).

33d. (IV.H.2.a) Please change "implement" to "continue to implement". (EPA)

Response: See response 12c.

33e. (IV.H.2.b) The permit should ensure that the public involvement requirements in part H.2.b are incorporated into all of the options presented, including participation in the regional program and the options described in Part H.2.a. (EPA)

Response: The permittee must implement a public involvement program that complies with state and local public notice requirements and includes three activities. A permittee implementing three activities must also comply with part H.2.b. A permittee does have the option of contributing monies to sponsor the Regional Stormwater Education Program in lieu of implementing the three activities. If the permittee elects to contribute monies for any or all of the three activities then the permit allows them to avoid the requirements of H.2.b; however, they still must develop a program and comply with all public notice requirements as defined in H.2.a. This is because the regional program has met the requirements of H.2.b through its 5-year education outreach plan, its 5-yr statistically valid behavioral surveys, and its annual communication and media plans.

33f.(IV.H.2.a) Items 8 and 10 allow the Secretary to arbitrarily modify these requirements. The ability of the Secretary to allow these modifications should either be removed from the permit, or moderated with decision standards the Secretary must follow when allowing these modifications. (EPA)

Response: Items 8 and 10 allow the Secretary flexibility in accepting similar public involvement activities not specifically listed in H.2.a. The implicit requirement is that the substitute or alternative activities be similar to the listed requirements; the Secretary may not

make the approval in an arbitrary manner. The permit has been modified based on this comment.

33g. (IV.H.1) ANR should clarify statements at a recent MS4 RSEP meeting that the MCM #1 Public Education and Outreach is “Permittee” specific and that for any designated MS4 whose MS4 jurisdiction crosses multiple MS4 municipalities or MS4 Impaired Watersheds that only one Public Education and Outreach Program is required for that Permittee. Without this clarification, VTrans might have to comply with this measure in different parts of the state as new non-Chittenden County municipalities or watersheds are designated as MS4 entities. VTrans is a linear non-traditional MS4 with MS4 jurisdiction crossing multiple existing and new MS4 impaired watersheds and municipal MS4 jurisdictions. VTrans’ understanding is that as long as the agency continues participation in RSEP as compliance under MCM #1 that it will be in compliance with MCM #1 no matter how many more municipalities or watersheds are subject to the MS4 Permit. VTrans would like ANR to confirm and clarify this in the permit. ANR should note that MCM #1 is Permittee Specific and that if MS4 jurisdiction spreads over multiple MS4 Municipalities or impaired watersheds that no additional public education and outreach is required. (VTrans)

Response: The Department does not agree. The requirements of the measure apply to all localities in which an MS4 is designated.

33h. (IV.H.1) The Town would like assurance that this section would include the participation of VTRANS in this watershed despite the fact that they are also subject to this requirement as part of the Chittenden County MS4 permitting. The cost for the outreach for this watershed located in Franklin County should be bourn proportionally by the MS4s located in Franklin County. (ST)

Response: See response to 33g.

34a. (IV.G.1.c in Draft Permit) EPA still after 7 years cannot put a dollar figure on the cost of stormwater compliance. Currently, it appears that there is no legal EPA requirement to report costs other than pressure on the State to provide costs. Compliance is not being paid for by either the State or the Feds. There is a time and a cost associated with having to develop estimates and costs on a non requirement. This shows up in a number of places in the permit and needs to be changed from “must” to “as available”. (E) (SB)

Response: The Department concurs, the permit has been modified. As background, Congress has mandated that EPA report to it in 2012 about the effectiveness of the Phase 1 and Phase 2 stormwater program. In 2007 the US Government Accounting Office issued the report “Further Implementation and Better Cost Data Needed to Determine Impact of EPA’s Storm Water Program on Communities.” This report concluded that: “it will be difficult to assess the burden of implementing the storm water program, and for EPA to meet its goal of evaluating Phase II starting in 2012, without more complete and consistent reporting on the scope, costs, and results of communities’ storm water best management practices. In order to enable EPA to evaluate the implementation of the storm water program, we are recommending that the Administrator, EPA, issue additional program guidance and consider regulatory changes to ensure that (1) communities report on activities in sufficient detail to determine their scope,

costs, and results; and (2) communities report this information consistently so that it can be analyzed on a national basis.” The Department supports providing this information when available.

34b. (IV.G.1.c in Draft Permit) We request that the permit be revised to require that the MS4's provide only the total costs expended on stormwater as part of the annual reports. (CO) (SB) (WIN) (WIL)

Response: See response to 34a.

34c. (IV.H) Several minimum measures note financial reporting requirements. Where appropriate, MS4's are agreeable to providing the lump sum cost for complying with all minimum measures identified in the permit. Additionally, we will work with ANR on standardizing the format for reporting of measureable quantities. (MS4)

Response: The Department recognizes that there are limitations to the financial data reporting but believes that if MS4s start collecting this information it will be useful and relevant to both the state and federal government and improve the ability of both levels of government to acquire funding to assist MS4s in the implementation of the permit. The Department also agrees with the MS4s that standardizing measurable quantities/progress indicators is important. These measures are most relevant to helping the public understand the magnitude of the stormwater problem and the accomplishments of local stormwater management programs.

Comments pertaining to IV.H.2 Public Participation

35a. (IV.H.2) These requirements should be streamlined and be simpler to implement. Many municipalities have a difficult enough time getting one dedicated group to volunteer. This could be simplified by saying "The MS4 shall work with the local community to form one or more storm water volunteer organizations that will be responsible for implementing the following: Act or form a citizen stormwater advisory panel; Institute a continuing stormwater stenciling project; organize a periodic stream corridor cleanup day; work with the MS4 on stormwater related issues and improvements." Our experience with the volunteer groups has been, the simpler the program the more participation. We believe that is the overall goal here. If you overburden a volunteer group, they simply will not participate after a while. This does not need to be complicated or overburdening, it is supposed to be a way to get them involved and have them take some ownership of the watersheds. The remainder of the recommendations in this section (a) 1-8 can be eliminated. The MS4's are already performing ongoing public education and most of the rest of these requirements. (WIN)

Response: The MS4 permit is written to be prescriptive in order to give permittees a good idea of what is required in their SWMP. There are four newly designated MS4s that do not have the familiarity with the program that the current permittees have. Through the MEP definition (as described above) the Department and the permittee have considerable flexibility in defining what is satisfactory

35b. (IV.G.2.c in Draft Permit) Reference comment #34a (E) (SB) (WIN)

Response: See response 34a.

35c. (IV.H.2.c) Reword "The Permittee must make its SWMP and annual reports to the Agency available to the Public upon request. Permittee must state on its website that this information is available upon request." (WIN)

Response: The Department believes the recommendation would not achieve the intent of the requirement. The subject section has not been changed.

35d. (IV.H.2.a.9) ANR should clarify that this "buy out" program is for the 5-year permit term – you pay once for each activity and that buys compliance over the 5-year permit term... in order to make this fair, ANR should indicate how much money it will take to buy compliance for every activity – in the last permit cycle it was \$5,000 per activity (VTrans)

Response: The permit has been modified in response to this comment.

35e. (IV.H.2) ANR should note that MCM #2 is Permittee Specific and that if your MS4 jurisdiction spreads over multiple impaired watersheds or multiple Municipal MS4s that no additional public education and outreach is required. If ANR intends to have VTrans develop multiple MCM #2 compliance programs around the State (i.e. Rutland and St. Albans) then ANR should make this clear, so we know what is expected of us to achieve compliance with the permit. (VTrans)

Response: See response to 33g. The requirement to meet MCM #2 will apply in all localities in which VTrans is a designated MS4.

Comments pertaining to IV.H.3 Illicit Discharge Detection and Elimination

36a. (IV.H.3) There are specific exceptions to the non stormwater discharges as noted in the draft permit. (WIN)

Response: The Department is in agreement with this comment. The permittee is not required to develop and implement an IDDE plan for discharges associated with this list so long as the Secretary has determined that these discharges are not significant contributors of pollutants as is described in I.C.1.a.2.

36b.(IV.H.3.a.6) Is there a standard for this? This is not practical or reasonable. This section should be deleted. (WIN)

Response: Existing MS4 communities have successfully complied with this requirement. The MS4 Permit must include this section to be consistent with federal requirements.

36c. (IV.H.3.a.4) How can a plan be developed to detect "random illegal" dumping? If it is random, it can occur anywhere and at anytime. How can you plan for a random event by definition? What is the Agency looking for in terms of compliance? (E) (WIN)

Response:

During the first MS4 permit cycle this measure focused on finding and eliminating any chronic discharges to the municipal stormwater system such as municipal or industrial wastewater cross-connections. The presumption is that at this point most of those illicit discharges have been at least located if not eliminated as well. During the first permit cycle there were a number of reports of the illegal dumping of paint, boiler antifreeze, RV waste, lawnmower gas, waste concrete and other more random and acute discharge events. There are numerous sources MS4s can use for guidance on how to develop a plan to address illegal dumping into the municipal stormwater system and waters of the state. The MS4 IDDE plan for 2010-2015 should describe how it will address illegal dumping through a tracking method (such as a hotline), community education (such as through RSEP or storm drain marking activities), enforcement (such as a local ordinance), and clean up efforts (such as GreenUp). Sources on how to develop a comprehensive illegal dumping plan:

http://www.stormwatercenter.net/Pollution_Prevention_Factsheets/IllegalDumpingControl.htm

<http://www.neiwpcc.org/iddmanual.asp>

<http://www.epa.gov/npdes/pubs/iddmanualwithappendices.pdf>

http://www.epa.gov/reg5rcra/wptdiv/illegal_dumping/downloads/il-dmpng.pdf

36d. (IV.H.3.a.2) We suggest you encourage georeferencing of the storm sewer map developed; work performed using AutoCad is not necessarily georeferenced. (EPA)

Response: The Department supports the intent of the comment; the section does require the map to identify location.

36e. (IV.H.3) The Town's main concern here is that this section appears to shift responsibility for detection and enforcement of discharges other than stormwater discharges into the MS4. Previously the state was responsible for this enforcement. If this is true, than that represents a shift of responsibilities that are inappropriately piggy-backed onto a stormwater discharge permit. For the stormwater discharges, this seems to place the responsibility on the municipality to monitor discharges from private properties, an expensive and time-consuming project. (ST)

Response: The requirement to develop and conduct an illicit discharge detection and elimination program is part of the federal Phase 2 Stormwater Rule. The Department has separate authority to prohibit unpermitted discharges that is not affected by the permit.

37. (IV.H.3.a.4) How can these items be identified if random outfall testing is not done? Also, if these items are excluded under the permit section I.C.1.a.2 of the revised permit, why are they being identified as a category that needs to be addressed? The earlier section does not mention a quantity of these items, except in the context of them being “not substantial polluters”. What is the threshold between not substantial and significant? How does an MS4 gauge an undefined standard? (E) (VTrans)

Response: Section I.C.1.a.2 prohibits authorization of these types of discharges if they are considered substantial contributors of pollutants to the MS4 system. Any such discharge is not authorized by this permit. MS4s and the State have conducted numerous water quality studies

and collected water quality data for a number of years; MS4s should be generally aware of specific problems of non-stormwater discharges to their stormwater system if they have been identified through this monitoring activity.

38. (IV.H.3.a.7) Is the annual status report of IDDE a stand-alone report or a component reporting element of this permit? (E)

Response: IDDE activities in years 1-4 can be summarized in the component report similar to the current reporting.

39. (IV.G.3.a.8 in Draft Permit) Reference comment #34 (E) (SB) (WIN)

Response: See response 34a.

40a. (IV.H.3.b.1) Reword as follows "How the permittee will maintain and if necessary improve... .. Describe the sources of information the permittee used for maps, and how if deemed necessary it plans to further update such data." (WIN)

Response: The permittee may state in the SWMP that no updates are necessary if no new infrastructure has been constructed. For most, but not all MS4s, the growth of stormwater infrastructure is not static.

40b. (IV.H.3.b.2) Why is there a requirement to provide an answer to the issue of “why” a particular mechanism was chosen? The mechanism will be descriptive in and of itself. It is either acceptable or it is not acceptable; the “why” doesn’t enter into it unless the State questions the mechanism. Do it by exception; not by inclusion. (E)

Response: There are numerous ways to address a particular problem. In the case of the illicit discharge prohibition there are many forms an ordinance can take.

40c. (IV.H.3.b.3) Reword as follows "An explanation of how the permittee addresses enforcement procedures and actions when and if they are detected". (WIN)

Response: No change to the permit has been made based on this comment.

40d. (IV.H.4 & 5) Due the fact (Rutland) Town does not administer Zoning Regulations nor a Building Code, it will not be possible to implement many of the Construction Erosion Control and Post Construction Stormwater Management provisions of the MS4 minimum permit measures. The Environmental Protection Agency recognizes this possibility and states in EPA Fact Sheet 2.5 “Illicit Discharge Detection and Elimination minimum Control Measure Page 2, “EPA Recognizes that some permittees may have limited authority under State, Tribal or local law to establish and enforce an ordinance or other regulatory mechanism prohibiting illicit discharges. In such a case, the permittee is encouraged to obtain the necessary authority, if possible.” (RT)

Response: The Department acknowledges the comment.

41a. (IV.H.3.b.4) Identify and clarify what is meant by dry weather screening tests and field tests of selected chemical parameters. The two are intermingled and can imply expensive field monitoring of every discharge with an industry connected. There needs to be some basis such as observation to determine probable cause that would then lead to testing of the outfall. This needs to be reworked and reworded. (E) (WIN)

Response: This requirement is in the 2003 permit. All previously regulated MS4s have approved IDDE programs.

42. (IV.H.3.b.4) Don't reinvent the wheel. The procedures are already spelled out in great detail in a January 2003 document entitled, IDDE Manual – A Handbook for Municipalities by the NEIWPC. There is also an EPA companion manual. Rather than have the MS4 write out a compliance plan, just require that one or more of the referenced source documents must be used as a basis for the procedures for identifying and handling IDDE. Permittees are being asked to regurgitate a procedure that has already been determined and in place for at least the last 7 years. Make the task of compliance less costly and complex. (E) (VTrans)

Response: See response 41. The resources described in the response to question 36c can be referenced.

43a. (IV.H.3.b.6) This section is repetitive. (E)

Response: See response 13.

43b. (IV.H.3.b.7) Delete the following words "the measurable goals for each of the"

Response: See response 32c.

Comments pertaining to IV.H.4 Construction Site Stormwater Runoff Control

44a. (IV.H.4&5) Construction and Post Construction stormwater permitting and compliance are State regulatory functions. The expertise and resources to do this work exist at the State level. Municipalities are not organized in a manner to perform these functions. Permitting and compliance need to remain with the State. (WIN)

Response: Both measures are requirements of a MS4 SWMP (40 CFR 122.34). The Department has a separate responsibility to implement these programs.

44b. (IV.H.4.a) This has been an ongoing permit activity. However, it is not "procedures" but "inspection". By procedures, is it the State's expectation that the Town will inspect every state issued permit site? To what degree does "assisting" translate into performing the State's primary role? Define better the expectations under the permit. (E)

Response: The permit has been revised. See Section IV.H.4.a.

44c. (IV.H.4.a) The permit must require that the MS4 develop and implement a program to manage construction runoff. Developing and implementing a program that assists the Secretary does not satisfy that requirement. It is also impossible to enforce a program that relies on a concept such as assistance – something that can't be clearly interpreted. There are provisions in the MS4 regulations that allow a permittee to incorporate a “qualifying local program” [see 40 CFR 122.34]; or that allow a permittee to have a third party satisfy one of the MS4's six minimum measures [see 40 CFR 122.35], but the VT permit doesn't satisfy the requirements of either. The requirement also shields the permittee from complying with an NPDES mandated requirement (enforcing post-construction controls) by allowing a permittee to comply with a non-NPDES based permit requirement—assisting the state. (EPA)

Response: Section IV.H.4 of the permit has been modified to clarify the requirement.

44d. (IV.H.4.a) This process—where the MS4 doesn't need to be familiar with the erosion control plan—also sets up a scheme where an MS4 could conduct a site inspection on a site with violations, find no violations (because the inspector hasn't seen the plans), and report that to the State. The result is a system that inadvertently hides violations, or results in inspections that produce little useful information. The scheme is detrimental to an effective enforcement program, not an advancement of it. This section should be changed to require permittee's staff to be familiar with the erosion control plans (simply removing the word “not” will do it), and to inspect for compliance with these plans along with signs of noncompliance such as eroding soils and turbid waters. (EPA)

Response: See response 44c.

44e. (IV.H.4.a) Most inspections should be stipulated to occur during wet weather (or as soon after a rain event as possible) when violations will be more evident. And a timeframe for reporting suspected violations should be specified. (EPA)

Response: See response 44c.

44f. (IV.H.4 & 5) We think it would make sense here for the State to come up with forms and procedures that the municipalities could follow to give notice to the State about these types of projects. In addition it would be helpful if the State would review any current regulatory models and make recommendations to the municipalities as to acceptable regulatory tools. (ST)

Response: See changes to the permit.

45a. (IV.G.4.a.3 in Draft Permit) What does the word “cooperate” mean in the context of the permit? Is it really “coordination”, “plan review”, “enforcement”, other? Is there a legal remedy to “non-cooperation”? (E) (WIN)

Response: See permit change. The Department hopes that where a problem with stormwater runoff crosses MS4 jurisdictional boundaries that MS4s will communicate to each other the specific information about why the event is causing a problem, the problem's source, and share suggestions on how to solve the problem.

45b.(IV.H.4.a.1) It is unclear which permit is being referenced. (EPA)

Response: This requirement refers to publicly owned projects undertaken by the MS4. The MS4 permittee must develop procedures to insure that its own projects comply with the state General Permit 3-9020, the Construction General Permit. The permit has been revised.

46a. (IV.H.4.a.3) If the permit is using the requirements of another program to substitute for the NPDES MS4 requirements, it must, as discussed above, satisfy the qualifying local program provision of the NPDES MS4 regulations or the or third party implementer provision. (EPA)

Response: See changes in Part IV.H.4 of the permit Each permittee is required to have a separate ordinance (or policy if nontraditional) for sub-jurisdictional construction erosion control.

46b. (IV.H.4.b.1) Also, which expenses are being requested? The expense of managing the system or the cost of implementing erosion control on each project that is approved? The latter is dependent on development activity in a given year. How does the cost information provide a basis for a cleaner stream? (E)

Response: See response 34a.

Comments pertaining to IV.H.5 Post Construction Stormwater Management for New Development/Redevelopment

47a. (IV.H.5) If State statute cannot be modified to mirror federal law, we suggest as part of this permit that the MS4's be required to pass a local ordinance requiring any building permit applicant to obtain a State post-construction storm water permit prior to applying for a local building permit if their project proposed to (create) more than 1-acre (of impervious cover). Regardless, we strongly object to any attempt to shift the permitting responsibilities the municipal level. (WIN)

Response: This is in fact what many, but not all, MS4s have done. A number of MS4s have also met the regulatory "gap" by requiring that projects below the state threshold of 1 acre impervious surface comply with the state stormwater management manual to the maximum extent practicable.

47b. (IV.H.5) Again, why is it the Town's responsibility to assist the State in performing a task that falls within State jurisdiction? Why is the MS4 prioritizing sites for inspection that have been issued State permits? If the Agency feels that this is necessary, and we strongly believe it is not, then the State should set up their permits with a requirement that the permittee contact the State within a certain number of days prior to initiation of construction and that this information be provided by the State to the impacted MS4. In this case, it appears that the Agency is essentially failing to meet its permit inspection responsibilities and passing that work and accompanying costs to the affected MS4. If the MS4 is going to inspect for the State, then the State stormwater permit fees should be increased to allow for local inspection and the local inspection costs should be reimbursable by the State. (E)

Response: See changes to the permit.

48a. (IV.H.5.a) Reference Comment #47b (E)

Response: See response 47b.

48b. Part IV.H.5.a, this suffers from the same problem as the provision discussed in 44c.

Response: See response to 44c.

49a. (IV.H.5) Reference Comment #45 (E)

Response: See response 45.

49b. (IV.H.5.c) The review of existing policies, ordinances, etc. should include an assessment of design standards for streets and parking lots to determine whether any changes are needed to support low impact design options. The review should also include an assessment of whether changes are needed to allow the following types of practices: Green roofs; infiltration practices such as rain gardens, curb extensions, planter gardens, porous and pervious pavements, and other methods to infiltrate stormwater using landscaping and structured or augmented soils; water harvesting devices such as rain barrels and cisterns, and the capture and use of stormwater for non-potable uses. These assessments should be part of the SWMP. The permittees should report in each annual report on progress toward making these practices allowable and/or required where appropriate. The above list of low impact practices (or one like it) should also be referenced for clarity purposes in Part IV.H.5.e.2, where low impact practices are required to be included in new ordinances and policies. (EPA)

Response: Modifications have been made to relevant Parts of the permit in response to this comment.

49c. (IV.H.5) Does ANR intend to include language that requires newly designated MS4s to address the Stream Corridor and Riparian Buffer Management issues set forth under the Water Resources Board July 21, 2005 Memorandum of Decision ? It makes sense to address this issue now instead of as a likely appeal amendment as was the case the last time the permit was issued. (VTrans)

Response: The language from the July 21, 2005 Memorandum of Decision has been added to the permit in Part IV.C.1.e.5 and IV.C.1.e.6.

50a. (IV.H.5.g) Reference Comment #47b (E)

Response: See response 47b.

50b. (IV.H.5.a) This Part states: "To qualify for coverage under this general permit a permittee must develop, if it has not already done so, implement, and enforce a program to reduce pollutants in any post construction stormwater runoff to the small MS4 from activities that result in a land disturbance of greater than or equal to one acre and that are not subject to regulation under the Agency's post-construction stormwater management permit program. The permittee must also develop and implement

a program to assist the Secretary in the regulation of sites, *which are within the jurisdiction of the Agency's post-construction storm water management permit program*. This suffers from the same problem as the provision discussed in the above comment. The same problem arises in the following provision Part IV.H.5.e) For stormwater runoff that discharges into the small MS4 from new development and redevelopment projects that disturb greater than or equal to one acre (including projects less than one acre that are part of a larger common plan of development or sale) *and that are not subject to regulation under the Agency's post-construction stormwater management permit program* the permittee must adopt, if it has not already done so, an ordinance, planning, zoning and subdivision regulation, or other regulatory mechanism, or if the permittee is a nontraditional MS4, a policy that.... (EPA)

Response: See changes in Part IV.H.5 of the permit. In addition, each MS4 is required to have a separate ordinance (or policy if a non-traditional MS4) for sub-jurisdictional construction erosion control.

51. (IV.H.5.g.4) This requirement is repetitive. (E)

Response: See response 13.

52. (IV.H.5.g.5) Reference Comment #40; The word "why" has been changed to "how." (E)

Response: The Department acknowledges the comment.

Comments pertaining to IV.H.6 Pollution Prevention/Good Housekeeping for Municipal Operations

53a. (IV.H.6) The list of activities required to be covered by the operation and maintenance plan should include the proper disposal of snow. A time-frame should be specified for the completion of the operation and maintenance plan. (EPA)

Response: The proper disposal of snow and deicing material has been addressed in all of the MS4 stormwater management plans. The requirement relating to the proper disposal of snow is already included in Section IV.H.6.b.2.b of the permit. As to timing, the operations and maintenance plan is submitted as part of the notice of intent and is due 180 or 270 days after the effective date of the permit depending on whether the permittee is currently regulated or new.

53b. (IV.H.6) This requirement should extend equally to all State facilities and to non-traditionals. The statement "maintenance schedules and inspection procedures for long term structural controls" is not clear. Is this intended to cover equipment? If so, this should clarify that it only relates to equipment stored outside or in a location that has the potential to drain to the stormwater system. (WIN)

Response: This requirement applies to all state and municipal MS4 facilities within the MS4 jurisdictional boundary. The requirement for maintenance schedules and inspection procedures

apply to structural controls such as the catchbasin network, existing treatment ponds/filters etc, as well as nonstructural controls such as a street sweeper. The Department would agree that if there is no exposure to precipitation by storage of equipment inside or under cover that is an adequate description of a pollution prevention strategy for equipment.

53c. (IV.H.6.a) Modify the description of public parks and recreation facilities to read: "For all recreational facilities under municipal control, including public parks and recreational fields where lawn or garden fertilizers are used ..." (MS4)

Response: The proposed change is unnecessary; the section applies only to municipal operations.

53d. (IV.H.6.a) Any regulations of phosphorous in fertilizer should be a State function. Municipal fertilizing operations are a small source in the larger view of statewide fertilizer application. (EJ) (WIN)

Response: The comment is acknowledged.

53e. (IV.H.6.a.2) The Town has no permit responsibility (other than permits it holds as a municipal entity) under the Multi-Sector Permit or the 3-9003 Permits. These permits are between the industry and the State. Since there is no Town responsibility, under what legal authority does the State operate to require the Town(s) to provide a list of industrial facilities in the Town? The State Agency of Environmental Conservation can request such a list from the municipal assessor's office at any time to assist them with multi-sector history and permit compliance. Again why is this item in this permit and under what authority? Is this a one-time requirement of a continuing requirement? Shouldn't the wording be changed to industrial landowners rather than facilities? (E) (SB) (WIN)

Response: The permit has been modified based on this comment. The Department removed Section IV.G.6.a.3.

53f. (IV.H.6.a.2) We request that this requirement be removed from the draft permit. (CO)

Response: See response to 53e.

53g. (IV.H.6.a.3) Municipalities are agreeable to providing a listing of commercial landowners in order to aid the agency in pollution prevention. Municipalities do not have information related to how these properties may be leased. (MS4) (B)

Response: See response to 53e.

53h. (IV.H.6.a.2) Is the listing of industrial facilities limited to those that discharge directly to an MS4? Or is it expected to include all industrial facilities within the municipality regardless of discharge location? The permit should make this more clear. (EPA)

Response: See response to 53e.

53i. (IV.H.6.b.1) Remove the word "pollutant". (WIN)

Response: "Pollutant" is necessary.

53j. (IV.H.6.b.2.) Remove the word "pollutant". Add the word "uncovered" prior to salt/sand storage locations. (WIN)

Response: See response to 53b. The use of cover would be a control.

53k. (IV.H.6.a.1) Participation in the Agency's Municipal Compliance Assistance Program is not likely to achieve full compliance with this measure, especially to the extent that the compliance assistance program functions as a "facility audit program" as implied in the draft permit. Most audit programs merely identify issues that need to be addressed, but stop short of fully correcting the problems. If this is the case with the VT compliance program, the permit should indicate that participation in the Agency's Municipal Compliance Assistance Program may constitute partial compliance with this measure. (EPA)

Response: The Department agrees. The requirement has been changed to require participating MS4's to correct and document any deficiencies within 90 days.

53l. (IV.H.6.a.2) We suggest rewording to say "...subject to an individual NPDES permit for its industrial activity..." Use of the term "Multi-Sector" implies the Multi-Sector General Permit and as worded this could cause confusion. (EPA)

Response: The Department agrees. The section has been modified.

53m. (IV.H.6.a.3) We recommend that this condition not be included within Minimum Measure 6 since it does not relate specifically to municipal operations. (B)

Response: This requirement has been deleted from the permit.

53n. (IV.H.6.a.) How can the Town of Rutland be expected to successfully implement the provisions and practices of the MS4 requirements to lands for which the Town is a partial owner? The Town of Rutland Select Board owns approximately half of Northwood Park. The Town School Board owns the other half. The property contains improvements on both parcels and the site is such that much of the School land is upland of the Town owned land and drains onto the Town land. Town officials question the efficacy of implementing MS4 requirements on only half of the developed property. (RT)

Response: It is assumed that the Town is referring to the requirement under Minimum Measure #6 to conduct a soil test for phosphorus before adding any additional fertilizers to its municipal parks or playing fields. No phosphorus fertilizers should be added to the Town lands in the parks without a soil test that indicates that phosphorus is limiting.

54. (IV.H.6.b.2.a) Why are "floatables" singled out when the TMDL is based on suspended solids and flow? Define floatables. Drop the word floatables and just use the word pollutants. (E)

Response: Floatables are defined by EPA as any foreign matter that may float or remain suspended in the water column and includes plastic, aluminum cans, wood products, bottles, and paper products. Floatables are not categorically the same as other pollutants associated with runoff that are dissolved in the water such as sediment, oil and grease or phosphorus and therefore are singled out. Floatables become a pollutant by breaking down and releasing chemicals or creating biological oxygen demand. The language as is will be retained.

55. (IV.H.6.b.3) This requirement is repetitive. (E)

Response: See response 13.

56a. (IV.H.6.b.4) Reference comment #40b. (E)

Response: The requirement is the same as the requirement discussed in Comment #40. The permittee must provide a short written discussion on the measurable goals for Minimum Measure #6 and how (through what deliberative process) the goals were chosen.

56b. (IV.H.6.b.4) Results from practices like this are not quantifiable. (WIN)

Response: Quantifiable measurable goals for this measure include miles of street swept, tons of sediment removed, hours of training, etc.

Comments pertaining to IV.I Sharing Responsibility

57a. (IV.I) This parallels section 122.35 in the NPDES MS4 regulations that does allow for sharing of responsibility. But it departs in at least two significant regards. The provision numbered 2 above should be rewritten as follows: “2. The particular control measure, or component of that measure, is at least as stringent as the corresponding NPDES permit requirement.” (EPA)

Response: This change has been made.

57b. (IV.I) The other problem relates to the following language: “3. The other entity agrees to implement the control measure on the permittee’s behalf. Written acceptance of this obligation is expected.” If it is to be an enforceable agreement, which it needs to be, written acceptance is essential to the agreement. The word “expected” should be replaced by “required.” (EPA)

Response: The change has been made.

57c. (IV.I.3) Shouldn’t this read “permit–component”? It can involve more than just discharges. What if a permit holder hired a third party to comply with an initiative that was not related to a discharge? (E)

Response: The Department agrees. The permit has been modified.

57d. (IV.I) We are also concerned about the liability section (I. Sharing Responsibility). The protocol required will discourage any of the collaboration anticipated in the paragraph above. We believe the penalties for violations of Permit Conditions (VI. B) are draconian, particularly when one considers that the violator is likely to be a public official – not someone making enormous profit from a most likely inadvertent violation. (VLCT)

Response: The Department acknowledges the comment.

Comments pertaining to IV.J. Reviewing and Updating Storm Water Management Programs

58a. (IV.J.2.b.1) Costs should not be a basis for allowing a permittee to avoid implementing a BMP if the purpose of the BMP is to achieve water quality standards. Under the provision, a permittee can always replace an ineffective BMP with an alternative, and environmental effectiveness, not cost, is the appropriate criterion. (EPA)

Response: Under this provision, BMPs may be replaced, not avoided. The Department acknowledges that cost is a factor in BMP selection but not in its level of needed effectiveness. Part J.2.b.3 requires the replacement BMPs to achieve the goals of the initial BMP.

58b. (IV.J.3) There needs to be a defined course of action against a defined requirement consistent throughout the life of the permit, subject only to changes in new federal statutory or regulatory requirements. The legislatively approved State proposed permit language leaves the entire process open to change at the “whim” of the Secretary or third party influence on the Secretary. There should also be a legal mechanism reference to State law to appeal changes mandated by the Secretary. (E) (EJ)

Response: Any action of the Secretary may be appealed as allowed by law.

58c. (IV.J.2.a) There will be circumstances that warrant replacement of components and controls. The Secretary has the authority under Section (b) to deny any proposed modification. Delete paragraph (a). (WIN)

Response: Section IV.J.2.a provides the requirement that the Department be notified in writing of any new additions in the SWMP. IV.J.2.b covers changes in ineffective BMPS. Regarding the addition of BMPs, it is important for the Department to be aware of what MS4s are doing and give them credit for meeting or exceeding the permit requirements. The MS4s in Vermont often exceed minimum measure requirements. The Department has worked to formally recognize these exemplary actions. In 2007 the Department submitted the MS4s for a Governor’s Environmental Excellence Award. In 2003 and 2005 the Department submitted the City of South Burlington for both an EPA award and the Governor’s Environmental Excellence Award. The Department also works to assist the MS4 in meeting the minimum measure requirements by taking advantage of activities that are already ongoing and paid for such as Green-Up. If the Department has no knowledge of these activities this recognition and subsequent benefits cannot occur.

59. (IV.J.4.b) There is a fear that changes will be necessary over time to the permit and that the minor change provision is very narrow in scope. A provision should be added that allows for other minor changes to the permit by the Secretary providing those changes do not cause or contribute to an exceedance of water quality standards or something to that effect. This permit will create an onerous burden on the permittee. Future changes may be needed that all parties agree are necessary. There needs to be an easier path to amend for the permittee. Conversely, language needs to be inserted to protect the permittee from wholesale midcourse changes by the Secretary. Essentially, there needs to be a trigger for reopening an appeal process to the permittee if the changes are significant. (E) (EJ)

Response: Section VI.Q covers procedures for modification of the permit. Additionally, any decision of the Secretary may be appealed as allowed by law.

Comments pertaining to V. Monitoring, Record Keeping and Reporting

60a. (V.A.2) The section referenced in this section (IV.H.3.a.4) does not specifically require monitoring as part of the illicit discharge program. We suggest changing the wording to: "If the permittee conducts monitoring of illicit discharges, all samples and measurements taken shall be representative of the monitored activity." (EPA)

Response: Section V.A.2 does not conflict with IV.H.3.a.4.

60b. (V.A.5) This paragraph opens the door to point discharge monitoring. Again, this may have to be in the permit as a result of the law suit by CLF on the previous permit. However, there should be language in the permit that there is a presumption that stormwater treatment systems meeting the 2002 State Standard or as approved by the Agency as an approved BMP meet the water quality requirement. The portion on evidence of an unusual discharge is sufficient unto itself; drop all after in reference to BMP's effectiveness. (E)

Response: The language on BMP effectiveness in the permit is consistent with the July 21, 2005 Memorandum of Decision of the Water Resources Board, re: Small Municipal Separate Storm Sewer Systems (MS4s) Docket Nos. WQ-03-08 and WQ-04-03 (Consolidated).

60c.(V.A.1). Not definable. Eliminate the word "measurable". (WIN)

Response: The Department disagrees. There are situations where monitoring would be appropriate in assessing the progress of a measurable goal. For example Burlington utilizes E.coli monitoring counts to establish the number of days a swimming beach is open. The measurable goal is the number of days the beach is closed, the bacti counts establish that number and the goal is a reduction in the number of days closed. The Department would agree that not all of the BMPs can be monitored in this way.

60d.(V.C.1) Not definable. Eliminate the word "measurable". (WIN)

Response: See response 60c and 32c.

60e. (V.A.5) Add: the permittee may charge the public for copies of its records under this permit based on allowable charges set by the Secretary of State. (E)

Response: The permit does not dictate whether copying charges may be collected by the permittee. This is governed by state law.

60f. (V.C.1) Change date to coincide with 30 days following the end of the Permit holder fiscal year (i.e., August 1) (E)

Response: The permit has been modified to make this change.

Comments pertaining to VI, Standard Permit Conditions

61a. (VI.B.1&3) This section needs to recognize intent. "Any person who violates any provision of this subchapter or who knowingly and intentionally fails. (WIN)

Response: The language in question is established by statute, and is only referenced by the permit.

61b. (VI.B) Define the term "person" (VTrans)

Response: Title 10 VSA §1251 (8) defines the term person as "any individual; partnership; company; corporation; association; joint venture; trust; municipality; the state of Vermont or any agency, department, or subdivision of the state, any federal agency, or any other legal or commercial entity."

61c. (VI.B.1) Subsection 1 of this section, quoting 10 VSA § 1275(a) requires that any person who violates any provision of this permit shall be fined not more than \$25,000 or be imprisoned not more than six months. Read in conjunction with subsection (H) which requires the chief administrative officer or highest elected official to sign and certify all permit information, it may be construed at some point that the permit signatory could be sentenced to a term in prison. While we understand that the intention of the statute was to punish individuals, the Town would suggest that the permit penalties be modified so that they are limited to monetary fines only. (ST)

Response: The penalties are established by statute and are not modified by the issuance of a permit.

61d. (VI.D) This section should be changed to read "...to maintain compliance with the conditions of this permit or an individual permit except in a circumstance where such a change is approved by the Agency." (WIN)

Response: The comment is acknowledged.

61e. (VI.E) The term "all reasonable steps" is very subjective. Particularly in emergencies (spills) or other unforeseen circumstances, the definition of "reasonable steps" could easily vary widely. Suggested wording "A permittee shall make reasonable efforts to" (WIN) (E)

Response: The comment is acknowledged.

61f. (VI.F) Too open-ended. "Any new information" (pertains to what?) that is requested (by whom?) ...or other information (delete). It needs to be defined better. Identify who has the authority to request and delete ..."other information" The only issue is permit compliance and not gathering a bunch of ancillary information because someone has dreamed up a new data request not related to permit compliance. (E)

Response: The Secretary is the only entity with such authority.

61g. (VI.H) We recommend the State consider including after "duly authorized" the following language: "consistent with 40 CFR 122.22(b)", to define what "duly authorized" means in the permit context. (EPA)

Response: The Department concurs, the permit has been modified.

61h. (VI.J) The statement is made that proper operations and maintenance requires the operation of back-up or auxiliary facilities but then qualifies the requirement as to only when needed. What is intended? Do backup facilities have to be ready to go into play if an event occurs that might lead to permit non-compliance? How do you actually do this -- more ponds? Large pumps (but where do you put the water)? Portable storage tanks? This is a catch-all that appears to "trap" an MS4 when essentially there is almost no way to pre-prepare for all contingencies and have back-up on site when the variable being dealt with is runoff and flow under a wide variety of precipitation events. The wording needs revision. (E)

Response: The Department acknowledges the comment.

61i. (VI.O.2) Need to address potential conflicts and the circumstance where one agency may not issue a permit to implement a BMP approved by this Agency. Suggest the following "In the event of conflict between conditions of this permit and State or Federal law OR conflicts between State or Federal agencies related to permitting or other conditions beyond the control of Permittee which may inadvertently place the Permittee in non-compliance of this Permit, the Agency will provide guidance to the Permittee and the Secretary shall on a case by case basis retain the authority to temporarily or permanently modify or remove the permit requirement." (WIN)

Response: The Department acknowledges the comment.

61j. (VI.R) This section should be changed to readAny interested party may petition the Secretary to take action under this paragraph. If the Secretary determines that an individual or alternative NPDES permit may be required, the Secretary will notify the entity in writing. This notification shall include a

brief statement of the reasons for this decision. If the entity disagrees with the Agency's rationale for the decision, they shall within 30-days of the date of the notification respond to the Secretary in writing and request that the Secretary reconsider the decision. If the secretary determines after reviewing the facts that an individual permit is still necessary, the entity shall be notified of the decision in writing and provided an application form, " (WIN)

Response: The Department acknowledges the comment.

61k. (VI.S) When an individual NPDES permit is denied to an operator otherwise subject to this permit or the operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Secretary. Is this correct....seems like a denial of an individual would make the MS4 permit valid? (VTrans)

Response: The section is correct.

61l. (VI.T) Change the "you"s to the "permittee" (E)

Response: The correction has been made.

Comments pertaining to VII, Definitions

62a. (VII.4) Designer means a qualified Professional Engineer. (WIN) (E)

Response: The Department acknowledges the comment.

62b. (VII.8) Illicit Discharges should account for all approved exceptions (discussed in question 1 & 36a). (WIN)

Response: The Department acknowledges the comment.

General Comments

Comments pertaining to expired state stormwater discharge permits

63a. ANR has not yet resolved the expired State permit issue that exists in the stormwater impaired watersheds. ANR should include in the 3-9014 permit that compliance with the requirements of the 3-9014 permit will allow expired state 3-9015 and 3-9010 permits to be renewed without requiring sediment and flow offsets. More specifically, the 3-9014 permit should include language that says, "if a project with an existing expired State stormwater permit uses the guidance provided in ANR's Engineering Feasibility Analysis (EFA) document (dated May 5, 2004) to upgrade their stormwater treatment system to the best fix possible, then the expired permit shall be renewed when the permittee submits a Notice of Intent for the expired permit". (SB) (EJ) (B)

Response: The Department expects to issue its policy regarding the renewal of expired permits in conjunction with the issuance of this permit.

63b. As noted earlier, expired permits are an important part of the FRP Puzzle. These loose ends are not the responsibility of the MS4 to resolve as part of the FRP. Expired permits must be considered as part of the FRP and the Agency's modeling of watershed remediation. (EJ) (VTrans)

Response: The Department acknowledges the comment.

63c. Please...comment on...whether permitted (expired or current) properties that discharge to the MS4 will maintain separate private permit coverage or if the expectation is for the NPDES permit to provide coverage for these impervious surfaces long term (particularly for those properties that are targeted and retrofitted during the FRP implementation). (B)

Response: This will be addressed in the Department's policy. See response 63a above.

63d. It is imperative to the implementation of this MS4 Permit that the State clearly identifies how they will handle the existing expired permits. These Permits are state issued and the Town has no authority to force the permittees to bring their existing systems into compliance. The State should RDA these expired permits immediately and encourage them to work with the Town to bring their systems into compliance prior to the creation of the FRP. It may be determined that once these systems are in compliance with the 2002 State Design Standards that additional work may not be necessary and or reduced. (WIL)

Response: The Department acknowledges the comment. See previous responses.

63e. There needs to be a clarification of the intent of the new MS4 permit, if it is to transfer all the expired permits that comingle with the MS4 waters to the MS4 permit holder, then the financial burden to the Town is not acceptable. (WIL)

Response: The Department acknowledges the comment. See previous responses.

Comments pertaining to state stormwater permit reporting and inspection requirements

64. Regulated MS4 entities are subject to numerous State of Vermont Stormwater permits and each permit has its own schedule for the filing of annual (or semi-annual) inspection reports and system recertification. There is no consistency in the timing of these reporting requirements and this creates a substantial administrative burden for municipalities. The 3-9014 permit should contain a provision that allows MS4 entities to submit inspection and recertification paperwork for all permits on which it is a permittee or co-permittee with the MS4 Annual Report. (SB) (MS4) (WIN) (WIL)

Response: The MS4 permit may not modify the requirements of General Permit 3-9010, 3-9015, or the Stormwater Management Rule. However, the Department will make every effort to facilitate consolidated reporting.

Comments pertaining to the economic impact of the permit

65a. We believe that this general permit necessitates an economic impact statement. We understand no such assessment is required by the law, because this is a permit instead of a rule. However, the economic impacts on affected municipalities of the proposed shift in responsibilities to affected local governments will be severe. We believe it is irresponsible to propose a rule that is as far-reaching as the MS4 permit without assessing its economic impact. (VLCT) (ST) (SC)

Response: The requirement to assess the economic impacts of the NPDES Phase II Stormwater Rule was appropriately assigned to the US EPA. Economic considerations by the State are not allowed under either Federal or State law.

65b. While we concur that the consensus of the SWAG process was that municipalities need to be heavily involved in the development and implementation of the BMP or Flow Restoration Plans (FRPs), the way the MS4 permit currently reads, it places the burden of FRP development, financing and implementation entirely¹ on the permittee. This is an inappropriate and impractical shift of the full responsibility of TMDL implementation for the reasons stated below. While there has never been any doubt in most stakeholder minds that the municipalities would be heavily involved with the remediation of these watershed since they have the most on-the-ground knowledge of the watersheds, requiring the municipalities to develop² and be fully responsible for implementing the FRP is very different than requiring the MS4s to be participants in a State led remediation effort. Instead of the current draft system, we propose the conceptual framework captured in various statements throughout Appendix F “The Stormwater Advisory Group (SWAG) and Development of an Overall Implementation Strategy for Vermont” of “The Framework for Remediation of Vermont’s Stormwater Impaired Waters”. The statements below more closely approximate the relationship we envision between the State and Municipalities. This relationship involves assisting in developing but not necessarily financing and implementing the FRPs:

“It was acknowledged that municipalities would play a critical role in preparing BMP plans and assisting others in preparing plans given their “on the ground” knowledge of watershed discharges.” (page 46)

“The importance of stakeholder involvement by municipalities, business, homeowners, watershed groups, etc.”(page 42)

“The importance of “fairness” in terms of who is required to implement and/or pay for TMDL implementation.” (page 42)

Though the permit should detail the level of participation necessary from the municipalities to ensure the efficient development and implementation of the FRPs, it is the City’s position that ANR must maintain ownership of the remediation effort and not shift that responsibility entirely to the

¹ We acknowledge that the State will provide assistance in running the model, but the coordination and feasibility work (which is very time consuming if done correctly, as it should be) would fall to the municipalities, as we read the currently proposed draft permit.

² Again, while we are aware of the State’s involvement in developing and running the model, and are appreciative of that assistance, the brunt of the work will fall to the municipalities, many of whom will likely be forced to hire consultants to assist in the development of these FRPs.

municipalities.³Requiring the municipalities to participate and perhaps even cost-share in the development of the FRPs is potentially palatable, but putting the full burden of implementation (design, coordination and construction costs) within 10 years upon the municipalities when a framework for financing has not been developed is not acceptable. (B)

Response: The Department acknowledges the comment. The Department has revised the permit to require implementation of Flow Restoration Plans (FRPs) as soon as possible, but no later than 20 years.

65c. The City of Burlington is aware that the State is willing and committed to assisting the communities in developing mechanisms for financing this effort – however, if those efforts (federal funding, Statewide Stormwater utility development etc.) are not successful, it will then still fall to the municipality to comply with the Phase II permit, and by extension, to fully fund the implementation efforts. Thus, by placing the full regulatory burden upon the municipalities, the Phase II permit effectively places the full financial burden of TMDL implementation upon the municipal permittees⁴. This is neither fair nor practical, as the report to the legislature notes. Appendix F “The Stormwater Advisory Group (SWAG) and Development of an Overall Implementation Strategy for Vermont” of “The Framework for Remediation of Vermont’s Stormwater Impaired Waters” report to the legislature clearly states:

Neither the state nor local communities can absorb the costs of such a program. (page 42)

Local communities cannot bear the full financial burden of implementing the TMDLs. (page 43)

The statements above, recorded as sentiments that emerged from the SWAG process, conflict with the implications of the current framework presented in the draft Phase II permit. The City believes the draft permit must be changed to more accurately reflect the SWAG’s guidance. Moreover, despite the fact that the City of Burlington is collecting a stormwater user fee and has a dedicated stormwater budget, this fee does not create the surplus of funds that would be necessary to fund the initial FRP development process, the design phase and the construction phase of the remediation efforts in our impaired watersheds. With the current schedule of implementation (approximately 7 years – 10 years total, but assuming 3 years will be taken up by FRP development) and the current estimate (approximately \$4 million) for stormwater retrofits for the MS4 portion of Englesby alone,⁵ the yearly budget for design and construction would be \$570 K. These estimates do not take into account the

³ While mandating “participation” can be difficult, perhaps it could be enforced through the threat of the residual designation authority which is offered in the draft permit as a regulatory backstop for the permittee to use for non-compliant discharges during the development and implementation of the FRP. If RDA can be used on existing discharges to the MS4 (which are technically covered by the municipalities Phase II NPDES permit) could RDA not be used on the MS4 entity itself as an enforcement mechanism? We recognize that the MS4 permit needs to be compliant with the goals of the TMDL; however that should be reserved for the post-construction stormwater minimum measure where the town must develop regulatory mechanisms for ensuring that new growth does not contribute to the impairment and that opportunities are seized during redevelopment for stormwater remediation.

⁴ We recognize that the option of submitting dischargers for residual designation by the State may be an option for non-cooperative entities; however we are assuming that we cannot suggest dischargers for residual designation because of lack of funding as a means to encourage private funding of retrofits. In either case, that is neither a locally palatable solution nor do we believe this is the intent of ANR in allowing for the RDA avenue of compliance.

⁵ The City of Burlington would also need to participate in the remediation of Centennial Brook (\$9 million between UVM, South Burlington and Burlington) and Potash (\$25 million between South Burlington and Burlington) likely according to impervious contribution.

cost of developing the FRP itself, or the cost of coordination and oversight as the implementation process moves forward. And with each new BMP, depending on the ultimate framework the State envisions regarding responsibility for operation and maintenance, there will be long term O&M costs that will multiply. To put this in context, of our current estimated \$830,000 in revenue for FY11 only approximately \$200,000 remains for “capital projects.” The remainder is dedicated to operating and maintaining the stormwater conveyance system for the City and improving on our ability to meet or exceed the requirements of the 6 minimum measures contained in our current Phase II permit and to improve water quality for all of the City’s receiving waters, including the Winooski River, the various unnamed tributaries to Lake Champlain and Lake Champlain itself. We would further estimate that at least 75% of that \$200K capital budget is already programmed in this year, and in following years, towards known and prioritized repair projects as well as towards grant matches and loan repayments⁶ for larger capital stormwater improvement projects installed across the City, not just in the impaired watershed. The remainder should and will go towards the inevitable unplanned events and emergencies that occur in any given year. The stormwater user fees do not and will not come close to providing the funds that will be necessary to fully finance the implementation effort of these impaired watersheds, nor should stormwater user fees collected across the City be directed only towards these three watersheds when Burlington has a number of stormwater challenges across the City. 7 (B) (ST)

Response: See response 65b.

65d. Most municipalities are required to go the voters to obtain permission to obligate funds for multiyear expenditures. The draft MS4 permit requires funds to be available over several years in order to manage the six minimum criteria and to oversee the implementation of the flow restoration plan. In addition to these expenses is the funding required to construct the stormwater treatment systems specified within the flow restoration plan, which may be paid for with either private or public dollars. Each municipality involved will require an accurate estimate of costs of complying with all portions of the MS4 over the term of the permit in order to accurately develop a budget to present to the voters for their consideration. Should the voters decline to commit the funding, it would seem that only the most imprudent official would sign the NOI or the permit (contract). We expect that, given the other demands on very limited municipal resources, the rejection of the funding request is likely. However, any monies that are devoted to stormwater will be at the expense of the maintenance of other, more critical infrastructure which protects the health and welfare of people such as water, sewers, bridges and highways. (RC)

Response: The Department acknowledges the comment. See response 65b.

⁶ For FY11 we are installing rain garden bump outs on a residential street and will also need to provide a \$20,000 match for our map modernization grant through SAFETEA-LU. In FY11 we will also be beginning a loan repayment on the vector truck purchased specifically to address the regular cleaning of our 2000+ catch basins as well as repaying the 50% match for our ARRA projects that are focusing on reducing stormwater to our combined sewer system and thus reducing the frequency of combined sewer overflow events.

⁷ The City of Burlington cannot focus its funding and staff time solely on the remediation of the impaired watersheds. While appropriate attention and an equitable portion of the stormwater budget can and should go towards these areas of the City, the other Burlington stormwater issues (combined sewer system, aging collection system infrastructure and the health of and water quality in other drainage to Lake Champlain) cannot be set aside for the implementation of the stormwater TMDLs.

65e. The draft permit requires the permittee to develop, implement, and enforce a program to detect and eliminate illicit discharges (Minimum Measure 3) and to regulate runoff from construction activities, erosion control regulations and post-construction runoff (Minimum Measure #5). MS4 municipalities would assume the role of regulators and enforcers of stormwater management requirements under both this section and the FRP requirement. What residual role will be left to DEC in these municipalities? What will be the cost of essentially adopting and implementing parallel programs to those the agency implements outside MS4 communities? (VLCT)

Response: The Department will continue to issue construction and post construction permits. Under Minimum Measure 4 and 5, the MS4s' role is to issue permits for post construction stormwater discharges that disturb an acre but have less than one acre of new impervious.

65f. The draft permit advocates that the staggering costs be paid for one way or another by the tax payers of each targeted municipality. It is important that the State become more of a "dues paying" stakeholder. As long as the State is insulated from the financial effects of its regulations, there will continue to be a disconnect between a program's costs and benefits. (RC)

Response: The Department acknowledges the comment; however Federal, not State law dictates the issuance of this MS4 permit.

65g. Of the implementation options available to achieve the goals of the MS4 permit, the only responsible, rational way is through a state-wide utility. We have no doubt that the implementation plan would be better accepted if the State stepped up and took an on-the-ground leadership role. Such leadership would remove a lot of the doubt and questions that permeate the draft permit. Uncertainty has been the enemy of progress towards stormwater solutions since the beginning. The utility could be set up like a state-wide solid waste district where the VT DEC would regulate, and the state stormwater utility would operate and be responsible for implementation of the MS4 permit. (RC)

Response: The Department has researched and reported on the potential role of stormwater utilities (Report to the 2010 Legislature: A Framework for Remediation of Vermont's Stormwater-Impaired Waters). However, there does not appear to be a consensus position, or universal support at this time amongst MS4s for such a utility.

65h. Our second comment is related broadly to the philosophical underpinnings of the MS4 program and costs...the basic assumption made is that it is the stormwater flow that is decreasing the biotics in the stream rather than the specific pollutants which are acknowledged to be carried in the stormwater. It would seem logical to suggest that the proposed stream flow changes may not change the biotics in a stream if the acceptable levels of stormwater flow into these streams still carried pollutants that were extremely toxic to biota. The Town is not contesting at this point the biological assessment regarding biotics in the Stevens and Rugg Brooks...What is of concern however is the statement made by the DEC in the TMDLs for each of these streams when discussing biological monitoring:

"The monitoring is extremely useful in that it directly measures the health of the aquatic life community and is reflective of environmental conditions that occur in the stream over an extended period of time (i.e. months) including the effects of intermittent discharges such as stormwater.

However, biological monitoring is limited when trying to identify the specific pollutant stressors and the extent to which they may contribute to impairment." ⁸ (Emphasis added)

This acknowledgement is made, but then largely ignored... The Town questions whether the physical stressors that the TMDL is supposed to address will actually result in improved aquatic life support in the Stevens and Rugg Brooks, which, as acknowledged in the Framework, is a theory supported with assumptions and presumed expectations. This is the crux of our second comment: there are a lot of unknowns and assumptions being made as to the efficacy of the stormwater management program as proposed by the MS4 permit. The Town acknowledges that in any new scientific inquiry a certain amount of assumptions must be made when creating models and analyzing problems. However, when that modeling results in projected costs to a municipality of hundreds of thousands, if not millions of dollars, we feel the State should take a step back and create some room for a project cost-benefit analysis that will let taxpayers know what the project costs will be, if the projects will be successful, and how long it will be before we see the desired results. (ST)

Response: The comments related to the TMDL are beyond the scope of the general permit. The Department acknowledges the remainder of the comment.

65i. At the outset, it should be noted that this is sizeable unfunded mandate. As such, it falls particularly hard on a community such as St. Albans City, where the grand list is flat, budgets regularly fail, and we're struggling to deliver current services, much less new ones. This is a different animal than has been encountered in the high growth communities (or those in active redevelopment such as Winooski) where it has been implemented to date. (SC)

Response: The Department acknowledges the comment. These requirements originate in Federal law.

Comments pertaining to the identification of impaired waters

66a. The development of a process (is needed) for removing "insignificant" streams from the impaired list when the receiving water is not impaired, the stream is incapable of supporting fish, and where the MS4 has documented compliance with the SWMP and TMDL requirements. (WIN)

Response: The comment is outside the scope of the general permit.

66b. By using stormwater (as the cause of impairment), the State is pointing a finger at the owner of every developed parcel of land in the affected watershed. The overwhelming majority of these property owners are innocent of any violations and in compliance with all permits. That and the fact that there are so many individuals involved makes it very awkward (both morally and administratively) for the State to "go after" them. The State apparently is considering selectively "going after" individuals, which, of course leaves itself open to claims of discrimination. (RC)

⁸ Rugg and Stevens Brooks TMDLs, VT DEC October 2008, page 4.

Response: The Department acknowledges the comment.

66c. The Town has several concerns regarding the scientific and technical bases for the application of the MS4 permit to the Town given that Moon Brook suffers no impairment in the Town and no evidence presented by DEC establishes the Town discharges excessive stormwater runoff into this stream, which suffers moderate impairment in its lower reaches only.... DEC acquired no data on Moon Brook's flow within the boundaries of the Town. Consequently, DEC put forth no evidence concerning the extent of any stormwater runoff contributed to Moon Brook by the Town. Nothing in the TMDL assesses stream flow rates in the Town, let alone establishes that such flow rates approach or exceed a problematic level. (RT)

Response: The comments related to the TMDL and the listing of the brook as impaired are beyond the scope of this permit.

66d. Moreover, whatever small increase stream flow is attributable to Town stormwater runoff, is evidently ameliorated by the flow-reducing presence of two in-stream ponds, Combination Pond (RM 3.3) and Piedmont Pond (RM 2.4). On site stormwater control techniques frequently incorporate ponds and basins as retention devices to slow stormwater flow and release input over time. Here nature has already provided retention ponds with respect to stormwater flow arising within the Town. As previously noted, all impairment in Moon Brook occurs below Piedmont Pond. Given the interposition of these two ponds, there exists no evidence that stormwater runoff from the Town is causing degradation of the Moon Brook stream channel. (RT)

Response: The comments related to the TMDL and the listing of the brook as impaired are beyond the scope of this permit.

66e. Much (if not all) of the developable land in (Rutland)Town has been developed, including lands in the Moon Brook area. A material increase in stormwater flows from the Town is unlikely. (RT)

Response: The Department acknowledges the comment.

Comments pertaining to the State's Approach to Mitigation of the Stormwater Impaired Streams

67a. ..the adversarial position taken by the State where "going after" property owners is the default and seemingly the only seriously considered course of action. Would it not be much better to try to work cooperatively with the larger property owners to reduce peak stormwater flows? (RC)

Response: The State initially took this approach with the Watershed Improvement Permits (WIPs) in 2003. Each watershed's top 5-10 contributors of stormwater runoff based on impervious surface and existing treatment were identified for stormwater retrofits. The Conservation Law Foundation challenged this approach as inadequate and without adequate assurance of success. The Water Resources Board, and Vermont State Legislature, agreed and ruled the Department must take a much more comprehensive approach to addressing the problem of stormwater runoff. The State then embarked on the development of the current

stormwater-impaired watershed remediation plan. The initial effort with the WIPs, and the Water Resources Board Docket leading to the remediation plan development are summarized in Investigation into Developing Cleanup Plans for Stormwater Impaired Waters - Docket No. INV-03-01.

67b. We are disturbed by the State's adversarial attitude toward the municipalities as expressed in the MS4 permit. Municipalities will be more willing to continue to work cooperatively with the State if the path ahead is one of positive collaboration, real world accomplishment and milestones of appreciation, not threats of fines and imprisonment and reflexive defensive litigation. (RC)

Response: The Department acknowledges the comment.

67c. The draft permit is structured in a way that the interpretation of potential impacts is obscured by the numerous references to state and federal regulations. Without devoting significant legal resources which are financially unavailable to many of the potentially affected municipalities, these future permittees are left to wonder how the MS4 permit will be interpreted by the State of Vermont. (RC)

Response: The Department acknowledges the comment.

67d. The flow reductions (high flow) and increases (low flow) called for arise from a flawed, indirect comparison to Tenney Brook, the sole "attainment stream" identified by DEC for Moon Brook. The TMDL states that the Lake Champlain Basin contains 15 attainment streams and 12 impaired streams. Tenney Brook and Moon Brook are included within these respective groups. DEC provides no information regarding flows of those streams within the attainment group. Tenney Brook's flow therefore cannot be compared to the attainment mean (an undisclosed value), though DEC has the data. Instead, DEC states that "analysis showed an average difference of 5% between the highest flow in the attainment range and the attainment mean." (TMDL p.13.) From the Tenney Brook high flow, DEC then subtracted an additional 5% to arrive at a "calculated target flow" of 8.8700 cfs/sq. mi. This figure represents a 10.9% high flow reduction target for Moon Brook. (TMDL p. 15.) DEC should have used the actual data from Tenney Brook and compared it to the known attainment mean to determine whether any downward adjustment was warranted to reach a calculated target flow. It could well be that Moon Brook's divergence from the appropriate target flow is in fact substantially smaller than the 12% overall targeted reduction which DEC characterizes in its response to TMDL Comment 4 as "relatively modest." If this proves correct, the cost of inclusion of the Town in the MS4 permit would substantially outweigh any benefits attendant the meager reduction in flow necessary. (RT)

Response: This comment is outside the scope of the general permit.

67e. The tool to implement the TMDLs is termed a "staged adaptive implementation and management approach". Simply put this approach is a trial and error management tool. There is not sufficient evidence that any of the stormwater management tools will work to achieve the stated goal of restoring aquatic life to the Stevens and Rugg Brooks (the ultimate objective of this program). This is because

the state is on the cutting edge in this field and there are not any other successful state models to draw upon.⁹ (ST)

Response: The Department acknowledges the comment and references the conclusion of the WRB Investigatory Docket: *“There is scientific evidence to suggest that stormwater management can result in improvements in aquatic biota in impaired streams. Although it is not possible to say with certainty whether full compliance with VWQS is possible or not in all the stormwater impaired streams in Vermont, best professional judgment suggests that cleanup plans based on the attached assessment and adaptive management approach have a reasonable probability of success. The adaptive management approach is ‘responsive’ rather than ‘prescriptive.’ It provides a rational framework for responding to future unforeseeable conditions. At this time, we see no need for Vermont to consider lowering its designated uses, classifications, or water quality criteria for any waterbody. In the last decade there have occurred stormwater remediation and stream restoration practices in Vermont’s stormwater impaired streams that have successfully restored or sustained both macroinvertebrate and fish populations to the Class B WQ standards. The list is not long nor is it certain that the effect will persist in all cases without further watershed remediation efforts. It is worth noting that in many of the urban stormwater streams the water quality can be hazardous to human health and that pollutants such as floatable trash, nutrients, and E.coli are both unhealthy and unaesthetic for urban dwellers regardless of their impact on the aquatic biological community. Urban stormwater runoff is no less problematic than wastewater or industrial point sources in the effort to clean up the State and the nation’s waterways.”*

⁹ "Vermont is on the cutting edge of creating...stormwater cleanup plans. In fact there is reason to believe that the Stormwater Cleanup Plan Framework may be used by other states across the country as a model for designing their own stormwater cleanup plans." Docket 2004, page 14.