Response to Public Comments on the MS4 Permit

ANR thanks everyone who took the time to review and comment on the draft MS4 permit. The final permit is a better document as a result of your efforts. Our responses to major comments are provided below.

Comment 1. (CLF)The proposed permit is duplicative of other stormwater permits issued by ANR.

- The numerous permits are confusing and make it difficult for citizens to participate.
- Conditions of the permits are sometimes contradictory.
- Permits use inconsistent terminology.

To consolidate and simplify the process we recommend:

- Re-issuing the Watershed Improvement Permits (WIP) as federal NPDES permits.
- Redefining MS4 permits to include the entirety of WIP watersheds and use of the MS4 permits in lieu of WIPs to address stormwater discharges to impaired waters and compliance with the Lake Champlain TMDL.
- Conducting a comprehensive review of state and federal stormwater laws and regulations and creating a program that minimizes duplication and overlap.

Response 1. The impact of stormwater on water quality is not a one-dimensional issue. Multiple solutions are required for a multi-faceted problem. Each of the stormwater permits issued by ANR addresses a distinct aspect of managing stormwater. Each of the following permit programs was developed at a different time by separate actions of federal and state authorities:

- *State individual and general permits for management of post-construction stormwater (10 V.S.A. § 1264 - 1981).* The Vermont General Assembly authorized ANR to issue individual and general stormwater discharge permits to address post-construction stormwater management from large impervious surfaces in 1981. Amendments to the statute in 2000 and 2002 required enhanced permitting standards and required that general permits for discharges to waters principally impaired by stormwater be issued on a watershed specific basis. ANR's 2002 permitting standards are designed to manage several distinct but inter-related stormwater impacts - water quality, groundwater recharge, stream channel protection, and l0 year and 100 year flood protection.

- *Phase I federal individual and general permits for management of erosion from large construction sites, prevention of stormwater contamination at certain industrial facilities and management of large and medium municipal separate storm sewer systems (MS4s) (§ 402(p) of the federal Clean Water Act*

(CWA), 1987). The United States Congress resolved confusion regarding the 1972 CWA's permit requirements for stormwater in 1987 by adopting section 402(p) (33 USC 1342(p)). 402(p) required individual or general stormwater permits for: 1) operators of certain industrial activities, requiring them to utilize good house keeping practices in order to prevent stormwater contamination caused by contact with industrial chemicals and waste products (the Industrial Multi-Sector permit), 2) construction sites disturbing five or more acres of land, requiring plans for controlling erosion from, and 3) large and medium MS4s, requiring improved stormwater management practices. These three permits were known as "Phase I stormwater permits".

- *Phase II federal individual and general permits for small construction projects and small MS4s(1999).* In 402(p) of the CWA Congress also required EPA to adopt rules covering additional stormwater discharges that it believed merited control based on scientific study. In 1999 EPA adopted these "Phase II" rules requiring individual or general permits for: 1) construction sites disturbing between one and five acres of land, requiring control of runoff from, and 2) small MS4s with urban characteristics, requiring them to implement a suite of management activities to reduce pollutants entering into their stormwater collection systems. The six management activities are:

  - Enhanced public education.
  - Improved public participation in municipal decision-making regarding stormwater.
  - Investigation and elimination of non-stormwater flows into the MS4.
  - Management of construction erosion on sites where more than one acre is disturbed.
  - Management of post-construction stormwater on sites where more than one acre is disturbed.
  - Management plans to prevent pollutants from contaminating stormwater at publicly owned properties and facilities.

- *The Lake Champlain Phosphorus TMDL (2002).* In addition to the state and federal permit programs, the Lake Champlain Phosphorus TMDL prepared by the states of New York and Vermont and approved by Regions 1 and 2 of EPA also governs stormwater management in the Lake Champlain Basin. The TMDL provides an allocation of acceptable phosphorus loads from both wastewater and stormwater discharges. The TMDL includes an implementation plan calling for municipal actions to abate phosphorous from stormwater-related activities not covered by state or federal permit programs. Such activities included better management of back roads, adoption of erosion ordinances for projects disturbing less than one acre of land, and promoting naturally vegetated riparian corridors.

It should be noted that the MS4 management concerns are not directly addressed in other state or federal permits. The MS4 permit has been designed to

complement rather than duplicate municipal actions required under other permits. For example, municipal construction projects and facilities subject to construction erosion and post-construction permits are not required to implement the six minimum measures contained in the MS4 permit. However, if a municipal facility is subject to the industrial multi-sector permit the stormwater pollution prevention plan prepared under that permit will suffice for meeting the facility planning obligations under this permit. Section 1.3 of the permit has been amended to help clarify the relation of the MS4 permit to other stormwater permits.

A sage once said that a solution to a problem ought to be made as simple as possible and no simpler. The distinct problems posed by stormwater have to be addressed individually. The stormwater permitting programs in Vermont emerged at different times, however, collectively they provide a comprehensive solution to the problem. While it might make sense to treat different aspects of stormwater management as separate schedules or parts of a unified stormwater permit there is something to be said for the educational value of maintaining their separate identities. Also, typically these permits are sought at different stages in the development and management of a site.

While the management of stormwater is not simple, it is pretty straightforward once it is recognized that there is not one stormwater problem but several different problems. ANR hopes to work with environmental organizations, municipal groups and the business community to communicate to our citizenry the necessary complexity of the problem, the hard work that will be required to minimize all the adverse impacts of stormwater, and the role that each permit program plays in that process.

Comment 2. (CLF) The small MS4s identified by ANR are different from those identified by USEPA. USEPA includes the communities of Milton, Jericho, and larger portions of Shelburne, Colchester, Essex Junction and South Burlington.

Response 2. ANR agrees and thanks the commenter for pointing out ANR's error in failing to account for changes in urbanized areas based on the 2000 census. Larger portions of Shelburne, Colchester, Essex Junction and South Burlington will be included under this permit. It should be noted that ANR has already expanded coverage under the MS4 to include all impaired watersheds within the MS4 towns and many of the areas identified by USEPA were designated in the initial permit.

We believe that amending the general permit to require Jericho and Milton to seek coverage under the general permit would constitute a major change requiring a new notice and public comment period. To avoid unnecessary delay in implementing the permit in towns originally identified for inclusion in the permit the permit will be issued without the inclusion of Jericho and Milton. Both towns will be identified as MS4 towns in an amendment to the permit to be noticed in the near future so that Milton, Jericho, and other interested parties can have an

opportunity to comment on the permit with the knowledge that these two towns are to be included. The amendment will give Jericho and Milton 180 days after the adoption of the amendment to prepare and submit their NOIs and stormwater management programs, consistent with the manner in which newly designated entities are treated under USEPA rules at 40 C.F.R. § 122.33(c)(2). It should be noted that the other 11 entities subject to the permit had three years to familiarize themselves with the federal requirements governing this permit and met with ANR representatives in monthly meetings for over a year and half prior to the issuance of the permit.

Comment 3. (CLF) Discharges to waters known to support populations of threatened or endangered species should not receive coverage under any general permit.

Response 3. The Department of Environmental Conservation (DEC) stormwater section will, in consultation with the Fish and Wildlife Department (FWD), screen NOIs for coverage under the MS4 to determine whether any of the discharges covered by the NOI will have an adverse impact on the habitat of any species on the state and federal endangered species lists. In the event of a potential adverse impact, applicants will be requested to revise their application to avoid harm to threatened or endangered species.

It should be noted that the taking of threatened or endangered species already requires a permit from ANR's Department of Fish and Wildlife so that the impacts addressed under this permit relate to secondary impacts on habitat. ANR believes the permit's procedures represent a cost-effective, common sense approach to assuring protection of the habitat of threatened or endangered species and compliance with applicable provisions of the state water quality standards without imposing the expense, delay and duplication of requiring an individual permit for such discharges. However, an individual discharge permit may be required if in the judgment of ANR, protection of the habitat of a threatened or endangered species cannot be accommodated within the framework of the general permit.

Comment 4. (CLF) The proposed permit must include a condition that no discharges authorized by this permit may cause or contribute to a violation of Vermont Water Quality Standards.

Response 4. Section 402(p)(3)(B)(iii) of the federal Clean Water Act (33 U.S.C. 1342(p)(3)(B)(iii)) and USEPA rules at 40 C.F.R. 122.34(a) require that stormwater permits for municipalities require municipalities to reduce pollutants to the maximum extent practicable (MEP). As noted in the case of *Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999), the MEP requirement is a municipality-specific substitute for compliance with Water Quality Standards. The federal MEP requirement is included in sections 1.3.6, 3.1.2.1 and 4. 1.1 of

the permit. Sections 1.3.7 and 3.1.3 of the permit also require that discharges under the permit be consistent with an EPA approved TMDL. Thus in addition to meeting the MEP standard MS4s must also comply with the Lake Champlain Phosphorus TMDL (and any TMDLs for other waters that may be adopted in the future).

ANR views MEP as an appropriate and aggressive standard for achieving water quality improvements from activities subject to the MS4 permit. There are no requirements in the Vermont Water Quality Standards regarding public education, public involvement in decision-making, investigation of improper discharges to municipal stormwater systems, adoption of ordinances to prevent construction erosion and control post-construction stormwater, or good housekeeping practices on municipally-owned property.

Although neither ANR nor anyone else can reliably predict the precise impact of the activities required by the MS4 permit on phosphorus or any other pollutant entering Lake Champlain and any of its tributaries, we are confident that these activities will reduce from current levels the pollutants in stormwater emanating from these communities. Therefore, we believe that actions meeting the MEP standards are consistent with state water quality standards even though the standards do not directly address the actions required under the permit.

Comment 5. (CLF) The proposed permit does not properly implement, nor does it ensure compliance with the recently approved Lake Champlain TMDL for phosphorus. No criteria or measurable goals are established in the permit for the discharger to measure up to.

Response 5. Lake Champlain is the ultimate "receiving water" for all discharges covered by this permit as per the definition of that term in section 1-01 B. 38 of the Vermont Water Quality Standards. Hence, pursuant to section 1.3.7 of the permit the management of stormwater discharges of the MS4 entities must be consistent with the Lake Champlain Phosphorus TMDL. Section 3.1.3 of the permit requires that MS4 actions be consistent with the recommendations set forth for municipalities in the Lake Champlain TMDL. Section 3.1.4 goes on to clarify that determinations of consistency with recommendations of the TMDL will "focus on the adequacy of your storm water controls (implementation and maintenance), not on the response of the receiving water."

The Lake Champlain Phosphorus TMDL requires significant reductions in pollutant loadings from developed land sources. However there is no credible method to parcel out responsibility for these reductions among the 136 cities and towns that are either fully or partially within the Lake Champlain basin. As noted in the Lake Champlain TMDL at pages 93 and 94:

> "[T]here is little or no quantitative information available to provide either a basin-wide inventory of needs, or estimates of the phosphorus load reductions attainable from the kinds of nonpoint source control practices that apply on most of the developed land in Vermont, such as erosion control at constructions sites, better backroad maintenance, riparian buffer protection, local municipal ordinances, and restoration of stream stability.
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> The lack of quantitative information on these nonpoint source phosphorus control practices should not preclude aggressive efforts to implement these programs in order to attain the load allocations in the TMDL. All of the recommended implementation actions in the TMDL are aimed at reducing known sources of phosphorus in the basin, and the expectations of phosphorus reduction benefits from these actions are supported by simple observation and common sense."
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> Monitoring will be necessary to determine when implementation efforts have succeeded. A comprehensive, long-term monitoring program (discussed below) will be needed to determine when the loading targets and in-lake criteria have been achieved, and to redirect program efforts if necessary. These limitations of scientific knowledge mean that it is not possible to define, in advance, specific levels of implementation or endpoints (e.g., number of sites to be treated or miles of river to be restored) necessary to attain the load allocations for each watershed and each land use category in the TMDL. However, there are a number of good reasons, listed below, why the fullest possible implementation effort would be the best strategy to adopt."

As previously noted, the stormwater management activities required by the MS4 permit are unlike traditional waste water management discharges and the Vermont Water Quality Standards establish no measurements for their success. That is why Congress established the requirement in section 402(p)(3)(B)(iii) of the CWA that municipalities reduce pollutants to the maximum extent practicable. This is an effort-based standard, not an "end of pipe" pollutant-loading standard. The standard's application is necessarily fact and entity-specific.

The recommendations for municipal action to reduce developed land sources of pollution are discussed in pages 59 through 77 of the Lake Champlain Phosphorus TMDL. In preparing the municipal stormwater management program required by the permit the MS4 entities are required to make maximum effort to incorporate relevant recommendations. Their compliance will then be assessed on the degree to which they have implemented the elements of their approved programs. That is why section 3.1.4 requires compliance in implementing best management practices rather than numeric outputs.

There is simply no reliable means to implement a phosphorus loading reduction accounting system for practices required under the permit. ANR is continuously

monitoring phosphorus entering Lake Champlain. If ambient water quality monitoring shows that phosphorus is not being adequately reduced then an assessment will have to be made regarding what more MS4 entities (or other municipalities in the watershed, waste water dischargers, farmers or foresters) will have to do reduce phosphorus in their discharges.

USEPA recently issued a guidance memorandum entitled *Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs.* The memorandum treats the issue of MS4 compliance with a TMDL and reads in pertinent part as follows:

> "Where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Effluent limitations to control the discharge of pollutants generally are expressed in numerical form. However, in light of 33 U.S.C. §1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. See *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits*, 61 FR 43761 (Aug. 26, 1996). The Interim Permitting Approach Policy recognizes the need for an iterative approach to control pollutants in storm water discharges. Specifically, the policy anticipates that a suite of BMPs will be used in the initial rounds of permits and that these BMPs will be tailored in subsequent rounds.
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> EPA's policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances.
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> Under certain circumstances, BMPs are an appropriate form of effluent limits to control pollutants in storm water. See 40 CFR § 122.44(k)(2) & (3). If it is determined that a BMP approach (including an iterative BMP approach) is appropriate to meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this."

The Lake Champlain Phosphorus TMDL and ANR's requirements for MS4 consistency with the TMDL are fully consistent with EPA's guidance.

Comment 6. (CLF) Conditions for discharging to impaired waters are inadequate.

Response 6. ANR believes that the conditions in the MS4 permit are adequate to address MS4 discharges to impaired waters. As noted in the answer to the previous comment, all MS4 stormwater management plans must be consistent with recommendations of the Lake Champlain Phosphorus TMDL. If an MS4 discharge contributes to the impairment of a stream principally impaired by stormwater it must comply with the specific requirements of the WIP permit issued for that watershed in addition to the requirements of the MS4 permit. Hence, in areas subject to MS4 requirements the measures taken by MS4 entities provide pollutant reductions that are in addition to those achieved by the WIPs.

Comment 7. (CLF) The proposed permit does not require discharges to comply with Vermont's antidegradation policy.

Response 7. This permit does not authorize new stormwater discharges to waters of the state. The six management activities addressed in the MS4 permit are designed to reduce pollutants in existing stormwater flows not further degrade them. As previously noted in response 4, the Vermont Water Quality Standards do not address the management activities required by the MS4 permit. However, ANR believes that implementation of the measures will significantly enhance water quality in Lake Champlain and its tributaries.

Comment 8. (CLF) No provisions are made for designating MS4s through a petition.

Response 8. The legal authority for any person to petition the ANR for the designation of a large, medium, or small municipal separate storm sewer system is not in the General Permit it is contained in 40 CFR 122.26(f)(4). 40 CFR 123.35(c) requires ANR to render a decision on a petition within 180 days. 40 CFR 122.32(a)(2) requires that an MS4 seek coverage under the general permit if designated by ANR. Section 1.1.3 of the permit states that MS4s designated as a result of a petition will be required to seek coverage under the general permit and the reference to 40 CFR 122.32(a) in section 2.1.2 of the permit gives a designated municipality 180 days to file an NOI seeking coverage under the permit. No change to the permit is required.

Comment 9. (CLF) The proposed permit must include a condition requiring water quality monitoring, especially in waters listed as impaired under Section 303(d) of the Clean Water Act.

Response 9. ANR does not believe that sampling of MS4 stormwater discharges would provide any reliable or useful management data. ANR has itself taken responsibility for ambient water monitoring which is partially paid for by the fees assed to all stormwater permitees. The activities of MS4 municipalities will be reviewed to ensure they have implemented and are in compliance with the best management practices set forth in their approved stormwater management programs.

Comment 10. (VTrans) Will a copy of the map be included in the Permit? Are the boundaries of the regulated area dynamic during the term of the Permit? If the regulated area is dynamic, then please explain how would alterations of the boundaries be made, how would MS4s be informed, and what would be the required response from the effected MS4s?

Response 10. Part 1.1 or the permit lists all municipalities subject to the MS4 rule and includes a web site address that shows the area subject to the MS4 rule and a list all of the designated MS4s. The boundaries of regulated area are dynamic during the permit term. The boundary can change if a watershed in a municipality subject to the MS4 rule and not shown on the map is found to be principally impaired by stormwater and so listed on the biannual 303(d) list. The boundary of the area effected by the rule would be expanded to include the impaired reach of the watershed and lands contributing to it. This permit would be amended to recognize the expanded jurisdiction and all affected MS4s would be notified by ANR. The affected MS4s would be required to file an amended SWMP. The amended plan would expand activities required under this permit to the new area subject to the rule. If ANR designates additional MS4s for coverage under this permit on its own motion or after being petitioned to do so, the boundary would also change and affected SWMPs would have to be amended.

Comment 11. (VTrans) Include bridge washing in the list of non-stormwater discharges. Bridge washing is similar to street washing.

Response 11. Bridge washing has been added to the list of non-stormwater discharges in part 1.2.1.8.

Comment 12. (VTrans) There are problems with the proposed timeline. If the permit is issued in final in late February, then the MS4s have less than one month until the March 10, 2003 deadline to prepare the Notice of Intent (NOI) and the stormwater management program (SWMP) and submit that documentation to ANR. Since 10 V.S.A. 1263(b) requires a 10 day public notice Comment permit before ANR can issue a stormwater permit discharge permit, ANR can not issue the letters of determination for at least 10 days after they receive the NOI and SWMP. If ANR or the public questions the content of the NOI or the SWMP and requires more

information then the determination may be delayed further. Therefore, if an MS4 meets the March 10, 2003 deadline, they will be in violation of this Permit for at least 10 days if not more.

Response 12. An MS4 is required by EPA rules to file either an NOI for coverage under a NPDES general permit or an application for a individual NPDES permit by March 10, 2003 unless designated by ANR after that date in which case an NOI or individual permit application must be submitted with a 180 days of designation. (40 CFR 122.26(e)(9)(i) and (ii) and 40 CFR 122. 40 CFR 122.33(c)) Because ANR has delayed issuing this permit ANR will consider NOIs file by March 24, 2003 to be timely.

An MS4 that makes a timely filing of an NOI is in compliance with federal rules and the permit. Once an MS4 has filed its NOI it has taken all the steps necessary to comply with the permit. After determining that an MS4's NOI filing is administratively complete, that is, it has met basic application requirements, ANR will provide notice and initiate a 10-day comment period. After the end of the public comment period ANR will review the application and comments, if necessary seek additional information, and make a final determination of eligibility for coverage under the general permit. Section 1.4.1 of the permit has been rewritten to make clear that MS4s obtain preliminary coverage under the permit upon the filing of an NOI and obtain final coverage after receipt of approval from ANR.

It also should be noted that Section 2.1.3. of the general permit allows MS4s to submit an NOI after the March 24 filing deadline. However, the MS4 is responsible for violations between March 24 and the date of filing.

Comment 13. (CWD) Please include the following language in the proposed MS4 permit: "In developing the NOI and permit application for the Phase II stormwater permit, the MS4 shall consult with and involve those public water supplies with source protection zones within that MS4."

Response 13. Part 4.1.4 has been added to address this concern and, if applicable, requires MS4s to consult with public water suppliers regarding source protection zones.

Comment 14. (EPA) Permit numbers, EPA uses "05" to denote a permit as a multi-sector permit. We will be using "04" as a municipal permit. Suggest Vermont change numbering to VTR04###.

Response 14. ANR agrees.

Comment 15. (EPA) Can the state issue a National Pollutant Discharge Elimination System Permit? Isn't the permit a state issued permit, the language in the draft permit should read "Notice of a draft Vermont Pollutant etc."?

Response 15. Vermont has been approved for NPDES delegation. ANR is the primary permitting authority for issuing MS4 NPDES permits. The MS4 permit is both a state permit and an NPDES permit. The numbers on the front of the permit reflect this.

Comment 16. (EPA) On page 1 of the permit the state mentions a "storm water management plan". The text of the permit mentions "storm water management program". Which is the state requiring? EPA requires a program.

Response 16. ANR agrees that the proper term is "stormwater management program" and has made the change on page 1 of the permit.

Comment 17. (EPA) The signature date needs to be reflective of the actual issuance date.

Response 17. ANR agrees.

Comment 18. (EPA) Suggest the language of Part 1.1.1.1 read "latest Decennial Census". This language is consistent with regulatory language.

Response 18. The latest decennial census applicable to the term of this general permit is the 2000 census. ANR believes that citing the 2000 census makes it easier to understand.

Comment 19. (EPA) It is unclear who is regulated by Part 1.1.1.2. The storm water program automatically applies to municipalities located fully or partially in an urbanized area regardless of water quality impairments.

Response 19. Vermont has chosen to exceed the minimum requirements of the federal rules by extending the jurisdiction of the permit to cover the watershed of an impaired water body within the territory of an MS4s even if the impaired watershed extends beyond the bounds of a census designated urban area. Part 1.1.1.2 states this requirement.

Comment 20. (EPA) The designation of additional municipalities for coverage applies to those municipalities located outside of an urbanized area. The regulatory citation (40-CFR §123.35(b)) states that designations must be made by December 9, 2002, or December 8, 2004 if the state has a comprehensive watershed plan. Is the state

planning on designating municipalities outside of urbanized areas based on a watershed approach?

Response 20. 40 CFR 122.35(b) also permits the state to designate additional MS4s which are not included in a watershed plan after the issuance of a general permit. ANR has no plans at this time to designate any additional MS4s but reserves the right to do so. Also, ANR must review petitions seeking designation of additional MS4 pursuant to 40 CFR 122.26(f).

Comment 21. (EPA) Part 2.2.1.2 refers to §122.32(c), this section pertains to waivers not designations. Although the language does state that once a waiver is given, a municipality may be required to apply for coverage at a later date, I think this may cause some confusion for the regulated community. Does the state plan to allow either waiver that is discussed in the regulations at §§122.32(d) &(e)?

Response 21. ANR is granting a waiver to the town of Underhill that has 250 residents in an urbanized area designated by the 2000 Census. ANR has waived the requirement that Underhill seek coverage under an MS4 NPDES permit pursuant to 40 CFR 122.32(d) and 40 CFR 122.35(d). ANR has no intention at this time of requiring Underhill to seek coverage under this permit. However, 40 CFR 122.35(b) requires that ANR reserve the right to designate a waived municipality as an MS4 in the event that circumstances change.

Comment 22. (EPA) Part 2.2.2.2 talks about relying on "another governmental entity". Is the state limiting the type of entity a municipality can rely on in implementing the minimum measures? The regulations just mention "entity" and do not qualify it. Part 4.3 does not use the qualifier of "governmental". This seems confusing.

Response 22. Parts 2.2.2.2 and 4.3 are identical to corresponding provisions of EPA's May 1, 2002 model permit (2.2.1.4 and 4.4). However, ANR agrees with the comment and will remove the word "governmental" in part 2.2.2.2.

Comment 23. (EPA) Is the state adopting EPA's menu of BMPs for their own? Or does the state plan to develop their own menu?

Response 23. For the most part ANR has adopted EPA's menu of BMPs. EPA's website for both BMPs and measurable goals are referenced in 4.1.2.2 and 4.1.2.3. However, in the permit ANR has added additional options or mandated the use of certain options. See, for example the requirements for public education and public participation.

Comment 24. (EPA) Part 4.2.1.1 do all the regulated communities have the ability to develop a web site?

Response 24. Yes.

Comment 25. (EPA) Part 4.2.2.1, you should state what the actual public notice requirements are.

Response 25. ANR agrees. Part 1.4.2 has been changed and ANR will now take responsibility for providing notice of the NOIs. This is a procedure that is working well to assure proper notice in some of ANR's other general permit programs.

Comment 26. (EPA) Part 4.2.2.2.1 this requires discussion of how the municipality will involve the public in the development of the NOI and storm water management program. With the short time period for submissions it there really time for meaningful public participation in NOI development?

Response 26 ANR recognizes that there was little time to consult with the public prior to the preparation of NOIs. 4.2.2.2.1 now requires MS4s to describe their plans to actively involve the public in the further development and implementation of their stormwater programs.

Comment 27. (EPA) Part 4.2.3.1.2 what if a community wants to do something different than GIS? Will the state allow another type of system?

Response 27. No, ANR is requiring GIS or AUTOCAD mapping of MS4 storm sewer systems. All of the designated MS4s have the ability either independently or in cooperation with the Chittenden County Regional Planning Commission to meet this requirement.

Comment 28. (EPA) Part 4.2.6.1.3 what is the state referring to as "an individual NPDES Multi-Sector Permit?"

Response 28. In the event that an industrial facility is unable to qualify for coverage under the state's forthcoming Multi-Sector General Permit then it must submit an application for an individual NPDES permit pursuant to 40 CFR 122.26(c)(1). ANR expects that most publicly and privately operated industrial facilities will obtain coverage under the Multi Sector General Permit when it is issued. Nevertheless ANR must allow for the possibility that some facilities may file applications for an individual permit.

Comment 29. (EPA) What is the date for submission of the annual reports?

Response 29. The date for submission of annual reports is February 1 of each year.

Comment 30. (EPA) Definitions: Consider adding EPA to the definitions. The "permitting authority" for this permit is the State of Vermont, not the EPA Regional Administrator.

Response 30. ANR has added a definition for EPA and replaced references to the term "permitting authority" with the term "the Agency". For clarities sake ANR has also added definitions of the terms "Waters of the United States", "Waters of the State", and "Nontraditional MS4".

Comment 31. Legal Question: Part 4.2.4.1., this language says that the municipality may qualify for cover under this permit by developing a program to assist the Secretary in the regulation of construction discharges. Similar language exists in Part 4.2.5.1.1. My concern is the state appears to be saying that instead of implementing the requirements of the Phase II program with regards to construction and post construction, the municipality can help the state with its existing construction program. This approach does not really fit the qualifying local program requirements of phase II program (40 CFR 122.34(c)).

Response 31. ANR has tried to eliminate duplicative regulation wherever possible in order to reduce the burden on regulated entities and to make the most efficient use possible of the taxpayers' state and local taxes. ANR believes the relevant support for this approach is found in 40 CFR 122.30 (d), 40 CFR 123.35(h)(2)(v) and 40 CFR 122.35(b) not 40 CFR 122.34(c). Pursuant to 40 CFR 122.30(d) EPA strongly encourages partnerships "for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health." 40 CFR 123.35(h)(2)(v) authorizes States, where appropriate, to recognize existing responsibilities among governmental entities for the control measures in an NPDES small MS4 permit. 40 CFR 122.35(b) states:

> "(b) In some cases, the NPDES permitting authority may recognize, either in your individual NPDES permit or in an NPDES general permit, that another governmental entity is responsible under an NPDES permit for implementing one or more of the minimum control measures for your small MS4 or that the permitting authority itself is responsible. Where the permitting authority does so, you are not required to include such minimum control measure(s) in your storm water management program. (For example, if a State or Tribe is subject to an NPDES permit that requires it to administer a program to control construction site runoff at the State or Tribal level and that program satisfies all of the requirements of § 122.34(b)(4), you could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures.) Your permit may be reopened and modified to include the

requirement to implement a minimum control measure if the entity fails to implement it."

Thus, the above rules explicitly recognize the propriety of ANR's assuming primary responsibility for construction site stormwater management in the MS4 permit since ANR is the EPA delegated permitting authority for the NPDES large and small construction permits in Vermont.

Unlike other states, Vermont also has a statutorily mandated state permit program for post-construction stormwater management from new development and redevelopment with large impervious surfaces. Hence, under this general permit ANR is assuming jurisdiction for post-construction stormwater management for those projects for which it already issues a state permit (projects with one or two acres of impervious surface depending on watershed size and affected resources). However, there is a gap between the larger projects covered by the state permit program and projects which must be regulated under the MS4 permit (projects that disturb greater than or equal to one acre). The permit requires that municipalities take responsibility for regulating post-construction stormwater management for projects greater than or equal to one acre that are below the regulatory threshold of ANR's permit program.

Comment 32. Did the state adopt regulations implementing the phase II program? (40 CFR 122.30-122.37) (40 CFR 123.25(a)(39)-(45))?

Response 32. It was not necessary for ANR to adopt new regulations for the implementation of 40 CFR 123.35 and other aspects of the Phase II program. ANR's legal authority for implementing this general permit is contained in both state statute and rule. ANR's statutory authority for issuing this rule is found chiefly in 10 V.S.A. Chapter 47 (especially §§1258(b), 1259, 1263 and 1264). 10 V.S.A § 1264 sets out the basic requirements for stormwater planning and permitting and specifically authorizes ANR to adopt general permits for stormwater management. In October of 1991 ANR adopted General Permit Rule 13.12 as an amendment to the Vermont Water Pollution Control Regulations. Rule 13.12 provides procedural and substantive requirements for the issuance of general permits for stormwater discharges, including this MS4 permit.