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 (MS4s)
July 27, 2018

The Department of Environmental Conservation issued the Draft Municipal Separate Storm Sewer System (MS4) General Permit for public comment on February 14, 2018. The Department held a public hearing to solicit public comments on the draft permit on March 16, 2018 and the public comment period closed on March 23, 2018. The following are the public comments received by the Department and the Department's responses.

The following comments were received by:

- Chittenden County Board of Directors, representing the MS4 Subcommittee of the Clean Water Advisory Committee, submitted by Dan Albrecht, Senior Planner. (CCBD)
- The City of South Burlington, Tom Dipietro, Deputy Director, S. Burlington DPW (SB)
- The Conservation Law Foundation, Elena Mihaly, Staff Attorney (CLF)
- The Town and Village of Essex Junction, Dennis Lutz, Public Works Director and James Jutras, Water Quality Superintendent, respectively (E&EJ)

1. 1.1 Purpose: Please clarify if the MS4 boundaries are expanding. Also, provide clarity on the fees associated with the MS4 boundary and expanding to the traditional boundary. (CCBD)

   Response: The boundaries for the designated MS4 area are not changing under this permit. The MS4 designated area remains the census defined Urbanized Area plus the area of the stormwater impaired watersheds. The regulated MS4s shall continue to implement the Minimum Control Measures (MCMs) and Flow Restoration Plans (FRPs) within the designated MS4. This permit does however include the requirements to implement the municipal road standards and implement a Phosphorus Control Plan (PCP) to the boundaries of the municipality, which may be outside of the designated MS4.

   At the time of this response, the MS4 annual operating fee is $10/impervious acre. The impervious area calculation is applied to the area of the designated MS4.

2. 2.2 Eligible Discharges: The Department should remove any reference to how the Permit authorizes non-regulated, non-stormwater sources that are "commingled" with regulated discharges, even if those sources are not substantial contributors of pollutants. (CLF)

   Response: The permit authorizes discharges from certain non-stormwater sources only to the extent that they commingle with stormwater from the small MS4, and only on the condition that the non-stormwater discharges are not substantial contributors of pollutants. This is consistent with EPA's National Pollutant Discharge Elimination System (NPDES) Municipal

Separate Storm Sewer System General Permit Remand Rule (81 Fed. Reg. 237, 89,320 (Dec. 9, 2016), codified at 40 C.F.R. § 122.34), which requires municipalities to address the non-stormwater discharges identified in Section 2.2(2) of this general permit only if the permittee identifies them as a significant contributor of pollutants to the MS4.

3. 2.3 Limitations on Coverage: Please spell out the acronym CERCLA. (CCBD)

   Response: CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act. The Department has incorporated the suggested change.

4. 3.1 Submittal of NOI, Necessary Attachments, and Application Fee: When an MS4 submits an amendment or application to the Agency for technical review, what are the fees associated with the review? (CCBD)

   Response: Application review fees, identified in 3 VSA 2822(j)(2), are due upon the submittal of an original application for authorization, or an amendment of an authorization for a change in activities, under this general permit. The application review fee does not apply to renewal of previously permitted MS4s.

5. 3.1 Submittal of NOI, Necessary Attachments and Application Fee: This section is relatively undefined as to format and minimum requirements for submittal. Without direction, this could lead to a broad array of document and plan formats that the ANR will have to sort out. Also consider some form of ANR FTP site so applicants are able to submit complete applications at one time. Clarify whether fees would have to be paid on line when the necessary web based application is provided. State submittal requirements, not preferences. (E&EJ)

   Response: The Department will provide the NOI form and requirements for attachments with the issuance of the final permit. At this time, the Department does not have web-based application system to process applications or fees. The Department acknowledges the need for an online application and plan submittal platform and will work to further this effort.

6. 3.8 Amendments: Please spell out the acronym WQRP. (CCBD)

   Response: The Department has incorporated the suggested change.

7. 4.1 Discharges: Clarify that the "appropriate water quality requirements" referenced in Part 4, Discharge Requirements, must be the standards that were in place at the time of permit *application*, not issuance. (CLF)

   Response: The applicable water quality standards shall be those Vermont Water Quality Standards in effect at the time the Secretary issues a draft authorization under this permit. This is consistent with the EPA's administration of the Clean Water Act.

8. 4.2 Discharges to Impaired Waters: Clarify the phrase "applicable TMDL." This Permit should make eminently clear that if a TMDL is issued, even if midway through an MS4's

five-year authorization period, the MS4 shall automatically reapply for authorization within a reasonable period of time and amend its SWMP to be consistent with the assumptions and requirements of the TMDL. (CLF)

Response: The "applicable TMDL" is the TMDL for the water into which an MS4 is discharging. Permittees shall control discharges consistent with the assumptions and requirements of any wasteload allocation (WLA) applicable to the permittee in the TMDL. MS4s discharging to impaired waters without a TMDL must comply with the requirements of Section 4.2(B) of this general permit. The Secretary shall determine if more stringent water quality based effluent limitations are necessary to achieve compliance with a WLA, and the permittee shall amend their SWMP as necessary.

9. 4.2.A.3 and elsewhere: "....the permittee shall describe in its annual reports all control measures which have been or are planned to be implemented to control discharges consistent with the assumptions and requirements of the TMDL WLA. Please consider providing some form of reporting guidance to better facilitate MS4 reporting in a format that would simplify the Agencies supplemental reporting requirements to EPA as part of the TMDL score keeping process. In prior reporting years we have had to modify metrics. Consistency will lead to simplified data recording as well as consistency and accuracy in all layers of reporting. (E&EJ)

   Response: Comment noted. The Department will develop and provide an annual report template to ensure consistency in reporting.

10. 5.1 Comprehensive Plan for Covered Stormwater Discharges: In the second sentence, it states that the SWMP must be signed in accordance with Subpart 9.8 of this permit. It appears that this should refer to Subpart 10.8 Signatory Requirements. (CCBD)

    Response: The Department has incorporated the suggested change.

11. 5.2 Reviewing and Updating Stormwater Management Programs (SWMP): The Flow Restoration Plans (FRPs) and Phosphorus Control Plans (PCPs) are living documents and will be updated regularly as the MS4s implement the Plans. Does the Agency require a full submittal of the FRPs and PCPs every time they are updated? Please provide clarity on the extent that MS4s can update their FRPs and PCPs without having to go through the formal review process. What kind of change requires the FRP and PCP to go through the amendment process as outlined under 3.8 Amendments? The MS4s would prefer to notify the Agency of changes to the FRPs and PCPs with the submittal of their annual reports or have them understood to be living documents that change frequently. (CCBD)

    Response: Changes to practices in the approved FRP and/or PCP that achieve a commensurate reduction in stormwater flow or phosphorus may be reported in the Annual Report. These do not constitute changes that require technical review or resubmittal of the FRP or PCP. Changes in the site location of the planned treatment practices in FRPs or changes that result in reductions of level of treatment, do require technical review and shall be submitted as amendments to the authorization. When submitting an application for

amendment, the MS4 shall submit the entire FRP or PCP document for review, unless otherwise discussed with the Stormwater Program.

12. 6.2 Minimum Control Measures: Please identify what specific changes have been made to the Minimum Control Measures that differ from the 2012 MS4 General Permit 3-9014. (CCBD)

    Response: A "Track Changes" document comparing the Minimum Control Measure section of the of the previous permit to this permit has been posted on the MS4 website at: http://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees/ms4-permit

13. 6.2 3 a (5) Illicit Discharge Detection and Elimination: this section lacks clearness of significant source of discharges such as water line flushing, etc. that are exempted activity under 2.2 Eligible Discharges. MS4's may identify them as sources of phosphorus control without necessarily identifying them as significant contributors of pollutants to be regulated. (E&EJ)

    Response: Section 6.2 of the permit requires MS4s to address certain categories of non-stormwater discharges, including water line flushing, if those discharges are significant contributors of pollutants, including phosphorus. Those discharges are not authorized under this permit if they are significant contributors of pollutants. Section 2.2 only authorizes non-stormwater discharges if they are not substantial contributors of pollutants. Situations like this will be evaluated on a case by case basis to determine compliance with this requirement.

14. 6.2.5 a Post Construction Stormwater Management for New Development and Redevelopment. We respectfully request that the Agency take steps to address the regulatory gap identified pursuant to 10 VSA 1264. There is a gap between what the Agency's post construction storm water management permit regulates and what the permittee must regulate to comply with the minimum control measure. It consists of activities that disturb one acre of earth or greater, but do not trigger post construction jurisdiction. This gap continues to be delegated to municipalities over subsequent permit renewals without being addressed on a state permitting level. This is a State matter that is long overdue for correction. (E&EJ)

    Response: As a delegated state, Vermont is required to implement 40 CFR 122.34 - Permit requirements for regulated small MS4 permits. This includes the requirement for MS4s to develop and implement a program for stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre. The Department has addressed the "gap" between the requirements of the MS4 and the requirements of the post-construction stormwater permitting program by requiring MS4s to develop and implement a program regulating post-construction stormwater from projects that result in land disturbance greater than one acre, but do not otherwise trigger the requirements of the State's post-construction stormwater permitting program. The "gap" is the responsibility of the MS4. Additionally, the regulatory threshold for the State's post construction, or operational, permit program is determined by the legislature via 10 VSA 1264. The Agency has testified in

support of recent legislation (H. 576) that would lower the permit threshold from one acre to one-half acre of impervious surface.

15. 6.2 Minimum Control Measures: The Department must require low impact development and green infrastructure-based performance standards to comply with the standards of the Clean Water Act. This Draft Permit should set forth low impact development and green infrastructure as minimum elements for satisfying minimum control measures (MCMs) 5 and 6 pertaining to post-construction stormwater management in new development and redevelopment and pollution prevention/good housekeeping for municipal operations. (CLF)

    Response: For new development and redevelopment projects that disturb greater than or equal to one acre, and that are not subject to regulation under the Agency's post-construction stormwater management program, the MS4 shall adopt a regulation or policy that utilizes a combination of structural, non-structural, and low impact BMPs which are appropriate. The MS4's regulation or policy shall complement, at a minimum, or be more stringent than the requirements of the Agency. The Agency has established standards for stormwater treatment, including low impact development practices, in the Vermont Stormwater Manual.

16. 7. Assumption of Responsibility for Previously Permitted Stormwater Systems: Please elaborate on the definition of "full legal responsibility." If an MS4 is going to have "full legal responsibility" of a stormwater system, the MS4 must also have proper infrastructure in place to adequately access the stormwater system in order to maintain it. It is recommended that the language in the permit reflects this point. (CCBD)

    Response: The permit defines "full legal responsibility" as legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State. The municipality may establish agreements with the property owners, homeowners' associations, or private entities to annually inspect and maintain the stormwater systems. The permit does not specify the type of physical access that needs to be in place to maintain the stormwater system as this varies by practice and location.

17. 8.2 LC PCP Requirements: This section appears to make a reference to the Draft Version of the Lake Champlain TMDL (as opposed to the final version released in June). (CLF)

    Response: The Department has revised the final permit to reference the final Lake Champlain TMDLs.

18. 8.2 Lake Champlain Phosphorus Control Plan (PCP) Requirements: Under 8.2.A.2.d, the permit states that stormwater BMPs installed after 2010 and permitted offset projects installed after 2002 shall be included in the phosphorus reduction calculation. Please clarify the reasoning behind using 2010 as the baseline date for the implementation of BMPs. (CCBD)

Response: The permit has been updated to better distinguish between the cutoff date for tracking implementation of stormwater treatment practices on existing impervious, versus the implementation of BMPs on new impervious. The Lake Champlain TMDL modeling period was from 2000 – 2010. Therefore, phosphorus reductions as a result of BMPs installed during the modeling period were included in the TMDL baseload. As the sources of land use data, monitoring data, and modeling period all varied somewhat, July 1, 2010 was chosen as the cutoff date for tracking of practices implemented on new impervious. July 1, 2010 also coincides with the beginning of a new fiscal year, which coincides with other tracking efforts.

19. 8.2: "After 2010" and "after 2002" is ambiguous and open to interpretation. It is recommended that the specific dates of 1/1/2002 and 1/1/2010 be listed in the permit. (CCBD)

    Response: The 2002 date was selected for retrofits of existing impervious in part to be consistent with the cutoff for credit under the Flow Restoration Plans (FRPs). In many cases DEC was unable to the determine the exact construction date of a stormwater treatment practice, so implementing a specific cutoff date was found to be infeasible. It is generally clear, based on the design of a practice, whether a practice was installed after the adoption of the 2002 Vermont Stormwater Management Manual (VSMM). DEC has clarified this in the permit.
    The date for credit for practices associated with new development has been clarified in the permit as July 1, 2010. See response to question 18.

20. 8.2: Section 8.2.A.2.d indicates that BMPs installed after 2010 and stormwater offset permits installed after 2002 will be included in the City's MS4 phosphorus reduction calculation. Use of the 2010 date is inappropriate and must be revised before final issuance of the MS4 permit. The data collection period for the Lake P TMDL extended from 2000-2010. BMPs installed in the latter part of this timeframe should not be completely omitted from the phosphorus reduction calculation. Not only is this inaccurate from a modeling and mathematical standpoint, but it also punishes MS4 communities that took pro-active steps to address P inputs to the Lake in the latter years of the TMDL monitoring period. I recommend that DEC use a date of January 1, 2005, or develop a way to provide a percentage of the phosphorus reduction credit for BMPs that were installed during the monitoring period (e.g. if a BMP was installed in 2008 and was only accounted for in 2 years of the 10 year monitoring period then it will receive 80% of the total calculated phosphorus reduction credit for that BMP). (SB)

    Response: MS4s may receive a proportional level of credit for practices installed during the TMDL modeling period. The Department will consider the percent approach, described above, in an MS4's PCP for practices that include detailed efficiency and implementation date information.

21. 8.2: The MS4s are responsible for phosphorus reductions on municipally owned or controlled impervious surfaces of three acres or greater and developed lands for which they have assumed full legal responsibility. DEC is releasing a developed lands permit that will target

impervious surfaces of three acres or greater. Please clarify whether MS4s will receive credit towards their percent reduction for these properties that fall under DEC's jurisdiction and lie within the MS4's boundary. (CCBD)

Response: MS4s may receive credit for phosphorus reductions from treatment of impervious surfaces three acres or greater if those surfaces are municipally controlled. To receive the phosphorus credit in the PCP, the MS4 must have assumed full legal responsibility for the stormwater treatment system.

22. 8.2: Phosphorus reduction credit should be provided to MS4's that have Land Development Regulations requiring stormwater treatment for properties below the State stormwater permitting threshold. As it stands now, the State only regulates stormwater on properties that contain greater or equal to 1 acre of impervious surface. Some MS4 communities have local regulations that require stormwater treatment for properties at a lower threshold (e.g. a ½ acre impervious surface threshold). The MS4 permit should allow MS4 communities to submit these projects for phosphorus reduction credit. Not only is crediting of these properties appropriate within the proposed P reduction accounting system (i.e. they will provide benefit, but won't be credited elsewhere), but it will provide incentive for MS4 communities to take additional steps to manage stormwater on private property. (SB)

    Response: The Department has modified the Phosphorus Control Plan (PCP) requirements in the final permit to address this comment. Municipalities that require stormwater treatment on properties that would not otherwise receive a state stormwater permit may include these projects in their PCP as a P reduction credit. Municipalities shall establish legal agreements with these properties to ensure long-term maintenance and P removal.

23. 8.2: It is recommended that DEC encourage the MS4 communities to work together to develop and implement PCPs similar to the development and implementation of the FRPs and SWMPs. (CCBD)

    Response: Permittees that discharge into the same Lake Champlain lake segment may elect to cooperate to develop a single PCP. The PCP shall address the permittees' commensurate share of the municipal phosphorus reduction target. The MS4s shall include in the PCP who is responsible for each practice.

24. 8.2: MS4s worked together to create FRPs. Please provide clarity on how DEC will decide how MS4s will receive phosphorus credit on BMPs that are implemented under a joint FRP. (CCBD)

    Response: While MS4s worked together to write many of the flow restoration plans, most individual projects have been assigned as the responsibility of a single MS4 in the plans. Credit will generally be given to the MS4 responsible for implementing a given stormwater treatment practice. For shared FRP projects, the agreements between MS4s to share responsibility vary in nature. DEC would encourage MS4s involved in a joint project to negotiate shared phosphorus credit. If DEC is required to arbitrate, factors such as percent

ownership of impervious, cost share of the project, and maintenance responsibility will be considered in dividing credit.

25. 8.2.B: How will the Secretary "evaluate the phosphorus reductions achieved through all the developed lands regulatory tools to assess compliance, per lake segment, with the Lake Champlain TMDL reduction targets?" Will the Secretary rely on the state's Best Management Practices Accountability and Tracking Tool (BATT) to determine phosphorus reductions achieved? Will on-the-ground monitoring occur? And, the Permit should require the Secretary's evaluation to be posted in a manner so that is reviewable by the public. (CLF)

    Response: ANR developed a comprehensive TMDL implementation tracking and reporting system. The system is housed in the Watershed Projects Database (WPD) and contains the "BMP Accounting and Tracking Tool" (BATT) used to estimate pollutant reductions achieved by clean water projects. ANR will use the WPD and BATT to track stormwater treatment practices constructed to comply with MS4 permits and estimate phosphorus reductions achieved by those practices. ANR will assess compliance with the developed lands wasteload allocation per lake segment based on the TMDL baseloads, targets, and estimated phosphorus reductions achieved through installation of stormwater treatment practices under MS4 and TS4 permits, operational permits, and the Municipal Roads General Permit, as well as sub-jurisdictional/voluntary stormwater treatment practices implemented through state funding programs. Data will be compiled and reported to EPA in support of interim and final report cards at 2.5 and 5 years following the adoption of each Tactical Basin Plan, per the Lake Champlain TMDLs accountability framework. The report card reports will be posted on the DEC website.

    The Lake Champlain Long-Term Water Quality and Biological Monitoring Project (LTMP) conducts in-lake and tributary monitoring that will be used as an indicator of progress towards achieving the compliance with the TMDLs.

26. 8.3 Municipal Road Requirements: The existing MS4 permit previously defined the term "outfall" and contained requirements related to their mapping, inspection, and testing (see minimum measure 3, Illicit Discharge Detection and Elimination). The new draft of the MS4 permit proposes to include new requirements similar to what is contained in the Vermont Municipal Roads General Permit (MRGP). The MRGP requirements proposed for inclusion in the MS4 permit also use the term outfall, but define this term differently. This will create confusion and administrative problems because we will now have two sets of points for outfalls, each with different requirements. The existing MS4 outfalls will be inside the MS4 area and subject to the requirements for mapping, inspection and testing contained in minimum measure 3. The new MRGP outfalls will be both inside and outside the MS4 area and have different inspection and repair requirements. Furthermore, these points may not line up with existing MS4 outfalls within the MS4 area due to how they are defined in relation to a waterbody. DEC must correct this issue before issuing the final draft of the MS4 permit. (SB)

    Response: The comment is noted. The permit has been clarified to distinguish between the stormwater "outfalls" that must be monitored for compliance with IDDE requirements within

the designated MS4 area and the catch basin "outlets" that shall be stabilized to comply with the municipal road requirements.

27. 8.3 Municipal Road Requirements (Note: Comments 14 and 15 do not apply to the three non-traditional MS4s.): The definition of an outfall under the Municipal Roads requirement is inconsistent with what MS4s have used under their SWMP. It is recommended that the word "outfall" is replaced with "discharge point" under 8.3.A.1.a. (CCBD)

    Response: The comment is noted. See response to comment 26.

28. 8.3 Municipal Road Requirements: Hydrologically connected roads that are not under municipal ownership should not be included in the REI inventory assigned to the MS4 for compliance. (E&EJ)

    Response: The Department agrees. Only municipally owned roads shall be part of the Road Erosion Inventory.

29. 8.3 Currently, municipalities are not required to maintain Class 4 roads. MS4s believe that maintenance on Class 4 roads is tied to drainage and erosion. It is recommended that no permit requirements should be established on Class 4 roads unless and until statute is clarified to specifically require this responsibility. (CCBD)

    Response: Chapter 3 of Title 19 gives municipalities discretion regarding the extent to which they maintain class 4 roads for the purposes of navigability; Class 4 roads are not required to be maintained so as to be negotiable by a car. This general permit is issued pursuant to Section 1264 of Title 10, which pertains to the management of stormwater runoff. 10 V.S.A. 1264(c)(6) does explicitly require that municipalities obtain and comply with permit requirements before discharging stormwater from a municipal road. The MS4 permit imposes new regulatory standards to restore and protect water quality in compliance with statutory requirements. The stormwater statute and the terms of this general permit do not require municipalities to make class 4 roads negotiable by cars, which would potentially conflict with Title 19. Instead this permit imposes technical standards intended to reduce stormwater runoff from municipal roads. The requirements of this permit do not conflict with the authority municipalities are granted under Title 19 over the negotiability of municipal roads.

30. 8.3 C Road Stormwater Management Standards: Municipalities are required to certify VTRANS compliance of standards for State highway aid. Incorporate VTRANS standards as they apply to this section to avoid conflicting standards. (E&EJ)

    Response: The Department and VTrans are working together to ensure that the standards are consistent for all municipal roads in the future. At this point, both sets of standards shall be followed.

31. 8.3 C: Driveway culverts under this section assume rural installations rather than urban with small drainage areas. Consider exemption criteria for minimum sizing requirements. (E&EJ)

Response: The Department acknowledges that all drive culverts, rural and urban, convey different sized flows based on uphill contributions. The drive culvert minimum diameter standard for replacement or upgrades is a minimum standard. Drive, drainage and intermittent stream culverts should be sized based on active channel width and/or contributing watershed size. DEC has provided a recommended culvert sizing table and diagram available at http://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees/municipal-roads-program.

32. 9.1 Monitoring: It is requested that DEC provide a link to the specific Discharge Monitoring Report they'd like MS4s to use. (CCBD)

    Response: The Department has amended the permit and removed the requirement for reporting on a DMR form provided by the Agency.

33. 9.1 Monitoring: Identify DMR report format now so that compliance plans and reporting may be developed around the required format. Annual reporting is currently only structured to the permit layout, not an undefined reporting format. (E&EJ)

    Response: See response to comment 32. In addition, the Department is developing an Annual Report template for MS4s to use to report on minimum control measure implementation, FRP project installation, and PCP planning and implementation.

34. Appendices: Please provide any additional appendices that are associated with this permit. (CCBD)

    Response: Materials developed in support of this permit, including the Road Erosion Inventory templates, have not been included as a part of this general permit. They are available on the Department's website at: http://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees/ms4-permit

35. Definitions: This section does not include 'check dams' yet Appendix B shows one without clear requirement or notation in the permit. It seems out of place. Better to make appendix B a cross reference to the State design manual or other construction and maintenance records OR as per comment related to 8.3 C above? (E&EJ)

    Response: Check dams are included in Part 8.3.C as a road stormwater management practice. The check dam specifications are included as an appendix instead of within the permit text because check dam details are very specific and best described in a graphic. The VTrans design manual and/or other design manuals may change over time and direct references may be lost.

36. Initially, the MS4 boundaries were to be extended to the boundaries of the MS4 communities. Our intent was to wrap a number of valid developmental permits into our MS4 permit for ease of compliance. Also, from a Lake clean-up perspective, almost all of the

Town's storm-water systems that contribute to the Winooski River watershed are outside our current MS4 boundary. This is a huge disconnect. (E&EJ)

Response: Municipalities may incorporate state stormwater permits into their MS4 authorization for projects within and outside of the designated MS4 boundary. The MS4 shall establish a legal agreement with the previous permittee to ensure long-term maintenance. Also, see response to question 37.

37. Additionally, a significant portion of the Town's gravel roads lie outside our current MS4 boundary. They drain to the Brown's River Watershed and the Winooski River Watershed. The proposed municipal road permit is wrapped into our proposed MS4 permit and yet these roads lie outside the current MS4 boundary. How can the requirements set within an MS4 bound area legally apply outside that area? (E&EJ)

    Response: The new MS4 permit is written as a hybrid permit to incorporate the traditional MS4 permit requirements, the Municipal Roads General Permit requirements and to implement the LC TMDL. The traditional minimum control measures apply within the designated MS4 boundaries and the municipal road and phosphorus control plan requirements apply across the entire municipality. This is described in Part 1.1, Purpose and Part 1.2, Authority.

38. The questions regarding the 3-acre parcel rule are many and have been articulated well by our neighboring MS4 communities. While the permit requirements surrounding these parcels may make sense on a state-wide basis for communities without MS4 permits, the requirement creates enormous permit and compliance problems for the MS4 municipalities. (E&EJ)

    Response: The comment is outside the scope of this general permit. We do note that the requirement for so-called three-acre sites is established by statute and is not discretionary for the Department. Reference response to comment 21.