

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)
September 28, 2023

The Department of Environmental Conservation issued the Draft Municipal Separate Storm Sewer System (MS4) General Permit for public comment on June 2, 2023. The Department held a public hearing to solicit public comments on the draft permit on July 11, 2023 and the public comment period closed on August 1, 2023. The following are the public comments received by the Department and the Department's responses. Where appropriate, comments have been paraphrased, consolidated, and categorized for clarity.

The following comments were received by:

- The City Burlington, James Sherrard, Program Manager, Burlington Stormwater Program (B)
- The Town of Colchester, Brett McCreary, Environmental Engineering Technician, Department of Public Works (C)
- The City of Winooski, Ryan Lambert, PE, City Engineer (W)
- Lynne Jennings, Chief, Water Permits Branch, Water Division, EPA Region 1 (EPA)
- The Town of Williston, Christine Dougherty, Public Works Assistant Director (Wil)

1. The application timeframe of 60 days to submit an NOI and 180 days to submit a revised SWMP, PCP, and FRP may be difficult for communities with limited staff to achieve. An extension of this deadline to complete updates to the plans would be greatly appreciated. (C)

Response: The Agency understands this concern and has worked to accommodate this by allowing 180 days to submit a revised SWMP. If an MS4 cannot meet this deadline they should contact the Stormwater Program.

2. Request an extension of the 180 days unless the State can commit to having a new Modeling Program in place with trained staff available to remodel previous Flow Restoration Plans where needed. I have made multiple requests over the years for remodeling the Allen Brook Flow Restoration Plan only to be told staff was not available, and now the modeling program is not working. (Wil)

Response: A renewal application under the re-issued MS4 Permit is not dependent on the availability of a new flow modeling program. The permit requires that an MS4 submit an NOI, updated Stormwater Management Program plan, updated Phosphorus Control Plan (PCP), and updated Flow Restoration Plan (FRP). If an MS4 has updates to the Flow Restoration Plan, the MS4 may submit the proposed changes and associated HydroCAD files and drainage area information with the application. The Department is currently working on a request for information for a replacement model to allow for more users to run and update the model.

3. Draft language in Section 4.3, Anti-Degradation; Discharges to High Quality Waters states, "The six minimum control measures are achieved through the implementation of BMPs approved by the Agency." Consider removing this sentence unless clear guidance is provided about the Agency's review and approval process for BMPs. (B)

- Is there a list of approved BMP's being provided to MS4's?
- Are the "approved" BMP's those listed in the SWMP or other State approved Plans?
- Do MS4's need to receive approval for all BMP's under consideration?
- What is the structure of the review and approval process?

Response: The Agency approves the MS4's proposed BMPs through the Stormwater Management Program (SWMP) review and approval process when an MS4 applies for MS4 permit authorization.

4. Section 4.3 includes background language on the Vermont Antidegradation Policy in the Vermont Water Quality Standards and the Antidegradation Implementation Procedure that does not provide permit requirements. Such language is better suited for the Fact Sheet and should be removed from the body of the Draft Permit itself. (EPA)

Response: The language in Section 4.3 has been revised to address this comment. The previous language has been copied into the general permit fact sheet. See in-text revisions in the revised general permit.

5. 4.3 Second Paragraph. First, this approach appears to be trying to apply a method to a predetermined outcome. (Wil)

Response: See revised Section 4.3 and response to comment #6.

6. Section 4.3, Second Paragraph. Second, this process is qualifying waters as "high quality" even if the parameter is met only for an (undefined) minimum period of time throughout the year. So, the same should be true for determining a water is meeting its designated use if the water meets the requirements for some portion of the year, otherwise, the baseline standard should be "meets existing uses" unless the division has conducted studies to show the water meets "High Quality" Consistently throughout the year. (Wil)

Response: The duration of attainment of uses is dependent upon the given water quality criteria, which vary. Some uses may be considered attained even if not met throughout the entire year. In order to meet designated uses the criteria must be met for any applicable duration for that criterion.

7. Section 6.2.3(a)(3)(iii). Requiring testing for "Selected Chemical Parameters" is too vague. If the State wants testing to be completed the chemicals to be tested for should be clearly defined and the EPA approved procedures for testing should be provided as it is with other water/wastewater industry requirements. (Wil)

Response: The Vermont MS4 GP is a “Two-Step General Permit” whereby the Secretary has established general requirements in the MS4 GP and allows MS4s to develop specific BMPs and implementation plans through their individual Stormwater Management Programs (SWMPs). The MS4 SWMPs are submitted with the application NOI and are approved after review completing the public notice process. As part of the SWMP, the MS4 develops a monitoring plan and selects monitoring parameters that are appropriate for the municipality. Common parameters to detect illicit discharges in urban areas include: ammonia, chlorine, conductivity, salinity, E. coli., surfactants or optical brighteners, and temperature. EPA approved testing procedures can be found in 40 CFR 136.

8. Section 6.2.3(a)(3)(iv). On-site sewage disposal systems should be tracked, monitored, and inspected by the State, which is the current agency responsible for permitting the systems. Wastewater Treatment is outside the expertise of most Stormwater Professionals and are typically located on private property so without a legal nexus for accessing and inspecting the systems this requirement cannot reasonably be met by municipal staff. (Wil)

Response: The MS4 is not required to inspect private sewage disposal systems. This part of the permit requires that the MS4 IDDE plan address on-site sewage disposal systems that flow into the storm drainage system. The MS4 is responsible for inspecting and monitoring the MS4 system to detect and eliminate any illicit connections. Parameters such as those listed in Response #7 are used to sample the MS4 system to detect potential illicit connections. If a suspected illicit connection is discovered as part of the MS4 IDDE plan, then the MS4 shall follow its procedures for determining the cause and eliminating the discharge.

9. Section 6.2.3(a)(3)(vi). The "time frame" for eliminating discharges will be case specific and cannot reasonably be identified in advance. (Wil)

Response: The requirement for MS4s to provide a time frame for eliminating illicit discharges was added in response to comments received from EPA. This section requires that the MS4 IDDE plan include procedures for removing the source of the illicit discharge, including a timeframe for eliminating the discharge. In the SWMP, an MS4 may state that illicit discharges will be eliminated as soon as possible and specific dates following a potential illicit discharge will be determined based on the nature of the specific event.

10. Section 6.2, Minimum Control Measure #4, Construction Site Stormwater Runoff Control, focuses solely on “construction activities that result in a land disturbance of greater than or equal to one acre” and the Secretary, acting on behalf of the State’s approval to implement the NPDES program, has issued the CGP 3-9020. Are MS4 communities allowed to rely wholly on the State to permit, inspect, and enforce compliance with the State issued permit? (B)

Response: The State will continue to permit, inspect, and enforce compliance with the State issued Construction General Permit (CGP). The CGP is separate from the MS4 EPSC requirements in Minimum Control Measure #4. The permit language in Section 6.2.4(a) has

been updated to clarify that the Secretary will continue to implement the State issued CGP and this is separate from the MS4 permittee's EPSC requirements.

11. The Town of Colchester is not supportive of requiring MS4 permittees to regulate construction-related stormwater runoff on sites with greater than one acre of land disturbance, that currently fall under the jurisdiction of the State of Vermont's Construction General Permit. This places the burden of site plan review, consideration of public comments, site inspections, and enforcement of control measures on Town staff. We do not have the resources or staff time at our disposal to regulate activities that are currently regulated by the State of Vermont, and we feel that it is inappropriate for the State through the MS4 permit process, to mandate its prior responsibilities to MS4 permittees and their citizens. It is not in the best interest of Town of Colchester residents to use Town property taxes or stormwater utility fees to fund duplicative regulation of construction sites, when these sites should already be regulated by the State of VT and funded through State taxes. (C)

Response: The MS4 permit has been updated to comply with the requirements in 40 CFR §122.34 that require MS4s to develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. The Agency recognizes the overlap in CGP and MS4 permit requirements in 40 CFR §122.34 for site plan review, public noticing, and receipt of comments. To address this, the permit language in Parts 6.2.4 (4) and (5) has been updated. The permit now includes language that states if the MS4's EPSC program is the same as the CGP standards, then the MS4 may rely on the site plan review and public noticing by the state CGP instead of developing a separate program. However, if the MS4's program is more stringent or regulates earth disturbances of less than once acre, the MS4 will need to develop a review and noticing process for those properties. The MS4 permit does require that the MS4 develop and implement procedures for site inspection and enforcement of control measures.

12. If the local municipality is being asked to manage the State issued CGP through the creation of a local workforce enabling EPSC inspection and enforcement, then do the MS4's also receive additional authority from the State to enforce CGP compliance? (B)

- If the answer is "Yes" will this additional enforcement authority be clearly laid out in the Draft Permit?
- If the answer is "No", then will the State include language in the Draft Permit noting that while the MS4's are mandated to enforce a State issued permit, that the State has not provided any actual enforcement authority to the MS4's to do so? In this scenario, all requests from the MS4 to contractors out of compliance with their permit will be suggestions, and not requirements.

Response: Please see response to comment #10, above. The authority for MS4s to develop and enforce an MS4 construction site stormwater runoff control program is established in 40 C.F.R. § 122.34(b)(4).

13. Please consider revising paragraph 6.2.4.a.(5), “Develop and implement procedures for receipt and consideration of comments submitted by the public,” to eliminate or make optional the requirement for public comment as it relates specifically to local permitting of construction site stormwater runoff control. Our reasoning for this comment follows. (W)

- Currently, our mechanism for reviewing and enforcing temporary construction features on site projects, including EPSC measures, is the local ROW permit. As is typical for most communities, we do not have a public comment period for ROW permits, nor would we seek to introduce one. Doing so would cause schedule delays for contractors and would not likely yield substantive comments. Introducing a separate local EPSC permit would have the same consequences, as any final EPSC measures should be reviewed concurrently with other temporary construction considerations.
- An EPSC plan could be included with the local zoning permit, which does have a public comment period. However, the zoning review is concentrated on permanent design features, not temporary construction considerations, and an EPSC plan would be out of place in relation to the other submittals required with the zoning permit. The EPSC plan would also likely be premature at the zoning permit stage of design development, depending on the permittee’s level of involvement with a civil engineer and/or contractor, and/or progress of site/civil plans and contractor’s work plan. What is likely to occur would be zoning approval with conditions, with a condition being that the final EPSC plan be approved by DPW as part of the ROW permit (see bullet above). Public comment period would then open and likely close before ROW permit applications are submitted, so comments received from the public regarding the EPSC plan at this stage are likely to neither be useful to nor considered by the MS4 permittee.
- We acknowledge and concur with the desire to maintain an opportunity for the public to provide feedback on proposed policy decisions (such as this draft MS4 permit), permanent design features (such as those covered by zoning permits), and even temporary measures on large and impactful projects (such as those regulated by the 9020 permit). However, we question the value added by requiring the same opportunity for public feedback on temporary measures for small projects, whether it be EPSC measures, support of excavation plans, or utility connection work plans. The review of proposed EPSC measures by qualified technical staff or subcontracted consultants, especially when such EPSC plans are themselves prepared by qualified professionals, provides the necessary level of local regulatory oversight of EPSC designs; a public comment period added to the local EPSC permit mechanism is not commensurate with the small project nature of the work, and would only extend the timeline to permit approval without adding value to the review process.
- DEC should also consider that the MS4 permittee is more likely to receive complaints from the public regarding failing or non-compliant EPSC measures during construction, than public comments related to a permit. Such “comments” are always appreciated by and responded to by the MS4 permittee, and are in fact more useful in supporting water quality protections. In this way, the intent of providing opportunity for public feedback already exists, without the consequences of extending timelines for local permit approval.

Response: Please see response to comment #11, above.

14. We commend VTDEC on the updates to MCM 4, Construction Site Stormwater Runoff Control to meet the Federal requirements in 40 CFR §122.34. These updates include requiring erosion and sediment controls; procedures to site plan review; developing and implementing procedures for reviewing public comments; and developing and implementing procedures for site inspection and enforcement of control measures. Proper control of construction site stormwater runoff is important in protecting Vermont's waterbodies. The updated language includes the needed changes from the previous permit to align the Draft Permit with the regulations at 40 CFR §122.34. (EPA)

Response: The Vermont DEC takes the responsibility of protecting Vermont's waterbodies very seriously. The State has a strong Construction General Permit program that includes detailed site plan review, public noticing, and provides for the receipt of public comments. The proposed changes to Minimum Control Measure #4 to require MS4 permittees to develop and implement duplicative review, noticing, and comment for construction activities solicited many comments and concerns from the MS4 permittees. The Agency has heard those concerns and has revised the MS4 permit to meet the requirements of 40 CFR Section 122.34, while allowing MS4s to rely on the State CGP for site plan review, public noticing and receipt of comments. The permit language allows the MS4 to rely on the State review and noticing if the EPSC standards and thresholds in the MS4 community are identical to the State EPSC requirements.

15. Does any permit language in Section 6.2 pertain to construction activities that result in a land disturbance of less than one acre? (B)

Response: No; Minimum Control Measure #4 requires MS4s to develop a program to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more.

16. If the permit language in this section does pertain to construction activities that result in a land disturbance of less than one acre, then Burlington has the following list of clarifying questions. (B)

- a) Is there MS4 discretion on what size/type of projects trigger such an inspection?
- b) Who can inspect a site? Anyone employed by the MS4 or do they require a certain certification (i.e. PE, CPESC, CPSWQ, etc...)?
- c) Will the State provide any additional enforcement mechanisms for MS4's to utilize to support increased enforcement requirements? If a MS4 doesn't have the funding/staffing to perform inspections will the State provide financial support?
- d) What will the reporting process to the state require (narratives, pictures, videos, design drawings, EPSC plans [stamped by a PE?], etc...)

Response: While the MS4 permit does not require an MS4 to develop an EPSC program for construction activities that result in disturbances of less than one acre, the Agency would like to respond to the questions above for those projects in an MS4 that do disturb over one acre.

- a) In accordance with Section 6.2.4.a.6, the MS4 shall develop site inspection procedures for any projects that disturb greater than or equal to one acre or are part of a larger common plan of development.
- b) An inspector is not required to hold a specific certification in order to inspect construction projects within the MS4; however, at a minimum, the inspector should be knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, possess the appropriate skills and training to assess conditions at the construction site that could impact stormwater quality, and have the appropriate skills and training to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of Minimum Control Measure #4.
- c) The MS4 is responsible for developing a site inspection and enforcement program in accordance with 40 CFR §122.34. The Stormwater Program will work with the MS4s to develop a plan for a coordinated approach to site inspections where both the MS4 standards and the CGP are required.
- d) The MS4 is required to list, in the annual report, all construction projects that were inspected and any enforcement actions taken.

17. If section 6.2 pertains solely to construction activities that result in a land disturbance of greater than or equal to one acre, consider updating language to allow MS4 to rely on the State to manage, inspect, and enforce their own permit. (B)

Response: Please see response to comment #10, above.

18. Given the current language, it appears that the State is requiring MS4's to enforce a State issued permit without providing any additional authority to the MS4's to enforce the permit. I hope that the State recognizes this inconsistency and either A) removes this problematic language or B) provides MS4's with the authority to enforce compliance with State issued permits including the following;

- Authority to stop work on site,
- Authority to fine contractors out of compliance with EPSC measures,
- Authority to approve EPSC plans prior to the start of construction. (B)

Response: Please see response to comments #10 and #11, above.

19. Burlington is not in favor of adding an additional public comment step to the local permitting process. (B)

Response: Please see response to comment #11, above.

20. 6.2.4(a)(1). What coordination will there be between the State Permitting Group and the MS4's to ensure the MS4 representatives clearly understand the intentions behind the Permit

conditions? I have called the state to provide compliance assistance in the past, only to learn that no follow up action was pursued rendering my efforts useless. (Wil)

Response: Part 6.2.4(a)(1) specifies the requirement that construction activities undertaken by the MS4 are properly permitted and implemented. The Agency is available to explain the construction permitting requirements of the Construction General Permit (CGP). In regard to compliance assistance, the Agency is responsible for implementing the CGP statewide and prioritizes enforcement actions across the state but is willing to work with MS4s if compliance issues overlap.

21. 6.2.4(a)(4). Will these reviews be required before or after State Permit review? Will these reviews require Flow Modeling for waters determined to be impacted by Stormwater runoff for example? If so, those programs take time to develop and train staff. How will discrepancies between local and state reviews be addressed? Will there be a process to challenge a state review decision if a local request is overturned during a state review or vice versa? (Wil)

Response: Part 6.2.4(a)(4) requires that the MS4 “develop and implement procedures for site plan review which incorporate consideration of potential water quality impacts” from construction activities that disturb one or more acres. The MS4 site plan review can occur prior to or after the Agency completes its review under the Construction General Permit (CGP). The State CGP does not require an applicant to consider stormwater flow modeling as part of the application process; however, the MS4 may choose to develop regulations in accordance with Part 6.2.4(a)(3) that require stormwater flow considerations as part of Erosion Prevention and Sediment Control (EPSC) review. In regard to discrepancies between MS4 review and State CGP review, the State will review and issue a CGP authorization for projects that comply with the CGP requirements. In accordance with Part 6.2.4(a)(2) of the MS4 Permit, the MS4 shall “review its policies, regulations, and ordinances for their consistency with the requirements of the Construction General Permit. If the permittee’s review indicates that its policies are inconsistent with the Secretary’s permit, the permittee shall amend its policies to complement, at a minimum, or be more stringent than the requirements of the Secretary.” In this case, the MS4’s EPSC standards may be more stringent than the requirements of the CGP. The operator of a construction site would need to comply with the more stringent requirements. The State Stormwater Program will inspect and enforce compliance with the State standards and the MS4 is responsible for inspecting and enforcing the local standards. As part of the Environmental Notice Bulletin (ENB) public noticing process for all permit decisions, the MS4 has the ability to comment on construction permit applications within the MS4.

22. Regarding section 6.2.5, the draft permit does not appear to define the water quality requirements to be met for local regulation of post-construction stormwater runoff from applicable site developments, beyond ensuring “that controls are in place that would prevent or minimize water quality impacts.” We respectfully request clarification on whether there are quantifiable water quality requirements to be met, as per the Vermont Stormwater Management Manual or otherwise, for the local regulation of post-construction stormwater runoff from applicable projects as defined in the draft permit. (W)

Response: The MS4 permittees are required to develop a program to address post-construction runoff from projects that involve land disturbance of greater than or equal to one acre that are not subject to the Agency's post-construction Operational Permit. The Agency lowered the post-construction impervious surface regulatory threshold to one-half an acre of new and redeveloped impervious surfaces on July 1, 2022. Therefore, the post-construction "gap" that MS4 permittees must plan for is for projects that disturb one or more acres but develop less than one-half an acre of impervious surface. For these projects, the MS4 may select BMPs and develop standards that are appropriate for the MS4. The MS4 permit states that the permittee shall implement a stormwater ordinance that, "Utilizes a combination of structural, non-structural, and low impact BMPs (e.g. green roofs; infiltration practices, such as rain gardens, curb extensions, planter gardens, porous and pervious pavements, and other designs to manage stormwater using landscaping and structured or augmented soils; water harvesting devices, such as rain barrels and cisterns; and the use of stormwater for non-potable uses) which are appropriate." (Part 6.2.5.f)

23. Regarding paragraph 6.2.5.e, the MS4 permittee should not be responsible for determining whether a redevelopment project requires DEC permits. Unless the lot size or other project characteristic makes such a determination obvious, or the Owner's engineer has made the determination themselves and the MS4 permittee concurs with that determination, the MS4 permittee would defer to DEC on whether or not a project meets criteria for a 9050 permit (and 9020 if applicable), and would refer the local permittee to DEC to receive a written determination from DEC on the DEC permit requirements for their project. Once the DEC determination is available, the MS4 permittee would then determine whether local regulation of post-construction stormwater management is required for the project according to the general permit. (W)

Response: The MS4 permittee is not responsible for determining if a new or redevelopment project requires a DEC Stormwater Permit. Part 6.2.5.e requires that the MS4 permittee develop and implement procedures to identify those projects that do not require a DEC Stormwater Permit. The process described in this comment of working with an engineer and obtaining a determination from DEC is appropriate. The MS4 shall implement procedures to identify projects that disturb greater or equal to one acre. The MS4 shall require local post-construction controls for those projects unless DEC has determined that an DEC Stormwater permit is required.

24. In Section 7.1, Full Legal Responsibility, should the permit state that MS4's have a "legal right" as opposed to a "legal duty" to 'properly maintain' and 'repair and replace the stormwater system' that the MS4 has incorporated into the MS4 authorization? (B)

Response: Full Legal Responsibility for a stormwater system includes the obligation, or *legal duty*, to maintain, repair, and replace the system when it is no longer functioning. This is a greater responsibility than having the ability, or *legal right*, to maintain and replace the system.

25. In Section 7.2, Partial Legal Responsibility, the permit states, "An MS4 may assume "partial legal responsibility" for a stormwater system if the system is covered by an individual permit

where the MS4 is a co-permittee.” Does this language cover only systems covered by an “individual permit” or also an “individual General Permit?” (B)

Response: The permit has been amended to clarify that the term “individual permit” means Individual Stormwater Permit (INDS). The INDS is a state operational permit type that establishes specific conditions for the management of impervious surfaces on specific properties. This section of the MS4 GP provides the opportunity for MS4s to achieve phosphorus reduction credits on properties that are not incorporated into their MS4 authorization.

26. Section 8.3.E.1 “Feasibility” “The implementation of a standard does not require the condemnation of private property;” Can this language be updated to say “the use of private property”? The current language implies that the permittee may be required to use/ gain access to the private property in any way except a condemnation process. We would like this to be more clear so that we are not required to demonstrate that all other options to use/ access the private property were attempted before arriving at condemnation as the only option. (C)

Response: The municipality should make every reasonable attempt to meet the standards set in the permit. If a practice is not feasible in a particular location, the municipality should evaluate alternative locations. If an outlet is not accessible, the municipality should try to gain access. If it is not feasible, the municipality shall document the reason in the REI. The term condemnation was kept in the permit as it refers to the authority of local, state, or federal government to seize private property and compensate the owner. Because the permittees are municipalities, condemnation is the appropriate term to use in this context.

27. “Municipalities shall document in the REI Reassessment each instance where feasibility affects implementation of the standards.” Will this REI Reassessment form include an option for this feasibility exemption to be clearly documented? Can this section be more clear on where and how in the reassessment form the feasibility limitations should be documented? (C)

Response: The Department will update the REI Reassessment app to address this comment. The new REI app does include a feasibility section titled, “Barriers to Implementation.” This is where a municipality can document length of road segment that cannot meet standards due to historic stone walls, historic large trees, buried utilities, wetlands, lakeshore vegetation, excessive ledge, public safety considerations, or other hinderances.” For closed drainage roads in the outlet inventory form, the Department will add a new field for municipalities to document inaccessible outlets.

28. Section 8.3.B. (Hydrologically Connected Road Segment Determination) This is a significant expansion on the roads which will be subject to the MRGP and does not account for the stormwater control mechanisms in place that reduce the flow and volume of runoff from roads such as Catch Basins, Dry Wells, Infiltration, Evaporation, Stone and Grass lining of swales. The current practice of limiting the Hydrologically connected segments to 500 feet from surface waters and class 1 or Class 2 wetlands is a more reasonable approach. (Wil)

Response: The only change to the criteria was the category of roads that was formerly referred to as “paved roads with catch basins” is now referred to as “closed drainage roads”, which more accurately describes the roads currently captured under this group. The criteria for evaluating the hydrologic connectivity, including separation distances from surface waters, have otherwise not changed from the previous version of the permit.

29. Section 8.3.E.3.C.1. (Road Stormwater Management Standards, Open Drainage Roads, Drainage Outlets to Waters & Turnouts) “Whenever possible” should not be removed, because there are locations where a turnout will direct runoff onto, and potentially impact, private property. (Wil)

Response: The language “whenever possible” was removed from the permit to clarify that all drainage ditches shall have stabilized turnouts. Depending on the slope of the turnout, it can be grass or stone lined. If a turnout is not feasible in a particular location, the municipality should evaluate alternative locations or consider designs to achieve distributed runoff. This standard does not require a municipality to condemn private property.

30. Section 8.3.E.3.D.2. (Road Stormwater Management Standards, Open Drainage Roads, Municipal Cross Culverts and Intermittent Stream Culverts) 18” Minimum Culvert - Ask that this section follow Section E (3) (Driveway Culvert): Upgrade to minimum 15" culvert when FEASIBLE with 18" recommended. Existing drainage and road depth may not permit an 18" culvert while maintaining minimum coverage for structural integrity of the road surface. (Wil)

Response: For driveway culverts within the municipal Right of Way that are causing erosion, the permit requires upgrades of a minimum of 15” with 18” recommended. Municipal cross culverts are held to a higher standard (18” required) because they sustain higher flows for longer distances when compared to driveway culverts. The permit also includes an option to consider installing a French Drain or French Mattress in lieu of a cross culvert (Part 8.3.E.3.D.6). If both of these options are infeasible due to public safety considerations, the MS4 may document this in the REI.

31. Section 8.3.E.3.D.3. (Road Stormwater Management Standards, Open Drainage Roads, Municipal Cross Culverts and Intermittent Stream Culverts) For newly constructed cross culverts or when existing cross culverts are replaced. (Wil)

Response: 8.3.E.3.D.3 states “Cross culverts- Upgrade to 18” culvert (minimum), if erosion is due to inadequate size or absence of structure.” If the REI determines that the size or absence of a municipal cross culvert is the reason why a road segment is not meeting standards, then the municipality shall install or upgrade the culvert. The MS4, as part of its Phosphorus Control Plan (PCP), determines the timeframe for implementing the required upgrades.

32. Section 8.3.E.3.E.4. (Road Stormwater Management Standards, Open Drainage Roads, Driveway Culverts within the municipal ROW) "Requiring" doesn't account for, or allow

variance which may be required do too, site specific limitations when working on existing infrastructure. (Wil)

Response: This section states, “Intermittent streams may enter the municipal road drainage network, and in these cases, the Secretary requires culvert sizing based on in-field and mapping techniques described on the Stormwater Program’s website.” The Stormwater Program’s in-field guidance uses ‘active channel width’ to determine the appropriate culvert sizing. If an intermittent stream is entering the municipal drainage network and is causing erosion, and the Program’s in-field guidance cannot be followed, the municipality shall contact the Stormwater Program.