

# Vermont Department of Environmental Conservation

## Response to Comments Received During Public Comment Period for Draft General Permit 3-9003 (2011) for Stormwater Runoff from Industrial Facilities

August 2011

This document provides responses to the comments submitted during the public comment period for General Permit 3-9003.

### Comments Received:

Identification	Submitted by:	Signed by:
VNRC/CLF	Vermont Natural Resources Council and Conservation Law Foundation	Kim L. Greenwood, CPESC, Staff Scientist;  Louis Porter, Lake Champlain Lakekeeper
VTrans	Vermont Agency of Transportation	Jonathan B. Armstrong, PE, VTrans Stormwater Management Engineer

Parts I-VI include the summary of comments received by VNRC and CLF. Part VII includes a summary of comments received by VTrans.

### **Part I: Summary of comments pertaining to public comment**

The proposed general permit does not provide adequate opportunity for public scrutiny or comment. Ensuring this chance for public comment is important not only to comply with the CWA, but also to ensure that the Secretary has adequate information with which to evaluate a discharger's proposed SWPPP. This evaluation is the best chance to make sure necessary measures are being taken to prevent stormwater pollution. It allows the agency to receive comments from members of the public who know the site and the condition of the receiving waters best. At a time when ANR has increasingly-limited staffing resources, it should welcome the supplemental resources that informed and interested members of the public can provide.

1. Although the permit properly requires that a permittee prepare a Storm Water Pollution Prevention Plan before submitting a Notice of Intent it does not ensure that both the NOI and the SWPPP be available for public review and comment before coverage is granted or that they truly have been prepared (Vermont Proposed MSGP Section 5 p.35). Both together function as the permit for

stormwater discharge, not the NOI alone with the very limited information it contains. Given limited enforcement actions by the program, ensuring that these core documents exist and are available to the public helps to ensure compliance. The draft permit does require that a copy of the SWPPP be made available “to any member of the public who makes such a request in writing”, as required in 33 U.S.C. 1342(j) (Sec. 5.3). However, this provision does not impose meaningful deadlines for the permittee to respond to such a request, only saying such a response should be “timely” (5.3). That leaves open the possibility the SWPPP would not be made available in time for public comment on the NOI.

***Response:*** All applicants are required to submit both the completed Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) for their facility at the time they first apply for the Multi-Sector General Permit (MSGP). The Secretary will post the NOI on the Department’s website at <http://www.vtwaterquality.org/cfm/notices/notices.cfm> for a period of 10 days, pursuant to 10 VSA § 1263[b]. The applicant must also provide a copy of a complete NOI to the municipal clerk of the municipality in which the discharge is located at the time the NOI is submitted to the Secretary. Members of the public may contact the Agency to request a copy of the SWPPP during this 10 day public comment period. The SWPPP submittal requirement for new applicants was inadvertently omitted from the Draft MSGP 2011 and has been included in the final permit. Permittees with prior authorizations under the MSGP are not required to resubmit their facility’s updated SWPPP; however, if a member of the public requests a copy of a facility’s SWPPP during the public comment period, the applicant must furnish the Secretary with a copy of the updated SWPPP within 10 days. The Secretary will provide the SWPPP to the interested party and the comment period shall be extended for 10 days from that date. This provision has been added to the final permit.

2. In addition, the draft does not appear to include a formal process for an “opportunity for public hearing” as required under 33 U.S.C. 1342(a)(1) (Vermont Proposed MSGP Section 5.5 p.42), although the draft permit notes that the Secretary may notify a permittee their SWPPP is inadequate as a “result of comments on your SWPPP that the Secretary receives from the public,” indicating that public comments will be taken into consideration..

***Response:*** The public comment section of the NOI has been revised to include directions for requesting a public hearing.

3. Therefore, the chance for public comment on the NOI as established in section 1.4.2.2 of the draft is inadequate because the far greater detail contained in the SWPPP compared to the NOI means that the SWPPP contains the substance for evaluating the permittee’s approach to pollution prevention.

Without affording an opportunity for the public to review the SWPPP prior to authorizing the discharge, there is no way for the public to ascertain whether the discharger will actually comply with the substantive requirements of the permit and the CWA, including the requirement to ensure that discharges will not cause or contribute to water quality standards violations.

***Response:*** See response to 1 and 2, above.

4. The limited chance for notice and comment provided for the NOI and the SWPPP in the draft permit does not satisfy the requirements of the CWA as shown in *Environmental Defense Center, Inc. v. EPA*, 344 F.3d 832 (9<sup>th</sup> Cir. 2003)(consolidating separate actions from the Fifth, Ninth, and D.C. Circuits) and in *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486 (2d Cir. 2005).

For instance, in *Waterkeeper Alliance, Inc. v. EPA* where nutrient management plans were not accessible to the public for scrutiny and comment, the court emphasized that, “Congress clearly intended to guarantee the public a meaningful role in the implementation of the Clean Water Act... that a ‘copy of each permit application and each permit issued under this section [1342] shall be available to the public.’” (33 U.S.C. § 1342(j) p. 503).

To ensure a meaningful comment period as required by the CWA, both the NOI and the SWPPP should both be posted to the internet by DEC and filed with the municipal clerk of the municipality in which the discharge is located (the draft permit requires such posting for the NOI only). Both of these actions are necessary for members of the public to meaningfully comment on the proposed plan to prevent pollution and the effect on proposed receiving waters. At the very least a time limit for permittees to produce the SWPPP for members of the public which will guarantee its availability in time to provide comments should be required.

**Response:** *The permit has been revised to reflect this comment. See response to comment 1.*

5. The NOI requirements should be amended to include information about the receiving waters for the proposed discharge. Information on the condition of the receiving waters, including its impaired status and the water quality standards for that water, would facilitate public scrutiny of proposed discharges.

For instance, the EPA is revising its NOI form to include information on the receiving water, when a discharge is proposed to a tier 2 or tier 2.5 water (new discharges to a tier 3 waters are not allowed under the EPA’s MSGP). This change is being made “in order to trigger heightened oversight over those discharges and to assess whether additional procedures and requirements are necessary to comply with the applicable antidegradation policies.” (EPA’s Response to Comments on the December 1, 2005 Proposed MSGP, p. 82). Vermont should update its NOI form to include information on the proposed receiving waters.

**Response:** *The NOI has been changed to address this comment.*

6. The amount of information included in SWPPP on the condition of proposed receiving waters is inappropriately diminished in the draft MSGP (Vermont Proposed MSGP 5.1.2 p. 36). The current MSGP requires that a SWPPP include (1) the name of all surface waters that are proposed for discharges, (2) the size and description of wetlands or “special aquatic sites” and (3) the name and operators of municipal separate storm sewer systems, which are slated to receive discharges (Vermont MSGP Section 5.1.2 p.28). By contrast, the draft permit only requires that a permittee identify the water quality standards of receiving waters.

This reduced amount of information proposed for the new permit matters because the additional information about receiving waters is vital to members of the public concerned about water quality.

***Response:*** *A facility's SWPPP must include a general location map with enough detail to identify all receiving waters for stormwater discharges. The facility's site map must also show locations of all receiving waters in the immediate vicinity of the facility. The site map must show where stormwater discharges enter a municipal separate storm sewer system (MS4). Further, the NOI requires the applicant to name all receiving waters and discharges to MS4s. Part 5.1.6.3, Water Quality Standards, has been changed to require that the permittee provide the description of wetlands or other "special aquatic sites."*

## **Part II: Summary of comments pertaining to protection of receiving waters in attainment of water quality standards**

7. The use of benchmark monitoring, as proposed in the general permit, is an outdated approach left behind by advances in stormwater pollution control technology and permitting. In 2002, the EPA expected that most Water Quality-Based Effluent Limits (WQBELS) would be in the form of Best Management Practices (BMPs) and rarely rely on numeric limitations. Yet, the Agency's 2010 TMDL Stormwater Guidance points out that , times have changed "as the stormwater permit program has matured." (2010 TMDL Stormwater Guidance p.3). In fact, according to the EPA's draft guidance, where stormwater discharges from small industrial sites or MS4s "have the reasonable potential to cause or contribute to water quality excursions" the permits "should contain numeric effluent limitations where feasible to do so." (2010 TMDL Stormwater Guidance p. 3).

The EPA's guidance document, like the Vermont draft MSGP, still relies on benchmark monitoring in other cases. However, it is feasible in nearly all cases in which benchmark monitoring is proposed to use numeric WQBELS instead. The draft MSGP contains a variety of detailed, sector-by-sector benchmark standards that could become numeric WQBELS. According to EPA's 2010 guidance, numeric WQBELS "clarify permit requirements and improve accountability and enforceability." (2010 TMDL Stormwater Guidance p. 2). There is therefore no reason they would not do the same if they were to replace the benchmark monitoring, which the draft permit tells permittees is "primarily for your use" as they improve their practices, rather than for enforcement of permit limits. (Vermont Proposed MSGP Section 6.2.1 p. 45).

***Response:*** *EPA is in the process of taking public comment and reconsidering its 2010 TMDL Stormwater Guidance. The Department will continue to monitor EPA's efforts with its 2010 TMDL Stormwater Guidance. The Department has not made any changes to the draft permit based on this comment.*

8. Under the proposed permit, the benchmark monitoring, already insufficient when numeric water-quality based effluent limitations could be applied instead, can be suspended after four quarters if a permittee can demonstrate that an average concentration of a benchmark "is attributable solely to the

presence of that pollutant in the natural background.” (Vermont Proposed MSGP, Section 6.2.1.2 p. 46).

Both the definition of the term “natural background” and the lack of explanation of how permittees will be able to determine their discharge is not the source of the pollutant, are ill-defined and incomplete in the draft permit. “Natural background pollutants,” according to the draft permit, “include those substances that are naturally occurring in soils or groundwater.” Permittees are responsible both for making the determination their activities are not contributing to the exceedances and for proving “any data previously collected by you or others” to the state. Such a process is unclear and invites a presumptive finding by the permittee that their activities are not contributing to the exceedance of the benchmarks. It also provides an incentive for permittees not to include – or not to look for – data which would show that their activities are contributing to or causing those exceedances. This approach also appears to contradict compliance with the Vermont Water Quality Standards (VWQS) by other ANR permitting programs.

***Response:*** *The Secretary concurs. The “Natural Background Pollutant Level” section of the permit is insufficiently explained and has been removed.*

9. The MSGP proposed by the state is inadequate to protect waters covered by Vermont’s antidegradation policy.

The EPA’s MSGP specifically prohibits states from permitting new discharges under the MSGP to tier 3 Outstanding Resource Waters. Although the Vermont permit is, in many respects, identical to the EPA’s 2008 MSGP, this section is eliminated in the proposed Vermont permit, presumably because it is considered redundant (EPA 2008 MSGP 1.1.4.8 p.7). However, without this section in the Vermont proposal, a permittee who only reviews the ANR general permit would have to reason not to think their proposed discharge to these waters is permissible unless informed by ANR. Therefore, the state should include this section in its general permit, making it clear to applicants that new discharges to such waters are not legal under the MSGP. Even if the missing section was included in the Vermont permit, as it should be, the antidegradation protections provided in the state proposal are inadequate.

***Response:*** *The permit has been revised to address this comment. New discharges to ORWs so classified as a result of their water quality or habitat are not authorized under the MSGP.*

10. The only substantive sentence dealing with antidegradation protections in the proposed MSGP states “for a new discharge or existing unpermitted discharge seeking coverage under this permit, the Secretary expects, in the absence of information demonstrating otherwise, that if a discharge complies with the stormwater control requirements of this permit it will not lower the water quality of the receiving water and will meet the requirements of Vermont’s Antidegradation Policy” (Vermont Proposed MSGP Section 2.2.3 p.27).

This presumption, relying on a permittee to come forward with information showing that the proposed discharge does violate the state antidegradation policy, or on a citizen whose access to the

process is already inadequate, is not enough to ensure protection of state waters and is poor public policy.

That is of particular concern because the EPA's MSGP relies on state programs for antidegradation protection. In a typical response to public comments on its permit, EPA said it is the federal agency's responsibility to ensure "the consistent application of State antidegradation procedures to any new or increased discharges to applicable waterbodies" but more work in the area is unnecessary because dischargers "are required to comply with applicable State or Tribal antidegradation policies for water quality standards." (EPA's Response to Comments on the December 1, 2005 Proposed MSGP, p.79).

However, while Vermont has an antidegradation policy in place, it does not have an antidegradation implementation rule in place making the protections provided by the state virtually non-existent. As the EPA pointed out in its response to comments on its draft MSGP, state antidegradation procedures and policies "that implement this provision must be part of the determination of whether a particular discharge to a tier 2 or 2.5 water is appropriately covered by the MSGP." (EPA's Response to Comments on the December 1, 2005 Proposed MSGP, p.55). Without state antidegradation rules such a determination is impossible, as is the determination whether an activity causing a discharge "allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located," as required under federal law. 40 CFR 131.12 (2).

Therefore, in order for this proposed permit to adequately protect water quality the state must expedite the formulation of its antidegradation policy and should require antidegradation review for each NOI or SWPPP (i.e. each new discharge) for permittees seeking coverage under this general permit as well. In addition, those who are permitted to discharge to tier 1, tier 2 or (for existing permittees) to tier 3 waters under this general permit should, at the very least, be required to perform ongoing monitoring.

***Response:** The Department has an anti-degradation procedure ("VT ANR Anti-Degradation Implementation Procedure.") The draft Multi-Sector General Permit is consistent with the procedure and anti-degradation policy.*

### **Part III: Summary of comments pertaining to the protection of receiving waters which are not in attainment of water quality standards**

11. A general permit in which an applicant largely self-certifies they are in compliance with the requirements of the permit is inappropriate for discharges in a watershed which is not meeting water quality standards under state and federal law and regulation (10 V.S.A. §§ 1263(c), 1272; Vermont Water Pollution Control Regulations, Rule 13.4(b)(1)(d); 33 U.S.C. § 1311(b)(1)(C); 40 CFR § 122.44(d)(5)).

***Response:** The permit has been amended. New discharges must, in advance of submitting an NOI, provide to the Secretary with a)documentation of procedures taken to prevent exposure to stormwater*

*of the pollutant(s) for which the waterbody is impaired, b) documentation showing that the pollutant(s) for which the waterbody is impaired is not present at the site, or c) data to support a showing that the discharge is not expected to cause or contribute to an exceedance of a water quality standard (see Part 1.2.4.7 of the permit). Existing discharges are subject to additional limits or controls, as determined by the Secretary, to be consistent with the assumptions of any available wasteload allocation in a TMDL. If there is no TMDL for the impaired waterway the discharger must monitor for the pollutant(s) for which the waterbody is impaired and take corrective action if it is determined that the discharge causes or contributes to an exceedance of a water quality standard.*

12. DEC cannot issue a NPDES permit unless the permit terms ensure the attainment of water quality standards. In allowing coverage under a general permit, DEC authorizes large numbers of discharges with little or no analysis of the potential water quality impacts. Specifically, the proposed draft fails to guarantee that DEC will review individual SWPPPs even in the case of new or existing, yet currently unpermitted, discharges to already-impaired waters. While this may be an appropriate administrative response to regulating large numbers of discharges to waters that are attaining all water quality standards, general permits are not appropriate for waters that fail to attain water quality standards. Indeed, DEC has experience with this type of self-regulation in the Construction General Permit Program and should remember that virtually 100 percent all of those applications and compliance levels were, at least in the initial several years, woefully deficient. DEC should expect the same level of misunderstanding with another and similar self-certifying permit program.

***Response:*** *The SWPPP submittal requirement for new applicants was inadvertently omitted from the Draft MSGP 2011 and has been included in the final permit.*

13. Compliance with water quality standards also extends to a prohibition on new and existing discharges which would cause or contribute to violations of water quality standards (40 CFR 122.4(i) and (d) respectively). A general permit cannot authorize discharges to already impaired waters and comply with the state and federal regulations cited above even when the SWPPP has been reviewed for compliance with the general permit. For these reasons, the final version of Part 1.2.4 (Limitations on Coverage) should preclude coverage of discharges to waters which do not meet Vermont Water Quality Standards and should require an individual permit instead.

***Response:*** *The MSGP includes provisions for permittees that discharge to impaired waters. New discharges must, in advance of submitting an NOI, provide to the Secretary with a) documentation of procedures taken to prevent exposure to stormwater of the pollutant(s) for which the waterbody is impaired, b) documentation showing that the pollutant(s) for which the waterbody is impaired is not present at the site, or c) data to support a showing that the discharge is not expected to cause or contribute to an exceedance of a water quality standard (see Part 1.2.4.7 of the permit). Failure to meet this requirement means the discharger is not eligible for coverage under the general permit and must apply for an individual permit.*

*Existing dischargers must monitor for all pollutants for which the waterbody is impaired or meet the applicable WLA requirements in the TMDL for the waterbody.*

14. Subsection (C) of 1.2.4.7 of the Vermont Proposed MSGP, does not do enough to protect water quality impaired waters. The previous two subsections establish that prospective permittees are eligible for coverage under the MSGP if they are able to prevent exposure of stormwater to the pollutants for which the receiving waters are impaired, or if they are able to show that those pollutants are not present at their sites. If they cannot demonstrate either of those conditions – in other words if stormwater on their site is likely to be contaminated with the pollutants that are causing impairment of the receiving waters – those permittees should be subject to more complete review and attention.

At the very least, subsection C should include a requirement that permittees “obtain written clarification from the appropriate State or Tribal water quality agency that the discharge is not expected to cause or contribute to a violation of a water quality standard,” as was required in the EPA’s original proposed MSGP, even though later eliminated. (EPA Proposed MSGP Sec. 1.2.4.9 p.9).

***Response:** Part 1.2.4.7.c of the proposed MSGP included the following provision: You are eligible under Part 1.2.4.7.c if you receive an affirmative determination from the Secretary that your discharge will not contribute to the existing impairment, in which case you must maintain such determination onsite with your SWPPP. In the final permit, Part 1.2.4.7 has been expanded to require the Secretary to provide an affirmative determination that a discharge will not cause or contribute to an existing impairment for all new discharges to impaired waters prior to authorizing the discharge, not just those falling under 1.2.4.7.c of the draft permit (see Part 1.2.4.7 of the permit).*

15. The proposed permit does not adequately protect waters for which there are TMDLs already established. New dischargers to such waters must demonstrate under the proposed permit “[that]there are sufficient remaining wasteload allocations in an EPA approved or established TMDL to allow [the]discharge and that existing dischargers to the waterbody are subject to compliance schedules designed to bring the waterbody into attainment with water quality standards.” (Vermont Proposed MSGP Section 1.2.4.7 C (ii) p.12). This language relies on the permittee to interpret current compliance with and the meaning of wasteload allocations (many of which are expressed as aggregates rather than individually-assigned to specific existing or future sources), requiring them to evaluate how much of the loading allocation remains for their discharge and the adequacy of compliance schedules for existing permittees. A better approach is to require that permittees “are not authorized for discharges when a TMDL specifically articulates a wasteload allocation requiring more stringent controls than required by this permit, OR when TMDL applies a wasteload allocation of zero to your discharge (either specifically or by category).” (EPA Proposed MSGP Section 1.2.2.4 p.8). Instead of self-certification and coverage under the general permit, the original proposal by the EPA would have required consultation with state or federal TMDL authorities to ensure that a proposed SWPPP would meet the requirements of the MSGP in cases in which the TMDL provides an allocation for industrial stormwater, but not individual allocations. This is a better approach, and should be adopted by Vermont. As noted in Friends of **Pinto Creek** v. U.S. E.P.A., “the TMDL merely provides for the manner in which Pinto Creek *could* meet the water quality standards if all of

the load allocations in the TMDL were met, not that there are sufficient remaining pollutant load allocations under existing circumstances.”

**Response:** *See response #15; 1.2.4.7 has been revised to require an affirmative determination from the Agency.*

16. The proposed permit fails to adequately protect impaired waters for which there is not an established TMDL. A new discharger to an impaired water for which there is not an established TMDL can obtain a determination from the Secretary that their discharge will not contribute to the existing impairment if “discharge of the pollutant for which the water is impaired will meet instream water quality criteria at the point of discharge to the waterbody,” (sec. 1.2.4.7 C). However, that narrowing of the requirement does not do enough to take into consideration the potential impairment of waters downstream and the potential impact of other dischargers nearby.

**Response:** *The draft permit is consistent with EPA’s 2008 Multi-Sector General Permit.*

#### **Part IV: Summary of comments pertaining to protection of state threatened and endangered species**

17. Although the proposed new MSGP takes meaningful steps towards providing more details in its protection of endangered and threatened species and their habitats, in one regard it inappropriately diminishes the protection given to state listed species under the current MSGP. The current general permit stipulates that coverage is only provided in cases in which the proposed stormwater discharges and activities are not likely to jeopardize the continued existence of state or federal threatened or endangered species or critical habitat. (Vermont 2006 MSGP, Sec. 1.3.4.6 p.10). The 2006 version of the general permit also references Vermont Protection of Endangered Species Law, as well as federal law in this section.

On the other hand the new proposed MSGP inappropriately fails to include state listed threatened or endangered species in the comparable section of the permit. (Vermont Proposed MSGP Section 1.2.4.5 p.9). The draft only references federally-listed species and only references the federal Endangered Species Act in that context.

This omission was clearly in error, since later sections detailing how permittees can comply with the endangered and threatened species provisions of the general permit reference state listed species, and the need to consult with Vermont Fish and Wildlife as well as federal authorities.

The first paragraph of this section should be amended to make it clear that only discharges and activities which do not threaten state or federally listed species are applicable for coverage.

**Response:** *The omission was an error and the permit has been changed to address this comment.*

## Part V: Summary of comments pertaining to monitoring

18. Effluent limitation monitoring should occur at least quarterly, rather than annually as proposed. (Vermont Proposed MSGP Section 6.2.2.1 p.48). Annual monitoring does little to provide information about changes in discharges or to ensure that discharges of pollutants of concern are identified as early as possible.

***Response:*** *Effluent monitoring is required beginning in the first full quarter following the discharge authorization date. By requiring monitoring to begin in the first quarter, pollutants of concern should be identified as early as possible. All facilities with effluent limitations are also subject to quarterly benchmark monitoring.*

19. The proposed general permit should not include waivers of monitoring requirements for those discharging to impaired waters without a TMDL. (Vermont Proposed MSGP Section 6.2.4.2 p.49). In such cases, there is enough likelihood of discharging pollutants to warrant continued monitoring on a quarterly basis. Such waivers on the basis of four quarterly samples, which do not show exceedances, undermine the ability of regulators and of members of the public to monitor and ensure compliance with water quality standards and do not adequately take into account the possibility of changes in discharges.

***Response:*** *Permittees must monitor annually for all pollutants for which the waterbody is impaired. To address this comment, the Secretary has deleted the waiver which allowed permittees to discontinue monitoring after one year if the pollutant for which the waterbody is impaired is not detected above natural background levels. A permittee may discontinue monitoring after one year if the pollutant is not present and not expected to be present in the facility's stormwater discharge.*

20. The proposed permit does not require dischargers to impaired waters with a TMDL to monitor for the TMDL pollutant unless required by the Agency (Vermont Proposed MSGP Sec. 6.2.4.2 p.50). This is the opposite of the process which should occur, in which there should be an assumption there is a risk of contributing to the impairment of the TMDL water unless demonstrated otherwise. Even in cases in which the Agency requires such monitoring, that requirement can be waived after a year, which poses the same problem identified above.

***Response:*** *The draft permit is consistent with EPA's 2008 Multi-Sector General Permit. The Secretary may require monitoring for the pollutant for which the TMDL was written to be consistent with the assumptions of the TMDL and/or WLA.*

21. In adopting and amending the EPA's MSGP to use as the Vermont general permit, the Agency has eliminated the annual reporting requirement for permittees for reasons which are unclear. The report under the EPA MSGP would include findings from comprehensive site inspections, documentation of any corrective actions necessary as well as other information (EPA 2006 MSGP Sec. 7.2 p.41). The Vermont draft permit should also require such a report, eliminating a potentially extremely useful tool

for regulators and members of the public who wish to evaluate compliance with the general permit and status of permittees.

***Response:*** *The Secretary agrees and has included the requirement for permittees to submit an annual report, consistent with EPA's 2008 MSGP.*

22. The proposed exemptions for monitoring for outfalls the permittee believes to discharge substantially identical effluents is inadequate (Vermont Proposed MSGP Section 4.2.3 p.22 ; Section 6.1.1 p.33; Section 6.2.4.2 p.39). This provision would permit the operator to conduct visual monitoring and benchmark sampling at just one of the outfalls and report that the results also apply to purportedly identical outfalls identified and described in the SWPPP. To ensure that the outfalls are in fact substantially identical, the MSGP should require the discharger to alternate outfalls sampled during each monitoring period.

***Response:*** *The draft permit requires visual monitoring of each substantially identical outfall on a rotating basis throughout the period of permit coverage. The Secretary agrees that this requirement should also be applicable to analytical monitoring at identical outfalls and has revised Part 6.1 of the permit to reflect this.*

## **Part VI: Summary of comments pertaining to construction-related activities**

23. It is our belief that it has been repeatedly demonstrated that the current Construction General Permit is inadequate in protecting Vermont's waters from the impacts of stormwater runoff from construction sites. While we appreciate the need to increase efficiencies in permitting, the Agency is tasked with more than issuing permits and must institute a stringent permitting program for these discharges. While we feel the Construction General Permit is inadequate the MSGP requirements for erosion are even less protective and more unclear than those required in the CGP. We believe coverage should be sought both under the MSGP and the CGP (as required) to adequately protect against industrial and construction stormwater discharges.

***Response:*** *The Secretary disagrees with the characterization of the Vermont Construction General Permit. Consistent with EPA's 2008 MSGP, the proposed VT MSGP permits operators of Sector J (Mineral Mining and Dressing) and Sector G (Metal Mining) facilities to seek coverage for clearing, grading, and excavation activities under the MSGP if those activities meet the terms and conditions of Construction General Permit (CGP) 3-9020 or its replacement. Operators must complete all of the same application materials and implement the same measures under the MSGP as under the CGP.*

## **Part VII: Summary of comments pertaining to activities included in the MSGP**

24. Clarify that coverage is not required for temp waste and borrow areas associated with construction (that aren't quarries).

***Response:*** *We concur that these activities are typically not covered under the MSGP, but they should be evaluated on a case by case basis.*

25. Clarify that coverage is not required for single use solid waste disposal sites (that aren't dumps).

***Response:*** *We concur that these activities are typically not covered under the MSGP, but they should be evaluated on a case by case basis.*

26. Clarify coverage is required for railroad transfer operations (for example feed transfer from trains to temp silos then to trucks).

***Response:*** *Railroad transfer operations associated with a regulated activity are covered under the MSGP. For example, facilities that are manufacturing feed (i.e. mixing feed ingredients) are regulated under the MSGP under Sector U, SIC 2048. Feed transfer from trains to silos at these facilities is an associated industrial activity and would be covered under the MSGP.*