

VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
RESPONSE TO COMMENTS ON DRAFT GENERAL PERMIT 3-9007 FOR
STORMWATER DISCHARGES FROM THE STATE TRANSPORTATION SEPARATE
STORM SEWER SYSTEM (TS4)
December 28, 2016

The Department of Environmental Conservation issued the Draft Transportation Separate Storm Sewer System (TS4) General Permit for public comment on November 7, 2016. The Department held a public hearing to solicit public comments on the draft permit on December 6, 2016 and the public comment period closed on December 7, 2016. The Department received written comments on the Draft Designation, Fact Sheet, and Draft Permit. The following are the public comments received by the Department and the Department's responses.

Comments received by VTrans; Signed by Chris Cole

TS4 Notice of Draft Designation
TS4 Fact Sheet
TS4 Draft GP 3-9007

Comments received by Conservation Law Foundation; Signed by Elena Mihaly and Rebekah Weber

TS4 Draft GP 3-9007

Comments received by the MS4 subcommittee of the CCRPC's Clean Water Advisory Committee; Submitted by Dan Albrecht of CCRPC

TS4 Draft GP 3-9007

Response to Comments on the TS4 Notice of Draft Designation

- A. Under Findings of Fact Header change to “VTrans Owned or Controlled” (instead of “and”)

Response: The Department agrees and has incorporated the suggested change.

- B. Edit Footnote #2 on page 1 to read as follows inserting new underlined text:
“This permit covers “VTrans designated regulated small MS4,” which is made-up of state highways and state non-road developed lands in the urbanized areas and stormwater-impaired watersheds of Burlington, Colchester, Essex, Essex Junction, Milton, Shelburne, South Burlington, Williston, Winooski, the University of Vermont, the Burlington International Airport, Jericho, Underhill, St. Albans, the Town of St. Albans, the Town of Rutland, and the City of Rutland.”

Response: The Department agrees and has modified the language to clarify that the VTrans designated regulated small MS4 is made up of “...state highways and VTrans owned or controlled non-road impervious surfaces in the urbanized areas...”

Response to Comments on the TS4 Fact Sheet

- A. Search document to replace “owned and controlled” with “owned or controlled.

Response: The Department agrees and has incorporated the suggested change.

- B. Add footnote where “owned or controlled” is mentioned in the document stating: *“Excluding rail lines, rail yards, public transit facilities, and rail trails.”*

Response: The Department agrees and has incorporated the suggested change.

- C. Search document to add reference to MEP where the six minimum control measures are mentioned. This occurs in at least two places (once on page 1 under Section I and on page 2 under Section III).

Response: The Department agrees and has incorporated the suggested change.

- D. Remove references to “VTrans’ infrastructure” and replace with “VTrans owned or controlled impervious surfaces” then add footnote as requested under #2 above. This occurs in multiple places under Sections III and IV.

Response: The Department agrees and has incorporated the suggested change.

- E. Under “III Purpose of the Draft Permit” on page 2 – The third paragraph under this Section is misleading and should read more like the third paragraph under Section “I Program Background”. As written, Section III’s third paragraph leads one to question whether the “baseline” requirement is statewide (“across the system”) and whether the implementing PCPs are to be carried out statewide or just in the Lake Champlain Basin.

Response: The Department agrees and has incorporated the suggested change.

Response to Comments on the TS4 General Permit 3-9007

Response to Comments Received by VTrans

A. General document-wide comments:

- 1) Search and replace “TDML” with “TMDL or WQRP” where appropriate (for example under 2.2.A.1.C).

Response: The Department has added “or WQRP” where appropriate.

- 2) Search and replace “VTrans infrastructure” with “VTrans owned or controlled road and non-road impervious surfaces” were appropriate.

Response: The Department agrees and has incorporated the suggested change.

- 3) Search and replace “owned and controlled” with “owned or controlled”.

Response: The document only contains the phrase “owned or controlled.”

- 4) Search and replace “you” and “your” with “VTrans” or “Permittee” where appropriate and consider deleting the definition of “you/your”.

Response: While the Department agrees the use of “you” and “your” read a bit awkwardly in the permit, there is no legal need to change the terms, and “you” and “your” appear almost 600 times in the permit. Changing “you” and “your” would require careful review of every instance the words are used because surrounding words would also need to be changed. For example, in the following sentence the words “have” and “are” would also have to be changed, “Unless ~~you~~ VTrans ~~have~~ has received written notification from the Agency specifically allowing these discharges to be covered under this permit, ~~you~~ VTrans ~~are~~ is not eligible for coverage under this permit for any of the following...” Because making the requested change would require more than a simple find and replace exercise, the Department has kept the language as is.

B. Specific comments:

- 1) 1.1 – Add “owned or controlled road and non-road” after “VTrans’ “in the last sentence.

Response: The Department agrees and has incorporated the suggested change.

- 2) 2.1.B – Add language that clarifies that maintenance agreements, easements and similar binding documents satisfy “control” and “responsibility” under this section.

Response: The definition of “full legal responsibility” is self-explanatory. Without seeing the language in maintenance agreements, easements, and similar binding documents, the Department is not willing to make a broad statement that such legal documents satisfy the “full legal responsibility” definition.

- 3) 2.1.C – Replace “listed in” with “covered by”.

Response: “Listed in” is appropriate language to use in this context, since the areas are “listed in” Subparts 2.1.A and 2.1.B and then the discharges from those areas are “covered by” or “authorized by” the permit as a whole.

- 4) 2.1.C - Subpart 2.1.B reads more like a definition and doesn't seem to describe an “area” or “facility”. Did 2.1.C intend to refer to Subparts 2.1.A.1 and 2.1.A.2 instead of Subparts 2.1.A and 2.1.B?

Response: The Department agrees and has incorporated the suggested change.

- 5) 2.2.A.1 - Replace “identified in” with “covered by”.

Response: See response to comment B(3).

- 6) 2.3.A thru 2.3.D – Delete the word “For” in the heading of each.

Response: The Department agrees and has incorporated the suggested change.

- 7) 2.3.D - Should this subpart (or a portion of it) be moved to 2.2.B, as it seems to be describing an eligible discharge?

Response: No, the general eligible discharges are already included under 2.2.A. Section 2.3.D. lists a limitation on the eligible discharges.

- 8) 2.3.E thru 2.3.H – Add a leading sentence (heading) similar to 2.1.D.

Response: Section 2.3.E already has a heading. The Department added the heading “Protection of Water Quality” to 2.3.F, the heading “Discharges to Waters with Approved TMDLs” to 2.3.G, and the heading “Discharges to CERCLA Sites” to 2.3.H.

- 9) 2.3.G – Change reference to “pollutant” in first sentence to “pollutants of concern” because this is referring to waters for which there is a TMDL. Also, replace “achievement” with “compliance” in the 10th line.

Response: The Department notes the suggestion and has reworded the beginning of the sentence as, “Discharges of a pollutant into a water with an approved TMDL for that pollutant are not ...” The Agency changed “achievement” to “compliance.”

10) 2.4 – Add language to clarify how these sections apply to VTrans under the TS4.

Response: Rather than adding additional language to 2.4, the Department is happy to provide VTrans with additional information and guidance about the applicability of the “new discharger” and “new source” requirements under the Clean Water Act.

To provide additional clarification, the Department has added the following to the definition of “new discharger”: “For purposes of this permit, a facility that is part of VTrans designated regulated small MS4 is a “new discharger,” if it discharges stormwater from a new facility with an entirely new separate storm sewer system that is not physically located on the same or adjacent land as an existing facility and associated system operated by VTrans.”

11) 2.4.C – Replace “Waters with High Water Quality” with “Outstanding Resource Waters”.

Response: The Department agrees, has made that change, and has replaced “Tier 3 waters” with “Outstanding Resource Waters” throughout 2.4.C, since that is the more accurate term by which to identify the high quality waters to which this section pertains.

12) 2.4.C.1 – Delete entire sentence under #1.

Response: The Department agrees and has incorporated the suggested change.

13) 2.4.C.2 – Remove bullet and have text under #2 start next paragraph.

Response: The Department agrees and has incorporated the suggested change.

14) 3.1.A – In the last sentence replace “full scale” with “full size”.

Response: The Department agrees and has incorporated the suggested change.

15) 3.1.A and B – Include “SWMP” in list of items to be included with an application to be consistent with the opening paragraph under Part 3.

Response: Because airport tenants are also subject to limited parts of this permit, it is appropriate to leave 3.1.A broad. The Department agrees it is appropriate to add SWMP to 3.1.B.

- 16) 3.3.C – Update language to read as follows as the current law does not require payment of administrative processing fees (delete strikeouts and add underlined).
“At the same time that an NOI for an amendment is submitted, the applicant shall pay ~~the administrative processing~~ any fees required under 3 V.S.A. § 2822(j)(2).”

Response: The Department agrees and has incorporated the suggested change.

- 17) 4.2 – Clarify that “discharges” noted under A and B are discharges to “first waters of the state” and not the entire watershed (exception being 4.2.A.4 and 5, which per Part 9 must apply a watershed approach to addressing TMDLs). Add the following “Note” at end of opening paragraph under 4.2 so that it applies to both 4.2.A and 4.2.B:

Note: For the purposes of this permit, your project is considered to discharge to an impaired water if the first water of the state to which you discharge is identified as an impaired water. For discharges that enter a separate storm sewer system prior to discharge, the first water of the state to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

Response: The Department has incorporated this change, but also included language exempting Part 9, “For purposes of this permit, except for Part 9, your project ...”

- 18) 4.2.A.2 – Replace “pollutant(s)” in the fourth line with “pollutant(s) of concern” given this subpart is referencing water with a TMDL and to be consistent with the Definition of pollutant of concern.

Response: The Department agrees and has incorporated the suggested change.

- 19) 4.2.B – The “do not cause or contribute” is an impossible standard. Need MEP in language or adjust language to a “minimization” standard and not a “do not cause” (net zero) standard or practicability standard. Maybe clarifying in the “plan” this is an MEP standard is the solution.... what can VTrans reasonably take on to minimize the contribution to impairments. Consider adding the following language to this subpart:

If VTrans has complied with the terms and conditions of this permit, and has undertaken measures and documented them in the SWMP to address the pollutant(s) addressed by the TMDL, then compliance with these

conditions will be presumed adequate to meet the requirements of this permit.

Response: The Department has clarified this provision as follows “... VTrans shall address in its SWMP and annual reports how any identified and mapped VTrans’ discharges that cause or contribute to the impairment will be controlled to ensure compliance with the Vermont Water Quality Standards ...”

- 20) 4.3 – The last paragraph needs a qualifier as suggested below (see underlined added language):

Therefore, compliance with this permit affords a rebuttable presumption of compliance with the Anti-Degradation Policy. The overall presumption of compliance with anti-degradation requirements for projects and sites in conformance with this permit may be rebutted on a case-by-case basis if based on clear and convincing evidence and if warranted by credible and relevant project- or site-specific information available to the Agency during the review of an application for a proposed discharge.

Response: The “warranted by credible and relevant project- or site- specific information” standard comes from the “Interim Anti-Degradation Implementation Procedure” (October 2010). Therefore, the Department is leaving the language as is.

- 21) 6.1 - Clarify here where Post Construction Stormwater Design Manual is not applied and confirm the intent is that these existing surfaces will not need to meet manual unless triggering jurisdiction.

Response: This Part, the Minimum Control Measures, applies to the entire TS4; it does not require implementation of the Vermont Stormwater Management Manual on surfaces that do not trigger jurisdiction, as provided for in Part 8 of the permit. Part 8 of the permit includes the post-construction stormwater requirements for new, redeveloped, and expanded impervious surfaces and renewals of previously issued operational stormwater permits. Part 9 of the permit includes the requirements for dealing with existing impervious surfaces in stormwater-impaired waters and the Lake Champlain watershed.

- 22) 6.3.B.3.b.ii – Delete “including a description of the types of ethnic and economic groups engaged” from the sentence as VTrans’ public is different than what EPA intended here.

Response: The Department agrees and has incorporated the suggested change.

- 23) 6.3.D.1 – The phrase “construction activities” should be added to the Definitions section of the GP and should read much like that under the NDPEs CGP as first cut and try to focus on earth disturbance instead of adding a list of maintenance activities (ditching, tree clearing/stumping, slope repairs, etc).

Response: The Department agrees and has added a definition of “construction activities.” The definition is ““construction activities” means all clearing, grading, excavation, and stockpiling activities that will result in the disturbance of land, except for earth disturbance that is a normal part of the long-term use or maintenance of a property (e.g. active mining operations, dirt road regrading, and routine road resurfacing). For mining operations, “construction and construction-related activities” means the construction or exploration phase, not the active mining phase.”

- 24) 6.4.C – Edit to add underlined text:

The Agency may require VTrans on a case-by-case basis to undertake water quality monitoring at an individual stormwater discharge point if there is evidence of an unusual discharge from the TS4 or if it is necessary to verify the effectiveness of BMPs and other control measures in VTrans’ SWMP.

Response: The Department agrees and has incorporated the suggested change.

- 25) 7.4.B.3 – Delete the following bullet as it does not apply to VTrans:

Inspecting and maintaining baghouses at least quarterly to prevent the escape of dust from the system and immediately removing any accumulated dust at the base of the exterior baghouse.*

Response: The Department agrees and has incorporated the suggested change.

- 26) 7.7 – Update first sentence of first paragraph adding underlined text to read:

You must prepare a SWPPP for each VTrans facility subject to this Section before submitting your NOI for permit coverage.

Response: The Department agrees and has incorporated the suggested change.

- 27) 7.10.B.4.a.ii – Delete the wording “on the ground” from the second line.

Response: The Department agrees and has incorporated the suggested change.

- 28) Part 8 opening paragraph – Clarify what programs Part 8 is covering (Post Construction Stormwater Discharges?).

Response: The language in the permit has been clarified as follows: ~~Part 8 is for discharges of regulated stormwater runoff from impervious surfaces to waters of the State.~~ This Part provides permit coverage for: previously permitted stormwater runoff discharges; and proposed new stormwater runoff discharges from impervious surfaces that trigger jurisdiction, as described in Subpart 8.1.A, below. This Part provides permit coverage for stormwater discharges to waters of the State that are not impaired by stormwater and to waters of the State that are listed as principally impaired due to stormwater runoff with a stormwater WQRP or TMDL on the EPA-approved State of Vermont List of Priority Surface Waters (Part D, Impaired Surface Waters with Completed and Approved TMDLs) and that have an approved flow restoration plan or other approved implementation plan.

- 29) Part 8 opening paragraph - Clarify here where Post Construction Stormwater Design Manual is not applied and confirm the intent is to NOT capture existing non-jurisdictional impervious surface and clarify that these existing surfaces will not need to meet manual unless triggering jurisdiction.

Response: The language in the permit has been clarified as shown above.

- 30) 8.1.B – Correct repetitive language between last sentence of first paragraph and last paragraph under this subpart.

Response: The Department agrees and has incorporated the suggested change.

- 31) 8.1.D.1 – Consider deleting reference to “wastewater treatment plant” as it may not apply to VTrans TS4.

Response: The language has been kept as it also includes reference to permits that VTrans may receive under Vermont’s Underground Injection Control Rule.

- 32) 8.2 – Consider adjusting language at beginning of both paragraphs to be more consistent with the introduction language under Part 8.

Response: The Department agrees and has incorporated the suggested change.

- 33) 8.3.A.1 – Add underlined text to read as follows:

For discharges of regulated stormwater runoff to a water that is not impaired for stormwater, that is not in Lake Champlain Basin, and that does not contribute to the phosphorus impairment of Lake Champlain, the following treatment standards apply:

Response: The Department agrees, has incorporated the suggested change, and has further simplified the language to clarify the intent.

- 34) 8.3.A.1.b - Make sure intent and language clearly states that permitted & functioning systems are compliant and that permitted and not built or not functioning will need to build to permit issued (if issued under current Manual) or treatment determined via EFA to meet current manual.

Response: The Department has added the following language to Part 8 to clarify the version of the Manual that applies, “For purposes of this Part 8, “Vermont Stormwater Management Manual” shall be the version of the Manual in effect at the time an administratively complete application is submitted for coverage under this permit.”

- 35) 8.3.A.1.b.ii - Add the word “current” in front of “Vermont Stormwater Management Manual”.

Response: See response above.

- 36) 8.3.A.1.b.iii - Add the word “current” in front of “Vermont Stormwater Management Manual” (two instances) and delete the words “in effect at the time”.

Response: See response above.

- 37) 8.3.A.2 – Update opening paragraph to read:

For discharges of regulated stormwater runoff to a water with an EPA-approved stormwater TMDL; to Lake Champlain after the adoption of the Lake Champlain phosphorus TMDLs; or to a water that contributes to the impairment of Lake Champlain, the following treatment standards apply

Response: The Department agrees and has incorporated the suggested change.

- 38) 9.1 – Delete the word “Requirements” from the “9.1 Stormwater Flow Restoration Plan (FRP) ~~Requirements~~” header as some of the listed items are not requirements.

Response: The Department agrees and has incorporated the suggested change.

- 39) 9.1.E – Clarify last sentence to read as follows:

The TS4 may cost share with other MS4s or regulated dischargers in the operation and maintenance cost of the gage(s) for each watershed into which it discharges.

Response: The Department agrees and has incorporated the suggested change.

40) 9.2.A.1 – Consider if there is a need to clarify what dates/time frame the “baseline” will be tied to. If a time frame is necessary, VTrans offers the following for consideration.

[discussion] The TMDL modeling period was 2000 - 2010 and that we would like to see the baseline pushed to the beginning of this range (2001) – and here’s why:

- Generally, when you talk about the period a watershed model is based on this is really the rainfall record that is used to drive the model.
- The most recent land use data was developed in 2007 using NLCD 2001 data as a base (so dataset is 2001 reference point) by LCBP, and presumably forms the basis for the TMDL modeling.
- This said, the model may be calibrated to WQ data collected between 2000 and 2010, but the model still thinks land use looks like it did in 2001.
- This would mean that anything that VTrans built/changed since 2001 would be “smoothed” or averaged in into broader changes in landscape contributions in the watershed or basin. More specifically, if 2010 was used as the baseline, projects like the gravel wetland installed by VTrans in 2010 at the Park & Ride lot in St. Albans are likely to be lost in broader changes in water quality the TMDL model for St Albans Bay (in this case) was intended to capture. This same project, however, would likely be an important “credit” toward what VTrans needs to do in this watershed and therefore one the Agency would want to make sure was explicitly accounted for.

Response: As stated in the comment, the TMDL modeling period was 2000 – 2010 and the data used in the model is from various years within that timeframe. Due to this range and availability of data, the Department is not setting a specific date in time for a baseline assessment. The Department expects that VTrans will use the data sources discussed above and data consistent with the development of the LC TMDL for the establishment of a baseline. The Department will work with VTrans to develop the baseline and provide input and review prior to the April 1, 2018 compliance schedule due date.

41) 9.2.A.2 – Update last sentence to add “hydrologic” in front of “connectivity”.

Response: The Department agrees and has incorporated the suggested change.

42) 9.2.A.3 – Update to add “for various transportation land uses” at the end of the sentence.

Response: The Department agrees and has updated the language to say, “for the various transportation land uses.”

43) 9.2.A.5 – Update to add “of the total combined reduction targets in all lake segments” to read as follows:

Plan to achieve, on average, a 25% load reduction of the total combined reduction targets in all Lake segments in each 4-year phase, so that after all phases are completed the total reductions equal 100%. For each phase, VTrans shall:

Response: The Department agrees and has incorporated the suggested change.

44) 9.2.A.5.iv – add “VTrans” in front of “PCP” in second sentence.

Response: The Department agrees and has incorporated the suggested change.

45) Part 13 – Check for correct alphabetical order and include the following definitions:

- **Construction Activity** (see comments under CGP Part 6.3.D.1)
- **Operator** (because it is used often and in the definition of Existing Discharger.
- **Receiving Water** – for purposes of this permit, unless otherwise stated, receiving water is the first water of the state to which you discharge.
- **VTrans designated regulated TS4** (per Part 2)

Response: The Department has arranged all of the definitions in alphabetical order. Additionally, the Department added definitions of “construction activities,” “operator,” “receiving water,” and “TS4,” consistent with VTrans’ recommendations.

46) Part 13 – Adjust the following definitions as noted below (strikethrough for delete and underline for insert):

- **Illicit connection** means any man-made conveyance connecting an illicit discharge directly to a ~~municipal separate storm sewer system~~ stormwater system of the TS4.

Response: The Department agrees and has updated the language to reference the “transportation separate storm sewer system.”

- **VTrans designated regulated small MS4** means state highways and non-road developed lands in the urbanized areas and stormwater-impaired watersheds of Burlington, Colchester, Essex, Essex Junction, Milton, Shelburne, South Burlington, Williston, Winooski, the University of Vermont, the Burlington International Airport, Jericho, Underhill, St. Albans, the Town of St. Albans, the Town of Rutland, and the City of Rutland.

Response: The Department agrees and has incorporated the change as “state highways and VTrans owned or controlled non-road impervious surfaces”

Response to Comments Received by CLF

I. Comments on Discharge Requirements

A. Incorporate requirement to meet Vermont Water Quality Standards.

A central tenet of the Clean Water Act (CWA) as well as Vermont's small MS4 program is the principle that National Pollutant Discharge Elimination System (NPDES) permits ensure compliance with water quality standards. In accordance with this goal, the CWA is clear that all provisions in a NPDES permit must comply with state water quality standards. Federal case law has also underscored EPA's and states' authority to include in stormwater permits all conditions and limitations necessary to assure attainment of water quality standards.

Analysis conducted in connection to the Lake Champlain TMDL and on VTrans owned and controlled impervious surfaces outside the Lake Champlain watershed indicates that retrofits of existing infrastructure are needed to protect and maintain water quality. As is expanded on in the MS4 General Permit under Section IV(B), this Draft Permit should highlight that discharges that cause or contribute to instream exceedances of water quality standards are not authorized under the permit.

Response: The TS4 GP will ensure compliance with water quality standards and the permit includes specific conditions and limitations to ensure attainment of those standards, including the Flow Restoration Plan (FRP) and Phosphorus Control Plan (PCP) as well as requiring the entire TS4 to comply with the Six Minimum Controls.

Part 4 of the TS4 GP requires VTrans to address discharges that cause or contribute to water quality impairments and to bring them into compliance with water quality standards.

As to additional work and retrofits outside of the Lake Champlain and stormwater-impaired watersheds, under Part 4 VTrans is required to describe in its SWMP the measures it will take to address its discharges that are contributing to water quality impairments throughout the State, including what it will do to control discharges consistent with any applicable wasteload allocations under TMDLs. The measures VTrans proposes may include everything from retrofits to existing infrastructure to implementing stormwater treatment practices and other BMPs.

B. Clarify definition of approved TMDLs.

CLF seeks clarification on which TMDLs will be incorporated into the Permit. We objected to language in the MS4 General Permit that defines approved TMDLs as those that have been approved as of the effective date of the permit. As new TMDLs are approved during the permit term, they ought to be considered approved TMDLs. This better reflects the reality that new TMDLs will be issued throughout the permit term, as is the case with the Lake Champlain TMDL. CLF encourages this Draft Permit to reflect this broader understanding of approved TMDLs.

Response: VTrans must comply with the TMDLs, approved or established by EPA, in place at the time VTrans submits an NOI for coverage under the TS4 GP. Vermont

follows the “minority rule” that rights vest in the law in place at the time of permit application. However, if the Secretary determines that more stringent requirements are necessary to support achievement in any future TMDLs or WQRPs, the Secretary will impose such requirements through a modification of this permit or by their inclusion in this permit upon reissuance. Alternatively, the Secretary may notify the permittee that an individual permit application is necessary.

II. Comments on the Stormwater Management Program

A. Retain rationale for BMP selection.

CLF commends DEC for requiring VTrans to explain its justification for BMP selection, including what stormwater problems will be addressed, alternative BMPs that were not adopted and why, the behavioral and institutional changes necessary for BMP implementation, and expected water quality outcomes. Requiring this level of analysis will improve BMP selection and implementation.

Response: The Department appreciates this comment.

B. Retain illicit discharge detection and elimination (IDDE).

CLF supports the inclusion of IDDE requirements in the Draft Permit. Illicit connections can contain extremely high levels of bacteria as well as substantial nutrient loads, and should continue to be a core, required element of compliance with the permit. VTrans has had ample time to install IDDE protocols, so there should be no leniency with regard to grace periods for implementing IDDE BMPs.

Response: The Department appreciates this comment.

C. Reduce size threshold for construction site stormwater runoff control requirements, and include inspection of construction activities as a BMP.

This section should apply to projects of at least one half acre, if not one quarter-acre size. A one-acre threshold is inappropriate and insufficiently protective in urbanized areas. As highlighted in a report to the Vermont General Assembly, DEC must implement additional measures that curtail pollutant discharges into Vermont’s waterways in order to reach our clean water commitments. The advantages of expanding the acreage under stormwater management include cutting sediment and phosphorus discharges, reducing cleanup costs for impaired waters, and improving protection of high quality waters.

Response: This section applies to construction activities resulting in land disturbance of less than one acre. To comply with Minimum Control Measure D, Construction Site Stormwater Runoff Control, VTrans must develop and implement a plan that addresses stormwater runoff from VTrans’ construction activities not subject to state or federal erosion control requirements (i.e. construction activities resulting in land disturbance of less than one acre). At a minimum, the plan shall require implementation of the measures in the Low Risk Site Handbook for Erosion Prevention and Sediment Control.

Comment: VTrans should be required to include inspection of construction activities as a BMP. Inspections provide a valuable educational opportunity for VTrans to check on construction sites to ensure erosion prevention and sediment control methods are being implemented. In addition, for those projects out of compliance, VTrans can take appropriate action to rectify the situation and complement the Agency of Natural Resources' enforcement activities.

Response: VTrans must receive authorization under the Stormwater Construction General Permit (3-9020) or an individual stormwater construction permit prior to commencing earth disturbing activities greater than or equal to one acre, and as a part of those permits, VTrans must inspect construction activities.

D. Reduce size threshold for post-construction stormwater management for new development and redevelopment, and require low impact development and green infrastructure.

This section should also apply to projects of at least one half-acre, if not one quarter-acre size. Please see above.

Response: This section will address many sites that create less than one acre of impervious. To comply with Minimum Control Measure E, VTrans shall develop and implement procedures to identify new development and redevelopment projects that *disturb* greater than or equal to one acre, but that are not subject to regulation under the Agency's post-construction stormwater management permit program because they don't result in construction of an acre or more of impervious surface. Since many projects disturb a larger area than the area on which impervious surface is constructed, this requirement will address many sites that create less than one acre of impervious surface. For those sites, VTrans must adopt a plan to implement and maintain BMPs to prevent or minimize the water quality impacts of operational stormwater from those sites.

Comment: Low impact development (LID) and green infrastructure (GI) practices continue to represent the expression of controlling polluted stormwater runoff to the maximum extent practicable. This Draft Permit would be deficient in its responsibility to ensure achievement of water quality standards under the Clean Water Act without LID/GI-based performance standards. This is particularly important given the potential for LID and GI practices to be effective climate change resiliency measures, helping communities manage flooding from storm surges and severe rain and snow events.

Response: The Department agrees. As part of Minimum Control Measure E, VTrans shall assess changes to existing policies to support low impact design options. Additionally, the new 2017 Vermont Stormwater Management Manual, which VTrans will have to comply with, pursuant to the requirements of Part 8 of the TS4 GP, includes green stormwater infrastructure design practices.

III. Comments on Industrial Activity Control Measures

7.4 Control Measures and Effluent Limitations

A. Retain Inclusion of Numeric Effluent Limitations

The Clean Water Act's preference for numeric effluent limitations is expressed both in the statutory text and in EPA's regulations. Effluent limitation is defined as a restriction of "quantities, rates, and concentrations" of pollutants – i.e. a restriction on the quantity of the discharge. Quantifiable restrictions are best expressed in quantitative (numeric) terms themselves.

Similarly, Section 304(b) of the Act requires that EPA (or in this case, DEC) set effluent limitations that "identify, *in terms of amounts* of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable" (emphasis added). And Section 304(e) makes clear that, at least in the case of toxic pollutants, numeric effluent limitations are the preferred control strategy while best management practices and other control measures are intended only as supplementary limits on pollution.

Following from the text of the Act, EPA's regulations state that control measures (such as best management practices) are to be included in NPDES permits when "numeric effluent limitations are infeasible; or the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes of the CWA." Therefore, if it is feasible to develop numeric effluent limitations, then DEC must do so and must include these numeric limits in the MSGP.

Given that it is feasible to develop numeric effluent limits for the industrial activities regulated under this Draft Permit, CLF appreciates DEC's inclusion of such limits in Section 7.4 (C).

Response: The Department appreciates this comment and also notes that the specific numeric effluent limitations are included in Tables 4 and 6 on pages 68 and 77, respectively.

B. Clarify that permitted discharges under the Draft Permit must be in attainment with Vermont Water Quality Standards.

The CWA makes clear that all provisions in a NPDES permit must comply with state water quality standards. Federal case law has also underscored EPA's and states' authority to include in stormwater permits all conditions and limitations necessary to assure attainment of water quality standards.

Section 7.4(D) of the draft Permit states that "discharges must be controlled as necessary to meet the requirements of Part 4." CLF suggests revising this sentence to clarify the applicable standards. The revised sentence should be: "Your discharge must be controlled as necessary to meet Vermont Water Quality Standards and other requirements of Part 4." This way, the Permit clearly provides that discharges that cause or contribute to instream exceedances of water quality standards are not authorized under the permit. This language is needed to clearly express DEC's responsibility and authority to ensure water quality standards are met.

Furthermore, CLF questions DEC's ungrounded expectation in 7.4(D) that "compliance with the requirements of Part 7 will control discharges as necessary to

meet applicable water quality standards.” DEC is responsible for proactively monitoring whether discharges are meeting Vermont Water Quality Standards, and whether set numeric and non-numeric standards are sufficiently stringent. Inclusion of this expectation in Section 7.4(D) implies that DEC will not be doing any ground-truth monitoring to test whether the BMPs and numerical effluent limits contained in this Permit are actually achieving Vermont Water Quality Standards. CLF suggests removing this sentence.

Response: The Department agrees and has incorporated the first suggested change. As to removing the sentence, that sentence mirrors language in EPA’s 2015 MSGP, which Part 7 is modeled after, and the Secretary believes the measures under Part 7 are sufficient to protect water quality. While the Secretary believes the measures are sufficient, the statement does not diminish or remove the monitoring and reporting requirements under the permit. If monitoring indicates a discharge is not meeting applicable water quality standards, VTrans will have to take corrective actions.

7.6 Corrective Actions

- A. Clarify that it is a violation of the permit to exceed benchmarks a second time. To ensure that permittees progress through their available options in a timely manner and select sufficiently aggressive BMPs, DEC should specify in Section 7.6 of the permit that exceeding benchmarks a second time, i.e. after corrective action is taken, is a violation of the permit.

Response: Benchmarks concentrations are not effluent limitations and exceedances may occur for a variety of reasons, including natural background sources. Therefore, a benchmark exceedance alone is not a permit violation. However, if corrective action is required as a result of a benchmark exceedance, failure to conduct the required corrective action is a permit violation. All of the foregoing information is already included in the permit, therefore, the Department does not believe any changes are necessary.

7.8 Monitoring

- A. Improve the permit’s monitoring requirements, increase the frequency of sampling, and remove the monitoring exemption for data not exceeding benchmarks.

In order to adequately monitor compliance with the permit’s effluent limits, as required by Section 402 of the Clean Water Act,¹⁶ DEC should revise its monitoring requirements to increase the frequency of sampling and stop relying solely on grab sampling. A National Research Council Report (NRC) suggested that EPA could “significantly improve its monitoring program through reliance on continuous sampling methods that are flow weighted and continue for the duration of a rain event.” CLF suggests DEC adopt an approach with more continuous sampling. In a similar vein, DEC should remove the monitoring exemption for “data not exceeding benchmarks” found in 7.8B(1)(b) on page 55 of the Permit. The

monitoring exemption states that, “[a]fter collection of four quarterly samples, if the average of the four monitoring values for any parameter does not exceed the benchmark, you have fulfilled your monitoring requirements for that parameter for the permit term.” This is problematic because stormwater runoff is highly variable and most discharges cannot be adequately characterized with only four samples. To collect only four samples and conclude on that basis that the discharge complies with the benchmarks or water quality standards over time is arbitrary, capricious, unreasonable, and arguably an abuse of DEC’s discretion. At most sites, four samples are not enough to prove that the discharge does not exceed benchmarks or standards. The NRC Report directly discusses industrial stormwater variability. In its review of EPA’s stormwater permitting, the NRC found that stormwater data, in particular data from industrial sites, are highly variable. “[V]ariability comes from various sources, including intrinsic variability given the episodic nature of storm events, analytical methods that are more variable when applied to stormwater, and sampling technique problems and error.” The NRC concluded that the intrinsically higher variability of stormwater discharges means that a *greater number* of samples must be collected to support analysis and management decisions. “Industrial sites should conduct monitoring so that a sufficient number of storms are measured over the life of the permit for comparison to regional benchmarks.”

Based on analysis of existing stormwater data, the NRC suggested that EPA should require around forty samples to adequately characterize discharges from medium risk industrial facilities over the course of a permit, or eight samples per year, in order to establish a statistically valid estimated median concentration for various pollutants. While the NRC suggested that this number could be reduced depending on the variability observed in the first 10-15 samples, this still requires far more sampling to get accurate measurements than the four samples that DEC asks permittees to undertake. The current Draft Permit requirement to gather a maximum of four samples a year is not adequate to “yield data which are representative of the monitored activity” or to assure compliance with the permit’s technology and water quality based limitations. For DEC to re-adopt these sampling requirements in light of their known inadequacy would be unlawful, arbitrary, capricious, and an abuse of the agency’s permit-writing discretion.

Response: Benchmark monitoring is one tool to gauge the effectiveness of the BMPs selected by the facility operator. As stated in this permit and EPA’s permit, “Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in determining when additional corrective action(s) may be necessary...” (Part 7.8.B.1) The extent to which a facility implements, inspects, and modifies the BMPs associated with the non-numeric effluent limitations is another tool to ensure compliance with the permit. The requirements in Part 7 of this permit are more stringent than the previous MSGP requirements, which *recommended* BMPs for each non-numeric effluent limitation. This permit outlines specific measure that must be implemented, unless infeasible.

The current requirement to collect four benchmark samples is often difficult to comply with, as there are limits on what qualifies as a valid sample. Facility

operators must collect a sample from a measurable storm event, which is a storm event that results in an actual discharge from the site. This is often difficult as smaller storm events may infiltrate or discharge via sheet flow from the facility. The sample must also be collected within 30 minutes of the commencement of a stormwater discharge. As stormwater runoff is often diffuse and discharges do not commence at a certain time after rainfall begins, timing the sample collection is challenging. The storm event must also be preceded by 3 days of dry weather. Depending on the year and weather patterns, this presents a timing challenge. In addition, EPA has provided guidance that monitoring is only required during normal business hours. The industrial sectors regulated in this permit include gravel pits and airports – many of which are not continually staffed. This presents another challenge to ensuring personnel are available to collect a sample during the required time frames.

Additionally, the monitoring required is not unlawful, arbitrary, capricious, or an abuse of discretion. The monitoring requirements are consistent with EPA's 2015 MSGP. While the Department is aware that EPA's 2015 MSGP was appealed, the case was settled, and as a component of the settlement, EPA and the National Research Council will be producing a study to assess benchmark monitoring and ways to change and improve upon it under the next MSGP. The Department will be following this closely.

- B.** Do not allow permittees to complete corrective action process without first exhausting all available BMPs.

In Section 7.8(B)(1)(b) of the Permit, which covers required benchmark monitoring, EPA should specify that it is a violation of the permit for any permittee to conclude its corrective action process with a determination “that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice,” without having first exhausted all of the BMPs that EPA has identified as available for the industrial sector.

Response: The Department agrees and has incorporated the suggested change.

7.9 Reporting and Recordkeeping Requirements

- A.** Require all monitoring data, reports, and plans to be uploaded online and publically accessible.

The proposed permit's failure to ensure public availability of monitoring data curtails public participation and citizen enforcement. All monitoring data, reports, and plans required to be filed with DEC pursuant to the permit and/or the SWPPP should be posted electronically for the public to access. This comment regarding the need for the applicant's monitoring data, reports, and plans to be online and readily available to DEC and the public relates to several sections of the proposed Draft Permit, as follows:

1. 7.6(D) Corrective Action Documentation. Permittees should be required to post corrective action documentation online and such documentation should be readily available to DEC and the public in order demonstrate that corrective action has been taken and facilitate a review of the adequacy of the corrective action.

2. 7.9(B) Annual Report. Each facility's annual report should be publically available online.

3. 7.9(C) Exceedance Report for Numeric Effluent Limits. Exceedance reports should be electronically filed and publically available online.

4. 7.9(D) Additional Reporting. All of the items required to be reported under section 7.9 should be electronically filed and publically available online.

Response: The Department has added language to 10.2 requiring the Department to post each annual report on its website. The Department will also make every effort to ensure the additional documentation referenced above is posted on VTrans' website or the Department's TS4 website. Additionally, while the Department appreciates that posting online is an easy way for the public to access documents, all of the foregoing are state documents that are part of the public record and may be requested and reviewed at any time, regardless of whether or not they posted online.

IV. Comments on Stormwater Discharges from Impervious Surfaces

A. Reduce size threshold for stormwater operational permits and create definition and certification for stormwater designer

This section should also apply to projects of at least one half-acre, if not one quarter-acre size. Please see above.

Response: The size threshold for requiring an operational stormwater permit is established in 10 V.S.A. § 1264, not through issuance of general permits. The Department provided a report to the Vermont State Legislature in 2016 pursuant to Act 64, Section 32, regarding the advisability of lowering the operational permit threshold, but the Legislature did not amend state statute.

Comment: Stormwater designers are entrusted to certify that management systems are built and operating in compliance with permit requirements. However, there is no certification process to ensure consistency of knowledge, education, or professional experience across the designer community. In addition, without certification there is no method for reprimanding an individual for misrepresenting information within a permit application. We urge a clear and transparent definition of designer within the Permit.

Response: This general permit is not the appropriate vehicle for defining "designer." The Department plans to address this issue through its adoption of new stormwater rules pursuant to 10 V.S.A. § 1264(f). With that said, in the Department's experience unqualified individuals are not able to successfully develop a technically complete

stormwater permit application. Notwithstanding the potential benefits of a certification program, between the technical review provided by the Department and the importance to the regulated community of obtaining quality stormwater design and permitting services, the existing process prevents the alleged short-comings from occurring.

Additionally, the Department will be making every effort to develop a training program to coincide with implementation of the 2017 Vermont Stormwater Management Manual.

B. Clarify stormwater management manual standards

Section 8.3 outlines that stormwater treatment practices (STPs) must comply with the Vermont Stormwater Management Manual (the Manual). CLF recommends DEC clarify that practices must satisfy requirements within the Manual in effect at the time an administratively complete application is submitted with the impending 2016 Manual being the minimum standards to be incorporated.

Response: To remove any confusion regarding what version of the Manual applies, the Department has added the following language to Part 8, “For purposes of this Part 8, “Vermont Stormwater Management Manual” shall be the version of the Manual in effect at the time an administratively complete application is submitted for coverage under this permit.” Because the 2017 Manual does not go into effect until July 1, 2017 and the TS4 GP will go into effect before that date, there will be a short 6-month period when the 2002 Manual will still apply.

Comment: In addition, CLF finds confusing the requirement that VTrans comply with the Manual “for the chosen STPs authorized by the Secretary’s approval.” Is DEC suggesting only certain STPs – those authorized by the Secretary – need to comply with Manual standards? CLF questions the language choice and intent of this section.

Response: After further review, the Department has determined that 8.3.A.3, “Vermont Stormwater Management Manual STPs,” is unnecessary language that could cause confusion and therefore, the Department has removed that subsection. The applicable standards are stated in 8.3.A.1 and 8.3.A.2, and when a project must comply with the Vermont Stormwater Management Manual, the Manual itself includes all of the necessary substantive requirements.

V. Comments on TMDL Implementation

A. Flow restoration plan requirements need clarification

The Draft Permit requirements for developing a Flow Restoration Plan (FRP) are identical to the requirements under the MS4 General Permit. As evidenced by the inconsistent and incomplete FRPs recently submitted by MS4 permittees, DEC must be clearer with permittees about how to fulfill FRP requirements.

Response: VTrans has submitted FRPs to comply with its MS4 permit authorization issued under “General Permit 3-9014 for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems” (2012). The Department will review the FRPs and

require that any necessary changes be made prior to their approval. Because the FRPs were submitted under 3-9014, their approval will be granted pursuant to the requirements under the 2012 MS4 GP.

B. Baseline phosphorus loading assessments, phosphorus loading factors, and coefficients for loading rates need to be consistent

Beyond managing phosphorus runoff, DEC is requiring VTrans to establish baseline phosphorus loading assessments, investigate phosphorus loading factors, and develop coefficients for loading rates in a Phosphorus Control Plan (PCP). CLF assumes MS4 permittees will similarly be required to undertake these analyses in their upcoming PCPs. CLF is concerned this approach of requiring numerous permittees to conduct baseline loading assessments, study loading factors, and create coefficients for loading rates will result in a patchwork phosphorus analysis that is inconsistent across jurisdictions. Further guidance and clarification is required from DEC to ensure comprehensive and reliable assessments. CLF also recommends DEC explain its motivation behind requiring permit holders conduct these assessments rather than undertaking this analysis itself.

Response: The Department has been working with VTrans to develop baseline phosphorus loading data based on current available data. The Department will continue to work with VTrans and will guide and review the development of coefficients and loading rates. The Department has not begun the process to develop the new MS4 permit and associated PCP requirements, but will take these comments into consideration when undertaking that process.

C. Determination of progress needed every four-year phase

VTrans is committed to achieving, on average, a 25 percent load reduction in each four-year phase under the Phosphorus Control Plan for the TS4 within the Lake Champlain basin. CLF strongly encourages DEC to make a determination every four-year phase of whether VTrans is, in fact, meeting its obligation to reduce the phosphorus load by 25 percent. DEC should rely on the Lake Champlain BMP Accounting and Tracking Tool to determine whether the 25 percent reduction requirement is being met. Should VTrans fall short of meeting this obligation, DEC should clearly outline what actions it will take to meet the Lake Champlain TMDL. These actions should include increasing phosphorus removal standards, increasing the acreage of existing TS4 controlled land under permit, and/or using the Agency's residual designation authority pursuant to DEC's Stormwater Management Rule section 18(302)(a)(5).

Response: The Department will be analyzing VTrans phosphorus reduction implementation annually to ensure that the PCP is on track to meet the 25% target reduction every four years. The Department plans to use the tracking systems developed by the Clean Water Initiative Program within DEC to assess project completeness. Additionally, if information indicates that VTrans is not on target, the Department will amend the TS4 to ensure VTrans gets back on track. Because, as listed above, there are a variety of ways in which the Department could seek additional reductions, the Department does not think it appropriate to dictate at this time the specific actions it would take to amend a future version of the TS4.

Comment: Similar to our comments on the FRPs (please see above), CLF recommends DEC provide greater clarification on the expectations for PCPs to identify the suite of necessary stormwater BMPs, designs and construction schedules, and financing planning.

Response: The Department has not begun the process to develop the new MS4 permit and associated PCP requirements, but will take these comments into consideration when undertaking that process.

Response to Comments Received from the MS4 Subcommittee

These comments are submitted on the Draft TS4 permit with the assumption that MS4 language will be similar, if not identical, to the proposed TS4 language.

Response: The TS4 Permit applies to VTrans and not the regulated small MS4s. The Department will be developing an amended MS4 permit to incorporate the requirements of the Lake Champlain TMDLs in the coming year. The Department will make every effort to work with the regulated MS4 municipalities to develop the Phosphorus Control Plan (PCP) standards and schedules during the development of the draft MS4 permit.

- As a general comment, it appears that the state will be relying on TS4 and MS4 permit holders to not just manage phosphorus within their jurisdictional boundaries, but also require the permit holders to perform a significant phosphorus analysis including a baseline assessment, the creation of loading factors and coefficients and BMP prioritizations. If the State chooses to pass along the responsibility of phosphorus assessments to individual permit holders, clear guidelines describing how these assessments are to be performed must be provided. Otherwise, assessments will result in a variety of differing methods between permit holders, resulting in significant state review to facilitate approval and the likelihood of certain approaches being deemed unacceptable.

Response: The Department agrees and will provide any relevant guidance necessary to municipalities under the amended MS4 permit.

Reporting

- In recognition of the existing reporting burden municipality's face, it is requested that a single annual report containing updates on TS4/MS4 permit compliance, FRP progress and PCP progress be implemented as opposed to bi-annual reporting.

Response: The Department has required bi-annual reporting from VTrans on Flow Restoration Plan (FRP) and Phosphorus Control Plan (PCP) implementation to conform with the requirements of the compliance schedule language in the Vermont Water Pollution Control Permit Regulations. Under those Regulations, no more than 9 months may pass between interim requirements under a long-term compliance schedule.

FRP

- Section 9.1. D
 - In light of the simultaneous PCP requirements we suggest that phosphorus loading calculations be removed from consideration as part of the FRP. As the permit is currently worded TS4/MS4 operators are required to submit redundant phosphorus reporting.

Response: Implementation of VTrans' FRPs are on a different schedule than the implementation of the future PCPs. To ensure that VTrans receives "credit" for reductions of phosphorus during implementation of the FRPs, it is appropriate to require phosphorus reduction estimates as part of FRP reporting. The Department will work to ensure that reporting of implemented projects to comply with all TMDLs is streamlined.

PCP

The State should bear the responsibility of providing the phosphorus assessments which include preparing baseline, coefficient and loading factor analyses. If the State so chooses to pass these responsibilities onto individual permit holders then a guidance document needs to be assembled for Section 9.2.A.

Response: See response above.

- Section 9.2 A.1
 - Allocations by watershed should be provided as opposed to set percent reductions. This approach would allow permit holders to achieve TMDL compliance in a clear and consistent method with that of other impaired waterways such as those assessed under the FRPs.
 - Consider the approach used for the Lake and Pond Phosphorus TMDL Requirements in the MA MS4 GA Permit, where methodology to calculate Baseline Phosphorus Load, phosphorus export coefficients, etc. are provided in the appendices.

Response: The Department worked with VTrans to develop a methodology to most efficiently achieve the reductions required to meet the LC TMDLs across the entire Lake Champlain Basin. The Department will take the foregoing suggestion into consideration when developing the MS4 GP.

- The "cutoff" date which determines when a project is eligible as a phosphorus offset must be included in the permit language. In a letter by the Stormwater Program dated 11/2/2016 (attached) a program staffer states that this date is 2002 with respect to the allocation of phosphorus from offset projects. Accordingly, the CWAC anticipates all projects implemented past 2002 are eligible for inclusion in pending PCPs.
- Please reiterate in the permit what the above letter states. Simply put, that offsets, and their respective phosphorus allocations, are an acceptable "BMP" for PCPs.

- **Response:** The Department will work with the MS4 municipalities on the development of the requirements for the Phosphorus Control Plans in the forthcoming amended MS4 GP. The Department acknowledges that MS4 municipalities have conducted voluntary phosphorus removal BMPs and permitted projects to offset sediment loads to stormwater impaired streams. The Department will work with municipalities to ensure that these projects are accounted for, as appropriate, in the PCPs. Section 9.2 A.2
 - In general, the wording in this section is too vague. Accordingly, please clarify the following;
 - What is the definition of “investigate”?
 - What are the loading factors (e.g. Land use, rooftop, parking, paved road, gravel, and slope)?
 - Define connectivity and how this may reflect efforts in the local roads permit.
 - Define Erosion
 - What is an acceptable data source for the GIS analysis? Will acceptable data be provided by the State? Does this data require separation of various types of impervious with varying loading rates such as roof tops versus roadways? Please clarify.

Response: The Department is working with VTrans on the development of the PCPs and will provide guidance to VTrans, as necessary. The Department also plans to work with the MS4 municipalities in the development of the requirements for the Phosphorus Control Plans in the forthcoming amended MS4 GP.

- Section 9.2 A.3
 - What coefficients are to be determined and who is responsible for their determination?
 - How do these coefficients tie into the baseline assessment?

Response: The Department is working with VTrans on the development of the PCPs and will provide guidance to VTrans, as necessary. The Department also plans to work with the MS4 municipalities in the development of the requirements for the Phosphorus Control Plans in the forthcoming amended MS4 GP.

- Section 9.2 A.4
 - According the Lake Champlain Phase 1 Implementation Plan, the core component of the Tactical Basin Plans (TBP) are the implementation tables. The table outlines the priorities of DEC and partner organizations. The implementation tables will be frequently updated to reflect the implementation of practices that are required as a result of regulatory program requirements. The TBPs themselves are not considered standalone regulations or permits. The tables, however, serves to notify municipalities and partner organizations the types of projects the Watershed Management Division (WSMD) will support with Ecosystem Restoration Program grants or promote to other funding sources where DEC has leverage. It is the goal of WSMD to ensure that implementation priorities

identified in TBPs become priority items to be funded by ERP's grant monies or other available funds. This is the theme throughout the Implementation Plan. The PCP is a component of the TBP, but in order for any projects identified as a result of the PCP to be highly considered for funds, it must be incorporated into the implementation tables. Although it is implied, this is not directly stated in the TBP. The tables will track BMPs and estimate phosphorus reductions. Will the implementation tables still be the priority for funding and how will the projects developed from the PCPs be included in the implementation tables?

- Additionally, under the Lake Champlain Phase 1 Implementation Plan, DEC is required to construct a critical source area modeling tool to ensure that implementation tables of TBPs contain the highest-priority implementation actions.

Response: This question is outside the scope of this permit. For questions related to the Tactical Basin Plans and implementation tables, please contact the Monitoring, Assessment and Planning Program.

- Section 9.2 A.5
 - Rather than requiring structural projects to be implemented in four equal quarters of total phosphorus removal, the CWAC suggests an approach similar to that of the FRP approach that will allow permit holders to prioritize their projects over the full implementation time frame. This will allow municipalities the ability to more evenly distribute project costs over the implementation period, reducing variability in capital expenditures between fiscal years. This will also enable a comprehensive report to be approved by the State up front as opposed to the final quarter of the report being unknown until 2032.

Response: The Department worked with VTrans to develop a measurable implementation schedule that could be reasonably achieved by VTrans. The Department will take the foregoing suggestion into consideration when developing the MS4 GP

- What role will non-structural activities such as enhanced street sweeping, catch basin cleaning, and organic waste and leaf litter collection programs, as referenced in the MA MS4 General Permit, Appendix F - Requirements for Discharges to Impaired Waters with an Approved TMDL?

Response: As part of the development of the PCP, the Department will provide guidance to VTrans on phosphorus removal rates for non-structural BMPs.