

2008 MAINE MS4 GENERAL PERMIT REISSUANCE RESPONSE TO COMMENTS

This document is organized by general comments and by major sections (“Parts”) of the Maine Municipal Separate Storm Sewer (“MS4”) General Permit. When a comment did not specify the part of the MS4 GP being addressed, the comment has been included under the Part that appeared most applicable.

“Department” or “DEP” refers to the Maine Department of Environmental Protection. “EPA” refers to the United States Environmental Protection Agency. “MS4 GP” refers to the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems.

General Comments

Comment 1. It is unfortunate that the State must close its public comment period before the EPA Region 1 permit is available for public review. We note that Maine’s MS4 communities ultimately have the choice of being governed by the DEP General Permit OR by a separate USEPA permit. It may be true that EPA’s permit would be more restrictive and onerous, however, we simply want to state that we are unable to make a choice in this case as both governing documents are not available to consider.

Response. In November 1999, the State applied to EPA for authorization to administer the National Pollutant Discharge Elimination System (“NPDES”) program in Maine. On January 12, 2001, the EPA granted authorization to the Department to administer the NPDES program in most areas of the State. The Department is currently the permitting authority for Maine’s MS4 program, and regulated communities do not have the option of being regulated by a separate EPA General Permit.

The Department agrees that it is unfortunate that the EPA MS4 GP was unavailable during Maine’s official public comment period. These are circumstances beyond the Department’s control. However, the Department has had communication with EPA while drafting its MS4 General Permit, and has given EPA the opportunity to review and comment on Maine’s Draft MS4 GP.

Comment 2. There is an overall concern over the increased permit expectations and reliance on achieving compliance within certain deadlines. Recent municipal budget cuts and corresponding staffing reductions to meet local fiscal constraints have left the municipalities with an inability to provide assurance to DEP that key deadlines for permit compliance will be achieved, particularly the additional expectations for Urban Impaired Stream watersheds.

Response. The MS4 stormwater program is designed to build upon previous general permits with the goal of maintaining and increasing water quality in regulated communities. The development of the 2008 MS4 General Permit was done through an extensive 13 month stakeholder process and was designed with the goals of meeting the applicable requirements of the Clean Water Act as well as setting realistic goals and deadlines for regulated municipalities. We understand that there are fiscal issues for municipalities, and we have considered this in the

development of the proposed permit requirements. However, progress still must be made toward restoring water quality in the urban impaired streams. Department initiatives have aided municipalities in meeting the terms and conditions of the 2003 as well as some of the requirements of the 2008 general permit. Some examples include the acquisition of software to manage annual reporting for each municipality, and the development of two generic ordinances. One for non-stormwater discharges and the other for post-construction. Both model ordinances were developed through a well attended stake holder process, and need little municipal modification. The Department has also allocated additional staff to work with communities on their education and outreach permit requirements, and worked diligently with regulated small MS4s to develop and implement our mass media campaign which included radio and TV ads. DEP's efforts included funding for air time as well as assessment of the media campaign. The Department is in the process of developing inspection forms with stakeholders for elicit discharge detection, construction site inspections, and post construction site BMP inspections. We are also working with the Greater Bangor Stormwater Working Group to develop computer software for these inspection forms for better data management. The Department has allocated grant money for watershed management plans for three urban impaired streams. We have also hired interns to conduct watershed assessments as well as GIS mapping for Thacher Brook and Capisic Brook. The Department hired nationally recognized experts to conduct two full day seminars on funding municipal stormwater programs in June 2008. The State Stormwater Coordinator meets regularly with regulated communities to discuss local and regional stormwater issues and provide State updates as well as Region One and national updates. We will continue to partner with regulated small MS4s to assist them in meeting their permit requirements.

Comment 3. The overall initiative is both laudable and clearly a part of Maine's heritage, and requires multiple objectives be met in order to change behavior. As such it will require extensive oversight and effort among several municipal departments to be sure there is a cohesive and consistent application of care and standards. We note that the cost of achieving this program in general will further exacerbate our rising tax and utility rates.

Response. The Department has developed a template stormwater management plan for regulated small MS4s and has conducted two training sessions on this template. Additional training sessions are scheduled for September 2008. Stakeholder input over the past 13 months of developing Maine's MS4 GP has tried to address these concerns. This comment did not request or result in a specific change to the MS4 GP.

Comment 4. The general permit language should reference water quality protection and requirements as well as the Maximum Extent Practicable ("MEP") standard.

Response. The MS4 GP does address these issues. Part IV(A) provides that "[t]he permittee shall develop, implement, and enforce a Stormwater Program Management Plan ("Plan") implementing six minimum control measures, set forth in Section H below, which are designed to reduce the discharge of pollutants within the Urbanized Area from its regulated small MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act." The general provisions also refer clearly to the

general permit's goal of protecting and improving water quality. See Part I (A) ("Discharges must meet the requirements of this general permit and applicable provisions of Maine's waste discharge and water classification statutes and rules."); Part I (D) (1) ("This general permit does not authorize a stormwater discharge that is not in compliance with the requirements of this general permit, or a discharge that fails to reduce the discharge of pollutants from the permittee's MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the water quality requirements of the Clean Water Act."); and Part I (D) (5) ("This general permit does not authorize a discharge that causes or contributes to a violation of a water quality standard."). See also Part III(E)(3)(c)(standard for granting coverage under MS4 GP).

Comment 5. Maine's MS4 permit should be consistent with the Clean Water Act, federal regulations and the current EPA Region I MS4 permit for Massachusetts and New Hampshire.

Response. The MS4 GP is consistent with the Clean Water Act, federal regulations and the current EPA Region One MS4 permit. The MS4 GP requires the submission of a Notice of Intent ("NOI") and a Stormwater Program Management Plan that is designed to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. It requires consistency with EPA-approved TMDLs and requires additional measures to control known pollutants of concern in urban impaired streams. It requires the implementation of BMPs to address the six minimum control measures. The permittees must identify the measurable goals by which each BMP will be evaluated and must submit annual reports evaluating program compliance, the appropriateness of identified BMPs, progress towards achieving identified measurable goals, and the results of information collected and analyzed, including any monitoring data. It provides an opportunity for public comment on the Stormwater Program Management Plan. It provides that authorization to discharge is not effective until the applicant receives written authorization from the commissioner. The Department may require additional information, extend the comment period or deny coverage under the MS4 GP and require submission of an application for an individual or alternative MPDES permit.

Comment 6. Maine's MS4 permit should provide for meaningful review by the Department of both NOIs and Stormwater Program Management Plans to prevent an applicant from underestimating what reduction in discharges would be the maximum practicable reduction.

Response. The MS4 GP provides for meaningful Department review of the NOI and the Stormwater Program Management Plan. A submittal schedule for the permittee's Plan is included in the MS4 GP to ensure adequate time for Department staff to review each Plan. The Department has developed a generic Plan and has conducted two workshops on developing the Plan. Subsequent workshops are being scheduled for regulated small MS4's in September 2008. Each regulated entity will have to select a priority watershed as an area of program focus. The Department will be working with the regulated entities and providing meaningful review of the Plan to ensure that they will not inadvertently underestimate the MEP requirement. This will be

accomplished by meeting with regulated communities and providing comments on the Stormwater Program Management Plan prior to its formal submittal.

Comment 7. There is a heightened need for regulatory review in cases involving discharges to impaired waters. To the extent the Department requires modifications to Stormwater Program Management Plans to be consistent with an approved TMDL, the Department must then fully review such revisions to ensure that the permittee's Plan will in fact comply with any applicable waste load allocation and implementation plan.

Response. The Department agrees that discharges to urban impaired streams require additional stormwater treatment controls and will be working with regulated communities to address this issue to ensure that Plans are consistent with approved TMDLs, TMDL implementation plans and waste load allocations. For urban impaired streams that do not have an approved TMDL, Department staff will be working with regulated small MS4s to gather information on potential causes of impairment.

Comment 8. Authorization to discharge should be granted only to regulated small MS4s that submit both an NOI and a Stormwater Program Management Plan. In particular, the Stormwater Program Management Plan must not only be submitted to and meaningfully reviewed by DEP, but must also be incorporated directly into the terms and conditions of the resulting permit. NOIs and Plans must also be fully subject to the Clean Water Act's public participation requirements.

Response. Maine's MS4 GP requires the submittal of both the NOI and Stormwater Program Management Plan. The Plan is a requirement of the MS4 GP and will be reviewed by Department staff. Upon the Department's receipt of the Plan, the Department will post the Plan on its web site for a specified public comment period. The Department will consider all public comments received prior to granting authority to discharge under the MS4 GP.

Comment 9. The terms and conditions of the MS4 GP are unfunded mandates from the State and Federal Level. The general permit appears to facilitate the creation of a local or regional storm water utility to create a revenue stream for municipalities to work toward achieving compliance. Such a utility is not likely to be well received by the general public or private property owners. Instead of viewing such a utility as a more equitable method of financing a municipality's storm water operations, engineering and maintenance needs, any new utility will be branded in a negative light to cover costs associated with new state and federal storm water regulations.

Response. The Department will continue to work with regulated municipalities to develop locally driven solutions for their municipal stormwater program. This comment did not request or result in a specific change to the MS4 GP.

Comment 10. The general permit requires several deadlines to meet specific obligations throughout the permit document. We suggest that there be a single section for applicants to

easily refer to for noting all the key submission and compliance deadlines for ease in identification.

Response. The Department will develop a separate table for compliance deadlines based on the MS4 GP and distribute it to the regulated small MS4s.

Comment 11. The general permit's goal of protecting water quality and satisfying the appropriate water quality requirements of the Clean Water Act should be reiterated in Part IV.A.1.b, which requires additional stormwater treatment controls within the Urbanized Area for urban impaired streams.

Response. As previously noted, this goal has already been stated in several provisions of the MS4 GP, including in the provision requiring the development and implementation of the Stormwater Program Management Plan. This comment did not request or result in a specific change to the MS4 GP.

PART I. General Permit Coverage

Comment 12. Part I.D.5.a-c. These statements seem to be unrealistic and unattainable; consider striking them from the General Permit.

Response. These are existing conditions from the 2003 MS4 GP, and are typically included in all the Department's waste discharge permits. This comment did not request or result in a specific change to the MS4 GP.

PART II. Definitions

Comment 13. Part II (H) The definition of discharge should include sheet flow and shallow concentrated flows.

Response. The general permit covers the direct, or point source, discharges of stormwater from regulated small MS4s to waters of the State other than groundwater. Point source discharges include shallow concentrated flows, but do not include sheet flow. The term "discharge" is defined to incorporate several concepts: which activities constitute a discharge, the requirement of addition of a pollutant, the fact that the discharge must come from a point source, and for the purpose of the MS4 GP, that the receiving water body is any water of the State except ground water. The description of "direct discharge" or "point source" is consistent with statutory and regulatory definitions of these interchangeable terms. The definition of stormwater is separately defined in the general permit as the part of precipitation including runoff from rain or melting ice and snow that flows across the surface as sheet flow, shallow concentrated flow, or in drainageways. Read together, these definitions provide an adequate definition of stormwater discharges subject to the general permit.

Comment 14. Part II.L. The definition of “maximum extent practicable” or “MEP” in the proposed rule is too narrow as it does not recognize that the goal of MS4 permits is to protect water quality and satisfy the appropriate water quality standards of the CWA.

Response. MEP is not defined in the Clean Water Act, and EPA specifically chose not to define MEP in its regulations. However, EPA fully explained its interpretation of the MEP standard in the preamble to the Phase II Stormwater Rule. 64 F.R. 68722, 68754. The Department has expanded its definition of MEP to be consistent with EPA’s explanation of this standard and to clarify that the goal of the general permit is to protect and improve water quality. The MS4 GP will reflect the following change to the definition of maximum extent practicable.

“Maximum Extent Practicable” or “MEP” means available and feasible considering cost, existing technology, and logistics based on the overall purpose of the project. MEP is the Clean Water Act standard that establishes the level of pollutant reductions that operators of regulated small MS4s must achieve. The reduction of pollutants is achieved by implementing BMPs and other requirements of this general permit in an iterative process that continually adapts to current conditions and BMP effectiveness, on a location-by-location basis, taking into consideration such factors as condition of receiving waters, specific local concerns, a comprehensive watershed plan, MS4 size, climate implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance. The goal of the general permit, and the projects required to be undertaken under the general permit, is to protect and improve water quality.

Comment 15. Part II.U. Consider revising definition of Stormwater Pollution Prevention Plan, as follows: "...means a written plan developed and implemented for select municipal operations to reduce or eliminate pollutants as described in this general permit."

Response. The Small Municipal MS4 GP will reflect this change.

PART III. Procedure

Comment 16. Part III.D.2. The section states that all Notices of Intents, report certifications or information either submitted to the Department, or that this permit requires to be maintained by the permittee, must be signed and certified in accordance with Waste Discharge Licenses, 06-096 CMR 521(5); however the certification language provided within the text of the MS4 GP differs from 06-096 CMR 521(5).

Response. Parts of the text relating to corporations were omitted because the MS4 GP regulates to municipalities or state, federal or other public agencies. The certification language in the MS4 GP has been changed to reflect Chapter 521.

Comment 17. Part III (E). The Department can not issue interim or final coverage for stormwater discharges to urban impaired streams for which EPA-approved TMDLs do not exist without conducting a “reasonable potential” analysis to determine whether discharges are

causing or contributing to excursions above state water quality standards, including narrative water quality criteria.

Response. Of the 19 urban impaired streams into which regulated small MS4 stormwater discharges flow (listed at Appendix B of the general permit), four have EPA-approved TMDLs. The general permit states that these regulated stormwater discharges must be consistent with the approved TMDLs. Part I(D)(4), IV.K. For the remaining 15 urban impaired streams, the Department has not conducted a “reasonable potential” analysis because there is insufficient data upon which to base such an analysis. There is no obligation to conduct a further analysis or impose requirements beyond the six minimum control measures if adequate information does not exist upon which such additional controls can be based. 40 C.F.R. 122.44(d), cited by the commenter, provides that “[I]mplementations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” Without supporting data regarding sources and concentrations of pollutants of concern, the State cannot make this determination. As EPA notes in the preamble to the Phase II Stormwater Rule, there must be adequate information on the watershed or a specific site as a basis for requiring tailored storm water controls beyond the minimum control measures. 64 FR 68722, 68788. The general permit requires regulated small MS4s to evaluate program compliance, the appropriateness of identified BMPs, and progress towards achieving identified measurable goals, and to annually report results of information collected and analyzed, including any monitoring data. Part IV(D), (J)(1). As the State obtains adequate information, it will be in a better position to develop more specific measures to protect water quality as necessary and appropriate. The State has determined that, based on available information, the BMPs and other requirements contained in the MS4 GP will reduce the discharge of pollutants to the maximum extent practicable, protect water quality, and satisfy the appropriate water quality requirements of the CWA.

Comment 18. Part III (E) The general permit cannot legally provide for 180 days of interim coverage or provide that a Storm Water Pollution Prevention Plan for municipal operations must be developed and implemented by the end of permit year two.

Response. Under federal and state regulations, a general permit for stormwater discharges may indicate that authority to discharge is effective upon receipt of an NOI, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the State. This permit utilizes two of those options. Interim coverage is effective upon receipt of a complete NOI. Interim coverage expires either 180 days from the effective date of the general permit, or upon Department grant or denial of coverage after review of a complete Stormwater Program Management Plan, whichever occurs earlier. Coverage for the duration of the general permit is effective only if the commissioner affirmatively grants such coverage and the permittee continues to meet the terms and conditions of the general permit. This two stage approach allows the permittees sufficient time to prepare a Stormwater Program Management Plans meeting the new requirements of the general permit, and gives the Department sufficient time to post the received Plans on its web site, consider

public comments received, and review the Plans for consistency with the general permit. It is the Department's position that this two stage approach meets the substantive and procedural requirements of applicable law. Furthermore, it is appropriate and necessary to provide sufficient time for regulated small MS4s to develop these Plans. It would be unreasonable and unrealistic to ask the permittees to create such a Plan on the day the NOI is submitted.

The development and implementation of a Stormwater Pollution Prevention for select municipal operations is a new requirement in the 2008 MS4 GP and will be phased in as a requirement.

PART IV. Requirements

Comment 19. Part IV(A). The Stormwater Program Management Plan must include a coordinated monitoring plan to gather the information necessary to determine if additional conditions or limitations are necessary.

Response. There is no requirement that a regulated small MS4 conduct monitoring, although the permitting authority may require it in a general permit. 40 CFR 122.34 (note to paragraph (g)(1)) ("The NPDES permitting authority may determine monitoring requirements for you in accordance with State/Tribal monitoring plans appropriate to your watershed."); 64 F.R. 68722, 68769 ("EPA does not encourage requirements for "end-of-pipe" monitoring for regulated small MS4s. Rather, EPA encourages permitting authorities to carefully examine existing ambient water quality and assess data needs."); 64 F.R. 68722, 68811, Appendix 5 (analytical monitoring is not required for small MS4s). The portion of EPA's Phase II Stormwater Rule preamble cited by the commenter does not say that that a small MS4 must conduct monitoring, but quotes an EPA 1996 interim permitting policy stating that it "should." 64 F.R. 68722, 68788. At this time, the Department does not believe that it is necessary to impose monitoring requirements on the regulated small MS4s, which are already expending significant resources to meet the current general permit requirements. Rather, as suggested by EPA, the State will make an effort to make funds for monitoring available to the regulated small MS4s with the most impaired streams.

Comment 20. Part IV(A)(1)(b) of the General Permit states that "additional stormwater treatment controls...are necessary for Urban Impaired Stream (UIS) watersheds". We acknowledge that there is a strong desire to focus on these streams and seek a higher level of water quality, yet we note that there is a significant lack of fact-based scientific information available from which to develop an approach to best management approaches. In fact, only one MS4 community in Maine has a UIS watershed with a 'known pollutant of concern'. Additionally, being the densest urban environment in the State of Maine appears to significantly limit the options for best management practices (BMP's) as defined in Chapter 500 guidance documents. We note that determining the hydrology and characteristics of our three UIS watersheds, and the potential methods within each for reducing the impact of urban runoff (as a surrogate 'pollutant of concern') is a daunting task for which we currently have no available resources. Additionally, we understand that during the five-year period of this permit, the identification of Urban Impaired Streams could be changed and therefore the full impact of this requirement is unknown. We recommend that MeDEP allow each MS4 with multiple UIS watersheds to choose their highest priority UIS watershed for which the 'additional stormwater

treatment controls...are necessary' in order to provide a consistent and achievable compliance target, and that additional time be granted for that portion of our 'Plan' to be developed; request the deadline become December of 2010. This will allow the watersheds characteristics to be determined scientifically, stakeholders to become involved, and the full development of planned measures to reduce stormwater pollution.

Response. The Department recognizes that there are limited resources available to adequately address multiple Urban Impaired Streams ("UIS") unless the municipality has completed or is in the process of completing multiple stream watershed management plans. The Department agrees that a municipality may initially propose to address its highest priority UIS. If a municipality is interested in developing a comprehensive watershed management plan to address all sources of stormwater pollution and not just the portion from the MS4, then the Department will work with the municipality in finding funding sources for the plan.

Comment 21. Part IV.B.2. Consider having the deadline for amendments for the Stormwater Program Management Plan be simplified to within 120 days of the original notification.

Response. The permittee shall respond to proposed amendments to the Stormwater Program Management Plan based on Department notification within 30 days of such notification unless specified by the Department. The Department may require amendments to the Plan sooner than 120 days of the original notification based upon new information or potential impacts to water quality. For these reasons, this comment did not result in a change to the MS4 GP.

Comment 22. Part IV.F.1. The signatory requirements in this section differ from those presented earlier in the General Permit under Part III.D.2. Please clarify signatory requirements.

Response. The requirements are the same; the NOI and the Stormwater Program Management Plan must be signed by the chief elected official or principal executive officer of the municipality.

Comment 23. Will the amount of the annual fee for this MS4 GP be included in the Maine DEP Licensing Schedule? If so, it should be stated as such in the MS4 GP.

Response. The annual fee is included in the Department's fee schedule, but a statement as such will not be included in the MS4 GP.

Comment 24. Part IV.I-K. and Part V. Consider rearranging these sections, especially Part.IV.J (Reporting and record keeping requirements), so that the last section in the General Permit is Part IV.H (Minimum Control Measures).

Response. The Department has considered this comment and has determined that rearranging these sections would not add to the clarity of the MS4 GP. This comment did not result in a change to the MS4 GP.

Comment 25. Part.IV.J. The deadline for submittal of the Annual Report differs between the General Permit and the Fact Sheet. Please clarify the deadline for submitting the Annual Report.

Response. The deadline for submittal of the Annual Report for municipalities is September 1, 2009, and annually thereafter by September 1. The Fact Sheet has been corrected.

Comment 26. According to the General Permit, a regulated municipality must submit its Stormwater Program Management Plan by December 29, 2008. The need for public input and involvement and procedural timelines for official internal approvals makes that deadline difficult to reach, particularly given current reduced staffing levels, the volume of existing projects and other municipal-wide priorities. We recommend changing that submission date to December 31, 2009, and setting a separate submission date for the portion of the plan that concerns UIS watersheds of December 31, 2010.

Response. Each regulated municipality developed a five year Stormwater Program Management Plan for the 2003 MS4 General Permit. This Plan may be modified to meet the terms and conditions of the 2008 MS4 General Permit. The Department has also drafted a generic Plan for the regulated municipalities and has conducted two workshops on this subject. The Department intends to conduct subsequent workshops and address the Urban Impaired Stream issues.

Comment 27. We have learned from the initial five-year MS4 permit that not only is the task of changing behavior a difficult one, but it is best addressed in a Regional or State-wide fashion. We comment that without funding resources to develop and implement MS4 group efforts this will become extremely costly and potentially conflicting across municipal boundaries. It is noted that we will need MeDEP's support to find funding streams particularly in light of the Governor's Regionalization Grant opportunity having been de-funded recently. Meeting the March 2, 2009 deadline for submittal of plans will be unlikely if a group effort among MS4's is not sustainable financially.

Response. The Department understands that regulated small MS4s are interested in working collaboratively on the development and implementation of both the outreach and BMP adoption plans. Department staff are committed to developing template plans in cooperation with the regulated small MS4s that will assure synergy among regulated municipalities and eliminate potential conflicts. The Department believes that the March 2 deadline for the submittal of the outreach plans is both realistic and feasible. In addition, the collaborative effort with the implementation of the plans will reduce the cost and build an efficient campaign. This comment did not request or result in a specific change to the MS4 GP.

Comment 28. Illicit Discharge Detection and Elimination: The first required strategy indicates that permittees must develop a watershed-based storm sewer system infrastructure map by June 30, 2013. Although the City is making inroads toward building this critical mapping document, greater flexibility is needed to recognize staffing and resource limitations that could make this deadline not achievable. We suggest language stating that it is a "goal" for each permittee to complete this mapping deadline by June 30, 2013, with a firm deadline of June 2015. Otherwise,

the State should offer in kind or grant assistance to municipalities to supply needed resources to make the June 30, 2013 deadline a reality. As an example, Portland currently estimates this task will require a minimum of 20 hours/week of FTE technical labor (plus the requisite hardware and software) in order to reach the 2013 goal for the more than 250 miles of our system and over 5000 catch basins that must be mapped. Using Fiscal Year 2008 wage and benefit rates, achieving this map in five years equates to a minimum investment of \$120,000 just for the labor involved.

Response. Regulated small MS4s are required to prioritize their watersheds, develop a watershed based storm sewer infrastructure map locating catch basins and connecting infrastructure indicating the direction of in-flow and out-flow pipes. A comprehensive understanding of this infrastructure is a critical component to any regulated small MS4's illicit discharge program which includes but is not limited to detecting illicit connections, prioritizing maintenance schedules and developing a response plan. The collection of infrastructure data and development of a comprehensive map is an investment that transcends the MS4 GP, and will have additional community benefits such as asset management. Many of the regulated municipalities in the Greater Portland and Bangor areas have hired college engineering students to collect infrastructure data to offset costs for this requirement. This section of the permit will remain unchanged.

Comment 29. Part IV(H)(3) Regarding the deadline to adopt an illicit discharge ordinance by September 1, 2008, we suggest setting that deadline instead at December 31, 2008. While we are committed to drafting a proposed ordinance by the September 1, 2008 date, it is not unusual for our City Council (and the various Committees this may need to be run through) to have reduced meeting schedules in the summer, which will impact staffs' ability to hold Committee and City Council workshops and public hearings on this new ordinance. More realistically, the ordinance could be deliberated and adopted in the fall.

Response. Please be aware that this is a requirement that is carried over from the first five year permit cycle, and a stakeholder group which included EPA, Maine Municipal Association, municipal officials and the Department developed a generic non-stormwater discharge ordinance in 2004. The permit will be changed to reflect the new deadline of November 28, 2008.

Comment 30. Part IV(H)(4)Construction Site Stormwater Runoff Control: We point out that the option of relying on the State of Maine's General Construction Permit to meet this measure requires the MS4 to document each activity disturbing more than an acre. This is a task we feel is best addressed by the permitting authority, MeDEP. The new obligation of inspecting sites at least twice, and three times if in an UIS watershed, appears to be achievable at this moment however we want to note that further staffing reductions may force us to also rely on the MeDEP permitting authority for this measure. This option should be a viable part of the language.

Response. Construction site runoff control is an essential component of the MS4 GP. A properly managed construction inspection program greatly reduces or eliminates sediment and other pollutants from leaving the site via stormwater runoff. While DEP will administer the permitting of construction activity, and take formal enforcement action if the municipality can

not resolve properly documented site deficiencies, the Department will continue to rely on MS4 municipalities to track and document construction site activity and inspections that occur at the sites. However, the obligation to conduct inspections may be transferred to a third party inspector at the expense of the developer. Municipal staff reductions would make this approach all the more desirable.

Comment 31. Part IV(H)(5) Post-Construction Stormwater Management in New Development and Redevelopment: Implementation of an Ordinance or similar measure to ensure long-term operation and maintenance of post construction BMP's requires us to develop, educate impacted parties, involve stakeholders, and gain support for a new administrative program. The deadline of June 30, 2009 does not seem feasible for a community of Portland's size. We suggest that the deadline for adopting such an ordinance be extended to at least June 30, 2010, to allow the municipalities further time to work out this important oversight function. In conjunction, the deadline for submitting annual reports that include tracking data will need to be moved to permit year three.

Response. This requirement is a carry-over from the first five year MS4 permitting cycle. In May 2007, the Department partnered with stakeholders and developed a generic Model Ordinance to address this minimum control measure. At least five stakeholder meetings were conducted during the development of this ordinance. No change has been made to the MS4 general permit as a result of this comment.

Comment 32. Part IV(H)(6) Pollution Prevention / Good Housekeeping for Municipal Operations: Plainly, the size of larger regulated municipalities makes achieving the deadline to develop written Operation & Maintenance ("O&M") procedures for all municipal operations within permit year two an onerous task. Without yet having the inventory data required in permit year one (by June 30, 2009), we can not commit to developing all the O&M plans by June 30, 2010. We request that the O&M plan development deadline be based on the outcome of the inventory and the flexibility for an additional year to be granted become part of the language.

Response. The permit language will reflect the following changes: written operation and maintenance procedures must be developed and implemented for the highest priority watershed by the end of permit year two, and by the end of permit year three for the rest of the regulated area.

Comment 33. Part IV(H)(6) We note that this minimum control measure has perhaps the highest impact on the need to create a new revenue stream, perhaps via a stormwater utility, due to the increased services and operational controls required such as for snow and ice removal and storage, and street sweeping and catch basin cleaning frequencies.

Response. This minimum control measure has the ultimate goal of preventing or reducing pollutant runoff from municipal operations, and provides the permittee the opportunity to lead by example for the entire community. This MCM is structured to allow the regulated small MS4 adequate time for the assessment of municipal operations and the development of operation and

maintenance plans. This assessment not only affords the permittee the opportunity to better manage its facilities, infrastructure, capital expenditures and fiscal demands, it also requires an implementation schedule that will reduce pollutants in stormwater runoff. The Department is committed to working with regulated small MS4s in evaluating and developing community driven funding mechanisms for these endeavors. This comment did not request or result in a specific change to the MS4 GP.

Comment 34. Part.IV.J. What records are required to be retained?

Response. The permittee shall keep records required by this permit for at least three (3) years following its expiration, or longer if requested by the Commissioner. These records include the permittee's Stormwater Program Management Plan and all amendments, annual reports, the NOI form and all other written documentation required by the MS4 GP.