

U.S. Environmental Protection Agency

Region 2

2016 Reissuance of

**National Pollutant Discharge Elimination System  
(NPDES) General Permit for Stormwater Discharges from  
Small Municipal Separate Storm Sewer Systems in the  
Commonwealth of Puerto Rico  
Fact Sheet**

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of NPDES General Permit

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## 1.0 Introduction and Background

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed the Environmental Protection Agency (EPA) to develop a phased approach to regulate stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the second phase on this program on December 8, 1999, expanding the existing NPDES storm water program (Phase I) to address storm water discharges from small municipal separate storm sewer systems (MS4s) (those serving less than 100,000 persons) and construction sites that disturb one to five acres.

The Director of Caribbean Environmental Protection Division of EPA Region 2 is finalizing the NPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (Small MS4 GP) into waters of the Commonwealth of Puerto Rico. This general permit, 2016 Small MS4 General Permit, will replace the 2006 Small MS4 General Permit, which was issued on November 6, 2006 (71 FR 64952), and expired on November 6, 2011.

The 2006 Small MS4 General Permit allows coverage for 82 small MS4s within the Commonwealth of Puerto Rico. This amount also includes public universities, State agencies and Federal facilities.

The Final 2016 Small MS4 General Permit consists of the following parts:

- Section 1:** Coverage under this Permit
- Section 2:** Non-Numeric Effluent Limitations
- Section 3:** Program Evaluation, Recordkeeping, and Reporting
- Section 4:** Non-Conventional MS4s – Public Universities, State/Federal Facilities and other Public Entities
- Section 5:** Non-Conventional MS4s – Transportation Agencies
- Section 6:** Non-Conventional MS4s – Commonwealth of Puerto Rico Department of Natural Environment and Resources
- Section 7:** Additional Program Certification Requirement

### Appendices:

- A: Definitions and permit specific terms
- B: Standard permit conditions applicable to all permits (40 CFR § 122.41)
- C: Conditions related to the Endangered Species Act (ESA)
- D: Conditions related to the National Historic Preservation Act (NHPA)
- E: Impaired Waters Information
- F: Information required on the Notice of Intent (NOI)

Today's Final NPDES Small MS4 GP 2016 accompanies this fact sheet response to comments of the 2014 proposed general permit in the Federal Register on June 11, 2014 (79 FR 33548). The fact sheet does not discuss every provision of the general permit, especially if the provision is straight-forward, easily understood and has not changed from 2006 Small MS4 General Permit. However, a number of provisions in the 2016 Small MS4 General Permit are worthy of explanation.

## 1.1 Program Background

The conditions in the general permit are established pursuant to Clean Water Act (CWA) Part 402(p)(3)(iii) to ensure that pollutant discharges from small municipal separate storm sewer systems (small MS4s) are reduced to the maximum extent practicable (MEP), protect water quality, and satisfy the appropriate water quality requirements of the CWA. A small municipal separate storm sewer system means all separate storm sewers that are:

“(1) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes including special districts under State law such as a sewer, flood control district or drainage district, or similar entity or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of United States.

(2) Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to 40 CFR § 122.26(b)(4) or (b)(7) or designated under 40 CFR § 122.26(a)(1)(v).

(3) This term includes systems similar to separate storm sewer systems in municipalities such as military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings. For example, an armory located in an urbanized area would not be considered a regulated small MS4.” (See 40 CFR § 122.26(b)(16)).

Section 2.4 of the general permit sets forth the requirements for the MS4 to “reduce pollutants in discharges to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods...” (See Section 402(p)(3)(B)(iii) of the CWA). MEP is the statutory standard that establishes the level of pollutant reductions that MS4 operators must achieve. EPA believes implementation of best management practices (BMPs) designed to control storm water runoff from the MS4 is generally the most appropriate approach for reducing pollutants to satisfy the technology standard of MEP. Pursuant to 40 CFR § 122.44(k), the general permit contains BMPs, including development and implementation of a comprehensive stormwater management program (SWMP) as the mechanism to achieve the required pollutant reductions.

Section 402(p)(3)(B)(iii) of the CWA also authorizes EPA to include in an MS4 permit “such other provisions as [EPA] determines appropriate for control of ...pollutants.” EPA believes that this provision forms a basis for imposing water quality based effluent limitations (WQBELs), consistent with the authority in Section 301(b)(1)(C) of the CWA. See *Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9<sup>th</sup> Circuit 1999): see also EPA’s preamble to the Phase II regulations, 64 Fed. Reg. 68722, 68753, 68788 (Dec 8, 1999). Accordingly, Section 2.1 of the general permit contains the water quality based effluent limitations, expressed in terms of BMPs, which EPA has determined are necessary and appropriate under the CWA.

EPA – Region 2 issued a final general permit to address stormwater discharges from small MS4s on November 6, 2006. The 2006 Small MS4 General Permit required small MS4s to develop and implement stormwater management programs (SWMP) designed to control pollutants to the maximum extent practicable (MEP) and protect water quality. The SWMP was to be fully implemented by the time of the permit expiration date. This 2016 Small MS4 GP builds on the requirements of the previous general permit.

Neither the CWA nor the stormwater regulations provide a precise definition of MEP. The lack of a precise definition is to allow maximum flexibility in MS4 permitting. Small MS4s need flexibility to optimize reductions in stormwater pollutant loads on a location by location basis. The process of optimization will include consideration of factors such as receiving waters, specific local concerns, size of the MS4, climate, and other aspects. Pollutant reductions that represent MEP may be different for each small MS4 given the unique hydrologic and geologic concerns or features that may exist. EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness. EPA believes that compliance with the requirements of this general permit will meet the MEP standard. The iterative process of MEP consists of a municipality developing a program consistent with specific permit requirements, implementing the program, evaluating the effectiveness of BMPs included as part of the program, then revising those parts of the program that are not effective at controlling pollutants, then implementing the revisions, and evaluating again. This process continues until the goal of meeting water quality requirements is achieved.

## 1.2 Consideration of Other Federal Programs

When EPA undertakes an action, such as the reissuance of an NPDES permit, that action must be consistent with other Federal laws and regulations. Regulations at 40 CFR § 122.49 contain a listing of Federal laws that may apply to the issuance of NPDES permits. This section discusses three (3) Federal Acts that apply to the reissuance of these general permits: the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act. The requirements of these Acts and EPA's obligations with regard to them are discussed in the following paragraphs.

### Endangered Species

The Endangered Species Act (ESA) of 1973 requires Federal agencies, such as EPA to ensure in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (also known collectively as the Services), that any actions authorized, funded or carried out by the Agency are not likely to jeopardize the continued existence of any Federally listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C 1536(a)(2), 50 CFR § 402 and 40 CFR § 122.49(c)).

On July 8, 2014, EPA initiated an informal consultation with the USFWS and the National Oceanic and Atmosphere Administration, National Marine Fisheries Service (NMFS) pursuant to Section 7 of the ESA, for the reissuance of a proposed 2014 NPDES Small MS4 General Permit. Based on the information, EPA believes that the issuance of the NPDES Small MS4 General Permit (PRR040000), may affect, but is not likely to adversely affect any threatened or endangered species.

On August 22, 2014, the USFWS indicated that the Antillean manatee may be affected. This species is found near shore waters around Puerto Rico where stormwater may be discharged. In addition, USFWS indicated they concur with EPA's determination.

On August 28, 2014, NMFS had questions regarding EPA's proposed 2014 NPDES Small MS4 General Permit. EPA ensured to provide a response to each of NMFS's questions by October 1, 2014. A follow up conference call was held on October 7, 2014 to discuss the responses. On December 18, 2014, EPA held another conference call where the NMFS requested to see examples of EPA inspection reports performed to MS4s and Municipal Stormwater Management Program. EPA provided six (6) documents of coastal municipalities on December 19, 2014. EPA followed up with a letter dated July 24, 2015 seeking NMFS to concur on EPA's determination that stormwater discharges from MS4s and discharge related activities are not likely to adversely affect any federal threatened or endangered listed species or designated habitat.

Appendix C specifies the eligibility criteria related to the protection of endangered and threatened species and critical habitat. Each operator is required to certify that they have met one of the 6 eligibility criteria.

### Historic Preservation

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal "undertakings" on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term Federal "undertaking" is defined in the NHPA regulations to include a project, activity, or program of a Federal agency including those carried out by or on behalf of a Federal agency, those carried out with Federal financial assistance, and those requiring a Federal permit, license or approval. See 36 CFR § 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. See 36 CFR § 800.16(1).

On December 17, 2014, the EPA requested comments from the Puerto Rico Historic Preservation Office (SHPO) on a Programmatic Agreement (PA). The undertaking in question is the re-issuance of a general permit under the Clean Water Act (CWA) and the NPDES permit program: the Small MS4 GP, authorizes stormwater discharges from municipal and public entities, including federal installations, with conveyance(s) of storm sewer systems from urbanized areas. This general permit will apply only to entities in the Commonwealth of Puerto Rico. The permit has an effective term of five years.

Individual authorizations to discharge (i.e., coverage of specific municipality/public entity under the general permit) are not considered to be a separate Federal undertaking. Only those stormwater control measures implemented to reduce pollutants may be certain Federal undertaking. Since site-specific information about MS4s and the potential impacts of implementing stormwater control activities only come to the attention of EPA as operators seek coverage under the permit and implement a stormwater management program, including historic property eligibility requirements that operators must meet prior to implementing certain stormwater control activities is the most appropriate means to address potential impacts to historic properties. In these circumstances, the EPA also believes that development of a PA is the most appropriate means of consulting on and memorializing such requirements and historic properties screening procedures for purposes of compliance with Section 106 of the NHPA. The NHPA's regulations provide for the development of PA in these types of circumstances and contemplate that such agreements

will memorialize the relevant procedures for compliance with Section 106, which may differ from the regular Section 106 and Section 800 process as agreed and as appropriate to accommodate the particular program at issue (see 36 CFR § 800.14).

The EPA has included Appendix D of the NPDES 2016 Small MS4 General Permit, which includes the measures that operators must follow to ensure the protection of historic properties in order to become eligible for permit coverage. The EPA is committed to the implementation of a PA to memorialize the historic properties procedures for the 2016 Small MS4 General Permit.

### Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. Sections 1451 et seq., and its implementing regulations [15 CFR § 930] require that any federally licensed activity affecting a State's coastal zone be consistent with the enforceable policies of approved State management programs. In the case of general permits, EPA has the responsibility for making the consistency determination and submitting it to the State for concurrence.

On June 11, 2014, EPA requested the Puerto Rico Planning Board (PRPB) to review for consistency the Small MS4 GP with the CZM Program. The PRPB provide a resolution of consistency on September 26, 2014.

## 2.0 General Permit Authority

Section 301(a) of the Act, 33 U.S.C. Section 1311(a), prohibits the discharge of pollutants into waters of the United States, except in compliance with certain sections of the Act including , among others, Section 402 of the Act, 33 U.S.C. Section 1342. Section 402 of the Act provides the Administrator of EPA the delegation to issue NPDES permits for discharges of any pollutant into waters of the United States according to such specific terms and conditions as the Administrator may require. Although such permits are generally issued to individual discharges, EPA's regulations authorize the issuance of "general permits" to cover one or more categories or subcategories of discharges , including stormwater point source discharges, within a geographic area (see 40 CFR §§ 122.28(a)(1) and (2)(i)). EPA issues general permits under the same CWA authority as individual permits. Violations of a general permit condition constitute a violation of the CWA and may subject the discharger to the enforcement remedies provided in Section 309 of the Act, including injunctive relief and penalties.

### Types of Permittees

#### Conventional MS4 Programs

Many MS4 operators permitted under the NPDES program are city governments. To evaluate this type of an MS4 program, an evaluator must have a basic understanding of the structure, operation and function of local governments. The structure and authority of local governments can vary by State (for example, the stages of autonomy), therefore a general description of a common city/local government structure is provided below.

Cities provide a variety of functions including fire, natural disaster and police protection, construction and maintenance of streets, stormwater and wastewater services, and providing for health, recreation, and social needs. Cities are governed by a city council that establishes municipal policy and enacts local ordinances. Many cities are run by the mayor-council system, where a mayor (either elected or appointed

by the council) works with the council to direct city departments and implement policy. Some cities are run by the council-manager system, where the elected council appoints a full-time professional manager to direct city departments and implement policy.

Stormwater management responsibilities vary depending on the city or local government. Some permittees assign stormwater program oversight and implementation to the public works department, while others assign stormwater to an environmental services department. Still others combine stormwater program implementation with planning departments, flood control authorities, or other municipal entities. Also, some municipalities perform stormwater activities within the cities (such as inspections). Each permittee should clearly describe in the SWMP Plan the roles and responsibilities of each department involved in stormwater management.

#### Non-Conventional MS4 Programs

As stated previously, the term MS4 does not solely refer to municipally owned storm sewer systems. Examples include, but are not limited to non-conventional entities such as State departments of transportation (DOTs), universities, local sewer districts, hospitals, military installations, prisons, or flood control/irrigation districts.

Because of the unique structure and features of many non-conventional MS4s, some of the traditional SWMP elements may need to be modified or may not be entirely applicable. For example, a public education program for a State DOT or military base would be very different from a public education program for a traditional city/municipality.

In other instances, some non-conventional MS4s may lack the legal authority or employ a different type of enforcement mechanism than a city/municipal government to implement a SWMP component. For example, a State DOT may not have the legal authority to enforce controls on illicit discharges into its system. In these situations the DOT is encouraged to work with the neighboring regulated permittees to develop and implement a shared SWMP in which each permittee is responsible for activities that are within their individual legal authorities and abilities. The DOT could work closely with the permittees that surround the DOT MS4 (i.e. municipality or city) and use their enforcement authority to eliminate illicit discharges. In other words, a municipal permittee can utilize regulations which prohibit polluted runoff from leaving an individual property and entering the DOT MS4 if the property is covered under an appropriate municipal code (e.g. building, health, etc.) An evaluation of a non-conventional MS4 program must be very specific to the particular circumstances, permittee relationships, and permit requirements applicable.

## 2.1 Notice of Intent (NOI) Requirements

Before a small MS4 can be authorized to discharge stormwater under a general permit, it must submit a written notice of intent (NOI). The specific contents of the NOI are included in Appendix F of the general permit.

The regulations at 40 CFR § 122.33 require small MS4s who apply for a general permit to submit information on BMPs and measurable goals designed to meet the minimum control measures required by 40 CFR § 122.34(d). The NOI requirements of this general permit are slightly different than the NOI for the 2006 general permit. The initial NOI for the 2006 permit required the small MS4 to submit information on the BMPs for the Storm Water Management (SWMP) it planned to develop over the five year permit term. The NOI requirements of this general permit are based on the presumption that the programs outlined in the 2006 NOI are now developed and are being implemented and the NOI requirements build on those of the previous permit.



All NOIs must be submitted to EPA Region 2 by 90 days from the effective date of the permit. EPA will place all complete NOIs on public notice for a minimum of 30 days. NOIs will be posted on the Region 2 Stormwater NOI website: <https://www.epa.gov/region02/water/npdes/permits/index.html>. During that time, EPA will accept comment from the public concerning the content of the NOI. Following the close of the comment period, EPA will either authorize the discharges or require additional information. The general permit states that a small MS4 is not authorized to discharge until receipt of written authorization from EPA. The general permit also states that a small MS4 remains covered under the previous MS4 2006 permit and will remain covered for a period of 120 days, the permittee's authorization under the previous permit can be continued beyond 120 days on an interim basis. EPA may also deny coverage under the general permit and require an MS4 to obtain coverage under an alternative general permit or an individual permit.

## 2.2 Basis for Conditions of the NPDES General Permit

### 2.2.1 Statutory Requirements

Section 301(a) of the Act, 33 USC 1311(a), makes it unlawful to discharge pollutants to waters of the United States without a permit. Section 402 of the Act, 33 USC 1342, authorizes EPA to issue NPDES permits allowing discharges that will meet certain specified requirements. Sections 402(p)(3)(B)(ii) and (iii) of the CWA, and implementing regulations in 40 CFR §§ 122.26 and 122.34, require NPDES permits for stormwater discharges from MS4s to effectively prohibit non-stormwater discharges into the sewer system; and to require controls to reduce pollutant discharges to the maximum extent practicable including BMPs and other provisions as EPA determines to be appropriate for the control of such pollutants. EPA interprets this latter clause to authorize the imposition of water quality based effluent limitations.

### 2.2.2 Coverage under the Permit

This general permit is applicable to public operations and federal facilities within either a particular area or particular entities within a geographic area of the Commonwealth of Puerto Rico. This general permit covers stormwater discharges from small municipal separate storm sewer systems meeting the definition of "small municipal separate storm sewer system" at 40 CFR § 122.26(b)(16) and designated under 40 CFR § 122.32(a)(1) (applicable to small MS4s located in an urbanized area) or designated by EPA as needing a permit pursuant to 40 CFR § 122.32(a)(2).

Most small MS4s that will be covered by this permit are located entirely within an urbanized area as defined by the Bureau of the Census. On March 2012, the Census Bureau published final the criteria used to define urbanized areas for the 2010 census. An urban area encompasses a densely settled territory that consists of core census block groups or blocks that have a population of at least 1,000 people per square mile and surrounding census blocks that have an overall density of at least 500 people per square mile. Urbanized areas are not divided along political boundaries. Because of this nonpolitical division, a community may be entirely in an urbanized area or partially in an urbanized area. The Phase II regulations require a small MS4 to implement its program in the urbanized area. If a small MS4 is only partially within the urbanized area, the MS4 may decide to implement the SWMP within its entire jurisdiction, or just in the urbanized area. Both approaches are acceptable under EPA's regulations. However, EPA encourages MS4s to implement the SWMP in the entire jurisdiction.

As stated previously, the general permit applies to small MS4s located in urbanized area and those determined by EPA to need a permit. EPA has authority under the CWA to regulate sources other than those that are automatically covered by the stormwater regulations when necessary to protect or remedy localized water quality impacts. These could be small MS4s not in an urbanized area, including MS4s

owned by the State, or the Federal government. If EPA decides to regulate additional sources, EPA will evaluate whether a stormwater discharge results in or has the potential to result in exceedances of water quality standards, including impairments of designated uses, impacts to habitats, or biological impacts. Consistent with guidance found at 40 CFR § 123.35(b)(1)(ii), EPA will make a determination concerning water quality impacts from a non-regulated small MS4 using a balanced consideration of the sensitivity of a watershed, the growth potential of an area, the population density, the contiguity to an urbanized area, and the effectiveness of protection of water quality by other programs. If EPA decides to designate additional MS4s, EPA will provide public notice and an opportunity to comment on the designation.

In light of the updated urbanized area delineation, EPA has reviewed the newly released urbanized areas and has produced updated urbanized area maps for each of the communities located either fully or partially within the urbanized area in Puerto Rico. The revised areas are shown on the urbanized area maps available on EPA's website. (<https://www.epa.gov/npdes/urbanized-area-maps-mpdes-ms4-phase-ii-stormwater-permits>).

### 2.2.3 Obtaining Authorization to Discharge

In order for a small MS4 to obtain authorization to discharge, it must submit a complete and accurate NOI containing the information in Appendix F of the general permit. The NOI must be signed in accordance with the requirements of Appendix B Sub Paragraph 11 of the general permit. The NOI must be submitted within 90 days of the effective date of the final permit. The effective date of the permit is specified in the Federal Register publication of the notice of availability of the final general permit. Any new small MS4 designated by EPA as needing a permit must submit a Notice of Intent for a permit within 180 days from the date of notification, unless otherwise specified. A small MS4 must meet the eligibility requirements of the permit found in Sections 1.2, 1.9 and 1.10 prior to submission of the NOI. A small MS4 will be authorized to discharge under this permit upon the effective date of coverage. The effective date of coverage is upon receipt of written notice by EPA following a public notice of the NOI.

The general permit provides interim coverage for permittees covered by the previous permit and whose coverage was effective upon the expiration of that permit (November 6, 2011). For those discharges covered by the previous permit, authorization under the previous permit is continued automatically on an interim basis for up to 90 days from the effective date of the final 2016 general permit. If a permittee was covered under the previous permit and submitted a complete and accurate NOI in a timely manner, and notification of authorization under the final permit has not occurred within 120 days (90 days to submit complete and accurate NOI plus 30 day comment period of coverage) of the effective date of the final permit, the permittee's authorization under the previous permit can be continued beyond 120 days on an interim basis. Interim coverage will terminate after authorization under this permit, an alternative permit, or denial. EPA will provide an opportunity for public comment on each NOI that is submitted. Following the public notice, EPA will authorize the discharge, request additional information or require the MS4 to apply for an alternative or individual permit.

### 2.2.4 Discharge Authorization Waiting Periods

Today's general permit includes a new 30 day waiting period for authorization (Section 1.7.5). The 30 day period begins on the day that EPA posts the completed Notice of Intent on the Region 2 web site, <https://www3.epa.gov/region02/water/npdes/permits/index.html>. The purpose of the 30-day wait is twofold: 1) to provide U.S. Fish and Wildlife Service and National Marine Fisheries Service (the Services) an opportunity to review the NOI for coverage under the general permit for protection of threatened and endangered species and critical habitat consistent with the goals of the Endangered Species Act, and 2) to provide the public an opportunity to comment on the coverage under the general permit.

EPA is establishing a 30-day public comment opportunity in response to an expressed public desire to provide input on permittees. Anyone wishing to comment on an NOI, or the relevant proposed coverage, may submit comments. EPA clarifies that this 30 day period is not a formal permit public notice period. However, in the interest of providing the public a chance to comment on individual discharges, EPA will consider any comments received during the 30 day period. EPA does not plan to provide formal response to comments documents on comments received. However, EPA will review comments, and if there is valid concern about the proposed discharge, EPA will take the necessary steps to address the concern, e.g., require the relevant MS4 operator to make improvements to the Stormwater Management Program (SWMP). Depending on the nature of the issue and the timing of the comments, EPA will require appropriate action either prior to or following discharge authorization. In addition, EPA may delay authorization if comments received warrant such a delay, or may determine that the discharge is not eligible for authorization under the 2016 Small MS4 General Permit. The potential burden to EPA of taking public comment on discharges requesting authorization under this general permit is very significant, and thus EPA is hesitant to promise a specific process at this juncture. EPA fully intends to honor a public comment process, but needs some case-by-case flexibility on how this is accomplished.

### **2.2.5 Requirement for Availability of SWMP**

A copy of the SWMP must be kept on site at the Municipal/Public Entity Office facility or be locally available for the use of EPA, or representatives of a State, or local agency (e.g., Environmental Quality Board (EQB)) at the time of an onsite inspection/audit (Section 1.11.1). The SWMP must also be made available to any of these agencies and the U.S. Fish and Wildlife Service or National Marine Fisheries Service upon request. Since SWMPs are living documents that change over time, access to the current and full version of the SWMP is critical in assessing permit compliance.

SWMPs are considered publicly available information. As with 2006 Small MS4 General Permit, the Small MS4 GP

2016 requires that MS4 operators be required to provide a current copy of the SWMP in a timely manner to any member of the public making such a request. The mechanism for providing the SWMP is at the discretion of the MS4 operator (e.g., web-based, hard copy). EPA has not included a time limit for public requests within which MS4 operators must provide their current SWMPs, only that it must be timely. EPA notes that no more than 2 weeks from receipt of the request should be entirely adequate unless there are extenuating circumstances, including a cost for a hard copy of the document. In the event an MS4 operator receives numerous requests, EPA would find it reasonable for the MS4 operator to make a copy available for review at a public and easily accessible location, such as a city hall office or library in the community where the MS4 is located. EPA encourages MS4 operators to make their SWMPs available electronically both for ease and timeliness of access for the public and for reduced costs for the MS4 operator. MS4 Operators may withhold from the public (but not from regulatory agencies) information legitimately justified to be Confidential Business Information.

### **2.2.6 Permit Compliance**

EPA specifies that failure to meet any requirement of this permit is an enforceable permit violation. EPA has added emphasis and explanation about what constitutes a permit violation in several places in the permit in order to avoid any ambiguity. However, provisions where this emphasis has not been included are also enforceable requirements.

### **2.2.7 Stormwater Management Program (SWMP)**

The Stormwater Management Program is a written document required by the general permit. The SWMP is a mechanism used to document the practices the permittee is implementing to meet terms and conditions of the permit.

The general permit requires that the SWMP be a written document and signed in accordance with Appendix B subparagraph 11. The SWMP must be available at the office or facility of the person identified on the NOI as the contact person for the SWMP. If the contact person for the SWMP changes, this will be notify immediately in writing to EPA. The SWMP must be immediately available to EPA, representatives from FWS or NMFS; and representatives from State agency(ies). The permittee must also make the SWMP available to any member of the public who makes a request in writing. EPA encourages the permittee to post the SWMP online or make it available at a public location such as the library or town/city hall.

EPA believes that a written program provides a central accessible source for all information relating to the SWMP. The SWMP required by this general permit builds on the requirements of the previous permit. While updating the SWMP required by this general permit, the permittee must continue to enforce the SWMP that was required by the previous permit. This permit does not provide additional time for completing the requirements of the previous permit. Section 1.11.b. of the general permit state that permittees covered by the previous permit must update and submit their SWMP within one (1) year from the effective date of the permit to address the terms of this permit. The implementation of the modified/updated SWMP shall commence immediately after submission to EPA.

EPA does not require a specific funding mechanism or funding alternative. There are several options available to permittees. One funding mechanism is the use of a service fee or a stormwater utility. Usually, fees are based on the size of the property and the amount of impervious area associated with that property. Fees are usually one rate for residential homes and are varied for commercial and industrial facilities based on the property. Stormwater utilities exist in many parts of the country. A second funding mechanism is the general fund of the MS4. The revenue in the general fund usually comes from property taxes. This method of funding often means that levels are inconsistent from year to year and may not increase as the cost to implement the SWMP increases. Finally, stormwater projects may be eligible for grants or low interest loans. The State Revolving Fund may be a source of funding for stormwater projects. Additional information on funding can be found at: Green Infrastructure Funding Opportunities (<https://www.epa.gov/green-infrastructure/green-infrastructure-funding-opportunities>) and EPA's Catalog of Federal Funding Sources for Watershed Protection (<https://ofmpub.epa.gov/apex/watershedfunding/f?p=fedfund:1>).

### **2.2.8 Requirements for New Permittees**

The general permit provides different deadlines for municipalities/public entities not covered by the previous permit. New permittees have until year three of the permit to complete the map required by the permit as part of the illicit discharge detection program. New permittees have until year four to begin the monitoring program required by Section 3.0. EPA believes it is practical to have the map of the system complete prior to beginning outfall monitoring. Consistent with the timeframe in 40 CFR § 122.34(a), EPA is providing the permit term for new permittees to develop and implement the ordinances or other regulatory mechanisms required by Sections 2.3.4 (Illicit Discharges); 2.3.5 (Construction Runoff Management) and 2.3.6 (Stormwater Management in New Development). New permittees must meet all other deadlines as specified in the general permit Water Quality Based Effluent Limitations.

### 2.2.9 Water Quality Standards

This general permit includes provisions to ensure that discharges do not cause or contribute to exceedances of water quality standards. The provisions in Section 2.1 constitute the water quality based effluent limitations of this permit. The purpose of this part is to establish the broad inclusion of water quality based effluent limitations for those discharges requiring additional controls in order to achieve water quality standards and other water quality related objectives, consistent with 40 CFR § 122.44(d). The water quality based effluent limitations supplement the permit's non-numeric effluent limitations. The non-numeric effluent limitation requirements of this permit are expressed in the form of control measures and BMPs (see Section 2.3) and discussed later in this fact sheet.

If an MS4 discharges into waters that are not impaired, the general permit employs a presumptive approach to ensure that the permittee's MS4 discharges do not cause or contribute to exceedances of water quality standards. EPA considers this approach valid since, despite ongoing discharges from the permittee's MS4 and other potential sources, these waters have not been categorized as impaired and failing to meet water quality standards. During the previous five years, permittees have implemented SWMPs to comply with the conditions of the 2006 general permit. Under the general permit, the permittees would continue implementation of an augmented SWMP to comply with several additional and strengthened permit conditions. Therefore, EPA presumes that implementation of an augmented SWMP will at least maintain at present levels the contributions of pollutants from MS4s discharging to unimpaired waters, thereby not causing or contributing to an exceedance of water quality standards.

The general permit requires permittees to identify to EPA and the state of any additional or modified BMPs to be implemented to address any discharge from its MS4 in the event the permittee becomes aware that the discharge causes or contributes to an exceedance of applicable water quality standards. The permittee should use any available information, and add or modify BMPs in its SWMP to abate pollutants sufficiently to meet applicable water quality standards in the event that EPA's presumption proves to be incorrect.

Section 401(a)(1) of the CWA states that EPA may not issue a permit until a certification is granted or waived in accordance with that section by the state in which the discharge originates or will originate. The 401 certification affirms that the conditions of the general permit will be protective of the water quality standards and satisfy other appropriate requirements of State law. However, EPA requested 401 water quality certification. This has been waived.

### 2.2.10 Water Quality Impaired Waters

The general permit requires permittees to comply with any additional water quality related requirements for impaired waters. The additional requirements depend on whether the discharge is to an impaired water with or without an approved Total Maximum Daily Load (TMDL).

Each State must develop a list of water bodies that are not meeting the water quality standards applicable to the water body. This list, the "303(d) List", refers to the section of the CWA that requires the listing of the water bodies. The 303(d) list is part of an overall assessment of the water quality called the Integrated Report. The Integrated Report includes both the 303(d) list and the 305(b) assessment (305(b) is the section of the CWA which requires the assessment).

The Commonwealth of Puerto Rico must update these lists every two years.

EPA's regulations require the Commonwealth of Puerto Rico that TMDLs be developed for water bodies not meeting applicable standards (see 40 CFR § 130.7 for the regulations associated with TMDLs). A TMDL specifies the maximum amount of a pollutant that a water body can receive and still meet water quality standards. The TMDL allocates pollutant loadings to the impaired water body from all point and nonpoint pollutant sources. Regulations at 40 CFR § 130.2 define the TMDL as "the sum of the individual waste load allocations (WLA) for point sources and load allocations (LAs) for nonpoint sources."

WLAs and LAs make up portions of a receiving water's loading capacity. Once implemented, the TMDL is a strategy designed to meet the loading capacity of the water body and ultimately result in achievement of water quality standards.

The TMDL may establish a specific waste load allocation (WLA) for a specific source, or may establish an aggregate WLA that applies to numerous sources. Typically stormwater sources are expressed as an aggregate in a WLA. The permittee must identify in its SWMP how it will achieve any applicable WLA established in the TMDL. This should include specific BMPs and specific measures to meet the WLA, if applicable. The permittee's demonstration of meeting the requirements of the WLA should focus on evidence that shows that the BMPs are implemented properly and adequately maintained. This demonstration may be an iterative process.

Information on approved TMDLs can be found at: <http://www.epa.gov/owow/tmdl>.

Information on the 303(d) lists can be found at: <http://www.epa.gov/mywaterway>

For MS4 discharges into an impaired water for which there is an EPA approved TMDL, from the Commonwealth of Puerto Rico, as of the effective date of the permit, the general permit includes, pursuant to 40 CFR § 122.44(d)(vii)(B), effluent limits that are consistent with the assumptions and requirements of available waste load allocations included in the TMDL for the MS4 discharges. As of the date of issuance of this general permit, bacteria TMDLs (non-numeric) in the Commonwealth of Puerto Rico have been approved within various watersheds that receive discharges from MS4s in the area of coverage under this permit. In addition, copper and biochemical oxygen demand/ammonia TMDLs (also non-numeric) have been approved in the Río Grande de Loíza watershed.

### **2.2.11 Emphasis on Legal Authority/Bylaw**

Adequate legal authority is required to implement and enforce most parts of the SWMP. (See 40 CFR § 122.26(d)(2)(i) and 40 CFR § 122.34(b)(3)(ii)(B), (b)(4)(ii)(A), and (b)(5)(ii)(B)). Without adequate legal authority the MS4 would be unable to perform many vital SWMP functions such as performing inspections and requiring installation of control measures. In addition, the permittee would not be able to penalize and/or attain remediation costs from violators.

A major difference between a conventional MS4 and a non-conventional MS4 (such as a DOT, military base, or university) is often the scope of legal authority available to the MS4. Non-conventional MS4 permittees often cannot pass "ordinances" nor do they have enforcement

authority like a typical municipality, so legal authority may consist of policies, standards, or specific contract language. Non-conventional MS4 permittees also do not generally have the authority to impose a monetary penalty. Although these differences exist, just like conventional MS4s, non-conventional MS4s must have the legal authority to develop, implement, and enforce the program. Moreover, the scope of legal authority that may be exercised by MS4 operators that are municipalities may vary from each other. Therefore, the MS4 should tailor the legal authority or bylaws depending on the types of discharges covered and the scope of authority that may be exercised by the MS4. For example, non-conventional MS4 permittees often have authority over what their contracts require. Therefore, the non-conventional MS4 could require that contracts for construction and maintenance activities include specific stormwater requirements that ensure the non-conventional MS4's requirements are met. In addition, cooperative agreements could be maintained with those permitted MS4s that do possess the legal authorities to enforce stormwater measures within the permittee's MS4 boundary.

The discharge prohibitions listed in Section 2.3.3 are taken from the Phase II regulations and are the minimum requirements. Note that, unlike Phase II MS4s, Phase I MS4 permittees are required to address the sources of non-stormwater discharges in Section 1.4 when they are identified as sources of pollutants in stormwater discharges. (See 40 CFR § 122.26(d)(2)(iv)(B)).

### **2.2.12 Enforcement Measures and Tracking**

The permit requires permittees to have an established, escalating enforcement policy that clearly describes the action to be taken for common violations. The policy must describe the procedures to ensure compliance with local ordinances and standards, including the sanctions and enforcement mechanisms that will be used to ensure compliance. (See 40 CFR § 122.26(d)(2)(i)). It is critical that the MS4 have the authority to initiate a range of enforcement actions to address the variability and severity of noncompliance. Enforcement responses to individual violations must consider criteria such as magnitude and duration of the violation, effect of the violation on the receiving water, compliance history of the operator, and good faith of the operator in compliance efforts. Particularly for construction sites, enforcement actions must be timely in order to be effective.

Typical enforcement mechanisms include verbal warnings, written NOVs, administrative fines and orders, stop work orders, and civil or criminal penalties. Some non-conventional MS4 permittees, such as DOTs and universities, may not have the authority to use the mechanisms described above. Therefore the enforcement requirements in the SWMP should take the permittee's enforcement limitations and abilities into consideration, allow for alternative mechanisms such as related contract obligations or right-of-way permits, and/or require entities that cannot enforce to coordinate with those entities that can take action. For example, if a DOT discovers an illicit discharge to the right-of-way, a mechanism should be in place for the DOT to communicate with the adjacent municipality or State/Federal Agency to eliminate the discharge in a timely manner.

The SWMP must include specific language as to when non-conventional MS4s can refer violations of NPDES permits to the permitting authority. Because of the often similar control measures required in MS4 construction programs and PR Soil Erosion and Sediment Control Plan (Plan CEST, for its acronym in Spanish) or NPDES Construction General Permit (CGP)

Stormwater Pollution Prevention Plan (SWPPP) requirements, the permittee will need to make an honest effort at achieving compliance with their local requirements before referring a violator to the PREQB or NPDES permitting authority.

### 2.2.13 Non-Numeric Effluent Limitations

#### *Non-Numeric Effluent Limitations (MEP)*

In addition to water quality-based effluent limitations, NPDES permits are required to contain technology based limitations. (40 CFR § 122.44(a)(1)) When EPA has not promulgated effluent limitations for a category of discharges, or if an operator is discharging a pollutant not covered by an effluent guideline, permit limitations may be based on the best professional judgment (BPJ) of the agency. In this general permit, effluent limits are based on BPJ. The BPJ limits in this permit are in the form of non-numeric control measures, commonly referred to as best management practices (BMPs). Non-numeric limits are employed under limited circumstances, as described in 40 CFR § 122.44(k). EPA has interpreted the CWA to allow BMPs to take the place of numeric effluent limitations under certain circumstances. 40 CFR § 122.44(k), provides that permits may include BMPs to control or abate the discharge of pollutants when:

“(1)[a]uthorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) [a]uthorized under section 402(p) of the CWA for the control of stormwater discharges; (3) [n]umeric effluent limitations are infeasible; or (4) [t]he practices are reasonable to achieve effluent limitations and standards or to carry out the purpose of the CWA.” The permit regulates stormwater discharges with BMPs. Due to the variability associated with stormwater, EPA believes the use of BMPs is the most appropriate method to regulate discharges of stormwater from municipal systems in accordance with the above referenced regulation.

#### *Control Measures*

The general permit requires MS4s to continue to control stormwater discharges from the municipal system in a manner designed to reduce pollutants to the maximum extent practicable, and to protect water quality and to satisfy the appropriate water quality requirements of the CWA. The 2006 Small MS4 General Permit required that “[a]ll elements of the storm water management program must be implemented by the expiration of the permit.” This permit does not extend the compliance deadlines set forth in the 2006 Small MS4 General Permit.

Further, permittees authorized under the 2006 Small MS4 General Permit must continue to implement their existing SWMPs while updating their SWMPs pursuant to this new permit.

In order to reduce pollutants to the maximum extent practicable and protect water quality, MS4s must implement a SWMP consisting of the control measures in Section 2.3 of the general permit. In determining appropriate conditions for inclusion in the general permit, EPA evaluated SWMPs and annual reports submitted for the previous permit. Practices which were implemented by a significant number of MS4s assisted EPA in making a determination that a particular BMP was “practicable”.

Implementation of the SWMP involves the identification of BMPs and measurable goals for the BMP. The general permit identifies the objective of each control measure. The permittee must



implement the control measures and document actions in the SWMP demonstrating progress towards achievement of the objective of the control measure. The permittee must identify interim goals as steps towards achievement of the objective/long term goal.

Any goals identified as part of the SWMP must be measurable. A measurable goal for the program or control measure is a goal for which progress can be tracked or measured. A well-defined goal will have an outcome associated with it. Goals can be expressed as short term, mid-range or long term. The permittee must evaluate the success of a goal. The permittee can evaluate the goals using a variety of indicators including programmatic; social; physical; hydrological; or environmental. Recognizing that implementation of the SWMP is an ongoing and iterative process, subsequent goals will be more difficult to achieve than initial goals.

Measurable goals may be expressed either quantitatively or qualitatively. The method used to assess whether a goal has been met should be measurable, reliable, relevant, and an actual measure of the outcome. There are various methods to measure outcome. This includes confirmation or documentation that a task has been completed; tabulation, tracking an absolute number or value of something; surveying, determining the knowledge or awareness of a group; inspections, actual observations of an event; and monitoring, actual measurement of a pollutant in-stream or in an outfall.

#### *Relying on Another Entity (Section 2.4.1)*

In accordance with 40 CFR § 122.35, the general permit allows an MS4 to rely on another entity for implementation of all or part of a permit condition or control measure. The permittee may rely on the other entity if the other entity is actually implementing the control measure or permit condition. The other entity must agree to implement the measure or condition for the MS4. EPA requires the use of a legal agreement. This agreement must be included as part of the stormwater management program. If the other party fails to implement the measure or permit condition, the permittee is ultimately responsible for its implementation.

#### *Public Education and Outreach (Section 2.4.2)*

The MS4 must implement a public education program to distribute educational materials to the community or conduct other outreach activities about the impacts of stormwater discharges on water bodies and steps the public can take to reduce pollutants in stormwater runoff. The education program must be specific to the MS4 and include a focus on the pollutants of concern associated with impaired waters affected by discharges from the small MS4. The overall long-term goal of an effective education program is to change behavior and increase the knowledge of the community.

An education program must have a defined and targeted message for each of the different audiences and must include a measure to evaluate effectiveness of the educational messages. Based on review of annual reports from the previous permit, EPA found that some of the education programs developed by MS4s did not incorporate these expectations. In order to achieve the objective of this measure, the general permit includes detailed expectations for educating the public.

The general permit requires the permittee to provide educational materials to residents, commercial entities, institutional facilities, businesses, industrial facilities, and construction and

development companies. The general permit includes topics for consideration for all audiences. The permittee may use those topics listed or may focus on other topics specific to the small MS4. In addition, to the distribution of materials in a language other than Spanish as appropriate. Permittees can form partnerships with other permittees and/or organizations to assist in the implementation of its education and outreach programs. These partnerships may include other MS4s in a watershed, environmental groups, watershed associations, or other civic organizations.

During the previous permit term, an educational group developed comprehensive public education program materials for use by regulated small MS4s. For example, the “Servicios de Extensión Agrícola” of the University of Puerto Rico developed materials in Spanish related to stormwater runoffs. These materials provide an educational background and services as a tool for small MS4s to distribute in their communities. The program is available to any community. There is additional information on these materials are available at:  
<http://agricultura.uprm.edu/escorrentia/>.

#### *Public Involvement and Participation (Section 2.4.3)*

This control measure is closely related to the public education and outreach control measure. EPA supports the idea that if the public is given an opportunity to understand and participate in a stormwater protection program, the public generally will become supportive of the program.

The objective of this measure is to provide and engage the public with opportunities to participate in the review and implementation of the SWMP. The general permit requires that public participation opportunities, at a minimum, comply with the public notice requirements of the State. However, permittees are encouraged to provide more interactive opportunities for public participation. Examples include volunteer water quality monitoring, community clean up days, hazardous waste collection days, and adopt a drain/adopt a stream programs.

The general permit requires that the permittee provide an opportunity for the public to participate in the SWMP during the permit cycle. Participation efforts should attempt to engage all groups serviced by the MS4. This effort may include creative public information messages such as announcements in neighborhood newsletters, use of television spots on the local cable channel, or announcements or displays at civic meetings. One goal of public participation is to involve a diverse cross-section of people and businesses in the community to assist in development of a program that meets the needs of the permittee.

Permittees are encouraged to work together with other entities that have an impact on stormwater (for example, schools, homeowner associations, DOTs, other MS4 permittees). Permittees are also encouraged to use existing advisory groups or processes in order to implement these public involvement requirements.

The permittee is encouraged to use existing public educational materials in its program. Examples of public educational materials for stormwater are available at EPA’s Nonpoint Source Outreach Toolbox ([www.epa.gov/nps/toolbox](http://www.epa.gov/nps/toolbox)). The permittee is also encouraged to leverage resources with other agencies and municipalities with similar public education goals.

Finally, the underlying principle of any public education and outreach effort is to change behaviors. The permittee must develop a process to assess how well its public education and

outreach programs is changing public awareness and behaviors and to determine what changes are necessary to make its public education program more effective. This assessment of public education programs is typically conducted via phone surveys, but other assessment methods that quantify results can be used. The permittee is encouraged to use a variety of assessment methods to evaluate the effectiveness of different public education activities. The use of evaluation assessments allows the permittee to make changes as appropriate before the next permit application is due, EPA's *Getting In Step: A Guide to Effective Outreach in Your Watershed* (<http://www.epa.gov/nps/toolbox>) can provide useful information on setting up and conducting the evaluations.

#### *Illicit discharge detection and elimination (Section 2.3.4)*

The 2006 Small MS4 General Permit required that the “permittee must develop, implement, and enforce a program to detect and eliminate illicit discharges.” The 2006 Small MS4 General Permit also provides that “[a]ll elements of the stormwater management program must be implemented by the expiration date of the permit.”

While this general permit builds upon the requirements set forth in the Small MS4 2006, it does not extend the deadlines applicable to the illicit discharge detection and elimination minimum measure imposed by the Small MS4 2006. This measure requires the MS4 to detect and eliminate illicit discharges from its municipal separate storm sewer system. The regulations at 40 CFR § 122.26(b)(2) define an illicit discharge as “...any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.”

Some illicit discharges enter the storm system directly such as incorrectly connected wastewater discharge lines, while others may enter indirectly, such as through infiltration from cracked sanitary lines or spills collected by drain outlets. Both types of discharges can contribute pollutants to the system that in turn affect water quality. An illicit discharge, typically, is any discharge to a municipal separate storm sewer system that is not stormwater. The general permit contains a list of sources of non-stormwater (see Section 1.4) that permittees must evaluate to determine whether they are significant contributors of pollutants. If the permittee determines that the source is a significant contributor of pollutants, the permittee must implement measures to control or prohibit that source.

The general permit describes required components of an illicit discharge detection and elimination program. The general permit includes the elements that are listed as guidance in 40 CFR § 122.34(b)(3) and information and procedures included in *Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessment* by the Center for Watershed Protection and Dr. Robert Pitt. (IDDE Manual, available at <https://www.epa.gov/npdes/developing-ms4-resources>)

The previous permit required each MS4 to develop and implement an IDDE program. Since the issuance of the 2006 general permit, EPA, the State, and MS4s have gained an improved and more comprehensive understanding of the nature of illicit discharge connections; the extent of the problem; effective technologies and procedures to detect and verify illicit connections; and the best practices to reduce discharges of contaminated stormwater from illicit connections.

Collaborative programs can demonstrate that IDDE can be a key contributor to improved water quality. In consideration of this collective enhancement of knowledge and experience, this general permit requires more specific BMPs than the 2006 general permit.

For example, the general permit requires MS4s to develop a written IDDE protocol that includes specific requirements, procedures, and approaches. Examples of these requirements are a detailed map, a written prioritization of areas with a potential of illicit discharges, wet and dry weather outfall monitoring, record keeping, and thorough and complete storm drain network investigations that systematically and progressively evaluate manholes in the storm system to narrow the location of a suspected illicit connection or discharge to an isolated pipe segment. These requirements are described in the following paragraphs.

The previous general permit required the MS4 to develop a map that at a minimum depicted the locations of the stormwater outfalls and names and locations of all waters that receive discharges from those outfalls. This map must have been completed by November 6, 2011. The general permit requires that additional detail be added to the existing map. In addition to outfalls and receiving waters, the map must now include the locations of catch basins, manholes, pipes, treatment facilities associated with the stormwater system, and water resource areas such as drinking water sources. The permittee may choose to include additional information that is helpful, but not required. This additional information includes data regarding land use (zoning information) and the amount of impervious area on a parcel or a catchment. The general permit does not require a specific tool for the mapping, however a map generated using a Geography Information System (GIS) is EPA's preferred method. The general permit defines an outfall as a point source (as defined in 40 CFR § 122.2) at the location where the municipal separate storm sewer system discharges to waters of the United States. An outfall does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the U.S. and are used to convey waters of the U.S.

The general permit provides three (3) years for the MS4 to complete the additional mapping elements required by this general permit. The general permit does not provide any additional time for the completion of the map of outfalls and receiving waters that was required in the previous permit. The initial system map must have been complete by November 6, 2011. The three (3) year timeframe for mapping in the general permit is based on the expectation that the permittee has completed the mapping required by the previous permit.

The MS4 must have adequate legal authority to implement the following activities as part of the IDDE program: prohibit illicit discharges; investigate suspected discharges; eliminate illicit discharges and enforce the IDDE program. The previous permit required development of an ordinance or other regulatory mechanism to address these components. The ordinance must have been in place and effective by November 6, 2011. The MS4 must reference the authority to implement this measure in the IDDE program which is a part of the overall SWMP.

The 2006 Small MS4 General Permit required the permittee to "develop and implement a plan to detect and address non-stormwater discharges, including illegal dumping, into the system." The 2006 Small MS4 General Permit set forth the required elements of the plan. As required by the

2006 Small MS4 General Permit, this plan must have been developed and implemented by November 6, 2011. This general permit does not extend this deadline. The general permit builds on the requirements of the 2006 Small MS4 General Permit by detailing three additional required components of an illicit discharge detection and elimination program. The first component is an assessment and ranking of the catchments within the MS4 for their potential to have illicit discharges. The second component is a written protocol that clearly identifies responsibilities with regard to eliminating illicit connections. The final component is a written systematic protocol for locating and removing illicit connections. Each of these components is discussed in the following paragraphs.

The permittee must assess the illicit discharge potential for all areas that discharge to the MS4. The assessment consists of three steps: (1) delineation of catchments or drainage units; (2) evaluation of the data that exists for those delineated catchments or units and (3) ranking each catchment for its potential to have illicit discharges as “low”, “medium” or “high” based on EPA and/or permittee defined screening factors. The EPA defined screening factors that the permittee must consider are listed in the general permit. The permittee must consider all factors, but not all factors are applicable to all permittees and permittees may add other factors that are relevant to the municipality. The permittee must complete the assessment and the ranking by the end of the first year of the permit. The permittee must document the results of the assessment and ranking and maintain them as part of the SWMP. The permittee must also report this information as part of the annual report.

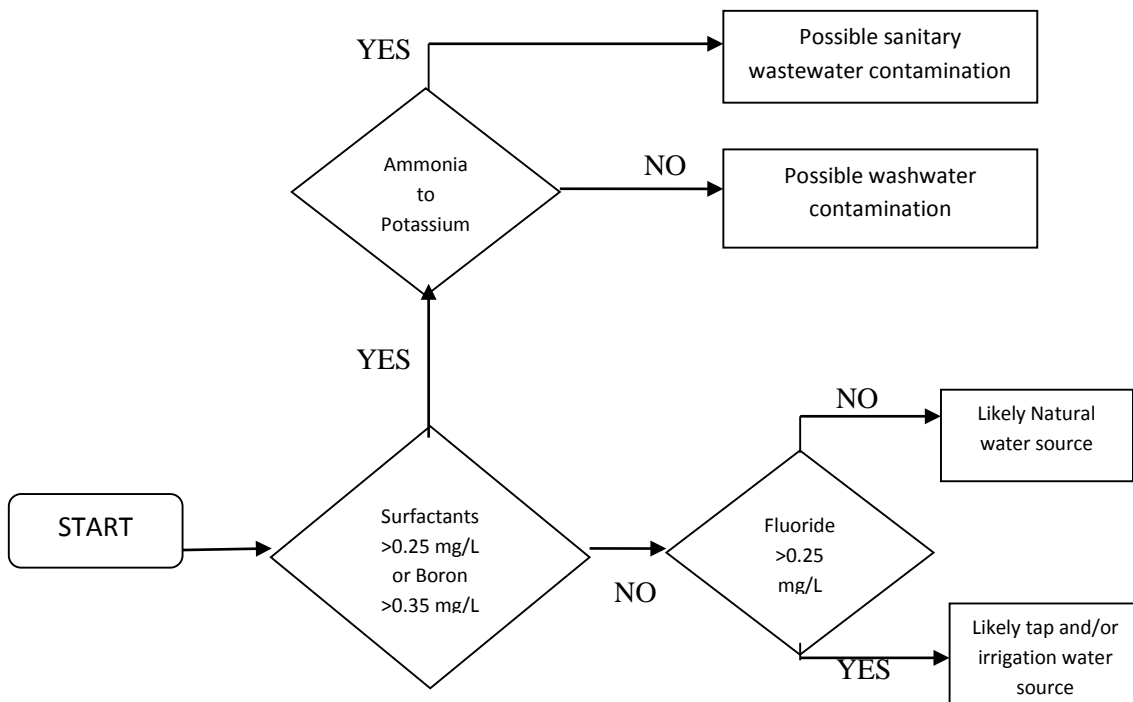
The ranking is intended to aid the permittee in the identification of areas with the greatest potential for illicit connections. The general permit requires the permittee to begin implementation of the systematic illicit detection protocol in areas identified as “high” or with the highest ranking. The permittee must continue to implement the protocol in all MS4 areas until all areas have been evaluated. The permittee must justify in the SWMP any decisions not to focus efforts in areas identified as “high” by the ranking.

The permittee must have in place a written procedure or protocol that clearly identifies methodologies and responsibilities with regard to eliminating illicit discharges. The protocol/procedure must identify who is responsible to pay for removal of an illicit connection/discharge. The permittee may incur the costs or the owner of the illicit connection may be responsible or a combination of the two depending on circumstances. EPA does not require a specific methodology, only that one exists and that the staff responsible for locating and removing illicit connections is familiar with it. The protocol/procedure must also define appropriate methods for removal of the illicit discharge or connection. Finally, there must be procedures for confirmation of removal of illicit discharges or connections. This protocol/procedure must be completed by the end of year two of the permit.

The permittee must develop a written procedure that details a systematic approach for locating and removing illicit discharges. This written procedure must also be completed by the end of year two of the permit. The systematic procedure includes three parts. The first part is the outfall inventory; the second part is tracking a discharge to a source; and finally, removal of the source. Each of these parts is discussed in the paragraphs below.

The outfall inventory includes walking all stream miles within the MS4 boundary that receive a discharge from the MS4 and locating all the outfalls. The permittee must complete the inventory during dry weather. The permittee should use the definition of outfall found at 40 CFR § 122.26(b) for purposes of identifying outfalls. When an outfall is located, the permittee must observe the outfall and record specific information. The information that must be recorded includes: the dimensions, shape, material, and spatial location; and the physical condition of the outfall. Each outfall must have a unique identifier. In addition to the physical observations, the permittee must also record any sensory observations. This includes color, odor, floatables, oil sheens or evidence of flow. If flow is observed at an outfall, a sample must be taken and the source of the dry weather flow determined. The flow must be analyzed for conductivity, turbidity, pH, chlorine, temperature, surfactants (as MBAS), potassium, ammonia and E. Coli or Enterococcus (as appropriate depending on whether the discharge is to a fresh water or a marine water). The 2004 IDDE Manual, Subchapter 12.4, provides guidance on four techniques to interpret indicator parameter data. The following flow chart method is one technique that can be used by the permittee as a screening tool to help determine the potential source of the discharge.

Figure 1: Flow Chart to Identify Illicit Discharges in Residential Watersheds (2004 IDDE Manual: Dr. Robert Pitt)



If the source is not readily determined, a more intensive investigation must be undertaken.

If an outfall has evidence of a flow, but there is not an actual flow during the inventory or dry weather monitoring, there may be an intermittent discharge. Intermittent discharges are difficult to track because they can occur at anytime. There are monitoring techniques a municipality can use to try to address a suspected intermittent discharge. These techniques include: (1) odd hour

monitoring; (2) optical brightener monitoring (OBM) traps; (3) caulk dams; (4) pool sampling; and (5) toxicity monitoring.

Odd hour monitoring includes mornings and afternoons, weekday evenings and weekends. OBM traps have an absorbent unbleached cotton pad or fabric swatch and an anchoring devise. Traps are placed in an outfall suspected of an intermittent discharge and then collected after several days of dry weather. When an OBM is placed under fluorescent light, it will indicate exposure to detergents, an indicator for wash waters. The caulk dam is used to create a small dam inside the pipe and then collect a sample of any water that is collected. Pool sampling is when a sample is collected right below the area where an outfall discharges and a sample is also collected upstream in a location not affected by the outfall. The samples are analyzed and compared. Finally, toxicity monitoring involves monitoring for toxicity in the pool below the outfall of a suspected intermittent discharge. Due to the complexities associated with toxicity testing, this method is not recommended unless the municipality has prior experience or an indication of the suspected source.

Tracking a discharge to its source involves investigation that is more intensive. This is accomplished through a storm drain network investigation. A storm drain network investigation involves systematically and progressively opening and inspecting junction manholes in the system to narrow the location of a discharge to an isolated pipe segment between two manholes. The permittee shall inspect each manhole for visual evidence of illicit connections or discharges (e.g. excrement, toilet paper or sanitary products). When flow is observed in the manhole, the permittee shall sample for ammonia and surfactants. Ammonia is a good indicator of sewage. The concentration of ammonia is higher in sewage than in ground water or tap water. Surfactants are the active ingredient in most commercial detergents. Surfactants are typically measured as Methyl Blue Active Substances (MBAS). These are a synthetic replacement for soap. The presence of surfactants is an indicator of sewage and wash waters. There are other indicator parameters the permittee could use such as fluoride. Water treatment plants typically add fluoride to drinking water supplies and its presence is an indicator of tap water. Potassium is another indicator that has relatively high concentrations in sewage. When the concentration of potassium is evaluated in combination with the concentration of ammonia, the ratio of the two can help distinguish wash waters from sanitary wastes.

In addition to determining what indicators to use to determine if a manhole is “clean” or “dirty”, the permittee must also determine where in a particular catchment to begin the investigation of manholes for illicit connections. The permittee must begin investigations in catchments identified as “high” or catchments with known illicit discharges. The permittee must decide whether the systematic investigations will be from the outfall working progressively up into the system (bottom up) or from the upper parts of the catchment working progressively down (top down). Either method or a combination that includes systematic inspection of junction manholes is acceptable. The permittee must document the chosen procedure in the protocol required by Section 2.4.4.8(d). EPA believes that in systems that are complex and service large populations, the top down approach is the most effective for locating illicit discharges.

In addition to the use of indicators to help identify the source of an illicit connection or discharge, the permittee may use dye testing, video testing, smoke testing or other appropriate

methods to aid in locating illicit connections or discharges. The general permit requires the permittee to either remove or eliminate the illicit discharge or take appropriate enforcement action within six months of detection. The permittee must also track the progress of the IDDE program implementation. The permittee must identify indicators it will use for tracking the effectiveness of the program. Appropriate tracking indicators are those that demonstrate elimination of a pollutant source and/or water quality improvements. For example, if a permittee has a beach that has closures due to bacteria, an appropriate indicator for tracking progress would be a decrease in the frequency of beach closures.

In addition to detecting and removing illicit discharges, the permittee must also develop and implement mechanisms and procedures for preventing illicit discharges. This includes training to inform public employees, businesses, and the general public of the hazards associated with illegal discharges. The requirement to prevent illicit discharges can be incorporated into the public education and public participation control measures. Examples of mechanisms to prevent illicit discharges include identification of opportunities for pollution prevention or source control; distribution of information concerning car washing or swimming pool draining; routine maintenance activities; and inspections of facilities.

#### *Construction site stormwater runoff control (Section 2.4.5)*

The 2006 Small MS4 General Permit required that the “permittee must develop, implement and enforce a program to reduce pollutants in any stormwater runoff to the MS4 from construction activities that result in land disturbance of greater than or equal to one acre [and] less than one acre if part of a larger common plan.” While this general permit builds upon the requirements set forth by the 2006 Small MS4 General Permit, it does not extend the deadlines applicable to the construction site stormwater runoff control minimum measure imposed by the 2006 Small MS4 General Permit.

MS4s are required to continue to review and enforce a program to reduce pollutants in stormwater runoff from construction activities that result in a land disturbance of greater than or equal to one acre and discharge to the MS4. The overall objective of an effective construction runoff management program is to have a program that minimizes or eliminates erosion and maintains sediment on site.

The construction program required by the general permit is different from EPA’s program that is implemented through the Construction General Permit (CGP) although there is some overlap. EPA’s CGP applies to construction projects that have one or more acres of disturbed land and discharge directly to a water body or indirectly through an MS4. The MS4 program must address the discharges from construction projects that discharge directly to its system. Discharges from a construction project to a combined sewer system and construction projects that do not discharge at all, are not subject to the CGP (see 40 CFR § 122.26(a)(7)). A permittee is not required to regulate any construction project that receives a waiver from EPA in accordance with 40 CFR § 122.26(b)(15)(i).

The permittee must have an ordinance or other regulatory mechanism requiring proper sediment and erosion control. EPA recognizes that the Commonwealth of Puerto Rico’s Law has the authority to issue a construction permit to a project, if not delegated to the Municipality. However, it also establish a level of endorsement at the municipal level for the State construction



permit. Also, the requirement to develop the ordinance was part of the previous permit. The ordinance must have been in place and effective by November 6, 2011. In addition to addressing sediment and erosion control, the ordinance must include controls for other wastes on construction sites such as demolition debris, litter and sanitary wastes. EPA encourages permittees to include design standards in local regulations for sediment and erosion control BMPs. The general permit includes a list of controls that could be included as part of the local program.

The construction program must have procedures for preconstruction review and approval of site plans. Permittees should make every effort to ensure that qualified personnel review plans. The procedures must ensure that plan reviews include consideration of water quality impacts. Site plan review should include consideration of comments from the public. These review procedures should be written.

For delegated State construction permit to the Municipality, the construction program must have procedures for site inspections and enforcement. Qualified personnel should perform inspections. A “qualified person” is a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact stormwater quality, and the skills to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of this permit. Inspections should occur during construction as well as after construction to ensure that BMPs are installed and operating as described in approved plans.

The permittee shall have clearly defined procedures regarding who is responsible for inspections and what aspects of the construction site are to be inspected. The permittee must have authority to impose sanctions if construction project stormwater discharges are found to impact storm sewer system and not to be in compliance with the local ordinance. Sanctions can include monetary penalties or stop work orders.

MS4s should review existing procedures in the community that apply to these activities. Often construction plans are seen by the planning board that may not have the technical expertise of engineering staff to evaluate them. An MS4 should look at the various components of the local government and whenever possible, optimize coordination between municipal offices and other MS4s as appropriate to ensure adequate review of plans and other documents associated with a construction project.

#### *Stormwater Management in New Development and Redevelopment (Section 2.4.6)*

This general permit builds upon the requirements set forth in the 2006 Small MS4 General Permit, but does not extend the deadlines applicable to the post construction storm water management in new development and redevelopment minimum measures imposed by the 2006 Small MS4 General Permit.

This measure was called Post Construction Stormwater Management in New Development and Redevelopment under the previous permit. The name of the measure was changed to more accurately reflect EPA’s expectations with regard to implementation of the measure. EPA encourages practices that manage stormwater on site and maintain or improve site hydrology. Practices which support this effort are discussed in the following paragraphs.

This measure applies in areas of new development and redevelopment one acre or more in size. The long-term objective of this measure is to have the hydrology associated with new development closely mirror the predevelopment hydrology and to improve the hydrology of redeveloped sites. Studies have indicated that prior planning and design for the minimization of pollutants in post construction stormwater discharges is the most cost-effective approach to stormwater quality management. Post construction stormwater runoff may cause two types of impacts. One is an increase in the type and the quantity of pollutants. The alteration of the land by development can increase the discharge of pollutants such as oil and grease, heavy metals, and nutrients. The second impact occurs with an increase in the quantity of stormwater that is delivered to water bodies during storm events. Increases in impervious area decrease the amount of precipitation that naturally infiltrates into the ground. The lack of natural infiltration increases the volume of stormwater runoff into water bodies. The increased flows and increase in sediment discharges can cause stream bank erosion and scouring, impacts to aquatic habitat, and flooding.

This control measure requires the MS4 to continue to review and enforce a program to address post construction stormwater runoff from areas of new development and redevelopment that disturb one or more acres. The MS4 must implement an ordinance or other regulatory mechanism to manage post construction stormwater runoff. This ordinance was required under the previous permit and must have been effective by November 6, 2011.

The general permit also requires the permittee to assess current conventional/nonconventional MS4 street and parking lot designs that affect the creation of impervious cover. The objective of this assessment is to determine if changes in design standards can be made to accommodate Low Impact Development (LID) options. Some of the street and parking lot design standards and requirements a conventional/nonconventional MS4 would want to consider in this assessment include flexibility in road design standards (the width of the road and placement of sidewalks) and flexibility in design of parking lots (shared and multilevel lots, and flexibility in the number of parking spaces). If the assessment indicates that changes in design standards or requirements are practicable, the municipality should consider the developed recommendations and a schedule for implementing the changes.

Management of stormwater on-site can be accomplished in many ways. LID focuses on using practices that imitate the natural water cycle. Rather than directing stormwater to a pipe or conveyance, the stormwater is managed onsite. LID practices can work at the site level as well as the watershed level. Some of the LID practices that the permittee should consider are green roofs; infiltration practices, such as porous pavement and rain gardens; and water harvesting devices, such as rain barrels and cisterns.

Another method a permittee can use to manage stormwater is to adopt a Master Plan based on smart growth principles that directs development towards suitable areas and away from important natural resources. The general permit does not require the permittee to adopt a Master Plan, but EPA encourages MS4s to consider this method as it is a powerful tool that can be used to help a permittee more effectively manage resources. However, the plan alone may not be enough to be the sole mechanism for addressing post construction stormwater runoff.

Implementation of a Master Plan includes the adoption of zoning, subdivision ordinances, or other regulations that implement the smart growth principles in the Master Plan. Through these principles and regulations permittees can encourage compact development and redevelopment, and discourage the development of more pristine areas. This will minimize the amount of new impervious surfaces and the generation of stormwater runoff and protect water quality.

The general permit contains requirements to reduce stormwater impacts on water quality. Impacts are due to a variety of factors including volume, frequency and quality. Stormwater can contain any pollutant that is on the ground and can be transported with the stormwater as it moves across an area. These pollutants may include bacteria, nutrients, metals and sediments. Large volumes of stormwater can cause erosion along stream banks and result in altered habitats. Studies from the Center for Watershed Protection (CWP) have shown that impairments from stormwater runoff can be observed in watersheds with as little as 10 percent impervious cover. Impervious cover includes roads, sidewalks, driveways, roof tops, and other surfaces that do not allow for infiltration. The requirements in the general permit focus on critical waters and small streams. The permit requires the permittee to reduce the frequency and volume of stormwater to these critical waters. The general permit encourages the management of the first one inch of rainfall from a 24 hour storm.

The general permit also requires the permittee to estimate the amount of impervious cover within sub-watersheds of the municipality. The permittee shall inventory properties and infrastructure within its jurisdiction that have the potential to be retrofitted with BMPs designed to reduce the frequency and intensity of stormwater discharges. Although not a pollutant, impervious cover can be used as a surrogate pollutant when dealing with stormwater discharges. In brief terms, reductions in the amount of impervious cover within a watershed should result in reductions of stormwater quantities (i.e., volume of discharge). Reductions in stormwater quantities should result in improvements to water quality.

The permittee is required to track the number of acres of impervious cover that have been added or removed annually.

#### *Pollution Prevention/Good Housekeeping (Section 2.4.7)*

While this general permit builds upon the requirements set for by the 2006 Small MS4 General Permit, it does not extend the deadlines applicable to this minimum measure imposed by the 2006 Small MS4 General Permit.

This measure requires small MS4s to develop and implement an operation and maintenance program that includes a training component. The ultimate goal of this measure is preventing or reducing pollutant runoff from all municipal operations. The general permit includes more detailed requirements than the previous permit for the implementation of this control measure. Permittees are required to develop an operations and maintenance plan for the following permittee-owned activities or facilities: parks and open spaces; buildings and facilities; vehicles and equipment maintenance; and roadways and storm systems.

The permittee must develop and implement operation and maintenance plans by the end of the first year of the permit. For management of open space and parks, the general permit requires an evaluation of the use, storage, and disposal of pesticides and fertilizer practices to ensure that

they are protective of water quality. The permittee must also ensure that lawn maintenance and landscaping activities are protective. During the evaluation of buildings and facilities, the permittee must consider all buildings it owns. This includes police and fire stations, schools, and other offices. The permittee should evaluate the use and storage of petroleum products, management of dumpsters, and other wastes. As stated in the objective of this measure, the permittee must implement good housekeeping and pollution prevention measures. In areas where permittee-owned vehicles are stored, the permittee must develop procedures to ensure vehicles that are leaking or require maintenance are stored indoors. Municipal fueling areas must be covered unless impracticable, including an automatic shut valve when dispensing fuel. Washwaters from permittee-owned vehicles must not be discharged to the MS4.

The general permit contains specific frequencies for street sweeping and catch basin cleanings. The municipality must track the amount of material removed from each basin and increase the frequency of cleaning if evidence suggests that material is accumulating more quickly than in other basins. Basins in priority areas may also require more frequent cleaning.

The permittee must establish and implement maintenance schedules and inspection frequencies for all permittee-owned BMPs.

In addition to the operation and maintenance plans required for permittee-owned operations, the permittee must develop a Stormwater Pollution Prevention Plan (SWPPP) for municipal maintenance garages, public works facilities, transfer stations, or other waste management facilities. If a facility that is already covered by EPA's Multi-Sector General Permit (MSGP), the SWPPP required by that permit will be sufficient. The SWPPP required by the MSGP may be referenced in the MS4s SWMP.

The permittee must develop a SWPPP that consists of the following elements: (1) a pollution prevention team – this team is responsible for the development, implementation and revision of the SWPPP; (2) a description of the facility and identification of potential pollutant sources; (3) identification of any stormwater controls at the facility; and (4) implementation of specific management practices at the facility. The conditions contained in this section are based on the conditions contained in the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activities (MSGP). They consist of pollution prevention activities such as preventing exposure, good housekeeping practices, and preventative maintenance. The general permit requires procedures for spill prevention and response and management of runoff.

EPA has developed a fact sheet for each of the 29 industrial sectors regulated by the MSGP. Each fact sheet describes the types of facilities included in the sector, typical pollutants associated with the sector, and types of stormwater control measures used to minimize the discharge of the pollutants. Sector P relates to Motor Freight Transportation that have BMPs for land vehicle related activities. Further information is available:

<https://www.epa.gov/npdes/stormwater-discharges-industrial-activities#factsheets>.

#### **2.2.14 Evaluation, Record Keeping and Reporting**

The permittee must periodically evaluate its SWMP for the following: compliance with the terms of the permit, the appropriateness of the identified BMPs and progress towards achieving the

objective of the control measure and the permittee's measurable goals. The permittee may need to change its selected BMPs identified in the SWMP based on this evaluation process in order to ensure compliance with the terms of the permit including water quality-based requirements.

### *Record Keeping (Section 3.2)*

The permittee must keep all records required by this permit for a period of five years after the expiration of the permit. In addition, the permittee may keep the records for a longer period as this will provide historical documents of the progress achieved by the permittee.

### *Reporting (Section 3.3)*

The permittee must submit an annual report. The reporting year is July 1 through June 30 and annual reports are due August 1. The due date for the annual report in the general permit is a change from the annual report due date of the 2006 Small MS4 General Permit. EPA changed the reporting schedule to more closely conform to the fiscal year of many municipalities and Puerto Rico's Fiscal Year. The report must include a self-assessment regarding compliance with the terms of the permit, the appropriateness of selected BMPs, and the progress towards achieving the permittee identified measurable goals. The report must also contain a summary of any information that has been collected and analyzed. This includes all types of data. The permittee must also indicate what activities are planned for the next reporting cycle and discuss any changes to either BMPs or measurable goals. The report must indicate if any control measure or measurable goal is the responsibility of another entity.

EPA will emphasize that the general permit contains more detailed reporting requirements than in the previous permit. Reports must contain sufficient information to enable EPA to assess the permittee's compliance with the permit.

#### **2.2.15 Standard Permit Conditions**

40 CFR §§ 122.41 and 122.42 establish requirements that must be in all NPDES permits. Appendix B of the general permit includes these requirements.

#### **2.2.16 CWA 401 Water Quality Certification**

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA. The Section 401 certification process will be simultaneously performed during the comment period. Specific 401 certification requirements are contained in Section 6.0 of the general permit.

Section 124.53 of 40 CFR § 124, provides, in part, that in accordance with CWA section 401 (a)(1), EPA may not issue a permit until a certification is granted or waived by the State in which the discharge originates or will originate. On June 11, 2014, EPA requested PREQB to provide EPA with a certification of the proposed 2016 NPDES Small MS4 General Permit within a reasonable time period as defined in 40 CFR § 124.53 of not exceeding sixty (60) days from receipt of EPA's request. In that request EPA provided PREQB a statement indicating that EPA cannot issue or deny the permit until PREQB has granted or denied certification under 40 CFR § 124.55, or waived its right to certify. EPA also indicated that the Commonwealth of Puerto Rico will have waived its right to certify unless that right is exercised within sixty (60)

days from the date EPA mailed its request, or unless the EPA Region 2 Regional Administrator finds that unusual circumstances required a longer time. See 40 CFR § 125.53(b)(3).

On June 16, 2015, EPA notified PREQB that it has been more than sixty (60) days since EPA requested PREQB certification of the proposed Small MS4 GP and the Regional Administrator for EPA Region 2 or its delegatee has found no unusual circumstances warranting a longer response time. EPA has determined that the right for PREQB to grant or deny certification is deemed waived for this permit.

### 3.0 Information and Resources

EPA has developed several tools to assist MS4s in the development of their stormwater management programs. The following is a non-inclusive list of some of the available resources:

1. MS4 Program Evaluation Guidance and the Illicit Discharge Detection and Elimination Guidance Manual is available under the municipal source area within the tab titled “Developing an MS4 Program.” EPA’s website is: <https://www.epa.gov/npdes/npdes-stormwater-program>.
2. Menu of BMPs is available under the municipal source area. EPA’s website is available at: <https://www.epa.gov/npdes/npdes-stormwater-program>.
3. Measurable Goals Guidance is within the Menu of BMPs area available under the municipal source area. This EPA website is at: <https://www.epa.gov/npdes/npdes-stormwater-program>.
4. EPA Stormwater Home page: <https://www.epa.gov/npdes/npdes-stormwater-program> contains links to stormwater publications including the Illicit Discharge Detection and Elimination guidance manual; model ordinances; and educational materials including EPA stormwater webcast series.
5. Source Water Practices Bulletin. Managing Stormwater Runoff to Prevent Contamination of Drinking Water: [http://www.epa.gov/safewater/sourcewater/pubs/fs\\_swpp\\_stormwater.pdf](http://www.epa.gov/safewater/sourcewater/pubs/fs_swpp_stormwater.pdf).
6. University of Puerto Rico: Mayagüez Campus – Servicios de Extensión Agrícolas website on stormwater runoff: <http://agricultura.uprm.edu/escorrentia/index.html>.
7. Center for Watershed Protection: <http://www.cwp.org>.
9. Low Impact Development: <http://www.lowimpactdevelopment.org>.
10. TMDL information available at: <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-2>.
11. Water Quality Standards: <http://www.epa.gov/waterscience/standards/wqslibrary/>.
12. Stormwater Center: [www.stormwatercenter.net](http://www.stormwatercenter.net).
13. Smart Growth: <http://www.epa.gov/smartgrowth/> and [www.smartgrowth.org](http://www.smartgrowth.org).
14. Green Infrastructure: <https://www.epa.gov/green-infrastructure>.
15. EPA’s Catalog of Federal Funding Sources for Watershed Protection: <https://ofmpub.epa.gov/apex/watershedfunding/f?p=fedfund:1>

## 4.0 Other Legal Requirements

### A. Environmental Impact Statement Requirements

The general permits do not authorize discharges from any new sources as defined under 40 CFR § 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. Sections 4321 et seq., does not apply to the issuance of these general NPDES permits.

### B. Section 404 Dredge and Fill Operations

This general permit does not constitute authorization under 33 USC Section 1344 (Section 404 of the Clean Water Act) of any discharge of dredged or fill material into waters of the United States.

### C. Executive Order 12866

EPA has determined that this general permit is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

### D. Paperwork Reduction Act

The information collection requirements of this general permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 USC 3501 et seq. and assigned OMB control number 20400086 (NPDES permit application) and 20400004 (Monitoring Reports).

### E. Regulatory Flexibility Act

EPA’s current guidance, entitled Federal Guidance for EPA Rule writers: Regulatory Flexibility Act [RFA] as Amended by the Small Business Regulatory Enforcement and Fairness Act, was issued in November 2006 and is available on EPA’s website: <http://www.epa.gov/sbrefa/documents/rfafinalguidance06.pdf>. After considering the guidance, EPA concludes that since this general permit affects less than 100 small entities, it does not have a significant economic impact on a substantial number of small entities.

The RFA defines a “small governmental jurisdiction” as the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

### F. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 1044, generally requires Federal agencies to assess the effects of their “regulatory actions” on tribal, State, and local governments and the private sector. The UMRA defines “regulatory actions” to include proposed or final rules with Federal mandates. The general permit, however, is not a “rule” and is therefore not subject to the requirements of UMRA.



## **Appendix A: Response to Comments**

RESPONSE TO COMMENTS ON DRAFT 2014 NPDES GENERAL PERMIT FOR SMALL  
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) (PRR040000)

**RESPONSE TO COMMENTS ON  
DRAFT NPDES GENERAL PERMIT FOR  
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)  
(PRR040000)**

On June 11, 2014, the United States Environmental Protection Agency (EPA) issued a draft National Pollutant Discharge Elimination System (NPDES) general permit (PRR040000) for Small Municipal Separate Storm Sewer Systems (MS4s) in the Commonwealth of Puerto Rico and for Federal Facilities within the Commonwealth of Puerto Rico. Public notice of the draft permit was provided in the El Vocero on June 13, 2014. The public comment period for the draft NPDES permit expired on August 11, 2014.

According to 40 Code of Federal Regulations (CFR) § 124.17, at the time that any final permit decision is issued under §124.15, EPA shall issue a response to comments. This response shall (1) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and (2) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

Comments were received on behalf of the Department of Defense (DoD) (on July 31, 2014), Puerto Rico Department of Transportation and Public Works (PR-DTPW) (on August 4, 2014), University of Puerto Rico-Central Administration (UPR-CA) (on August 5, 2014), Municipality of Aguadilla (on August 5, 2014), Municipality of San Lorenzo (on August 5, 2015), Sonia Cosme, EDS, Inc. (on August 8, 2014), Municipality of Caguas (on August 11, 2014), Municipality of Comerío (on August 11, 2014), and Municipality of San Juan (on August 11, 2014).

All comments received have been reviewed and considered in this final permit decision. A discussion and response to the comments received is as follows:

**General Comments to Fact Sheet**

*Comment: University of Puerto Rico – Central Administration*

*In Section 1.2, the third sentence of the first paragraph mentions that this section discusses four Federal laws that apply to the reissuance of the permit, but it discusses only three.*

*Response:*

EPA has corrected the misprint to reflect three instead of four Federal laws.

*Comment: University of Puerto Rico – Central Administration*

*In Section 1.2, the draft permit requires MS4 to meet non numerical effluent limitations to protect coastal and estuarine waters as required by the Coastal Zone Management Act. However, in this part of Section 1.2 EPA does not establish the criteria to prove the eligibility of the MS4 for the general permit as done in the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA). The definition*

*of the criteria will help the owner or operator of the MS4 to determine the eligibility for the general permit under that law.*

Response:

The fact sheet provides the rationale for the development and conditions incorporated within the general permit. EPA has defined those criterion within the fact sheet for ESA (see Criterion A thru E) and NHPA (see criterion A thru D). These are also defined in Appendix C and D of the general permit.

Reliance on the use of BMPs is consistent with the maximum extent practicable (MEP) standard which applies to storm water discharges from municipalities. The MEP standard is the statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. The MEP standard includes management practices, control techniques, and system, design and engineering methods. EPA believes that compliance with the conditions of the general permit and implementation of the minimum control measures, and other provisions EPA determines appropriate, will satisfy the MEP standard.

**Draft Permit Comments**

**General**

Comment: University of Puerto Rico – Central Administration (UPR-CA)

*The draft permit requires the permittee to prepare, maintain or submit many procedures, protocols, records, reports and other documents which have different datelines or timeframes to comply. It is recommended that EPA summarizes these requirements in a table and incorporates it in the final permit as a Compliance Quick Reference Guide.*

Response: UPR-CA

The general permit is allowing permit coverage for conventional and non-conventional MS4s. Each permittee is required to develop a stormwater management program (SWMP) that vary from MS4 to MS4. Establishing a table can cause confusion. EPA will not incorporate a table. However, EPA encourages permittees to develop their own unique timeline compliance plan.

Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*The proposed permit requirements have moved away from establishing performance standards and allowing the municipality to decide how it can best achieve the performance standards based on its unique circumstances. The concept that one size will fit all is seriously flawed. For example, the proposed permit requires outfall sampling of every outfall in the municipality during wet and dry weather. This data may provide the Federal and State representatives a snapshot of data that is useful to their programs, but it would be money poorly spend by the municipality since it does not serve the municipal needs. Each municipality knows where water quality problems are likely to be. The municipality has many new developments that have been inspected during the development of those sites. We know there are no illicit discharges at those outfalls. We do not need to sample fifty percent of our outfalls, or more, to find either no problem or even worse a false positive where we have to spend additional monies and*

*resources re-sampling or looking for a non-existent problem. Why did the municipalities develop IDDE plans during the first permit cycle so we could focus our work where it was needed, and now be required to sample all outfalls regardless of the priorities we established in our IDDE plan?*

Response: MA, MSL and MC

EPA agrees that the requirement for wet weather sampling should be targeted at areas that are most likely to find illicit discharges that are triggered by wet weather condition, such as areas with combined manholes, aging sanitary sewer infrastructure, history of SSOs, etc. Therefore, the permit requirements for wet weather monitoring have been reduced so that only those areas with System Vulnerability Factors or those discharges to impaired waters or waters with a TMDL need be sampled in wet weather. New developments inspected by the MS4 during construction should not fall into these categories and would only be screened in dry weather. The priorities established by permittees during the first permit cycle remain an important starting point for assessing the priority areas in which to begin catchment investigation as well as to establish the frequency of longer term follow-up screenings.

Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*As we all know, the economy is in crisis. The Federal and State government have cut back contributions for entitlements such as Medicare where the local community is now required to pay larger shares. Citizens are losing jobs and will be late with or default entirely on paying their taxes and properties are going into foreclosure. Municipal government will also be faced with cutting budgets by cutting back on staffing and programs. The additional requirements, proposed in the new permit, set the communities up to fail which subsequently sets the MS4 program up to fail. The EPA will be forced to begin enforcement action against many of the communities for not satisfying the minimum standards; thereby, going from a cooperative effort to achieve a common goal to an adversarial relationship in which progress towards the goal is lost. The EPA's proposed prescriptive methods to implement the second permit and timing will not be successful. I urge you to rethink the permit approach in light of the economic realities and cooperative nature and success achieved with the first permit.*

Response: MA, MSL and MC

In 1987, Congress amended the Clean Water Act to better regulate stormwater runoff, and in particular required that “[p]ermits for discharges from municipal storm sewers . . . shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and shall require controls to reduce the discharge of pollutants to the maximum extent practicable.” CWA §§ 402(p)(3)(B)(ii)-(iii). EPA understands that implementation of this requirement may entail substantial additional costs. EPA also understands that funding of stormwater management from a municipal general fund may be subject to the vagaries of budget cuts and competition with other municipal departments. This is the reason EPA encourages permittees to maintain an adequate funding source for implementation of the program. While EPA does not purport to require particular funding mechanisms, our experience suggests that replacing funding from a general fund with a stable, dedicated funding source such as a stormwater utility, although it may be a difficult transition, has great potential to address the funding concerns identified by the MA, MSL, MC and other commenters.

EPA therefore strongly encourages alternative means of funding, such as stormwater utilities, and has developed a website and materials to assist communities in pursuing funding options. Additional information on funding can be found at: Green Infrastructure Funding Opportunities (<https://www.epa.gov/green-infrastructure/green-infrastructure-funding-opportunities>) and EPA's Catalog of Federal Funding Sources for Watershed Protection (<https://ofmpub.epa.gov/apex/watershedfunding/f?p=fedfund:1>).

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*The MA, MSL and MC strongly suggests that EPA return to the concept of setting reachable standards and allowing each community to plan how it will achieve them. The results of the work done during the first permit have not gone unnoticed. Our field staff now understands the scope of the system they are responsible for. They recognize that the program of cleaning catch basins has resulted in a better functioning system noting that there are many less backups and flooding during large precipitation events. The Phase II program has given the municipalities' staff a forum to educate our policy makers that more money is required to do the necessary work to have a fully functioning drainage system.*

Response: MA, MSL and MC

EPA recognizes the sincere efforts and cooperative attitude taken by the MA, MSL and MC under the 2006 Small MS4 GP and hopes it continues a cooperative approach as permit requirements become more demanding and prescriptive during this and subsequent permit cycles. EPA issued the 2006 Small MS4 GP with an assumption that the baseline for most communities and municipal agencies were at a very low level of awareness and management of stormwater systems. A large part of the goal under the 2006 Small MS4 GP was to get communities and municipal agencies to recognize the scope of their system and the benefits of establishing standards for maintenance, and to educate public works personnel, public officials and the public about the importance of these systems for water quality in their communities. By and large the 2006 Small MS4 GP accomplished that goal.

However, EPA has found that the extremely flexible approach embodied in the 2006 Small MS4 GP had a number of negative consequences. For example, it proved extremely difficult to assess progress in implementing the minimum measures and improving stormwater management practices based on the annual reports, examination of SWMPs and even site visits. EPA is also aware that compliance with the 2006 Small MS4 GP was not consistently adequate, and that the flexibility inherent in the 2006 Small MS4 GP was in some cases interpreted in a manner that did not result in improvements in municipal practices or benefits to water quality. The reissued permit is specifically intended to set higher standards and increase EPA's ability to track activities under the SWMPs, consistent with the national approach as stormwater permits are reissued. See also 33 U.S.C. § 1251(a) (national goal of the Clean Water Act is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters").

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*Given the budget cycle and the timing of the permit it will be impossible for the municipality to insert budget increases at this time to accommodate the proposed year one requirements. My suggestion would*

*be to require the NOI and storm water management plan in the first year. Then in year 2 of the permit begin to ask for more, so that the municipalities can plan and prepare for increases to their budgets in an orderly manner.*

Response: MA, MSL and MC

EPA has examined the deadlines in the 2013 draft general permit. The first year of the general permit require submitting a NOI and SWMP (see Sections 1.7.2(d) and Section 1.11(b), respectively). EPA's overall approach to adjusting the schedules was to provide that only the preparation of the SWMP and its specific components (including water quality response plans, illicit discharge detection and elimination procedures, inventories and operation and maintenance plans) be required in the first year after the permit effective date, while implementation activities begin in the second year. EPA had also adjusted the annual reporting to match MS4s fiscal years (see Section 3.4) in the permit to allow MS4s additional time to be part of the initial stages of budget assignment process and funding cycles.

Comment: Municipality of Aguadilla (MA)

*I suggest that EPA eliminate or minimize the requirement to evaluate the effectiveness of its education and public outreach initiative. The final measure of the Phase II program will be whether in years to come we see an improvement in water quality in our streams and rivers.*

Comment: Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*I suggest that EPA eliminate or minimize the requirement to evaluate the effectiveness of its education and public outreach initiative. The final measure of the Phase II program will be whether in years to come we see an improvement in water quality in our streams and rivers. If I explain to my Municipal Legislature what needs to be done to comply and they appropriate the money then I have succeeded. The money will be used to implement the plan we have submitted and EPA approved. That's enough for now. Frankly those of us who implement the Phase II program on the ground have many other responsibilities in addition to the Phase II implementation. Spending time writing a story on whether we think our efforts are successful or not at educating and reaching the public is at best a comfort to EPA, but in reality a poor expenditure of time and effort for those of us in the field. Please excuse the bluntness of these comments, but if EPA actually has staff to read these type of analysis, those resources would be better spent on putting together a national/regional storm water educational campaign that will assist us in reaching the public. EPA can then evaluate how successful the campaign was in helping the communities and EPA reaching our common goal of improving water quality.*

Response: MA, MSL and MC

EPA notes that evaluation of the effectiveness of public education and other control measures is a requirement under the MS4 Phase II regulations. See 40 CFR § 122.34(g)(1). Thus this evaluation requirement is not discretionary for EPA in developing this permit. EPA does not expect that permittee's evaluation efforts will rise to the level of a professional communications or advertising firm. Rather, the permit requirements are intended to encourage permittees to focus on the results of their education and outreach efforts, rather than limiting their assessment to reporting their own actions. EPA encourages cooperative efforts such as those by the Sea Grants Program, San Juan Bay Estuary Program, Puerto Rico Recycling Partnership, Trash Free Waters Workgroup and the Northeast Corridor Coalition, among

others. EPA believes that genuine public interest and support will be discernible in measurable activities, particularly as permittees focus on more specific educational goals.

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo and Municipality of Comerío*

*In general I believe the permit proposal is too aggressive and unrealistic in what it expects permit holders to accomplish. The administrative burden alone is substantial and should be significantly reduced, as it does little to advance the cause.*

*Comment: Municipality of Caguas (Caguas)*

*Our Municipality always makes the best efforts, within its capabilities and resources, to reach compliance with Federal and State regulations. However, after evaluating the permits requirements, which include assessments, dry and wet screening and sampling, follow up screening, outfall inventory, outfall monitoring, physically label all MS4 outfall pipes, manholes inspections and manhole inspections, we find it extremely difficult to reach compliance with the new permit, for the amount of resources it requires.*

*Comment: Municipality of San Juan*

*From the requirements discussed, the EPA seems to have set forth unrealistic goals with municipalities and the actions required from them to implement the MS4 permit program. The unnecessary burden created by some of the new requirements will create significant noncompliance from municipalities, which will in turn not help in achieving the goals of better water quality in our waters. This will create the legal framework for EPA to commence legal compliance actions to order municipalities to comply with this permit program. If this is what EPA is looking for through this regulation, it will definitely achieve those efforts.*

*We urge the EPA to consider the reality of the Puerto Rico and worldwide economic situation, and to allow a permit program that thrives on promoting compliance but allowing regulated entities to implement measures that are reasonable, cost effective and within a realistic timeframe, not one that is burdensome and unreal to a municipality's budget operation.*

*Response: MA, MSL, MC, Caguas and MSJ*

The goal of the Clean Water Act is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” CWA § 101(a), 33 U.S.C. § 1251(a); see also id. §§ 1251(a)(1) (“national goal that the discharge of pollutants into the navigable waters be eliminated by 1985”), (a)(2) (“national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983”). While Congress did exempt small MS4s’ stormwater discharges from the obligation to obtain NPDES permit authorization until 1994, see CWA § 402(p)(1), 33 U.S.C. § 1342(p)(1), Congress also recognized the environmental threat posed by storm water runoff, see *NRDC v. EPA*, 966 F.2d 1292, 1296 (9th Cir. 1992), and consequently that moratorium was temporary. Small MS4s are now subject to requirements that are similar to those of other entities that discharge pollutants into the waters of the United States.

Under CWA Section 303(d) States are required to submit to EPA every two (2) years an update list of impaired and threatened waters still needing a Total Maximum Daily Load(s). The Puerto Rico Environmental Quality Board (PREQB) are continuously assessing conditions within watersheds, including establishing waterbody segments that are impaired. This waterbody background assessment can provide a determination on conditions prevailing at the municipal point of discharge. EPA encourages the use of this information to further understand the level of impairment of the surroundings of the municipality. The draft permit builds on the requirements of the previous general permit (e.g., outfall and waterbody segment identification).

EPA recognizes that there is administrative burden associated with NPDES permitting. This is the case not only with respect to the Small MS4 General Permit, but to all NPDES permitting. The NPDES permitting program relies on a self-monitoring, self-reporting compliance model that necessarily imposes significant administrative burdens upon permittees as well as the regulatory agency. Administrative burdens of this order of magnitude would not be unexpected for stormwater dischargers, which in most cases represent even more complex systems, with a greater number of outfalls and a larger number of receiving waters than traditional permittees. EPA encourages collaborative efforts in gathering data from the San Juan Bay Estuary Program, Puerto Rico Recycling Partnership, Trash Free Waters Workgroup and the Northeast Corridor Coalition, among others.

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*Requiring the communities to prepare mapping for the whole municipality will be costly. The effort should target only densely developed areas where disconnecting IDDE could help in reducing runoff.*

Response: MA, MSL and MC

EPA's intent in requiring mapping and tracking is focused on tracking changes during the permit term. It is not intended to require extensive effort throughout the entire municipality instead it is within the urbanized area of the municipality.

EPA encourages municipalities to recognize that the MS4 General Permit is the responsibility of the municipality as a whole, not just the public works department, even if it is public works that conducts the bulk of the physical work required by the permit.

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*Listing of all receiving waters, their classification, any impairments, and number of outfalls that discharge to each water body. It is unclear if private outfalls should be included in the list, access to private outfalls may not be possible.*

*USEPA and EQB should work together to identify impaired waters and concentrate on identifying and possibly eliminating the source of those impairments. Under existing law it is the Department of Natural Resources and Environment and the Environmental Quality Board are responsible for the water quality of any and all water bodies. It should not be the responsibility of the municipality.*



Response: MA, MSL, and MC

This provision of the general permit is not intended to charge the operator of an MS4 with responsibility for outfalls that are privately owned and do not receive a discharge from the MS4. EPA clearly established the language of Section 1.11.2 to clarify that outfalls are only included in the scope of this requirement if they are “outfalls from the MS4”. To the extent the permittee is aware of any private outfalls EPA encourages keeping records of such outfalls as such records may prove to be of assistance in tracing pollutant sources. However, the permit does not require tracking or monitoring of private outfalls.

In addition, EPA notes that a discharge from a permittee’s system to another MS4 or other storm sewer system (public or private) is also a regulated discharge under the Clean Water Act and is covered by this general permit. The CWA requires NPDES permits for any “discharge of pollutants”, which is defined at 40 CFR § 122.2 to “include additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man [and] discharges through pipes, sewers, or other conveyances owned by a State, municipality or other person which do not lead to a treatment.

Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*The "draft permit" fails to account for water quality conditions, or to even attempt to evaluate the relative potential for water quality impacts among those subject to it. Conventional NPDES permits allow for variation in complexity and potential for water quality damage by such mechanisms as variations in sampling and staffing requirements. It is important to maintain flexibility within the proposed requirements to avoid making this a "one size fits all" program.*

Response: MA, MSL and MC

EPA recognizes that the reissued permit takes an approach that is both more detailed and more protective than the 2006 Small MS4 GP. In implementing the statutory requirement to reduce pollutants to the maximum extent practicable (MEP), EPA has interpreted the MEP requirement as representing an iterative approach that requires that standards be raised each permit term so that progress will be made toward the attainment of water quality standards and towards the goals of the Clean Water Act established by Congress. See 33 U.S.C. § 1251(a) (national goal of the Clean Water Act is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”). EPA has also used the knowledge gained from its experience under the 2006 Small MS4 GP to establish detailed requirements where appropriate. For example, the changes to the IDDE programs between the 2006 Small MS4 GP and the draft permit are based on EPA’s extensive experience with the weaknesses of existing programs and the importance of these measures to improving water quality.

EPA recognizes that one of the difficulties inherent in writing a prescriptive general permit, for such a wide range of municipal permittees, is the risk that the permit will fail to allow appropriate differentiation among areas where different levels of investment are appropriate. This could result if low population density municipalities are implementing programs designed for city centers or where resources are diverted within a community from areas of greater need. For this reason, EPA allows any eligible permittee to apply for an individual NPDES permit that will allow for more individualized consideration. See 40 CFR § 122.33(b)(2); Permit Section 1.8.

EPA also understand that language within the draft general permit reduces the one size fits all concept. For example, to reflect the fact that a different approach may be more appropriate in a less urbanized area, the draft general permit allows a permittee to take various “vulnerability factors” into account in designing its IDDE program. MS4s can thus gain efficiencies by customizing their programs while still meeting permit objectives. To a large extent these provisions are self-limiting – e.g. dry weather screening will be less burdensome where outfalls are not flowing, as expected in less dense areas with small contributing catchments. However wet weather screening in many cases would be far more resource intensive to less dense communities with highly distributed drainage systems and high numbers of outfalls, as compared to urban centers where large areas drain to each outfall. This was recognized as an area where the uniform requirement placed a greater workload on communities with less potential benefit (in terms of illicit discharge reduction). EPA notes that application for an individual permit remains an option for small MS4s.

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*MS4s need flexibility to implement their educational programs to address their greatest storm water pollution threats while targeting the appropriate audience. The permit's Public Education and Outreach performance standards limit MS4s' flexibility and could lead to ineffective educational programs. In marketing, a more succinct and repeated message is more likely to get recognized.*

*Evaluating the effectiveness of the program will be difficult; typically people do not attend public or informational meetings unless it directly affects them. We have found success educating persons that attend such events as elections and leadership meetings. Those that attend, such an event, typically are willing to listen and partake.*

*Response: MA, MSL and MC*

EPA notes that permittees have already established “measurable goals” in connection with their public education activities. EPA’s intent in requiring a focus on effectiveness is that the goals of the program be defined and assessed in terms of the effect of the educational messages, rather than simply an accounting of actions taken by the permittee. Many permittees have been providing examples of such information in their annual reports submitted under the 2006 Small MS4 GP. It is EPA’s intent that permittees define more specific goals for their education program based on stormwater issues within the community, and assess their programs in relationship to those goals.

EPA encourages permittees to consider what measurable goals it will assess at the early stages of its public education planning, so that these types of tracking measures can be incorporated into the program design. To clarify this, EPA has revised the permit language to clarify that effectiveness should be assessed against these “defined educational goals” and that an effective program should show evidence that progress toward the defined goals is being achieved. EPA does not expect that educational goals will generally be defined by permittees in such a manner as to require analytical testing to demonstrate reduction in pollutants, and it is not requiring that sort of demonstration.

Comment: EDS, Inc. – Sonia Cosme

*Does EPA have a cost estimate for the implementation of this new permit? Previous studies showed an average of \$150/acre/year or \$1.39 to \$7.83 per person (1st year) and then \$1.23 to \$5.73 per person for the following years. So, for a city of 100,000 people the implementation annual cost could be around \$123,000 to \$573,000.*

Response: EDS, Inc.

EPA estimated annual costs for the municipal programs based on a fixed cost component and a variable cost component. The fixed cost component included costs for the municipal application, record keeping, and reporting activities. On average, EPA estimated annual costs of \$1,525 per municipality. Variable costs include the costs associated with annual operations for the six minimum measures. EPA reviewed cost data from existing Phase I storm water programs and cost data gathered from Phase II communities by the National Association of Flood and Storm Water Management Agencies (NAFSMA). These costs reflect the actual operating costs of program elements that are comparable to the six minimum measures for municipalities representing a wide range of population sizes. EPA estimated costs on a per household basis from both data sets. Annual mean costs per household (assuming 2.62 persons per household) are comparable across the data sets: \$8.93 (NASFMA) and \$8.85 (Phase I). The cost estimating equation is: **Annual cost** = \$1,525 + population/2.62\*\$8.93.

Comment: EDS, Inc. – Sonia Cosme

*There is a budget concern for the implementation of this program. Our experience is PR municipalities have a reduced capability of funding this program. Is it a consideration regarding external funding?*

Response: EDS, Inc.

EPA recognizes the concerns raised over the cost of the Permit requirements under the 2013 draft and the limitations of municipal funding. EPA also recognizes that compliance with this permit will require substantial investment by permittees to reduce the discharge of pollutants from their systems and address water quality impacts of their discharges. This is in keeping with the national goal of the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). While Congress temporarily exempted small MS4 stormwater discharges from meeting the Clean Water Act’s permitting requirements, see 33 U.S.C. § 1342(p), that moratorium ended almost two decades ago. The small MS4 permit from its inception was intended to be iterative in nature, with increasingly stringent requirements as permits are reissued. While progress was made in the last permit term, the bar needs to be raised for the objectives of the Clean Water Act to be addressed.

As stated before, Congress amended the Clean Water Act to better regulate stormwater runoff, and in particular required that “[p]ermits for discharges from municipal storm sewers . . . shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and shall require controls to reduce the discharge of pollutants to the maximum extent practicable.” CWA §§ 402(p)(3)(B)(ii)-(iii). EPA understands that implementation of this requirement may entail substantial additional costs. EPA also understands that funding of stormwater management from a municipal general fund may be subject to the vagaries of budget cuts and competition with other municipal departments. This is the reason EPA encourages permittees to maintain an adequate funding source for implementation

of the program. While EPA does not purport to require particular funding mechanisms, our experience suggests that replacing funding from a general fund with a stable, dedicated funding source such as a stormwater utility, although it may be a difficult transition, has great potential to address the funding concerns identified by EDS, Inc. and other commenters.

EPA encourages municipalities to recognize that the MS4 General Permit is the responsibility of the municipality as a whole, not just the public works department, even if it is public works that conducts the bulk of the physical work required by the permit.

EPA therefore strongly encourages alternative means of funding, such as stormwater utilities, and has developed a website and materials to assist communities in pursuing funding options. Additional information on funding can be found at: Green Infrastructure Funding Opportunities (<https://www.epa.gov/green-infrastructure/green-infrastructure-funding-opportunities>) and EPA's Catalog of Federal Funding Sources for Watershed Protection (<https://ofmpub.epa.gov/apex/watershedfunding/f?p=fedfund:1>).

*Comment: EDS, Inc. – Sonia Cosme*

*How is going to be the process of the NOI comments by the public in terms of time and discussion?*

Response: EDS, Inc.

EPA will be posting on Region 2's MS4 website (<https://www.epa.gov/region02/water/npdes/permits/index.html>) the **complete** and **accurate** Notice of Intent (NOI) with the date it was submitted complete for public review and comment. All NOI submittals are subject to a 30-day review period.

*Comment: EDS, Inc. – Sonia Cosme*

*Mapping. The previous experience with mapping showed that a high percentage of the SW lay out system is not available. We could have the inlets and outlets but not the complete lay out. This is more common in old areas. New areas or urbanizations will provide the lay out for SW. The SW lay out could represent a considerable budget.*

Response: EDS, Inc.

For a permittee to effectively manage its MS4, it must know what infrastructure assets it has and where they are located. This is the reason that mapping has been a focus of the MS4 permit program since its inception and remains a focus for the second permit term.

*Comment: EDS, Inc. – Sonia Cosme*

*Is there any consideration in terms of training for municipalities, consultants and general public?*

Response: EDS, Inc.

Since the issuance of the 2006 expired draft permit EPA developed and performed over fifty (50) workshops to municipalities, general public, professional organizations, educational institutions and

interested parties. Similar to issuance of the expired general permit, EPA intends to continue performing compliance assistance, including webinars, develop guidance documents and outreach, among other.

*Comment: EDS, Inc. – Sonia Cosme*

*Joined efforts could be a strategic to reduce costs for the implementation of this program. Is EPA going to explore it with the PR association and federation of majors in order to promote and help in this process?*

*Response: EDS, Inc.*

EPA encourages and agrees that joint efforts are particularly useful and cost-effective means of the implementation of the SWMP and meeting permit requirements. EPA has seen workshops and outreach efforts performed between two municipalities during the permit term. However, 40 CFR § 122.35(a) state that another party may satisfy the operator/permittee's responsibility by implementing the minimum control measure in a manner at least as stringent or prescriptive as the corresponding NPDES permit requirement. If the third party fails to do so, the operator/permittee remains responsible for its performance.

*Comment: EDS, Inc. – Sonia Cosme*

*Participation of the municipalities/mayors and EQB in the discussion of this permit is valuable. Is EPA calling for future discussions? Public hearings?*

*Response: EDS, Inc.*

EPA deems highly important the participation of municipalities, mayors, EQB and other interested parties. EPA follows the procedures established under 40 CFR § 124 - Subpart D—Specific Procedures Applicable to NPDES Permits. Notices of the draft general permit were sent to each of the regulated MS4 mayors requesting comments. In addition, EPA consulted and requested certificates and/or concurrences from State and Federal programs to incorporate language into the general permit.

*Comment: EDS, Inc. – Sonia Cosme*

*When is EPA estimating this permit will be out?*

*Response: EDS, Inc.*

In order to issue the final general permit, EPA must follow the procedures for issuing a permit that are established in 40 CFR § 124. Once finalized these procedures EPA may proceed to issue the final general permit.

### **Section 1.2.1**

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*Small MS4 indicates that an MS4 is eligible for authorization under this permit if it is: (1) An MS4 (see definition in Appendix A) within the permit areas described in Section 1.1; (2) Located either fully or*

*partially within an urbanized area (UA) as determined by the 2010, 2000 and 1990 Decennial Census by the Bureau of Census; or (3) Located in a geographic area designated by EPA as requiring a permit.*

*It is a well-known fact that Puerto Rico has experienced demographic changes in the last 10 years. The eligible criteria should be based on an urbanized area should be based on the 2010 Decennial Census by the Bureau of Census.*

*The permit should specify those geographic areas designated by EPA as requiring a permit.*

Response: MA, MSL and MC

EPA regulations detail the specific information that must be included on NOIs. This information is described in two locations. The first, at 40 CFR § 122.28 (b)(2)(ii), describes the general information required by an NOI. It states "... at a minimum, the legal name and address of the owner/operator, the facility name and address, type of facility or discharges, and the receiving stream(s)". The other location specific to small MS4s is at 40 CFR § 122.33(b)(1). This states that information required by §122.34(d) be submitted. The information required by §122.34(d) is a description of BMPs and measurable goals for the six minimum measures of the storm water management program and identification of a contact person. The mapping requirement is in the minimum control measure which applies to illicit discharge detection and elimination.

The U.S. Census Bureau recently completed the maps of 2010 urbanized areas. These maps can be used to assist authorized states (and EPA Regional Offices for unauthorized States) as they determine which new MS4s are located in the 2010 urbanized area and would require coverage by an MS4s permit. Municipalities can also use these maps to determine which parts of their jurisdiction are located in the 2010 urbanized area where the MS4 program would apply. EPA has further information on urbanized maps that can be accessed from the following link: <https://www.epa.gov/npdes/urbanized-area-maps-mpdes-ms4-phase-ii-stormwater-permits>.

## **Section 1.6**

*Comment: Municipality of San Juan (MSJ)*

*Based on the new proposed language, EPA has now complete discretion in authorizing an NOI for a request to obtain coverage and reissue an existing permit. The evaluation will require that the filing be timely, appropriate, complete and accurate. These EPA requirements are not only subjective, but can create a lack of uniformity in its application and interpretation, causing more problems to municipalities and government entities that want to comply with the permit.*

Response: MSJ

Under the Environmental Defense Center v. Browner ("EDC") [344 F.3d 832 (9th Cir. 2003)] decision, EPA must conduct a meaningful review of NOIs to ensure compliance with the permit. To that end, Section 1.7.5.b of the permit states that based upon a review of a small MS4's NOI or other information, EPA may grant authorization, extend the public comment period, or deny authorization under this permit and require submission of an application for an individual or alternative NPDES permit. EPA will conduct an appropriate review of NOIs.

EPA disagree with the notation. EPA has structured the NOI to provide substantive information sufficient to determine whether the proposed controls meet the requirements of the permit. The NOI by design does not contain the level of detail of the SWMP, which is intended to provide comprehensive operational and procedural guidance for the implementation of a permittee's program. Review of the NOIs is sufficient to meet the requirements of EDC v. Browner.

### Section 1.7

*Comment: Puerto Rico Department of Transportation and Public Works (PR-DTPW)*

*Permit requires certifying in the NOI that the small MS4 is eligible for coverage pursuant to Section 1.7.2. Determination is to be made in accordance to the ESA guidance procedure detailed in Appendix C. Since the DTPW MS4 covers basically the entire Island, a detailed documentation of such compliance it is not feasible, considering the fact that most of the highway system is old. It is proposed to discuss the fact that the construction of highways requires coordination with both local and Federal agencies during its planning phase. Therefore, findings about the presence of any critical or endangered species within the proposed highway are addressed. At this time, it is impossible to gather all the data about the existing highway network that spans the entire Island. However, an exception to this statement would be the construction of a new highway project, in particular those requesting federal funds. In those instances, it is a standard procedure to require comments from the U.S. Fish and Wildlife Service (USFWS).*

*Response:*

The general permit goals are focused on regulated stormwater runoff discharges from urban storm sewer systems. Consultations performed for the construction phase of projects provide an assessment that may serve as a document with reasonable determination to meet ESA and NHPA eligibility. Applicants must meet the eligibility requirements set forth in Appendix C (endangered species) and D (historic properties) of the Permit and must certify that these requirements have been met in the NOI submitted under this general permit. This certification must be based on current, updated information, although EPA expects that applicants will be able to rely substantially on information developed in connection with their 2006 NOIs in meeting this requirement. To the extent that consultation with the relevant agencies is deemed necessary in accordance with Appendix C and/or D, such consultation is necessary even if a previous consultation was conducted in 2006.

EPA assumes that there will be substantial carryover from permittees' existing NOIs, SWMPs and maps, although all of these elements will have to be updated and expanded as necessary to meet the additional requirements of the new permit. It is not EPA's intent that permittees "recreate the wheel", but that they improve and expand upon their existing programs.

*Comment: Puerto Rico Department of Transportation and Public Works (PR-DTPW)*

*Permit requires certifying in the NOI that the small MS4 is eligible for coverage pursuant to Section 1.7.2. Determination is to be made in accordance to the National Historic Preservation Act Review Guidance Procedure detailed in Appendix D. Since the DTPW MS4 covers basically the entire Island, a detailed documentation of such compliance it is not feasible, considering the fact that most of the highway system is old. It is proposed to discuss the fact that the construction of highways requires to coordinate both at a local and federal level during its planning phase. Therefore, findings about the presence of*

*historic structures and/or resources are addressed at this time. It does not appear to be feasible to gather all the data about this subject for the existing highway network that spans the entire Island. However, an exception to this statement would be the construction of a new highway project, in particular those requesting federal funds. In these instances, it is a standard procedure to require comments from the State Historic Preservation Office (SHPO) and the Puerto Rico Institute of Culture (IC). On these instances, it will be possible to provide documentation about compliance with this requirement.*

Response:

Similar to the previous response, the provision applies to discharges and implementation of best management practices of the storm water management program.

Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*Notice of Intent requires operators of small MS4s seeking authorization to discharge under the terms and conditions of this permit shall submit a complete, accurate and timely NOI that contains the information identified in Appendix F. This includes operators of small MS4s that were previously authorized under the November 6, 2006 Small MS4 General Permit.*

*EPA needs clarify statutory requirements; general and subjective terms such as complete and accurate need to be avoided. Will EPA consider an NOI complete if all items listed in Appendix F of the "draft permit" are addressed? Will EPA consider partial information in an NOI accurate?*

*The draft permit needs to identify the specific information required and establish the criteria to accept or deny the information submitted. For example: (a) Part E. (Infra-structure) requires an estimated percent of outfall map completed, it also requires an estimated date of completion. It does not however state if there is a minimum percent of completion that will be required (20%, 50% or 80%) to deem the NOI complete and accurate or if any deadline date for completion (1, 2 or 3 years) will be acceptable; (b) (Part F. Bylaw/Ordinance Development) requests information regarding the adoption of IDDE, Construction and Post-Construction authority, if it was adopted and an effective or estimated date of adoption. Will a negative response be considered as not submitting complete and accurate information?; and (c) Part G. (Receiving Waters) requests information regarding the surface water body segments into which the MS4 discharges, the number of outfalls discharging to each segment and impairments, is any. The "draft permit" needs to clearly establish the acceptance criteria? Will partial or incomplete information be acceptable? For example; If receiving waters and outfalls have not been identified, will it be acceptable?*

*The terms "complete and accurate" should be clearly defined and not left to individual interpretation. The criteria EPA will use to evaluate the NOI should be objective and clearly defined in the "draft permit". NOI approval and denial criteria need to be included in the "draft permit".*

Response: MA, MSL and MC

Permittees are required to submit NOIs in paper form. The instructions of the NOI form specify the required information item-by-item after the section with the title "Completing the NOI Form." Permittees submitting paper NOI forms will be informed via U.S. mail.



The term accurate is established conforming exactly to truth or to a standard in the information requested in the NOI form and specified in the instructions of the NOI form. In addition, under 122.41(k)(2)(8) provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both. In addition, where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

On September 24, 2105, the Administrator signed the final National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (E-Rule). This rule became effective December 21, 2015. This final rule requires NPDES regulated entities to electronically submit NPDES compliance monitoring reports and notices [e.g., Discharge Monitoring Reports (DMRs), Notices of Intent to discharge in compliance with a general permit, other general permit waivers, certifications, and notices of termination of coverage, and program reports] to their authorized NPDES program or to EPA through the National Environmental Information Exchange Network. Importantly, while the final rule changes the mode of transmission of these data (i.e., electronic rather than paper-based reporting), it does not change the information required from NPDES-permitted facilities under existing regulations and practices. Permittees will be notified of electronic reporting options as they are finalized during the general permit term. This electronic Notice of Intent (eNOI) system will be available to all permittees. The system will provide permittees with a user-friendly tool for completing NOIs quickly and more accurately and should expedite permittees' coverage under the general permit. Once launched EPA will encourage all permittees to use this eNOI system. EPA will notify permittees when authorized to discharge. Permittees using eNOI would be notified via e-mail.

### **Section 1.9 and 1.10**

#### *Comment: University of Puerto Rico – Central Administration*

*It is recommended to use a flowchart instead of a question by question process, to determine the permittee's eligibility required under Sections 1.9 and 1.10 of the draft permit.*

#### Response: Section 1.9 and 1.10

EPA acknowledges the recommendation. However, EPA will remain using the question process to meet Endangered Species Act and National Historic Preservation Act. This is also consistent with the requirements establish under the Multisector General Permit and Construction General Permit for the Commonwealth of Puerto Rico.

#### *Comment: Municipality of San Juan (MSJ)*

*The new permit proposal requires that any Storm Water Management Program (SWMP) demonstrate any effect on the eligibility with regard to Federal Endangered and Threatened Species and Critical Habitat Protection and National Register of Historic Properties, in surrounding areas of MS4's outfalls, discharges or activities or structures for BMPs. The compliance with this requirement will obligate municipalities to perform studies and go through the regulatory consultation process in Fish and Wildlife*

*Service and the National Marine Fisheries Service, and with the State Historic and Preservation Service, including in many areas, even private property not owned by the municipalities. Hence, this requirement needs to be modified in order for it to be reasonable for municipalities to comply with it.*

Response: MSJ

In accordance to Title 40 of the Code of Federal Regulation (CFR) Part 122.49, EPA has taken consideration under Federal Laws that may apply to the issuance of the general permit. Among the list of Federal Laws are Endangered Species Act and National Historic Preservation Act. Section 1.3(e), Section 1.9 and Appendix C of the permit are structured to comply with the procedural requirements of Section 7 of the Federal Endangered Species Act of 1973, which requires consultation with the relevant Federal agencies prior to federal action - here the issuance of a NPDES authorization. This is also applicable in Section 1.3(f), Section 1.10 and Appendix D of the permit are structured to comply with the procedural requirements of Section 106 of the National Historic Preservation Act, which requires consultation with the relevant Federal agencies prior to federal action - here the issuance of a NPDES authorization.

**Section 1.11**

Comment: University of Puerto Rico – Central Administration

*Section 1.11 (c) of the draft permit encourages the permittee to maintain a funding source for the implementation of the Stormwater Management Program (SWMP). Elimination of illicit discharges is a control measure of the SWMP that sometimes require costly infrastructure changes, such as sewer (stormwater or sanitary) system modifications, to take a specific corrective action. EPA must be aware that the University of Puerto Rico (UPR) has experienced a budget reduction, therefore, it is improbable that the UPR can identify and maintain this fund.*

Response: Section 1.11

In 1987, Congress amended the Clean Water Act to better regulate stormwater runoff, and in particular required that “[p]ermits for discharges from municipal storm sewers . . . shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and shall require controls to reduce the discharge of pollutants to the maximum extent practicable.” CWA §§ 402(p)(3)(B)(ii)-(iii). EPA understands that implementation of this requirement may entail substantial additional costs. EPA also understands that funding of stormwater management from a municipal general fund may be subject to the vagaries of budget cuts and competition with other municipal departments. This is the reason EPA encourages permittees to maintain an adequate funding source for implementation of the program. While EPA does not purport to require particular funding mechanisms, our experience suggests that replacing funding from a general fund with a stable, dedicated funding source such as a stormwater utility, although it may be a difficult transition, has great potential to address the funding concerns identified by the UPR and other commenters.

EPA therefore strongly encourages alternative means of funding, such as stormwater utilities, and has developed a website and materials to assist communities in pursuing funding options. Additional information on funding can be found at: Green Infrastructure Funding Opportunities (<https://www.epa.gov/green-infrastructure/green-infrastructure-funding-opportunities>) and EPA’s Catalog

of Federal Funding Sources for Watershed Protection  
<https://ofmpub.epa.gov/apex/watershedfunding/f?p=fedfund:1>).

### Section 1.11.2

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*(Section 1.11.2) The "draft permit" requires that all public drinking surface water and groundwater that may be impacted by the discharge be identified. There are many types of discharges that can potentially impact public drinking surface and groundwater. It is unclear what the intent of documenting these items is.*

Response: MA, MSL and MC

EPA understands that there are existing regulatory programs that apply to drinking water sources. EPA's intent in requiring documentation of these items is to facilitate establishment of links between municipal stormwater programs and drinking water programs. To the extent that drinking water programs establish requirements related to stormwater management, such as restrictions on infiltration practices, etc., these items should be included in the SWMP to provide a complete picture of the municipality's program.

*Comment: Municipality of San Juan (MSJ)*

*The SWMP will be required under this new permit to include all receiving waterbody segments, their classification under Puerto Rico Water Quality Standards, any impairment and associated pollutant of concern, applicable TMDLs, and number of outfalls from the MS4 that discharge to each waterbody. In addition, the permittee shall document all public drinking surface and groundwater sources that may be impacted, and include the existing map of the storm water sewer system with all its interconnections. To be able to comply with this requirement, the EPA seems to be determining that all municipalities have this information readily available. As you already know, the extent of the MS4 systems varies per municipality. The MSJ MS4 is one of the largest and probably the most complicated system in Puerto Rico. To require that the MSJ identify all receiving waters, map the complete MS4 system and document all water systems affected, will require many years of major investigative and scientific work that runs outside of the scope of a municipality. All the matters related to the receiving waterbody, specifically its water quality and measures to maintain its quality such as TMDLs, are the responsibility of the Puerto Rico Environmental Quality Board (PREQB), and the municipalities cannot assume that responsibility. Hence, the EPA needs to revise this section as to eliminate unreasonable and unrealistic requirements for municipalities in Puerto Rico, and to allow the municipality sufficient time to address their responsibilities, such as mapping the complete MS4 system, which cannot be done in the 4 years identified under Section 1.11.3.*

Response: MSJ

EPA has established previously the goal of the Clean Water Act is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." In the expired general permit, Section 3 required the permittee to determine whether storm water discharge from any part of the MS4 significantly

contributes directly or indirectly to a 303(d) listed (i.e., impaired) waterbody identification of outfalls and the quality of waterbodies.

EPA does not expect that permittees should perform detailed modeling or other quantitative analysis that would normally be associated with a TMDL assessment performed by the PREQB. Rather, the permittee should evaluate on a qualitative level the sources of pollutants to its system and whether its discharges are potential contributors to the impairment, based on the nature of the pollutant, available monitoring data; land use or impervious cover in the MS4 area; the proportion of the watershed to the receiving water that is in the permittee's jurisdiction; and the presence or absence of other pollutant sources; along with other information deemed relevant by the permittee.

EPA is also aware that many permittees, especially those in highly urbanized areas, likely will be challenged to attain all applicable water quality standards within this MS4 permit cycle. EPA believes that it is important to retain in the permit language that prohibits discharges that cause or contribute to exceedances of water quality standards. EPA notes that this language is not new in the reissued permit, as the Section 1.3.8 of the 2006 Small MS4 GP requires a SWMP "describing how the program will control the discharge of the pollutants of concern and ensure that the discharges will not cause an instream exceedance of the water quality standards." The 2006 general permit, Section 4.1.1, also requires the permittee to "develop, implement and enforce a program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, protect water quality and satisfy the water quality requirements of the Clean Water Act. [emphasis added] EPA does not intend to relax this requirement because it is necessary to protect water quality and achieve the goals of the Clean Water Act. See also CWA § 402(o); 40 CFR § 122.44(l) (anti-backsliding requirements).

The Water Quality Response Plan lays out a timeline that EPA believes is reasonable for addressing complex or widespread sources of impairments in the absence of a TMDL that establishes the necessary load reductions and allocation. EPA has long recognized that it may take decades or longer to address the water quality impacts of existing municipal stormwater discharges. See EPA's Preamble to the Phase II regulations, 64 Fed. Reg. 68722 (Dec. 8, 1999). In part, this is because of the difficulty and challenges associated with reversing the water quality impacts of existing stormwater discharges, which are associated with long term patterns of land use and infrastructure development. See, e.g., National Research Council, *Urban Stormwater Management in the United States*, at 23-24 (2008). However, even where a permittee is in compliance with the requirements of Section 2.2 of the permit, it may still be in violation of Section 2.1.1 of the permit if its discharge causes or contributes to an exceedance of water quality standards. EPA will take into account a permittee's good faith efforts to comply with the requirements of this Section in its determination of appropriate enforcement action related to exceedances of water quality standards.

In a final note, MSJ has referenced Section 1.11.3 of the general permit which is reserved for new permittees that were not covered under the previous general permit. This will not affect the requirements of the MSJ.

## Section 2.0

### Comment: Municipality of San Juan (MSJ)

*The new permit regulation requires that a reduction in the discharge of pollutants be achieved from the MS4 to the maximum extent practicable. Even though this statement seems to allow some flexibility, it also creates a very confusing goal, since a permittee will not have a clear understanding of what maximum extent practicable really means. Furthermore, to be able to achieve this reduction goal, sampling will be required to be performed at all outfalls, which is a very burdensome and unreasonable requirement. Most of the pollutants that reach a municipality MS4 are related to fecal coliform, thus to require sampling of all contaminants under the Puerto Rico Water Quality Standards (PRWQS) will create a significant and unnecessary investment from municipalities to document and analyze all outfalls contaminants.*

### Response: MSJ

EPA recognizes that the definition of maximum extent practicable (MEP) is not precise. As EPA stated in the preamble to the Phase II regulations, EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in stormwater pollutants on a location-by-location basis. EPA envisions that this evaluative process will consider such factors as conditions of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan. Other factors may include 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.

EPA has explained in response to comment Section 1.11.2 the need of an assessment of the source of pollutants and the receiving water body. The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. Permit writers may evaluate small MS4 operator's proposed stormwater management controls to determine whether reduction of pollutants to the MEP can be achieved with the identified BMPs. 64 Fed. Reg 68722, 68754 (December 8, 1999).

## Section 2.1.1

### Comment: Municipality of San Juan

*The new permit program requires that discharges of the MS4 system shall not cause an exceedance of the PRWQS in the receiving waterbodies. As mentioned before, the PREQB is the government entity in charge in assuring compliance of all PRWQS, hence municipalities cannot accept that responsibility and cannot incur in costs related to determining when an exceedance in a waterbody occurs. Municipalities need to adequately invest their available funds in the true important matters, and that would be in mapping the MS4 with all the interconnections. Hence, all this other matters that EPA is requesting through this new permit program needs to be reduced to a minimum or eliminated in order to allow municipalities to focus on what really matters at this time, knowing the status of municipalities with their MS4 system.*

Response MSJ

EPA has explained in response to comment to MSJ in Section 1.11.2 that even where a permittee is in compliance with the requirements of Section 2.2 of the permit, it may still be in violation of Section 2.1.1 of the permit if its discharge causes or contributes to an exceedance of water quality standards. EPA will take into account a permittee's good faith efforts to comply with the requirements of this Section in its determination of appropriate enforcement action related to exceedances of water quality standards.

The 2006 Small MS4 GP identify in Section 4.2.3 a decision process for mapping the storm sewer map. This process also identify the updates to the storm sewer maps. EPA is incorporating in the issued general permit language to pick up from these developed maps and expanded to ensure consistency with all the permittees mapping process.

Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*Section 2.1.1 requires the permittee to eliminate the conditions causing or contributing to an exceedance of water quality standards within 60 days of becoming aware of the situation.*

*Elimination of a condition causing or contributing to an exceedance of water quality standards within 60-days of its discovery seems unachievable. Elimination and fixing of such a problem may be time consuming and costly and not able to be accomplished within 60-days. The regulators should be flexible and allow the permittees in determining a solution.*

*It is possible that outfall monitoring and sampling will identify flows from an outfall that are causing or contributing to an exceedance of water quality (WQ) standards. It is likely that many outfalls will not meet WQ standards; however, extensive modeling would be required to determine the impact of specific discharges on receiving waters. Regardless, elimination of such a condition within 60 days of knowledge is impractical. The language under this part needs further clarification as to what constitutes a discharge causing or contributing to an exceedance of a water quality standard, including a list of exemptions/situations that do not apply. This will avoid situations where the MS4 may be in violation due to the 60-day criteria or a determination cannot be made without further analysis, modeling, etc. If the intent is to address obviously contaminated discharges from the MS4 it should be stated as so.*

Comment: Municipality of San Juan

*This program requires that when the permittee, EPA or PREQB determines than a discharge from the MS4 causes an exceedance on the PRWQS, within the next 60 days the permittee needs to eliminate the conditions, or if infeasible, to develop a Response Plan to address the condition. As you will see, the 60 day period is an extremely low period of time, particularly when in many cases, the entities responsible for correcting the matter will be other entities, such as Puerto Rico Aqueduct and Sewer Authority (PRASA), the Puerto Rico Highway and Transportation Authority (PRHTA), and other NPDES Permittees regulated by the PREQB. Hence, when not in compliance with this item, EPA can consider it a violation under Section 2.1.1 (a), creating a mechanism for continuously penalizing municipalities. It is a well know[n] fact, that there are many areas within an MS4 that are not in compliance due to the lack of a sanitary sewer system. The municipalities can't be held accountable for compliance that will fall under the jurisdiction of another entity. The EPA must define a more flexible approach than just a*

*requirement to correct the deficiency within 60 days, or else it will be considered a violation that can be penalized.*

Response: MA, MSL, MC and MSJ

EPA agrees that some outfalls may not meet water quality standards at the ‘end-of-pipe’, and that this alone may not indicate that a MS4 discharge is causing or contributing to an exceedance of water quality standards. It is the impact on the receiving water at the point of discharge that determines whether a discharge causes or contributes to the exceedance of water quality standards. There are many cases where extensive modeling is not necessary to determine that a discharge is contributing to a water quality violation, and it is these situations this provision primarily addresses. These can include obviously contaminated discharges (e.g. trash, oily sheens and other visible contaminants), but may also include simple sampling results (e.g. high bacteria counts downstream of a specific outfall but not upstream, high conductivity downstream of a municipal salt pile) or other cases where there are straightforward indicators of a discharge’s contribution to an exceedance. In such cases the permit requires the MS4 operators to take action to address the conditions causing or contributing to the exceedance. EPA recognizes that this will not always be feasible within 60 days and for this reason EPA had language addressing more than 60 days situations (see Section 2.1.1 (c)).

Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*(Requirements to Meet Water Quality Standards) requires that: (a) Discharges shall not cause or contribute to an exceedance of applicable water quality standards (including numeric and narrative water quality criteria) for the receiving water; and (b) For each water body that receives a discharge from the small MS4, the permittee shall consult the water quality standards applicable to that water body.*

*The language under this part needs further clarification as to what constitutes a discharge causing or contributing to an exceedance of a water quality standard (WQS). Also, it is unclear if private outfalls should be included, since access to private out-falls may not be possible. If this section is attempting to address obviously contaminated discharges from the MS4 it should be stated as so. How will narrative and numeric standards be applied? Do all WQS have the same dominance?*

Response: 2.1.1 (MA, MSL and MC)

The permittee’s discharge must assess its impact on the receiving water at the point of discharge and determine whether a discharge causes or contributes to the exceedance of water quality standards (WQS). These WQS are those determined by the Puerto Rico Environmental Quality Board. There are many cases where monitoring is not necessary to determine that a discharge is contributing to a water quality violation, and it is these situations this provision primarily addresses. These can include obviously contaminated discharges (e.g. trash, oily sheens and other visible contaminants), but may also include simple sampling results (e.g. high bacteria counts downstream of a specific outfall but not upstream) or other cases where there are straightforward indicators of a discharge’s contribution to an exceedance. In such cases the permit requires the MS4 operators to take action to address the conditions causing or contributing to the exceedance.

*Comment: Municipality of Caguas (Caguas)*

*Regarding the requirements to meet EQB Water Quality Standards, which numerical limits are extremely low, we find that complying with this requirements is unfeasible. There are a great amount of variables that the municipalities cannot totally control. It also implies investing a great amount of capital in infrastructure maintenance, LID controls and BMPs compliance. These facts will represent a huge impact in our budgets.*

*Response: Caguas*

EPA recognizes that the reissued permit takes an approach that is both more detailed and more protective than the 2006 Small MS4 GP. EPA's permitting regulations are designed to address water quality and other CWA regulations through the development of permit conditions for the discharge that will ensure that the discharge will meet the applicable requirements. Section 301 of the CWA prohibits discharge of a pollutant without, or contrary to the requirements of, a NPDES permit. This general permit therefore includes conditions specifically designed to provide a procedure for permittees to identify, evaluate and address discharges to impaired waters in order to ensure that discharges do not cause or contribute to exceedances of water quality standards, but does so within the scope of the permit.

**Section 2.2***Comment: Municipality of Caguas (Caguas)*

*Our Municipality is located in a river valley. Many of the river systems that run through our area, originate in other municipalities. Because of this, we have no control of their discharges or impairment at the time before they reach our jurisdiction.*

*Response: Caguas*

The CWA requires NPDES permits for any "discharge of pollutants", which is defined at 40 CFR § 122.2 to "include additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man [and] discharges through pipes, sewers, or other conveyances owned by a State, municipality or other person which do not lead to a treatment.

EPA understands the concern Caguas has with upstream MS4s. The Environmental Quality Board has been assessing waterbodies and determined waterbodies segments with impairments. The requirements in Section 2.2.2 apply to discharges to all impaired waterbodies, EPA presumes that MS4s discharging to waterbodies impaired for nutrients (nitrogen and phosphorus), bacteria, dissolved oxygen, suspended solids, metals, or oil and grease are potential contributors to impairments. In order to maintain consistency in a watershed wide approach, MS4s discharges to those impaired waters require specific actions to reduce loadings that will contribute to further impaired waters. This is to ensure MS4 discharges to waters listed as impaired receive the same level of effort to remove the pollutant as those MS4 discharges to waters impaired with an applicable approved TMDL.

*Comment: Municipality of San Juan*

*The new permit promotes that the SWMP establish controls for pollutant that may affect an established TMDL in the receiving waterbody. This requirement is outside of the scope of the MS4. Municipalities*



*have no jurisdiction over the TMDL in a waterbody, so to determine a goal for the contaminant to be discharged, it will require a determination that the discharge will not contribute to the impairment of the waterbody. Therefore, to do this determination, the municipalities will need to perform sampling and continuous monitoring in the waterbody, which is unreasonable. The MS4 requirement should only be based on the PRWQS, and on a TMDL requirement if established, but no analysis (as required by Section 2.2.1 (f)) of monitoring of the waterbody shall be required since that responsibility is exclusive of the PREQB. Furthermore, if the corrective measure to achieve that contaminant reduction falls outside of the municipality's jurisdiction, each municipality cannot then assume the responsibility of that third party.*

**Response: MSJ**

Regulations governing issuance of NPDES permits at 40 CFR §122.4(d) state that a permit may not be issued where its conditions do not ensure compliance with the applicable water quality requirements of affected States. The new requirements aim to clarify the responsibility of permittees discharging to impaired waterbodies. The general permit encompasses a process of identifying BMPs to address the pollutant of concern in the permittee's discharge.

The general permit specifically provides for an iterative approach in the permittee's response to water quality progress and requires permittees to incorporate proper source control and pollution prevention control measures to address those pollutant of concerns in their discharge. EPA is not indicating that the permittee perform TMDL analysis nor modeling from which PREQB perform and report on the 303(b) list to Congress. The permittee can establish collaborative efforts with organizations, agencies, institutions and other parties to assess water quality improvement at and downstream of the outfall(s).

**Section 2.3.1**

**Comment: Municipality of San Juan**

*The new regulation requires that the implementation of the SWMP for existing facilities needs to be fully completed within 5 years. As discussed before, many of the requirements under this proposed permit program are unreasonable and unrealistic for all municipalities. As such, only to have a complete MS4 map, including interconnections, and to have eliminated exceedances of pollutants in the discharges, can definitely not be performed within the next five years. This requirement will create a whole group of municipalities and government entities that will be in noncompliance, which is not the purpose of this program or this permit. Unless the EPA wants to exclusively pursue legal actions against all municipalities, this time frame is not sufficient in order to initially determine the reality of the MS4 system and the different BMP measures to improve its performance. Hence, the EPA needs to eliminate this reduced compliance timeframe.*

**Response: MSJ**

EPA recognizes that the reissued permit takes an approach that is both more detailed and more protective than the 2006 Small MS4 GP. EPA found that the extremely flexible approach embodied in the 2006 Small MS4 GP had a number of negative consequences. For instance, permittees lack consistency in the goal to restore and protect the Nation's waters, it proved extremely difficult to determine effectiveness in the implementation of the minimum measures and improving stormwater management practices based on

the annual reports, the lack of knowledge or turnover of permittee officials, examination of SWMPs and even lack of improvement in site visits. EPA is also aware that compliance with the 2006 Small MS4 GP was not consistently adequate, and that the flexibility inherent in the 2006 Small MS4 GP was in some cases interpreted in a manner that did not result in improvements in municipal practices or benefits to water quality. The reissued permit is specifically intended to set higher standards and increase EPA's ability to track activities under the SWMPs, consistent with the national approach as stormwater permits are reissued. See also 33 U.S.C. § 1251(a) (national goal of the Clean Water Act is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters").

#### **Section 2.3.4**

##### *Comment: Municipality of San Juan*

*The proposed program identifies as the permittee's responsibility to have identified the adequate resources and funding to implement the requirements of this permit. However, this requirement assumes that municipalities have defined, analyzed, and identified their MS4 systems. Since most municipalities are in the process of identifying, defining and analyzing their MS4 systems, it will be impossible at this point for municipalities to plan adequately the financial funding required for an operation that they do not truly know in specific detail. As such, this requirement shall be eliminated or modified.*

##### Response: MSJ

In EPA's response to comment to EDS in the General Comments Section, EPA stated that Congress amended the Clean Water Act to better regulate stormwater runoff, and in particular required that "[p]ermits for discharges from municipal storm sewers . . . shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and shall require controls to reduce the discharge of pollutants to the maximum extent practicable." CWA §§ 402(p)(3)(B)(ii)-(iii). EPA understands that implementation of this requirement may entail substantial additional costs. EPA also understands that funding of stormwater management from a municipal general fund may be subject to the vagaries of budget cuts and competition with other municipal departments. This is the reason EPA encourages permittees to maintain an adequate funding source for implementation of the program. While EPA does not purport to require particular funding mechanisms, our experience suggests that replacing funding from a general fund with a stable, dedicated funding source such as a stormwater utility, although it may be a difficult transition, has great potential to address the funding concerns identified by the MSJ and other commenters.

EPA therefore strongly encourages alternative means of funding, such as collaborative joint efforts among neighboring Municipality or other entities, and stormwater utilities. EPA has developed a website and materials to assist communities in pursuing funding options. Additional information on funding can be found at: Green Infrastructure Funding Opportunities (<https://www.epa.gov/green-infrastructure/green-infrastructure-funding-opportunities>) and EPA's Catalog of Federal Funding Sources for Watershed Protection (<https://ofmpub.epa.gov/apex/watershedfunding/f?p=fedfund:1>).

## Section 2.4

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*Section 2.4 requires the permittee to reduce pollutants to a maximum extent practical. EPA needs to clarify statutory requirements for MS4 to reduce pollutant discharges to the "maximum extent" practicable (MEP). What does MEP mean, and does it reach all the way to attainment of water quality standards? Furthermore, the current EPA TMDL policy does not recognize the BMP-based nature of municipal stormwater programs nor does it clearly provide for allocated loading reductions to be measured by implementation of BMP programs.*

*The "draft permit" requires the permittee that discharge to an impaired water without an approved TMDL to "evaluate discharges to impaired waters and implement a monitoring program. In the absence of a TMDL (which is typically the case in Puerto Rico), these requirements will essentially require the municipalities to conduct their own TMDLs to comply, and will require municipalities to dramatically expand operation and established Stormwater Divisions if they haven't already done so. To what extent is the permittee required to "evaluate" the discharge? Are the parameters and acceptable methods defined? How is this to be funded?*

*It is our position that the Puerto Rico Environmental Quality Board is responsible for establishing TMDLs and not the municipalities.*

*Response: MA, MSL and MC*

EPA recognizes that the definition of MEP is not precise. In formulating the regulations for the Phase II MS4 program EPA intentionally elected not to provide a precise definition in order to allow maximum flexibility in MS4 permitting. As EPA stated in the preamble to the Phase II regulations, MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis. EPA envisions that this evaluative process will consider such factors as conditions of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan. Other factors may include 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.

EPA believes that the MEP standard is given adequate content by the specific provisions of Parts 2.4.2 through 2.4.7. No further definition is thus required. EPA has therefore clarified this section by explicitly referencing MEP to the specific requirements of Section 2.4 of the general permit. Permittees' compliance with Section 2.4 (and their "good faith effort") will be assessed by their compliance with these specific requirements.

EPA does not expect that permittees should perform detailed modeling or other quantitative analysis that would normally be associated with a TMDL. Rather, the permittee should evaluate on a qualitative level the sources of pollutants to its system and whether its discharges are potential contributors to the impairment, based on the nature of the pollutant, available monitoring data; land use or impervious cover in the MS4 area; the proportion of the watershed to the receiving water that is in the permittee's jurisdiction; and the presence or absence of other pollutant sources; along with other information deemed

relevant by the permittee. A determination that MS4 discharges are not potential contributors to the impairment must be documented in the annual report and will be reviewed by EPA.

The Permit also requires a source identification and assessment study that requires permittees to identify source categories and specific locations within the contributing catchments. A preliminary written assessment must be included with the SWMP, and an updated report on the results must be submitted to EPA and must also contain outfall mapping and catchment delineations, calculations of the size of MS4 area draining to the receiving water, any monitoring data and, where available, impervious area and directly connected impervious area data for the contributing catchments. In order to make use of information being developed under Section 2.3 of the permit (mapping, monitoring, etc.), this report must be submitted in the third year of the permit term. EPA may use these reports, in conjunction with other data, to perform its own evaluations of MS4 pollutant contributions to impaired waters to determine where more stringent BMPs will be needed in future permit terms if no TMDL is approved.

### **Section 2.4.3.2**

*Comment: Puerto Rico Department of Transportation and Public Works (PR-DTPW)*

*This requirement appears to be applicable to a conventional MS4 permit but not for a non-conventional one. Allowing the general public to participate in the review and implementation of the SWMP may result in a task that may result in an excessive extension of the review process. It is understood that any review shall be performed by the DTPW.*

Response: 2.4.3.2 (PR-DTPW)

EPA disagrees with the comment. The permittee must evaluate its program and assess how it meets the conditions in the permit. They should evaluate their progress based on information submitted as part of the NOI and efforts towards meeting defined measurable goals. The assessment is submitted as part of the annual report. Permittees must provide opportunities for public involvement in both the development and implementation of the storm water management program. For example, public involvement can be implementing the Adopt-a-Road Program.

*Comment: University of Puerto Rico – Central Administration (UPR-CA)*

*Section 2.4.3.2 of the draft permit requires the permittee to provide annually an opportunity to the public to participate in the review and implementation of the SWMP. Even though public involvement is one of the Control Measures of the SWMP, such requirement is not suitable for the UPR (as a MS4 owner or operator). This could promote that people without any knowledge of the MS4 operations and limitations propose unfeasible actions that compromise the UPR's resources and obligations. Furthermore, the evaluation process of the comments imposes an additional time-consuming duty to MS4 owners or operators that finally may delay the SWMP implementation. It is recommended that the review of the SWMP continues under the owner or operator of the MS4.*

Response: 2.4.3.2 (UPR-CA)

EPA agrees on reducing the annual participation to once each permit cycle.

**Section 2.4.4.2**Comment: Municipality of San Juan

*The proposed program requires that through the IDDE program, that all illicit discharges be eliminated within 30 days, or an expeditious process. As explained before, in many cases the permittee or a municipality has no control of when an illicit discharge can be corrected, especially when it falls under the purview or responsibility of another entity such as PRASA, PRHTA or any other. Hence, the EPA shall modify this language as to allow flexibility to the permittee.*

Response: MSJ

Permittees must eliminate any identified illicit discharge as expeditiously as possible, must establish an expeditious schedule for removal if elimination does not occur within 30 days, and must diligently pursue elimination, pursuant to Section 2.4.4.2. EPA has established in a separate section illicit discharges that may occur from a sanitary sewer overflow which would involve PRASA, as stated in Section 2.4.4.4.

**Section 2.4.4.3**Comment: Municipality of Caguas (Caguas)

*Other causes of impairment of bacteria can be residential septic tanks illegal discharges. Also, we have no jurisdiction over residential septic tanks, which are regulated by the Department of Health, through the General Environmental Health Regulation. However, when an illicit discharge from a septic tank is detected, the Municipality may either enforce the elimination of the illicit discharge through our ordinance, or in the case that enforcement has not been achieved or it requires a dye test, we refer it to the Department of Health.*

Response: Caguas

EPA understands that individual residential septic systems are being regulated under the Puerto Rico Department of Health. Multiple unit septic systems are being regulated under the Puerto Rico Environmental Quality Board. EPA encourages Caguas to continue its effort to eliminate discharges from nonfunctional septic tanks. EPA will also remind that overflows from septic systems into a MS4 are illegal non-stormwater discharges. Non-stormwater discharges that are not on the list of Section 1.4 are defined as “illicit discharges” pursuant to Section 2.4.4.3 of the permit and must be eliminated.

**Part 2.4.4.4**Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*(Sanitary Sewer Overflows): (1) Discharges from SSOs to the MS4 are prohibited and any such discharge violates this permit and remains a violation until eliminated. Upon detection, the permittee shall notify the Puerto Rico Aqueduct and Sewer Authority (PRASA) and any pertinent agency to collaborate and eliminate SSOs as expeditiously as possible and shall take interim mitigation measures to minimize the discharge of pollutants to and from its MS4 until elimination is completed. In addition, the MS4 shall also coordinate and implement with PRASA and any pertinent agency cleanup measures to minimize impacts*

*to human health and the environment associated with the SSO; (b) The permittee shall identify in its SWMP all known locations where SSOs have discharged to the MS4 within the previous five years. This shall include SSOs during dry or wet weather, from inadequate conveyance capacities, or where interconnectivity of the storm and sanitary sewer infrastructure allows for communication of flow between the systems. Within 120 days of the authorization under this permit, the permittee shall develop an inventory of all identified SSOs indicating: location (approximate street crossing/address and receiving water, if any); c clear statement of whether the discharge entered a surface water directly or entered the MS4; date(s) and time(s) of each known SSO occurrence (i.e., beginning and end of any known discharge); estimated volume(s) of the occurrence; description of the occurrence indicating known or suspected cause(s); mitigation and corrective measures completed with dates implemented; and mitigation and corrective measures planned with implementation schedules. The permittee shall maintain the inventory as a part of the SWMP and update the inventory at least annually; (c) In accordance with Paragraph B.12 of Appendix B of this permit, upon becoming aware of a SSO discharge to the MS4, the permittee shall provide oral notice to EPA and PRASA (787-620-2482) within 24 hours. Additionally, the permittee shall provide written notice to EPA and PRASA within five (5) days of becoming aware of the SSO occurrence and shall include the information in the updated inventory. The notice shall contain all of the information listed in 2.4.4.4.b; (d) The permittee shall include and update the SSO inventory in its annual report, including the status of mitigation and corrective measures implemented by the permittee to address each SSO identified pursuant to this part; and (e) The period between identification and elimination of a discharge from the SSO to the MS4 is not a grace period, and such a discharge remains a violation of the permit until eliminated.*

*We concur that discharges from SSOs to the MS4 are prohibited and any such discharge violates this permit and remains a violation until eliminated. However, EPA needs to understand that the municipality does not own or operate any sanitary sewer system. All sanitary sewer systems within the municipality are owned and operated by PRASA as such any permit violations should be directed to PRASA and not the permittee. The permittee may become aware of the SSO occurrence and notify PRASA and EPA in a timely manner, however it is up to PRASA to correct the situation and not the permittee.*

*The requirement to identify in its SWMP all known locations where SSOs have discharged to the MS4 within the previous five years is a perfect example of money poorly spent by the municipality since it does not serve the municipal needs or improve water quality. While this data may provide EPA a snapshot of data that is useful to its programs it does improve water quality. Furthermore, the information that is required for this inventory is extremely specific and would be nearly impossible to obtain from municipal records. Since the municipality does not own or operate sanitary sewers its role in handling SSOs is to refer them to PRASA for corrective action. This effort would require an extensive amount of time and funding and assumes that PRASA will provide the solicited information. The requirement to provide status of mitigation and corrective measures to address SSOs is not feasible because municipalities do not own or operate the sanitary sewer system. Decisions regarding maintenance or improvements to the sanitary sewer system are made exclusively by PRASA.*

*Limit the requirement to provide oral notice to EPA and PRASA (787-620-2482) within 24 hours. Additionally, the permittee shall provide written notice to EPA and PRASA within five (5) days of becoming aware of the SSO occurrence.*

*Comment: Municipality of Caguas (Caguas)*

*Regarding the issue of impairment of bacteria, we established for the record that the vast majority of illicit discharges are from broken sanitary sewer lines and sanitary sewer system overflows into our MS4. PRASA is the owner of this system statewide. Also, we have no jurisdiction over this system and have no control over maintenance, repairs and replacements of sanitary sewer lines or systems.*

*Comment: Municipality of San Juan*

*The requirement to identify locations of Sanitary Sewer Overflows (SSOs) for the past five years is unnecessary and burdensome. All the information requested in this section does not contribute in achieving the goal of improving water quality, but it does create unnecessary reporting requirements.*

*Response: 2.4.4.4 (MA, MSL, MC, Caguas and MSJ)*

An SSO discharge to a MS4 is an illegal non-stormwater discharge to and from the stormwater system and represents an independent violation of this stormwater permit and remains a violation until removed, in addition to any violation of the NPDES permit for the wastewater treatment plant. Reporting of these discharges in the context of the MS4 permit is essential to a full understanding of MS4 discharges, especially as the presence of a MS4 can result in SSOs discharging to receiving waters a considerable distance from the sanitary sewer that is the source of the flow. Therefore, these provisions are relevant to the MS4 and are not redundant.

EPA notes that the period between identification and elimination of a discharge from the SSO to the MS4 is not a grace period, and such a discharge remains a violation of the permit until eliminated. The requirements in Section 2.4.4.4.b-d are distinct from the requirement not to receive SSO discharges in Section 2.4.4.4.a, and compliance with Section 2.4.4.4.b-d does not excuse or otherwise constitute a defense to a violation of Section 2.4.4.4.a or any other provision of the permit or of any applicable law or regulation.

One noteworthy point, on September 15, 2015, PRASA signed a consent decree which established remedial measures to address combine sewer overflows and sanitary sewer overflows, among other.

**Section 2.4.4.6***Comment: Puerto Rico Department of Transportation and Public Works (PR-DTPW)*

*The new permit requires completing the map of the MS4 within two (2) years of the authorization under the permit. The draft permit also indicates that this permit does not provide for additional time for its completion. Based on past experiences, and the lack of detailed maps about the existing system, it is not possible to agree on such a short period of time to complete the mapping. In the existing permit SWMP, it was discussed and indicated that various cycles of permit would be required to complete the required mapping. This statement does not even consider the additional data being required by the new permit. To that end, the DTPW requires to develop and mutually agree on a schedule of mapping that may be structured based possibly on regions of the Island, or other parameter that can allow overcoming the present uncertainty. The only way to expedite this process is by Identifying funds that may be used to complete this task.*

Response: 2.4.4.6 (PR-DTPW)

The permit requirement specifies the mapping of drainage system as defined under 40 CFR § 122.26(b)(8). EPA has examined the deadlines in the 2013 draft and has adjusted several of them in response to this and other specific comments addressed below. EPA's overall approach to adjusting the schedules was to provide that only the preparation of the SWMP and its specific components (including water quality response plans, illicit discharge detection and elimination procedures, inventories and operation and maintenance plans) be required in the first year after the permit effective date, while implementation activities begin in the second year. EPA has also lengthened certain time frames in the permit to allow additional time to ramp up activities, including IDDE investigations, outfall screening and monitoring. EPA recognizes that the revised deadlines are still aggressive, however, these schedules are appropriate to meet the Clean Water Act's goals and alleviate a leading cause of water quality impairments. (Need to edit permit language).

Comment: Municipality of San Juan

*This section requires that a MS4 system mapping, including its outfall inventory, be completed within 2 years of permit authorization. This timeframe is unreasonable, and as such EPA shall eliminate these specifics as to allow flexibility to municipalities to comply with these requirements.*

Response: MSJ

EPA recognizes that the revised deadlines are still aggressive, however, these schedules are appropriate to meet the Clean Water Act's goals and alleviate a leading cause of water quality impairments. For a permittee to effectively manage its MS4, it must know what infrastructure assets it has and where they are located. This is the reason that mapping has been a focus of the MS4 general permit program since its inception and remains a focus for the second permit term.

**Section 2.4.7.2 (a)**Comment: Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*The inventory and SWPPP development for all city facilities and operations needs two years rather than one to become operational.*

Response: MSL and MC

EPA requires in Section 2.4.7.2 (a) the development of the SWPPP on a two (2) year time frame. The comment regarding time frame did not provide sufficient information for EPA to respond precisely nor clarify.

**Section 2.4.4.8**Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*(Assessment and Priority Ranking Catchments): The permittee shall assess and priority rank the catchments, delineated as required by Section 2.4.4.6.a.i, in terms of their potential to have illicit*



*discharges and SSOs and the related public health significance. This ranking will determine the priority order for screening of outfalls and interconnections pursuant to Section 2.4.4.8.d, catchment investigations for evidence of illicit discharges and SSOs pursuant to Section 2.4.4.8.e, and provide the basis for determining permit milestones pursuant to Section 2.4.4.9. The priority ranking evaluation may be more effective if the overall drainage system needs and the potential for water quality improvements, including retrofit opportunities, is assessed. For example, the results of drainage system inspections may reveal problem areas that rank higher based on the opportunity for pollutant removal relative to cost.*

Response: MA, MSL and MC

EPA believes that identifying potential locations and concepts for BMPs is an important planning tool that will assist permittees in their obligation to reduce discharge of pollutants to the maximum extent practicable and satisfy other permit requirements. The purpose of the retrofit inventory and priority-ranking is to identify locations within the MS4 that present the best available opportunities for mitigating so that retrofit BMPs can be considered as properties are planned for redevelopment or reconstruction, in decision-making concerning possible uses for MS4-owned properties, as additional BMPs to address impaired waters as required under Section 2.2, as opportunities for funding (e.g. grant programs) arise, etc. In addition, the annual reports have denoted inconsistency among permittees in establish priorities for assessment of catchments and this will offer an opportunity for the development of a priority ranking system. Please see also response to comment number 25.

Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)

*(Outfall and Interconnection Screening and Sampling) states that: The IDDE program shall include a written procedure for screening and sampling of all outfalls and interconnections from the MS4 in dry and wet weather for evidence of illicit discharges and SSOs...*

*The monitoring program outlined under Section 2.4.4.8(d) will require significant re-sources and may not result in representative or comparable data. If wet weather data is collected for different storm events and during varying conditions (e.g., first flush, end of storm, time of year) it will not adequately characterize water quality impacts. Under these varying conditions, numerous data points would be required to evaluate problem areas and prioritize improvements. In order to obtain representative and comparable data, a wet weather-monitoring program will need to be developed for each MS4. Furthermore, the focus of the program should be the identification of IDDE and not water quality.*

*Did EPA take into consideration, the increased workload this will place on an already overburdened office staff? I realize this is not EPA's problem, but you are requiring us to produce something we may not be able to deliver, and then fining us if we do not deliver.*

*The parameters to be analyzed in the Outfall and Interconnection Screening and Sampling section of the IDDE Program should be reconsidered and evaluated according to their relevance and necessity in the overall objective of the IDDE Program. The objective of the IDDE Program is to identify and eliminate the source of illicit discharges occurring in the MS4, therefore its focus should be such and not to assess specific water quality. Simple field screening of ammonia, pH, surfactants and turbidity can indicate presence of an illicit discharge, without the necessity of laboratory contracting and expensive equipment.*

*Furthermore, Parameters such as conductivity, salinity, Enterococci, total coliform and fecal coliform are costly, require external laboratory contracting and expensive field equipment and do not contribute any more than field screening to determining if an illicit discharge is occurring in the MS4. These parameters are generally used to determine water quality in a body of water.*

*Please delete the requirement that all outfalls be sampled. The cost of sampling low priority outfalls twice during dry and wet weather makes neither practical nor economic sense. Let the IDDE prioritization plan guide the community to where sampling needs to be performed. This approach wastes local resources to collect the samples and scarce money to analyze the samples for little benefit in the overall program goal.*

Response: MA, MSL and MC

EPA disagrees that a single screening of all outfalls in dry and wet weather is a waste of resources. EPA recognizes that many permittees have chosen to prioritize specific categories and locations of outfalls in their IDDE programs and that this is consistent with currently available guidance. See CWP, Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments (2004), <http://water.epa.gov/polwaste/npdes/stormwater/Illicit-Discharge-Detection-and-Elimination-IDDE.cfm>. EPA agrees with the concept of prioritization in general, but not to the extent that low priority outfalls are never screened. It is EPA's experience that illicit discharges can be an issue in unexpected areas, and that a single dry weather screening in the course of a permit term is both reasonable and practicable. The general permit does allow for limited exclusion of catchments that are totally undeveloped with no sewers or dwellings, where there is no potential for an illicit discharge. In addition, where the permittee is already aware of problems in particular catchment, the permittee may designate a "Problem Catchment" and go directly to the investigation, without need for screening. For the remaining catchments, EPA notes that dry weather screening is relatively quick when outfalls are not flowing, and that therefore the burden presented by this requirement depends largely on whether or not there are suspicious flows requiring further investigation.

EPA knew analytical monitoring would be expensive for this reason allowed the use of field kits for as many parameters as possible. EPA also recognizes that bacteria sampling, which cannot be done through field kits, brings challenges not just in analytical cost but also requirements to meet hold times. However, it has been EPA's experience that bacteria sampling is essential to assessing whether an illicit discharge may be responsible for a dry weather flow, and that the other indicators are not sufficient to rule out the need for bacteria sampling.

EPA is also convinced of the value of wet weather monitoring. The requirement to take a single grab sample of wet weather discharges is specifically intended to provide additional screening for types of illicit discharges that may only be obvious in wet weather conditions. This is the reason that the parameters identified for monitoring are the same as those identified for dry weather screening, and are more suited for illicit discharge detection than for general water quality characterization. In the course of the prior permit term, EPA identified a significant number of instances where outfalls that appeared to be clear based on dry weather screening showed clear evidence of illicit discharges in wet weather. These illicit discharges were determined based on analysis for bacteria, ammonia and surfactants, providing a clear demonstration that the source is human sanitary sewage. EPA has determined that potential sources of these illicit discharges include low volume discharges that accumulate in the storm drain system until they wash out during storms; connections that provide relief to the sanitary sewer during high sanitary

flows from infiltration and inflow; underdrains that collect discharges from leaking sanitary sewers and wash out during wet weather; connections from septic systems that activate during high water table conditions, etc.

Based on this evidence, EPA has determined that wet weather screening for illicit discharges is an essential component of the IDDE strategy. EPA notes, however, that the types of illicit discharges it has identified that manifest only in wet weather have to this point been limited to areas with aging sanitary sewer infrastructure and/or previously identified issues with wet weather related SSOs, sewer backups, surcharges or septic system failures. EPA recognizes that these types of illicit discharges are not as likely in areas served by adequately functioning septic systems or newer sewer infrastructure, and that there are therefore a large number of permittees for whom a requirement to sample every outfall in wet weather for illicit discharge-related parameters is not necessary given other permit conditions.

In addition, EPA did specified in the draft general permit the requirement for wet weather monitoring to limit it to categories of outfalls that EPA has determined to present a risk of illicit discharges that may not be discovered through a dry weather screening program. It is referred to in the general permit as “System Vulnerability Factors.”

Under CWA Section 303(d) States are required to submit to EPA every two (2) years an update list of impaired and threatened waters still needing a Total Maximum Daily Load(s). The Puerto Rico Environmental Quality Board (PREQB) are continuously assessing conditions within watersheds, including establishing waterbody segments that are impaired. This waterbody background assessment can provide a determination on conditions prevailing at the municipal point of discharge. EPA encourages the use of this information to further understand the level of impairment of the surroundings of the municipality.

*Comment: Puerto Rico Department of Transportation and Public Works (PR-DTPW)*

*The new permit requires the completion of an outfall and interconnection inventory not later than one (1) year after authorization from the permit. As with the previous comment, the number of such type of structures within the Island is not comparable to the ones of a municipality, and therefore, committing to complete this task within a year is not a feasible option for the DTPW. As with the previous comments, it may be feasible to define different regions of the Island in the SWMP and complete the inventory with a more reasonable schedule. This might be as an example, one (1) year per region until completed.*

Response: PR-DTPW

EPA has examined the deadlines in the 2013 draft and has adjusted several of them in response to this and other specific comments addressed below. EPA’s overall approach to adjusting the schedules was to provide that only the preparation of the SWMP and its specific components (including water quality response plans, illicit discharge detection and elimination procedures, inventories and operation and maintenance plans) be required in the first year after the permit effective date, while implementation activities begin in the second year. EPA has also lengthened certain time frames in the permit to allow additional time to ramp up activities, including IDDE investigations, outfall screening and monitoring. EPA recognizes that the revised deadlines are still aggressive, however, these schedules are appropriate to

meet the Clean Water Act's goals and alleviate a leading cause of water quality impairments. (Need to edit permit language)

#### **Section 2.4.4.9 (c) Comment**

*Comment: Puerto Rico Department of Transportation and Public Works (PR-DTPW)*

*This section requires the completion of the dry weather screening and sampling of every outfall and interconnection no later than three (3) years from the authorization under the permit. As with previous comments, it may be reasonable to phase these investigations by regions, in order to comply with these requirements. It is suggested that one (1) year per region may be adequate.*

*Comment: Puerto Rico Department of Transportation and Public Works (PR-DTPW)*

*This section of the permit indicates that the permittee shall complete the Catchment Investigation Procedure in a minimum of 80% of the MS4 area served by the problem catchments within three (3) years of the authorization under the permit, and 100% within five (5) years of the authorization under the permit. As per previous comments, this timeframe appears insufficient to complete the activities given the size and characteristics of the MS4 owned by the DTPW. The phasing by regions to complete this task seems like a more reasonable option.*

#### Response 2.4.4.9 (c):

EPA has examined the deadlines in the 2013 draft and has adjusted several of them in response to this and other specific comments addressed below. EPA's overall approach to adjusting the schedules was to provide that only the preparation of the SWMP and its specific components (including water quality response plans, illicit discharge detection and elimination procedures, inventories and operation and maintenance plans) be required in the first year after the permit effective date, while implementation activities begin in the second year. EPA has also lengthened certain time frames in the permit to allow additional time to ramp up activities, including IDDE investigations, outfall screening and monitoring. EPA recognizes that the revised deadlines are still aggressive, however, these schedules are appropriate to meet the Clean Water Act's goals and alleviate a leading cause of water quality impairments.

#### **Section 2.4.5**

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*(Construction Site Stormwater Runoff Control) requires permittees to develop, implement and enforce a program requiring operators of small and large construction activities...*

*Under the current legal framework in Puerto Rico, the Puerto Rico Environmental Quality Board (EQB), the Department of Natural Resources and Environment (DRNE), Puerto Rico Permitting Office (OGPe) and the USEPA regulate construction activities. The EQB and OGPe through the General Permit Program and by the EPA via the NPDES program regulate all stormwater discharges from construction projects. Requiring municipalities to conduct preconstruction reviews of permits issued by the Commonwealth or EPA is not reasonable. On the other hand requiring the municipalities to conduct site inspections and enforcement actions based on permits issued by others is ludicrous. The "draft permit"*

*needs to limit the municipality responsibility to obtaining a certification from the discharger to the effects that the discharge meets WQS.*

Response: MA, MSL and MC

EPA understands that State Agencies have programs to regulate and permit construction activities. These have specific requirements and conditions on a State wide level. EPA has seen that certain municipalities have permitting authority over construction activities. The general permit is requiring permittees to assess stormwater discharges associated with construction activities into the municipal separate storm sewer systems to which they own and maintain (see 40 CFR § 122.34(b)(4)). Therefore, permittees must establish a mechanism for those illegal discharge that may occur from specific construction activities into the storm sewer system.

### **Section 2.4.6**

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*Construction Site Stormwater Runoff Control through Stormwater Management in New Development and Redevelopment (Post Construction Stormwater Management) will be laborious and difficult to process through the Puerto Rico Court system.*

Response: MA, MSL and MC

EPA recognizes that local ordinances are only as effective as the degree to which they are implemented and enforced. EPA has identified a number of enforcement tools that may be included in local ordinances to improve compliance, these are provided in EPA, BMP Fact Sheet – Local Ordinances for Construction Site Runoff Control (<http://owpubauthor.epa.gov/polwaste/npdes/swbmp/Local-Ordinances-for-Construction-Site-Runoff-Control.cfm>). The general permit requires that permittees develop enforcement procedures that incorporate appropriate enforcement tools “to the extent authorized by law” in recognition of the fact that not all enforcement tools may be available to every MS4 operator. If there are specific limits imposed by Puerto Rico law that pose obstacles to effective enforcement of these ordinances, EPA encourages MS4 operators to identify them in their annual reports.

EPA also notes that many construction site compliance issues can be resolved without resort to the PR Court system. Issues such as improper installation or failure to maintain sediment and erosion controls can often be quickly corrected if the issues are brought to the construction operator’s attention through a timely and thorough local inspection program. For truly intransigent violators, well-documented local inspection records can provide a foundation for escalating enforcement to PREQB under its State authority or to EPA under the Construction General Permit, in addition to being grounds for initiating action in the PR Courts. For these reasons local inspection and enforcement are essential components of an effective construction site stormwater management regulatory scheme.

*Comment: Municipality of Caguas (Caguas)*

*Our city is an Autonomous Municipality under the laws of the Commonwealth of Puerto Rico, but many regulations related to the minimum control measures (such as stormwater management in new*

*development and redevelopment) required by the MS4 permit, are responsibilities of State and Federal regulatory agencies such as the Environmental Quality Board (EQB), Natural and Environmental Resources Department, Puerto Rico Aqueduct and Sewer Authority (PRASA), Permits Management Office, Public Works and Transportation Department, Department of Health, and others. Most times, we depend for State regulations and actions to comply enforcement.*

Response: Caguas

EPA understands many jurisdictions may be established on a State level enforcement. For instances, the PR Planning Board's Joint Permit Rule for Construction Project and Soil Use, Subsection 17.9.3 state all projects should have a favorable recommendation from the Municipality at the stage of submitting for an urbanization and/or construction permit .

In addition, EPA recognizes that many municipalities are more comfortable with traditional stormwater management practices such as curbs and gutters, pipes and detention basins, than they are with low impact development (LID) practices that simulate natural hydrology and treat stormwater as a resource. While traditional stormwater management has the virtue of familiarity, it has unfortunately become apparent that the traditional approach has resulted in significant damage to water quality that is difficult and costly to remedy. Under the traditional approach, the effect of development and growth on water resources are well known and include degraded habitat, incised channels, impaired aquatic life, high pollutant loads, depleted and contaminated groundwater, and higher incidence of flooding, among others. See EPA, Incorporating Low Impact Development into Municipal Stormwater Programs, 901-F-09-005 (April 2009). LID represents a paradigm shift in approach to reduce runoff and to mimic a site's predevelopment hydrology by infiltrating, filtering, storing, evaporating, capturing for reuse, and detaining stormwater runoff that EPA considers crucial for protecting water quality moving forward.

EPA is encouraging MS4s to incorporate LID requirements into their new development/redevelopment program. EPA does not intend to mandate the inclusion of LID requirements in these programs but to allow MS4s to determine the extent to which LID requirements are appropriate in their jurisdiction.

**Section 2.4.7**

*Comment: Municipality of Aguadilla (MA), Municipality of San Lorenzo (MSL) and Municipality of Comerío (MC)*

*Good Housekeeping and Pollution Prevention for Municipal Operations requires the development and implementation of an operational maintenance program for buildings and facilities.... Including schools, town offices, police and fire stations, municipal pools and parking garages....*

*The "draft permit" needs to reflect that the schools, police and fire stations are not owned and operated by the municipality. Typically these are separate political entities that do not work under the same control.*

Response: MA, MSL and MC

EPA agrees that if, and to the extent that, a permittee that does not own or operate schools, police and fire stations are therefore not required to meet the permit requirements for properties that are located within

their jurisdiction unless the stormwater systems at those properties are operated by the relevant municipality. In the note to clarify, municipal police stations are consider in the scope of police stations. However, local municipal ordinances are to be enforced if the need arises toward owners of schools, police and fire stations.

#### **Section 4.0**

##### *Comment: Department of Defense (DoD)*

*DoD objects to the language of Section 4.2 of the draft Small MS4 GP PRR040000/PRR04000F for the reasons expressed in the attached formal comment letter. For the reasons detailed in our attached formal comment letter, DoD respectfully requests the Multimedia Permits and Compliance Branch, EPA Region 2, to remove Section 4.2, Federal MS4s, from the draft Small MS4 GP and leave Section 2.4.6.3 unmodified, thereby subjecting Federal MS4s to the same development and redevelopment requirements as private entities. DoD and its component military services are committed to managing stormwater from their facilities' development and redevelopment projects through green technology and Low-Impact Development design principles and practices. We share EPA's goal of minimizing water quality impacts to waters of the United States in Puerto Rico. We welcome an opportunity to discuss our comments on the draft Small MS4 General Permit, as well as our mutual goal of improving water quality.*

##### Response:

EPA agrees that Low Impact Development design principles and practices, when appropriate is one method which can contribute to water quality improvements. The language in Section 4.2 has been removed.

#### **Section 5.4.1 Comment**

##### *Comment: Puerto Rico Department of Transportation and Public Works (PR-DTPW)*

*This section indicates that new dischargers to impaired waters without an approved TMDL are not eligible for coverage under this permit. It indicates that it refers to a new transportation facility that is located outside areas inside the MS4 coverage area for which the permit is applied for. Therefore, the DTPW wants to clarify the purpose of including this provision in the permit. If as an example, a new transportation related facility (i.e.; a Repair Shop) is constructed in a non-urbanized area, will the storm water discharges require an individual permit? If a new roadway is constructed in a rural area, will this require an individual permit? It is our understanding that this may apply only for the specific pollutant concern. As an example, if the impairment of the surface body of water is caused by sources not associated with a highway project, then there should be no problem in obtaining coverage for a discharge not contributing for the specific pollutant. Please, clarify.*

##### Response:

A TMDL defines for a particular water body an acceptable “load” of a particular pollutant which has been identified as causing an impairment. This “load” is the total amount of pollutant which can be discharged to the water body without contributing to the existing impairment. This allowable load is divided among the sources which contribute the pollutant.

When evaluating issues with regard to TMDLs, a permittee must first determine if it discharges to a waterbody with an approved TMDL. If it does not, Section 5.4.1 is not applicable. If it does discharge to a water with an approved TMDL, it must determine what pollutant is addressed by the TMDL. If the permittee does not discharge the pollutant, this part is not applicable. If the permittee does discharge the pollutant, it must address whether it is already doing something to meet the wasteload allocations of the TMDL, or whether something else needs to be done. The “something else” is addressed through the implementation of BMPs designed to address the pollutant identified in the TMDL. In some cases the TMDL will provide adequate information in order for small MS4s to develop additional or more specific BMPs to protect water quality. More often, however, the TMDL’s waste load allocations and other analyses will not be detailed enough to necessitate measures beyond those required by this permit. The permittee should make a good faith effort to evaluate any applicable TMDL and respond accordingly.