MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES) PERMIT

MAINE WASTE DISCHARGE LICENSE

FACT SHEET
REISSUANCE WITH MINOR REVISIONS

Date: July 1, 2013

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM (MEPDES)
FACT SHEET FOR REISSUANCE OF THREE GENERAL PERMITS FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

AGENCY: MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
ACTION: ISSUANCE OF MEPDES MS4 GENERAL PERMITS

SUMMARY: The Maine Department of Environmental Protection (Department) is issuing Notice of final MEPDES MS4 general permits for the direct discharge of stormwater from small municipal separate storm sewer systems ("MS4s") which includes transportation and state or federal facilities, to waters of the State of Maine other than groundwater, and to municipal separate storm sewer systems. Regulated small MS4s are those entities required pursuant to 40 CFR 122.26(a)(9)(i)(A) to obtain stormwater permit coverage to operate their small MS4. Discharges from regulated small MS4s must meet the requirements of this General Permit and applicable provisions of Maine's waste discharge and water classification statutes and rules. Compliance with this General Permit authorizes a person to discharge stormwater, pursuant to Water Pollution Control Law, 38 M.R.S.A. § 413.

These MEPDES MS4 general permits describe permit coverage and limitations, definitions, authorization and notice requirements, stormwater program management plan requirements, and standard conditions for municipalities, transportation MS4s and state or federally-owned MS4s. The Small Municipal Separate Storm Sewer Systems General Permits are effective July 1, 2013 and authorization to discharge under this General Permit expires at midnight June 30, 2018. The Department intends subsequent reissuance of these General Permits.

The following 40 entities are regulated pursuant to Maine's MS4 General Permits.

Thirty (30)Municipalities: Auburn, Bangor, Berwick, Biddeford, Brewer, Cape Elizabeth, Cumberland, Eliot, Falmouth, Freeport, Gorham, Hampden, Kittery, Lewiston, Lisbon*,Milford, Old Orchard Beach, Old Town, Orono, Portland, Sabattus, Saco, Scarborough, South Berwick, South Portland, Veazie, Westbrook, Windham, Yarmouth, York* * MS4 Included as of the 2010 Census by the US Bureau of Census.

Eight (8)State or Federally Owned Facilities: Bangor Air National Guard, Eastern Maine Community College, Dorthea Dix Psychiatric Center, Portsmouth Naval Shipyard, Southern Maine Community College, University of Maine Augusta Bangor Campus, University of Maine Orono, University of Southern Maine.

Two (2) Transportation Agencies: Maine Department of Transportation (MaineDOT) and Maine Turnpike Authority (MTA).

The following FACT SHEET AND SUPPLEMENTARY INFORMATION section sets forth principal facts and the significant factual, legal and policy questions considered in the development of the MS4 General Permits. A reasonable fee may be charged for copying requests.

FACT SHEET AND SUPPLEMENTARY INFORMATION

Contents

Note: This fact sheet references Maine statutes (M.R.S.A citations), Maine rules (CMR citations), Federal Clean Water Act, and Federal rules (CFR citations). See the specific web sites for information on currency of texts.

- The texts of Maine statutes can be found at: http://www.mainelegislature.org/legis/statutes
- The text of Department rules can be found at: http://www.maine.gov/sos/cec/rules/06/chaps06.htm
- The text of the Clean Water Act can be found at: http://www.epa.gov/npdes/pubs/cwatxt.txt
- The text of Title 40, Part 122 of the Federal rules can be found at: http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=13df7dcb165ee237aa50f2192a316a3e&rgn=div5&view=text&node=40:23.0.1.1.12&idno=40#40:23.0.1.1.12.1.6.2

A. Introduction

On January 12, 2001, the EPA authorized the Department to administer the NPDES program in most areas of the State. As a result, the Department has incorporated certain requirements that were previously part of the federal program into Maine's stormwater program.

In 1987, Congress amended the Clean Water Act and added Section 402(p). This section requires a comprehensive program for addressing stormwater discharges. Section 402(p)(1) requires the U.S. Environmental Protection Agency (EPA), or delegated states, to issue permits to the following types of storm water discharges:

- Discharge subject to an NPDES permit before February 4, 1987;
- Discharge associated with industrial activity, including construction ;
- Discharge from a municipal separate storm sewer system serving a population of 250,000 or more
- Discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000; and
- A discharge that an NPDES permitting authority determines to be contributing to a violation of a water quality standard or a significant contributor of pollutants to the waters of the United States.

Section 402(p)(6) requires that EPA provide a comprehensive program that designates and controls additional sources of stormwater discharges to protect water quality. Sources recently regulated by the second phase of the storm water program include smaller municipal storm water discharges from urbanized areas and discharges from small construction activities. The regulations promulgated under the authority of section 402(p)(6) are commonly referred to as the Phase 2 storm water regulations. The final regulations were published on December 8, 1999.

Types of Discharge 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) or 40 CFR 122.32(a)(2). Designation under 40 CFR 122.32(a)(1) applies to small MS4s located in an urbanized area. Designation under 40 CFR 122.32(a)(2) applies to small MS4s determined to need a permit by the Director. A small MS4 is a

conveyance or system of conveyances - including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains. This system must be owned or operated by a municipality. A municipality includes the following entities: *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, storm water, 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...This term includes systems similar to separate storm sewer systems in municipalities, such as systems at 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 building.* For example, an armory located in an urbanized area would not be considered a small regulated MS4

An urbanized area is designated by the Census Bureau. On March 15, 2002, the Census Bureau published final criteria used to define urbanized areas for the 2000 census. An urban area encompasses a densely settled territory which 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. Part of a community may be in an urbanized area and another community may be fully in the urbanized area. The Census Bureau's delineation of urban areas is designed to identify densely developed territory, and encompass residential, commercial, and other nonresidential urban land uses. The boundaries of this “urban footprint” have been defined using measures based primarily on population counts and residential population density, but also through criteria that account for nonresidential urban land uses, such as commercial, industrial, transportation, and open space that are part of the urban landscape. Since the 1950 Census, when densely settled urbanized areas (UAs) of 50,000 or more people were first defined, the urban area delineation process has addressed nonresidential urban land uses through criteria designed to account for commercial enclaves, special land uses such as airports, and densely developed noncontiguous territory. The Phase 2 program applies within the urbanized area. A municipality may decide to implement their program in the entire community, or just in the urbanized area. EPA chose to regulate municipalities within the urbanized areas because urban runoff is a major source of water quality impacts

B. Use of the General Permit Option

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit, unless such a discharge is otherwise authorized by the Act. Title 38 M.R.S.A. Section 413 of Maine's waste discharge law provides that no person may directly or indirectly discharge or cause to be discharged any pollutants without first obtaining a license from the Department. Standards and requirements are specified in statute and rule. Although such permits are generally issued to individual discharges, EPA’s and Maine’s regulations authorize the issuance of "general permits" to categories of discharges (see 40 CFR Section 122.28 and 06-096 CMR 529(2)). The Department may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures.

The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require the same or similar monitoring requirements; and
- In the opinion of the Director, are more appropriately controlled under a general permit than under

individual permits.

This general permit meets the requirements of 06-096 CMR 529, "General Permits for Certain Wastewater Discharges" and 06-096 CMR 521(9), "Storm water discharges".

C. Associated rulemaking

The Department is intending to update its rules to incorporate Phase II requirements, and to make certain related changes. The Department issued the general permit pursuant to 06-096 CMR 521(9)(v).

D. **The General Permit -- Information concerning certain provisions.** The "Parts" referred to below refer to the parts of the general permit.

Part I -- General Coverage Under This Permit

The general permit(s) authorize the direct and indirect discharge of stormwater to municipal separate storm sewer systems (MS4s) and waters of the state other than groundwater.

Limitations on coverage. This general permit does not authorize a stormwater discharge that requires an individual waste discharge permit or is required to obtain coverage under another waste discharge general permit. The Department may require any person with a discharge authorized by this general permit to apply for and obtain an individual permit.[1] When the DEP notifies an applicant than an individual permit is required, no work may be begun or continued unless and until the individual permit is obtained. Any interested person may petition the Department to take action under this paragraph. Examples of when an individual waste discharge permit may be required are specified in rule.[2]

1. **Compliance with this general permit.** This general permit does not authorize a stormwater discharge that is not in compliance with the requirements of this general permit. If the Department determines that the standards of this general permit have not been met, the Department shall notify the person and may:

a. Authorize coverage under this general permit after appropriate controls and implementation procedures designed to bring the discharge into compliance with this general permit and water quality standards have been implemented as determined by the Department;

b. Require an individual waste discharge permit; or

c. Inform the person that the discharge is prohibited; or

d. Take enforcement action to address the violation(s)

Compliance with this subparagraph does not preclude any enforcement activity under Maine law for an underlying violation.

2. **Non-stormwater.** This general permit does not authorize discharges that are mixed with sources of non-stormwater, other than those discharges in compliance with Part IV (H)3(b).

3. **Discharge of hazardous substances, chemicals, or oil.** This general permit does not authorize the discharge of hazardous substances, chemicals, or oil resulting from an on-site spill.

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1 See 06-096 CMR 529(2)(B)(3).
2 06-096 CMR 592(2)(B)(3)(i)(A)-(G)

4. **Violation of water quality standards.** This general permit does not authorize a discharge that may cause or contribute to a violation of a water quality standard.

5. **Other waste discharge permit.** This general permit does not authorize a stormwater discharge associated with construction activity that requires an individual MEPDES permit or waste discharge license (WDL) or is required to obtain coverage under another waste discharge general permit.

6. **Waste discharge license (groundwater).** A WDL may be required for the discharge of stormwater through any well or wells, including drywells and subsurface fluid distribution systems. For complete requirements, see 06-096 CMR 543 (effective October 6, 2006).

II. Definitions

The general permit makes use of existing state definitions when possible. These include "person", "direct discharge".

Federal definitions used in the general permit include "construction activity", "disturbed area" (with additional clarification), stormwater, and NOI.

Disturbed area. The definition of the term *"disturbed area"* is different in the NPDES rules and general permit from the definition used for the same term, for several years, under Maine's Chapter 500 (06-096 CMR 500). The federal definition does not contain the exceptions found in Chapter 500 for areas restored to certain standards within a specified period, and for certain redevelopment. The federal program does make an exception for routine maintenance, and the general permit includes this exception. The general permit defines "routine maintenance" as "maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility". This definition is consistent with the approach to routine maintenance taken by the Department under both the Site Law and the Stormwater Management law.

Construction activity. *"Construction activity"* has the same meaning as defined at 06-096 CMR 521(9)(b)(14)(x) and 40 CFR 122.26(b)(15). Construction activities include:

> A construction activity including one acre or more of disturbed area, or an activity with less than one acre of total land area that is part of a common plan of development or sale, if the common plan of development or sale will ultimately disturb equal to or greater than one acre; or
>
> Any other construction activity designated by the Department based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

Based upon Maine's soils, topography, and extensive water resources, the Department has determined that the great majority of construction activities disturbing one acre or more will result in discernible concentrated flows (direct discharges) to waters of the state. While construction activities may occur on a small minority of sites without causing a direct discharge due to favorable topography, soils and/or weather conditions (lack of rainfall), the Department has concluded that an accurate assessment of these factors in advance of a project's initiation is usually not feasible considering cost for the applicant or the Department. Unless a project is of extremely short duration (no more than a few days), the avoidance of a rain event producing runoff is a matter of chance. For this reason, the Department has determined that a construction activity that creates one or more acres of disturbed area will potentially result in a discharge

to Maine waters unless the site is internally drained or will otherwise clearly not contribute runoff off-site. Such site conditions are very rare in Maine.

Because ground is not a perfectly level surface, sheet flow eventually channelizes. Sheet flow length, which means the distance sheet flow will travel before channelizing, varies based upon the individual site. However, in general, the USDA's Technical Release - 55 (TR55) "Urban Hydrology for Small Watersheds", which models stormwater flows, accepts a maximum length of sheet flow of 300 feet before shallow concentrated flow begins. This means that sheet flow is expected to channelize at or before 300 feet on all sites. Natural Resource Conservation Service Staff and Soil and Water Conservation District Staff have advised that, in practice, sheet flow will channelize on most sites at around 150 feet. If the erodability of the soils, degree of slope, concentration of flow, and other variables are considered, rill and gully erosion can occur much sooner than 150 feet. Rill and gully erosion occurs as the velocity of water increases and runoff begins to concentrate in shallow flows. This change in velocity results in additional removal of soil particles from the soil surface.

Notice of Intent "NOI". "Notice of Intent" or "NOI" means a notification of intent to seek coverage under this general permit, made by the applicant to the Department on a form provided by the Department.

Regulated Small MS4**.** "Regulated Small MS4" means any Small MS4 authorized by this general permit including all those located partially or entirely within an Urbanized Area and those additional Small MS4s located outside an Urbanized Area which, as of the issuance of this general permit, have been designated by the Department as Regulated Small MS4s. A list of these MS4s is included in Appendix A of the general permit.

Small MS4. "Small MS4" means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or Federally-owned systems, such as colleges, universities, prisons, MaineDOT and MTA road systems and facilities, and military bases and facilities located within an Urbanized Area.

Urbanized Area. "Urbanized Area" or "UA" means the areas of the State of Maine so defined by the inclusive sum of the 2000 decennial census and the latest decennial census (2010) by the U.S. Bureau of Census.

III. Procedure

This part of the general permit specifies NOI requirements, including associated submissions. Authorization under the general permit requires prior submittal of certain information. It outlines some available resources that may be used in the development of BMPs and measurable goals. It also stipulates signature requirements which certify that all requirements for authorization under the general permit will continue to be met for all discharges authorized by the general permit. This section informs the registrant where to file a registration form. Upon receipt of all required information, the Commissioner may allow or disallow coverage under the general permit. A stormwater discharge may not begin until the discharge is covered (authorized). The Department considers the submissions specified in the general permit to be the information minimally necessary to allow the Department to determine, as a factual matter, whether a discharge from a specific MS4 in Maine may appropriately be authorized under the general permit.

IV. Requirements

This part of the general permit specifies requirements for authorization in accordance with the following conditions:

1. **Stormwater program management plan** The Permittee must develop, implement, and enforce a Stormwater Program Management Plan (the Plan) designed to reduce the discharge of pollutants from the Small MS4 to the maximum extent practicable to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The Plan shall be completed and all Minimum Control Measures fully implemented by June 30, 2018.

2. **Annual fee.** An annual fee must be submitted each year, starting July 20, 2013. Fees must be paid by check or money order payable to **Treasurer, State of Maine.** The annual fee will cover permit review and processing.

3. **Development of stormwater program management plan.** The Plan must address the six Minimum Control Measures as indicated in this section. The Plan must, at a minimum, include the measures indicated as required within the Urbanized Area of the municipality. The Permittee may also include in the Plan those measures indicated as suggested and any other measures the Permittee deems appropriate. Some municipalities may choose to implement required measures or portions thereof throughout the entire municipality.

4. **Minimum control measures.** For each Minimum Control Measure, the Permittee must: define appropriate BMPs; designate a person(s) responsible for each BMP; define a time line for implementation of each BMP; and define measurable goals for each BMP. The Minimum Control Measures to be included in the Plan are as follows.
   - **Public education and outreach on stormwater impacts**
   - **Public involvement and participation**
   - **Illicit discharge detection and elimination**
   - **Construction site stormwater runoff control**
   - **Post-construction stormwater management in new development and redevelopment**
   - **Pollution prevention/good housekeeping for municipal operations**

V. Standard conditions

This part lists a short set of standard conditions, and references other standard conditions applicable under existing rules. The first standard condition listed prohibits discharges to certain classifications and sizes of waterbodies, repeating text currently in rule. The Department is proposing certain statutory and regulatory changes that would affect this section.

E. Appealing a Department Licensing Decision

Any person may appeal a licensing decision made by the Department as outlined in the information sheet included in this document.

DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012 Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status*. The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.

2. *The findings, conclusions or conditions objected to or believed to be in error*. Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.

3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.

4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested*. The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION
If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.
Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

The public was invited to submit written comments on the draft General Permits. The 45 day comment period closed at 5:00 p.m. on May 24, 2013. The general permits will be effective on the date specified in the final general permits issued by the Department. The MS4 General Permits will expire June 30, 2018.

PUBLIC MEETING INFORMATION: The Department held multiple regional public meetings to provide information about the Municipal MS4 General Permit and its requirements during the past 10 months. The public meetings included presentations on the various draft editions as well as permit language discussions. Written, and verbal, comments were accepted at the public meetings.

F. Response to Comments

The Department held a 45 day public comment period on the 2013 DRAFT MS4 General Permits. The following represents comments received, and the Department's official response to Comments. The Department received comments from the U.S. Environmental Protection Agency ("EPA"), Maine Department of Transportation ("MaineDOT") and joint comments from Maine Turnpike Authority ("MTA") and MaineDOT.

EPA's Comments:
Comment #1: The draft permit does not have a fact sheet as required by 40 CFR §124.8(a) which states: "A fact sheet shall be prepared for every draft permit for a major HWM, UIC, 404 or NPDES facility or activity, for every Class I sludge management facility, for every 404 and NPDES general permit…" Inclusion of a fact sheet facilitates the understanding of the requirements of the draft permit and documents the regulatory basis of its conditions. Many of EPA's comments which seek clarification on a particular permit conditions could have been addressed with a comprehensive fact sheet. Please refer to 40 CFR §124.8(b) for the required contents of a fact sheet. Specifically, 40 CFR §124.8(b)(4) requires "a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record…" Many of the comments raised could have been addressed with the inclusion of a fact sheet.

Response #1: The fact sheet was not attached to the permit, but there was one describing the changes from the 2008 MS4 General Permit to the 2013 draft MS4 General Permit.

Comment #2: Part I.A – "Unless otherwise explicitly noted, this permit only covers operations or activities associated with stormwater runoff from the regulated small MS4 within an urbanized area." As written, it appears that it is DEP's intent that this permit will not be used for MS4s designated under authorities of 40 CFR §§ 122.26(a)(9)(i)(C) or (a)(9)(i)(D). Is this interpretation correct? Does DEP anticipate a separate permit for any designation under either criteria?

Response #2: 40 CFR 122.26 (a)(9)(i)(C) states: The Director or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or 40 CFR 122.26 (a)(9)(i)(D) The Director or in

States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the United States. It is not the intent of this permit to limit the effectiveness of an EPA approved TMDL wasteload allocation, or allow the discharge of pollutants that contribute to a violation of water quality standard or is a significant contributor of pollutants to waters of the State. Part 1(B) of Maine's MS4 General Permit states, "Nothing in this General Permit is intended to limit the Department's authority under the waste discharge and water classification statutes and rules."

Comment #3: Part I.D.4 – EPA has significant concerns with this provision and its implied interpretation. The first sentence is not clearly written. Its actual intent should be clearly articulated rather that left to a reader's interpretation. EPA interprets this language as allowing a discharge to be inconsistent with the wasteload allocation (WLA) of an approved total maximum daily load (TMDL) if the TMDL does not provide "adequate information to develop specific measures to protect water quality, and any implementation for the waterbody to which the direct discharge drains." EPA's review of previous drafts requested clarification on this provision. The explanation DEP provided was that this provision is based on 40 CFR §122.34(e)(2). EPA believes that the provision in 40 CFR §122.34(e)(2) has been taken out of context and misinterpreted. The language referenced as the basis for this condition is clearly labeled as "Guidance." The language at 40 CFR §122.30(a) provides a clear explanation of the "guidance" included within the stormwater regulatory language…" EPA has clearly distinguished its recommended guidance from the rule requirements by putting the guidance in a separate paragraph headed by the word 'guidance'". DEP may rely on the guidance provided, but the guidance itself is not intended to be inserted as permit language.

Response #3: The permit language has been changed to "This General Permit does not authorize a direct discharge that is inconsistent with any EPA approved TMDL waste load allocation, except where the TMDL does not provide adequate information to develop specific measures to protect water quality, and any implementation plan for the waterbody to which the direct discharge drains."

Comment #4: Part IV.A.1.b – This section states that additional stormwater treatment controls are necessary for Urban Impaired Stream watersheds. The draft permit requires the permittee to implement structural and non-structural measures "…necessary to control, to the maximum extent practicable, the discharge of stormwater…" The maximum extent practicable standard is not appropriate for water quality impaired segments. In the preamble to the Phase II rule EPA states: "Absent evidence to the contrary, EPA presumes that a small MS4 program that implements the six minimum control measures in today's rule does not require more stringent limitations to meet water quality standards… however, small MS4 permittees should modify their programs if and when available information indicates that water quality considerations warrant greater attention or prescriptiveness in specific components of the municipal program…" (64 FR 68753). Identification of a water as an "urban impaired stream" clearly indicates that the stream is not meeting applicable water quality standards. The presumption envisioned in the preamble fails because evidence indicates that water quality standards are not met and therefore, stormwater controls greater than "maximum extent practicable" are needed in these urban impaired streams. The phrase "maximum extent practicable" should be removed.

Response #4: DEP agrees that regulated entities with urban impaired streams need to do more than the six minimum control measures in those watersheds, which is why section 1.b. is included in the permit. However, regulated entities can and will do more than the six minimum control measures for urban impaired streams, but they will do so to the "maximum extent practicable," which DEP feels is important to maintain in the permit language for this section.

EPA Comment #5: "However, without the assistance of a fact sheet explaining the basis of some of the requirements, understanding the elements of the required plans and how they all work together and when they must be completed is not straight forward. For example, the Awareness Plan must be developed by

February 1,2014; submitted to DEP by December 1, 2013 ; and considered approved by February 1, 20 14. It is unclear why a plan that must be developed by February 1, 2014 has to be submitted in December of the previous year. Other dates within this section also require development of a plan after the required submission date. Consider language such as: *No Later than ..."*

Response #5: The language from MCM 1 is nearly identical to the permit language in the previous 5 year permit (see below) thus the existing regulated MS4s are familiar with the language and its intent. They have experience developing and implementing awareness plans. In addition, DEP has a long standing relationship of working closely with the regulated communities providing technical assistance in developing and meeting MCM 1 & 2.
To clarify DEP will add "draft" when referring to plans with the first submittal date. For example "By December 1, 2013, the permittee shall submit a draft Awareness Plan."
Comparison of MS4 General Permit 2008 with draft 2013 language MCM 1 i:

i. Raise Awareness (Goal 1): Beginning July 1, 2013, the permittee shall continue their outreach efforts from the previous MS4 permit cycle while developing or revising an existing Awareness Plan.

1. Develop or Revise a Plan to Raise Awareness: By February 1, 2014, each permittee or stormwater group of which the permittee is a member shall have a new Awareness Plan or revise an existing Plan to raise awareness of stormwater issues for a target audience outside of municipal government. The Plan's goal must be to raise awareness of polluted stormwater runoff issues such as the path stormwater runoff takes, sources of stormwater pollution, and the impact that polluted stormwater runoff has in the community or communities.

2. By December 1, 2013, the permittee shall submit the Awareness Plan to the Department for review and approval. The Plan is considered approved as of February 1, 2014, unless the permittee receives written or verbal communication from the Department indicating non-approval. The permittee shall begin implementation of the Awareness Plan within one week of its approval.

The Awareness Plan must identify:

a) The target audience
b) The outreach tool(s) to be used
c) The message
d) The distribution system
e) The time line and implementation schedule
f) The person(s) responsible for implementation

EPA Comment #6: "Are there any minimum criteria associated with the components of the Awareness Plan? It appears from the draft permit language that all elements are decided upon by the permittee, and approved by the Department. Is this a correct interpretation?"

Response #6: EPA's interpretation is incorrect. The permit requires that each plan contain specific elements. For the Stormwater Awareness Plan (i) and the Permit Awareness Plan (ii) there are 9 elements (see above for an example). For the Targeted BMP Adoption Plan(iii) there are 10 and for the Enhanced effort in MCM 1(iv) there are 8 elements. Since sound social marketing principals dictate that each plan be tailored to a target audience and outcome, each plan will identify the actions to be taken to increase awareness or BMP use and how they will measure the impact of their efforts.

EPA Comment #7: "Paragraph a .ii. 1 references "a Plan to Raise Awareness" while paragraph a.ii.2. references a "Municipal Awareness Plan"? One can assume these are the same, but because of the

different names they may not be. The Department should use consistent terms or explain the difference in a fact sheet."

Response #7: The target audiences and the outcome for 'i' and 'ii' are different, thus different plans. To clarify, the target audience for 'i' is a subset of the general public with a goal that involves a general understanding of stormwater. While 'ii' is directed at staff, contractors and elected officials of the permit holder with a goal that involves not only understanding general stormwater issues but also knowledge that the municipality has a permit with compliance requirements. To clarify any potential confusion the plan referred to in element 'i' will be called Stormwater Awareness Plan and for 'ii' Permit Awareness Plan.

EPA Comment #8: "Paragraph a.iv.3. also contains what seems to be confusing dates. The draft permit requires a draft plan by July 1, 2014 which details how the permittee will meet the requirements in paragraph a.iv. 1 or 2 with the elements found in paragraph a.iv.3 (a-h) by November 1, 2014. It is unclear what, if any, actual requirements in paragraphs(ah) have to be met in November because the permit indicates that implementation of the plan doesn't begin January 5,201 5 . As mentioned previously, these types of clarifications should be addressed in a fact sheet."

Response #8: The text and format are similar to the MS4 General Permit issued in 2008. The process will be identical to that used for the 2008 permit. The permittee will submit a draft for DEP review by July 1, 2012, DEP will provide feedback and a final plan will be submitted to DEP by November 1, 2014. The permittee will start implementing the plan no later than January 5, 2015.

Comment #9: "The draft permit contains both 'required strategies' and 'suggested strategies'. Is it appropriate to assume that the suggested or recommended strategies are optional for all permittees?"

Response #9: The format is a repeat from the 2003 and 2008 permits. Required strategies as the term implies are required of all permittees. Suggested strategies are optional for all permittees and are included to provide permittees suggested areas to direct efforts if funding is available or if they wish to enhance their effort.

Comment #10: "DEP should not use "verbal" communication as a method of communication regarding "non-approval" of a plan. The opportunity for miscommunication is increased without clearly written documentation. EPA recommends written communication for records of approval (or non-approval) of plans. This comment applies to all sections of the permit that provide for verbal communication.

Response #10: The reference to 'verbal' communication is once again a holdover from the 2008 MS4 General Permit. We concur that approval or non-approval should be in writing for MCM 1.

Comment #11: Part IV.H.3 – Illicit discharge detection and elimination Paragraph 3.a.iii appears to require new permittees (those not covered by the 2008 general permit) to do dry weather outfall inspections in **a** (e.g. one) watershed or subwatershed that the permittee identifies as a priority. Is a new permittee required to focus only on the one watershed or subwatershed during the permit term? Are outfalls with the MS4 not located in the identified priority watershed required to be inspected in dry weather? When do these inspections occur? This would appear to miss many opportunities to identify and remove illicit discharges during the permit term.

For permittees covered by the 2008 general, dry weather inspections are to occur in two highest priority sub-watersheds approved by DEP. Why is there no approval for the identified watersheds for the new permittees? Does "subsequent permit years" refer to this permit term of 2013 – 2017? Or some other term?

Response #11: New permittees have one year to develop a prioritized dry weather outfall inspection plan and four years in which to implement it. We encourage the permittee to concentrate dry weather inspections in one area until there is a level of confidence that there are no illicit connections in the

permittee's highest priority watershed. This does not prevent the municipality from conducting opportunistic inspections for illicit or illegal discharges during infrastructure mapping or maintenance such as cleaning ditches and catch basins. All outfalls will need to be located and inspected within the permit cycle as part of the comprehensive mapping requirement. Non-opportunistic dry weather inspections may be conducted virtually year round provided inspections are not conducted within 72 hours of a rain that generated at least 1/10 inch of rain, or within 72 hours of ice or snow melt that produced a measurable discharge from the outfall. Approval of the priority watersheds for the new permittees will be negotiated prior to the submission of the municipality's stormwater program management plan.

The Draft General Permit states: "Permittees not subject to the 2008 MS4 General Permit shall conduct a dry weather inspection of MS4 outfalls that discharge to the two highest priority sub-watersheds, as approved by the Department. In subsequent permit years, dry weather inspections must be expanded to other sub-watersheds within the permittee's two highest priority watersheds as approved by the Department. The municipality must have a defined procedure/policy or protocol in place that details the steps that must be taken when an illicit discharge is identified during these inspections to locate the source of the illicit discharge and eliminate it. Permittees subject to the 2008 MS4 General Permit shall revise their outfall inspection plan and continue conducting dry weather inspections in different watersheds or sub-watersheds as approved by the Department and evaluate discharges for illicit connections."
Subsequent permit years may be within the same five year permit cycle, or if a requirement was initiated in permit year ("PY") four or five, the subsequent PY may be in the next five year permit cycle.

Comment #12: Paragraph 3.b.v. – The draft permit requires drive by evaluation and documentation of septic systems. What is the evaluation that is performed? What type of documentation is made? Consider requirements to coordinate with the local department which oversees septic systems. This may provide more useful information. What is the basis for a Department determination that a "drive by evaluation" will result in information which will allow a permittee to implement appropriate control measures?

Response #12: The permittee shall first make a determination that if the septic system fails, is there potential for the failed system to discharge into the MS4. The drive-by inspection would look for visible break-outs, or changes in vegetation color leading to the MS4. This would be documented by notes and photographs. These discharges could be addressed through the municipality's non-stormwater discharge ordinance or through other measures. Septic system inspections have been most successful documenting vegetative changes early in the growing season or late in the growing season (July-August) when the lawn is brown and there is a green strip of grass running down the slope to the ditch.

Comment #13: Paragraph 3.c – Non-stormwater discharges – How will the Department make a determination that a non-stormwater discharge contributes to a violation of water quality standards? The draft permit also allows for the permittee to address only those non-stormwater sources that the permittee determines are a significant contributor of pollutants. How will the Department address a situation where the permittee determines a discharge is not a significant contributor of pollutants. How will the Department address a situation where the permittee determines a discharge is not a significant contributor of pollutants to its MS4, but the Department determines that the discharge contributes to a violation of water quality standards? Are non-stormwater discharges determined to contribute to a violation of a water quality standard prohibited? This should be clearly stated if that is the case.

Response #13: The Department has been working on hydrant and water line flushing and will incorporate requirements of working with water utilities for this activity into the permittee's stormwater program management plan. We also have a DEP guidance document for dechlorinated swimming pool discharges. We require the permittee to notify the Department prior to the discharge of swimming pools. If the Department determines that a non-stormwater discharge contributes to a violation of water quality standards, the Department will have the discharger cease the activity/discharge. If the Department is

made aware after-the-fact of such a discharge and there is proof of environmental damage the Department will use its enforcement discretion to ensure such a discharge will not happen again.

Comment #14: Part IV.H.4 – Construction site stormwater runoff control – According to the regulations, it is acceptable for the permittee to rely on another entity or program for meeting the requirements of the permit. The Department must document that the referenced program meets the requirements of 40 CFR §122.34(b)(4). This documentation should be included in the required fact sheet. During Maine's Permit Quality Review lack of documentation was noted as a deficiency and identified as an "Action Item." This Action Item appears on the Department's Priorities and Commitment List for FY2013. Item 90 on this list states "Implement Action Item: When developing new MS4 permits, document state's ability to fulfill all requirements specified in federal MS4 regulatory requirements under either MCGP or Chapter 500, Stormwater Management, or directly in the MS4 permit.

Response #14: The State has relied on its construction general permit and Chapter 500, Stormwater Management Rules for the past two MS4 permit cycles to reduce pollutants in any stormwater runoff from construction activities that result in land disturbance of greater than or equal to one acre. From Chapter 500: **Stormwater standards.** This section describes the stormwater standards that apply to a project disturbing one acre or more, or to a modification of any size as described in Section 16 of this chapter. There are six categories of stormwater standards: basic, general, phosphorus, flooding, urban impaired stream, and other. More than one standard may apply to a project. In this situation, the stricter standard is applied as determined by the department. For example, a project may be located in a stream watershed, and the stream may drain to a lake. The standards for the particular stream and lake are compared, and the stricter standard is applied as determined by the department.

APPENDIX A. Erosion and sedimentation control

This appendix applies to all projects.

A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in 38 M.R.S.A. §480-B. Sediment control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken.

NOTE: The site must be maintained to prevent unreasonable erosion and sedimentation. See 38 M.R.S.A §420-C (in part). Other or additional standards than those provided in Appendix A may apply, under the Natural Resources Protection Act, to a project located in or adjacent to a protected natural resource.

NOTE: For guidance on erosion and sedimentation controls, consult "Maine Erosion and Sediment Control BMPs", Maine Department of Environmental Protection.

1. **Pollution prevention.** Minimize disturbed areas and protect natural down gradient buffer areas to the extent practicable.

   The discharge may not result in erosion of any open drainage channels, swales, upland, or coastal or freshwater wetlands.

   NOTE: Buffers improve water quality by helping to filter pollutants in run-off both during and after construction. Minimizing disturbed areas through phasing limits the amount of exposed soil on the site through retention of natural cover and by retiring areas as permanently stabilized. Less exposed soil results in fewer erosion controls to install and maintain. If work within an area is not anticipated to begin within two weeks time, consider leaving the area in its naturally existing cover.

2. **Sediment barriers.** Prior to construction, properly install sediment barriers at the edge of any down gradient disturbed area and adjacent to any drainage channels within the disturbed area. Maintain the sediment barriers until the disturbed area is permanently stabilized.

3. **Temporary stabilization.** Stabilize with mulch or other non-erodable cover any exposed soils that will not be worked for more than 7 days. Stabilize areas within 75 feet of a wetland or waterbody within 48 hours of the initial disturbance of the soil or prior to any storm event, whichever comes first.

4. **Removal of temporary sediment control measures.** Remove any temporary sediment control measures, such as silt fence, within 30 days after permanent stabilization is attained. Remove any accumulated sediments and stabilize.

NOTE: It is recommended that silt fence be removed by cutting the fence materials at ground level to avoid additional soil disturbance.

5. **Permanent stabilization.** If the area will not be worked for more than one year or has been brought to final grade, then permanently stabilize the area within 7 days by planting vegetation, seeding, sod, or through the use of permanent mulch, or riprap, or road sub-base. If using vegetation for stabilization, select the proper vegetation for the light, soil and moisture conditions; amend areas of disturbed subsoils with topsoil, compost, or fertilizers; protect seeded areas with mulch or, if necessary, erosion control blankets; and schedule sodding, planting, and seeding to avoid die-off from summer drought and fall frosts. Newly seeded or sodded areas must be protected from vehicle traffic, excessive pedestrian traffic, and concentrated runoff until the vegetation is well-established. If necessary, areas must be seeded and mulched again if germination is sparse, plant coverage is spotty, or topsoil erosion is evident. One or more of the following may apply to a particular site.
   (a) Seeded areas. For seeded areas, permanent stabilization means a 90% cover of healthy plants with no evidence of washing or rilling of the topsoil.
   (b) Sodded areas. For sodded areas, permanent stabilization means the complete binding of the sod roots into the underlying soil with no slumping of the sod or die-off.
   (c) Permanent Mulch. For mulched areas, permanent mulching means total coverage of the exposed area with an approved mulch material. Erosion control mix may be used as mulch for permanent stabilization according to the approved application rates and limitations.
   (d) Riprap. For areas stabilized with riprap, permanent stabilization means that slopes stabilized with riprap have an appropriate backing of a well-graded gravel or approved geotextile to prevent soil movement from behind the riprap. Stone must be sized appropriately. It is recommended that angular stone be used.
   (e) Agricultural use. For construction projects on land used for agricultural purposes (e.g., pipelines across crop land), permanent stabilization may be accomplished by returning the disturbed land to agricultural use.
   (f) Paved areas. For paved areas, permanent stabilization means the placement of the compacted gravel subbase is completed.
   (g) Ditches, channels, and swales. For open channels, permanent stabilization means the channel is stabilized with a 90% cover of healthy vegetation, with a well-graded riprap lining, or with another non-erosive lining such as concrete or asphalt pavement. There must be no evidence of slumping of the channel lining, undercutting of the channel banks, or down-cutting of the channel.

6. **Winter construction.** "Winter construction" is construction activity performed during the period from November 1 through April 15. If disturbed areas are not stabilized with permanent measures by November 1 or new soil disturbance occurs after November 1, but before April 15, then these areas must be protected and runoff from them must be controlled by additional measures and restrictions.

NOTE: For guidance on winter construction standards, see the "Maine Erosion and Sediment Control BMPs", Maine Department of Environmental Protection.

7. **Stormwater channels.** Ditches, swales, and other open stormwater channels must be designed, constructed, and stabilized using measures that achieve long-term erosion control. Ditches, swales,

and other open stormwater channels must be designed to handle, at a minimum, the expected volume of run-off. Each channel should be constructed in sections so that the section's grading, shaping, and installation of the permanent lining can be completed the same day. If a channel's final grading or lining installation must be delayed, then diversion berms must be used to divert stormwater away from the channel, properly-spaced check dams must be installed in the channel to slow the water velocity, and a temporary lining installed along the channel to prevent scouring. Permanent stabilization of channels is addressed under Appendix A(5)(g) above.

8. **Roads.** Gravel and paved roads must be designed and constructed with crowns or other measures, such as water bars, to ensure that stormwater is delivered immediately to adjacent stable ditches, vegetated buffer areas, catch basin inlets, or street gutters.

9. **Culverts.** Culverts must be sized to avoid unintended flooding of upstream areas or frequent overtopping of roadways. Culvert inlets must be protected with appropriate materials for the expected entrance velocity, and protection must extend at least as high as the expected maximum elevation of storage behind the culvert. Culvert outlet design must incorporate measures, such as aprons or plunge pools, to prevent scour of the stream channel. The design must take account of tailwater depth.

10. **Parking areas**. Parking areas must be constructed to ensure runoff is delivered to adjacent swales, catch basins, curb gutters, or buffer areas without eroding areas downslope. The parking area's subbase compaction and grading must be done to ensure runoff is evenly distributed to adjacent buffers or side slopes. Catch basins must be located and set to provide enough storage depth at the inlet to allow inflow of peak runoff rates without by-pass of runoff to other areas.
11. **Additional requirements.** Additional requirements may be applied on a site-specific basis.

APPENDIX B. Inspection and maintenance

This appendix applies to all projects. A project that is only required to meet basic standards (stormwater PBR) must meet the standards in Section 1. All other projects must meet standards in Sections 1 through 5.

See Appendix D(5) for additional maintenance requirements related to infiltration of stormwater.

1. **During construction.** The following standards must be met during construction.

(a) Inspection and corrective action. Inspect disturbed and impervious areas, erosion control measures, materials storage areas that are exposed to precipitation, and locations where vehicles enter or exit the site. Inspect these areas at least once a week as well as before and after a storm event, and prior to completing permanent stabilization measures. A person with knowledge of erosion and stormwater control, including the standards and conditions in the permit, shall conduct the inspections.

(b) Maintenance. Maintain all measures in effective operating condition until areas are permanently stabilized. If best management practices (BMPs) need to be maintained or modified, additional BMPs are necessary, or other corrective action is needed, implementation must be completed within 7 calendar days and prior to any storm event (rainfall).

(c) Documentation. Keep a log (report) summarizing the inspections and any corrective action taken. The log must include the name(s) and qualifications of the person making the inspections, the date(s) of the inspections, and major observations about the operation and maintenance of erosion and sedimentation controls, materials storage areas, and vehicles access points to the parcel. Major observations must include BMPs that need maintenance, BMPs that failed to operate as designed or proved inadequate for a particular location, and location(s) where additional BMPs

are needed. For each BMP requiring maintenance, BMP needing replacement, and location needing additional BMPs, note in the log the corrective action taken and when it was taken.
The log must be made accessible to department staff and a copy must be provided upon request. The permittee shall retain a copy of the log for a period of at least three years from the completion of permanent stabilization.

1. Post-construction. The following standards must be met after construction.

(a) Plan. Carry out an approved inspection and maintenance plan that is consistent with the minimum requirements of this section. The plan must address inspection and maintenance of the project's permanent erosion control measures and stormwater management system. This plan may be combined with the plan listed in Section 2(a) of this appendix. See Section 8(C)(2) for submission requirements.

(b) Inspection and corrective action. All measures must be maintained in effective operating condition. A person with knowledge of erosion and stormwater control, including the standards and conditions in the permit, shall conduct the inspections. The following areas, facilities, and measures must be inspected and identified deficiencies must be corrected. Areas, facilities, and measures other than those listed below may also require inspection on a specific site. Inspection or maintenance tasks other than those discussed below must be included in the maintenance plan developed for a specific site.

NOTE: Expanded and more-detailed descriptions for specific maintenance tasks may be found in the Maine DEP's "Stormwater Management for Maine: Best Management Practices."

(i) Inspect vegetated areas, particularly slopes and embankments, early in the growing season or after heavy rains to identify active or potential erosion problems. Replant bare areas or areas with sparse growth. Where rill erosion is evident, armor the area with an appropriate lining or divert the erosive flows to on-site areas able to withstand the concentrated flows. See permanent stabilization standards in Appendix A(5).

(ii) Inspect ditches, swales and other open stormwater channels in the spring, in late fall, and after heavy rains to remove any obstructions to flow, remove accumulated sediments and debris, to control vegetated growth that could obstruct flow, and to repair any erosion of the ditch lining. Vegetated ditches must be mowed at least annually or otherwise maintained to control the growth of woody vegetation and maintain flow capacity. Any woody vegetation growing through riprap linings must also be removed. Repair any slumping side slopes as soon as practicable. If the ditch has a riprap lining, replace riprap on areas where any underlying filter fabric or underdrain gravel is showing through the stone or where stones have dislodged. The channel must receive adequate routine maintenance to maintain capacity and prevent or correct any erosion of the channel's bottom or sideslopes.

(iii) Inspect culverts in the spring, in late fall, and after heavy rains to remove any obstructions to flow; remove accumulated sediments and debris at the inlet, at the outlet, and within the conduit; and to repair any erosion damage at the culvert's inlet and outlet.

(iv) Inspect and, if required, clean-out catch basins at least once a year, preferably in early spring. Clean-out must include the removal and legal disposal of any accumulated sediments and debris at the bottom of the basin, at inlet any grates, at any inflow channels to the basin, and at any pipes between basins. If the basin outlet is designed to trap floatable materials, then remove the floating debris and any floating oils (using oil-absorptive pads).

(v) Inspect resource and treatment buffers at least once a year for evidence of erosion, concentrating flow, and encroachment by development. If flows are concentrating within a buffer, site grading, level spreaders, or ditch turn-outs must be used to ensure a more even distribution of flow into a buffer. Check down slope of all spreaders and turn-outs for erosion. If erosion is present, adjust or modify the spreader's or turnout's lip to ensure a better distribution of flow into a buffer. Clean-out any accumulation of sediment within the spreader bays or turn-out pools.

(c) Regular maintenance

(i) Clear accumulations of winter sand in parking lots and along roadways at least once a year, preferably in the spring. Accumulations on pavement may be removed by pavement sweeping. Accumulations of sand along road shoulders may be removed by grading excess sand to the pavement edge and removing it manually or by a front-end loader. Grading of gravel roads, or grading of the gravel shoulders of gravel or paved roads, must be routinely performed to ensure that stormwater drains immediately off the road surface to adjacent buffer areas or stable ditches, and is not impeded by accumulations of graded material on the road shoulder or by excavation of false ditches in the shoulder. If water bars or open-top culverts are used to divert runoff from road surfaces, clean-out any sediments within or at the outlet of these structures to restore their function.

(ii) Manage each buffer's vegetation consistently with the requirements in any deed restrictions for the buffer. Wooded buffers must remain fully wooded and have no disturbance to the duff layer. Vegetation in non-wooded buffers may not be cut more than three times per year, and may not be cut shorter than six inches.

NOTE: Contact the department's Division of Watershed Management (Maine DEP) for assistance developing inspection and maintenance requirements for other drainage control and runoff treatment measures installed on the site. The maintenance needs for most measures may be found in the Maine DEP's "Stormwater Management for Maine: Best Management Practices."

(d) Documentation. Keep a log (report) summarizing inspections, maintenance, and any corrective actions taken. The log must include the date on which each inspection or maintenance task was performed, a description of the inspection findings or maintenance completed, and the name of the inspector or maintenance personnel performing the task. If a maintenance task requires the clean-out of any sediments or debris, indicate where the sediment and debris was disposed after removal.

The log must be made accessible to department staff and a copy provided to the department upon request. The permittee shall retain a copy of the log for a period of at least three years from the completion of permanent stabilization.

3. **Maintenance contract.** Contract with a third-party or other qualified professional, as approved by the department, for the removal of accumulated sediments, oils, and debris within any proprietary devices and the replacement of any absorptive filters. The frequency of sediment clean-out and filter replacements must be consistent with the unit's storage capacity and the estimated pollutant load from the contributing drainage area. This clean-out frequency is usually established by the manufacturer of the proprietary system when sizing the device for the project.

4. **Re-certification.** Submit a certification of the following to the department within three months of the expiration of each five-year interval from the date of issuance of the permit.

(a) Identification and repair of erosion problems. All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.

(b) Inspection and repair of stormwater control system. All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the system, or portions of the system.

(c) Maintenance. The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained.

Municipalities with separate storm sewer systems regulated under the Maine Pollutant Discharge Elimination System (MPDES) Program may report on all regulated systems under their control as part of their required annual reporting in lieu of separate certification of each system. Municipalities not regulated by MPDES, but that are responsible for maintenance of permitted stormwater systems, may report on multiple stormwater systems in one report.

5. **Duration of maintenance.** Perform maintenance as described and required in the permit unless and until the system is formally accepted by the municipality or quasi-municipal district, or is placed under the jurisdiction of a legally created association that will be responsible for the maintenance of the system. If a municipality or quasi-municipal district chooses to accept a stormwater management system, or a component of a stormwater system, it must provide a letter to the department stating that it assumes responsibility for the system. The letter must specify the components of the system for which the municipality or district will assume responsibility, and that the municipality or district agrees to maintain those components of the system in compliance with department standards. Upon such assumption of responsibility, and approval by the department, the municipality, quasi-municipal district, or association becomes a co-permittee for this purpose only and must comply with all terms and conditions of the permit.
6. **Additional requirements.** Additional requirements may be applied on a site-specific basis.

APPENDIX C. Housekeeping These performance standards apply to all projects.

1. **Spill prevention.** Controls must be used to prevent pollutants from being discharged from materials on site, including storage practices to minimize exposure of the materials to stormwater, and appropriate spill prevention, containment, and response planning and implementation.

2. **Groundwater protection.** During construction, liquid petroleum products and other hazardous materials with the potential to contaminate groundwater may not be stored or handled in areas of the site draining to an infiltration area. An "infiltration area" is any area of the site that by design or as a result of soils, topography and other relevant factors accumulates runoff that infiltrates into the soil. Dikes, berms, sumps, and other forms of secondary containment that prevent discharge to groundwater may be used to isolate portions of the site for the purposes of storage and handling of these materials.
   See Appendix D for license by rule standards for infiltration.

   NOTE: Lack of appropriate pollutant removal best management practices (BMPs) may result in violations of the groundwater quality standard established by 38 M.R.S.A. §465-C(1).

3. **Fugitive sediment and dust.** Actions must be taken to ensure that activities do not result in noticeable erosion of soils or fugitive dust emissions during or after construction. Oil may not be used for dust control.

   NOTE: An example of the use of BMPs to control fugitive sediment and dust is as follows. Operations during wet months that experience tracking of mud off the site onto public roads should provide for sweeping of road areas at least once a week and prior to significant storm events. Where chronic mud tracking occurs, a stabilized construction entrance should be provided. Operations during dry months, that experience fugitive dust problems, should wet down the access roads once a week or more frequently as needed.

   NOTE: Dewatering a stream without a permit from the department violates state water quality standards and the Natural Resources Protection Act.

4. **Debris and other materials.** Litter, construction debris, and chemicals exposed to stormwater must be prevented from becoming a pollutant source.

   NOTE: To prevent these materials from becoming a source of pollutants, construction and post-construction activities related to a project may be required to comply with applicable provision of rules related to solid, universal, and hazardous waste, including, but not limited to, the Maine solid waste and hazardous waste management rules; Maine hazardous waste management rules; Maine oil conveyance and storage rules; and Maine pesticide requirements.

5. **Trench or foundation de-watering.** Trench de-watering is the removal of water from trenches, foundations, coffer dams, ponds, and other areas within the construction area that retain water after excavation. In most cases the collected water is heavily silted and hinders correct and safe construction practices. The collected water must be removed from the ponded area, either through

gravity or pumping, and must be spread through natural wooded buffers or removed to areas that are specifically designed to collect the maximum amount of sediment possible, like a cofferdam sedimentation basin. Avoid allowing the water to flow over disturbed areas of the site. Equivalent measures may be taken if approved by the department.

NOTE: For guidance on de-watering controls, consult the Maine Erosion and Sediment Control BMPs", Maine Department of Environmental Protection."

6. **Non-stormwater discharges.** Identify and prevent contamination by non-stormwater discharges.

7. **Additional requirements.** Additional requirements may be applied on a site-specific basis.

In addition to Chapter 500 or the Maine CGP providing a regulatory framework for construction activity, the MS4 GP stipulates notification to any person conducting a construction activity, documentation of every construction activity, and mandatory inspections of construction activities. This minimum control measure in Maine's MS4 GP meets the intent of 40 CFR 122.34(b)(4).

Comment #15: Part IV.H.5 – Post construction stormwater management in new development and redevelopment – The Department should include practices aimed at management of post construction runoff. For example, require management of a specific sized storm event. Encourage the use of practices that infiltrate, harvest or evapotranspire stormwater. Significant opportunities for proactive stormwater management are lost by focusing on inspections.

Response #15: The Department has considered this comment, but has decided not to modify the permit. The Department believes that BMPs are only as good as their maintenance, and it is a program goal to ensure that BMPs function as intended. Follow-up inspections are essential to ensure that BMPs are functioning as intended.

Comment #16: Part IV.I – Sharing Responsibility. The regulations allow for MS4s to share responsibility with another entity as well as allow for MS4s to use another required program as meeting the requirements of the minimum control measure. The language in Paragraph 1 of this section seems to follow the language of 40 CFR §122.35. However, the language in 40 CFR §122.35 does not use the term "qualifying local program." This section describes what a permittee must do to demonstrate that reliance on another entity does in fact meet the requirements of the minimum control measure.

Response #16: Changed Qualifying local program to Reliance on other entity

Comment #17: The term "qualifying local program" is used in 40 CFR §122.34(c). The regulation states that if an existing program requires the permittee to implement one or more of the minimum control measures, the permitting authority may include conditions in the permit that direct the permittee to follow the qualifying program's requirements. The draft permit does not identify existing programs but rather allows the permittee to reference them. What assurance does the Department have that the local program qualifies as meeting the appropriate requirements of a minimum control? It appears that the Department has modified the meaning of "qualifying local program" from that contained in regulation. The Department should provide an explanation of this change.

Response #17: The Draft permit states "If the permittee is relying on a third party to implement one or more BMP(s), the permittee shall note that fact in the Stormwater Program Management Plan and annual report required in Part IV (J). If the third party fails to implement the BMP(s), the permittee remains responsible for its implementation."

Comment #18: Part IV.K – Impaired waters and total maximum daily load (TMDL) – EPA has significant concerns with this section. This section does not adequately address the requirements of 40 CFR §122.44(d)(1)(vii) which state: "When developing water quality based effluent limits under this paragraph the permitting authority shall ensure quality based effluent limits under this paragraph the permitting authority shall ensure that:…(B)… are consistent with the assumptions and requirements of

any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR §130.7." Both the Statewide bacteria TMDL and the Impervious Cover (IC) TMDLs establish WLAs for stormwater. Permit requirements must include conditions designed to be consistent with the WLA. If the Department has negotiated with the municipalities affected by the TMDLs, as is indicated in the TMDL report sections that explain TMDL implementation responsibilities and regulatory impacts, those negotiated conditions (e.g., what constitutes adequate progress in addressing the impairments) should be included in the permit and the Department should document its assertion that the conditions are consistent with WLA.

Response #18: It is the responsibility of the affected MS4 municipalities to ensure that streams and other surface waters that receive stormwater discharges meet water quality standards. Further, if the receiving water is categorized as impaired, then it is the responsibility of the affected MS4 municipalities to develop or use methods that will lead to improving water quality with the goal for these waters to reach attainment of water quality standards. The methods available to the affected MS4 municipalities include existing approved TMDLs or the development and implementation of a watershed management plan. The permit added the following language *"This general permit does not authorize a direct discharge that is inconsistent with the WLA of any EPA approved TMDL."*

Comment #19: Additionally, the permit does not address discharges to impaired waters without an approved TMDL. The Department should explain how the permit ensures that discharges to impaired waters without an approved TMDLs are addressed such that the discharge is not contributing the pollutant identified as the cause of the impairment.

Response #19: It is the responsibility of the affected MS4 municipalities to ensure that streams that receive stormwater discharges meet water quality standards. Further, if the receiving stream is categorized as impaired, then it is the responsibility of the affected MS4 municipalities to develop methods or use methods that will lead to improving water quality with the goal for these waters to reach attainment of water quality standards.

Comment #20: The permit must be consistent with the state anti-degradation policy. How is this addressed?

Response #20: When a licensing action involves an existing discharge for which no increase is imposed, and where the DEP determines that (1) existing in-stream water uses will be maintained and protected, and (2) the discharge is not to an outstanding national resource, and (3) the standards of the assigned classification will be met in all receiving waters affected by the discharge or that the discharge will not cause or contribute to the failure of the receiving waters to meet standards, and (4) actual water quality is maintained and protected where any criterion of water quality exceeds the minimum standards of the next highest classification, then the requirements of the State's antidegradation policy will be deemed to be met.

MaineDOT and MTA Comments

MaineDOT **Comment 1a:**

- It would be good if the definition for redevelopment was consistent with the Stormwater Management Law.
- The Stormwater Management Law doesn't have a definition for Redevelopment but has an "exception to the General Standards" for Redevelopment which states (my highlights):
    - **Stormwater Management Law project including redevelopment**. For a project requiring a Stormwater Management +
    - Law permit that includes redevelopment of impervious area that was in existence as of November 16, 2005 (the effective date of Chapter 500 revisions), the redevelopment of that impervious area is not required to meet General standards provided the department

determines that the new use of the existing impervious area *is not likely to increase stormwater impacts resulting from the proposed project's stormwater runoff beyond the level of impact already caused by the runoff from the existing impervious area*.

Answer: Activity undertaken to redevelop property in which ~~at least 70% of~~ the new developed area, not including maintenance, is located within the same footprint as existing developed area. A minor amount of undeveloped land may be included within the perimeter of the existing developed area.

- The proposed revisions for the Stormwater Management Law have both a proposed definition and an Exception, both of which imply a change in use or level of use which in turn could have an effect on quantity or quality of stormwater from the new use/level of use.
- The EPA Fact sheet on MCM# 5 attempts to clarify "redevelopment: Their focus is on land disturbance greater than one acre and does not reference any level of imperviousness as you propose in your definition.

    - **What Is Considered a "Redevelopment" Project?** The Phase II Final Rule applies to "redevelopment" projects that alter the "footprint" of an existing site or building in such a way that there is a disturbance of equal to or greater than 1 acre of land. Redevelopment projects do not include such activities as exterior remodeling. Because redevelopment projects may have site constraints not found on new development sites, the Phase II Final Rule provides flexibility for implementing post-construction controls on redevelopment sites that consider these constraints.

- I have reviewed countless MS4 documents throughout the US and cannot find any consistent "redevelopment" definition. One approach is to combine the Stormwater Law exception description with the EPA Fact Sheet, such that redevelopment is land disturbance greater than one acre on existing transportation projects and is *likely to increase stormwater impacts resulting from the proposed project's stormwater runoff beyond the level of impact already caused by the runoff from the existing impervious area*.

- This definition is extremely important to transportation because much of our current work in MS4 areas consists of full reconstruction of existing State roadways that do disturb more than one acre, but don't increase stormwater impacts. Having a clear definition for redevelopment will remove the uncertainty of the MS4 regulations from much of our scoping.

Response 1: The permit language for the definition for redevelopment has been changed to "An activity undertaken to redevelop property in which the new developed area, not including maintenance, is located within the same footprint as the existing developed area. Redevelopment projects do not include such activities as exterior remodeling."

MTA and MaineDOT provided the following Comments in a subsequent document on the redevelopment definition.

Comment 1b: *Part II.R. Redevelopment*

- In order to consistently apply *Minimum Control Measure 5 – Post-construction stormwater management in new development and redevelopment* to transportation projects, a definition for redevelopment is critical and is very complex considering the wide array of work undertaken on a regular basis.
- Unfortunately, the definition provided is arbitrary (i.e., no basis for 15%) and inconsistent, For example, "*land disturbing activities associated with new development of previously undisturbed land"* cannot be considered redevelopment (i.e. new development cannot be considered redevelopment).

- MTA and MaineDOT thank DEP for their efforts to include a potential definition in this permit. However, because there is not enough time to explore this complex issue completely, we respectfully request that the definition be struck from the permit and perhaps revisited at a later date.

MTA/MaineDOT Comment: Please remove the redevelopment definition from the final MS4 permit.

Response 1b: The permit language for the definition for redevelopment has been changed to "An activity undertaken to redevelop property in which the new developed area, not including maintenance, is located within the same footprint as the existing developed area. Redevelopment projects do not include such activities as exterior remodeling."

URBANIZED AREA (UA):

- *Part I.A Permit Coverage* clearly states that "*unless otherwise explicitly noted, this permit only covers operations or activities associated with stormwater runoff from the regulated small MS4 within an identified Urbanized Area as determined by the latest Decennial Census by the Bureau of Census (the 2010 Census).*"
- According to the UA MAPS provided by DEP via U.S. Environmental Protection Agency (EPA), there are some areas that were considered UA in the 2000 Census, but are no longer identified as UA in the 2010 Census.

Comment 2: Please clarify if these 2000 Census UA, which are no longer identified as UA in the 2010 Census, are regulated by the MS4 permit. If so, please identify where in the MS4 permit or other regulatory citations an additive regulation of 2000 UA and 2010 UA are regulated by this MS4 permit.

Response 2: Once an MS4 receives permit coverage covering UA from a previous Census that UA is always covered, even if the latest Census does not delineate the area as UA any longer. The Phase II fact sheets (http://www.epa.gov/npdes/pubs/fact2-1.pdf) state:

Once a small MS4 is designated into the program based on the UA boundaries, it cannot be removed from the program on that basis that a subsequent decennial UA calculation shows that the small MS4 is no longer within the UA boundaries. http://www.epa.gov/npdes/pubs/fact2-1.pdf Also, the phase II rule (Fed Register Vol 64 #235, 1999, p 68751; http://www.epa.gov/npdes/regulations/phase2.pdf) states:
Additional designations based on subsequent census years will be governed by the Bureau of the Census' definition of an urbanized area in effect for that year. Based on historical trends, EPA expects that any area determined by the Bureau of the Census to be included within an urbanized area as of the 1990 Census will not later be excluded from the urbanized area as of the 2000 Census. However, it is important to note that even if this situation were to occur, for example, due to a possible change in the Bureau of the Census' urbanized area definition, a small MS4 that is automatically designated into the NPDES program for storm water under an urbanized area calculation for any given Census year will remain regulated regardless of the results of subsequent urbanized area calculations.

The permit language is changed to reflect UA is calculated based on the inclusive sum of both the 2000 and 2010 decennial census.

Comment 3: Please clarify how LID is applicable to this MS4 permit since it does not appear in this document anywhere other than the definition.

- If it is applicable through implementation of the IC TMDL (as discussed in Comments #9-12), please specify how DEP intends to apply the LID concepts and/or requirements.
- If it is not applicable, please remove this extraneous definition from the permit.

Response 3: LID is an approach to land development (or re-development) that works to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site

drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bioretention facilities, rain gardens, vegetated rooftops, rain barrels, and permeable pavements. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within a watershed. Applied on a broad scale, LID can maintain or restore a watershed's hydrologic and ecological functions. LID has been characterized as a sustainable stormwater practice by the Water Environment Research Foundation and others. These concepts and practices should be encouraged as a means of compliance with this MEPDES stormwater permit, minimum control measure five, and the permittee's stormwater program management plan. The definition will remain the General Permit.

Comment 4: Outfall: the following language has been added to the end of this definition "…and does not include pipes, tunnels or other conveyances which connect segments of the same stream or waters of the State and are used to convey waters of the State. Based on verbal discussions with DEP, it is our understanding that it may be DEP's intent to reference cross culverts here and exclude them from being considered an outfall.

Please remove the language above and replace with and does not include cross culverts

Response 4: The definition was recommended by EPA from 40 CFR 122.26(b)(9). Using the term cross culvert could potentially limit the scope of this definition. This definition has been changed to add a reference to cross culverts, but not limit the definition to cross culverts.

Comment 5: ***Part IV.H.2 Public involvement and participation*** involves coordination with regulated MS4 communities. As you know, MTA and MaineDOT describe the existing coordination efforts with municipalities in annual reports, including providing municipalities in annual reports, including providing municipalities with a list of anticipated projects and participating in local MS4 coalitions.
Part IV.H.2.ii Coordinate with regulated community(s) indicates that coordination with municipalities should be taking place during road resurfacing. However, during resurfacing project, stormwater opportunities are not feasible since the equipment to conduct these practices is not the same equipment used to install, construct or maintain Best Management Practices (BMPs).
Furthermore, the public involvement and participation already being extended by MTA and MaineDOT provides mutual cooperation and coordination with municipalities.

For the reasons presented above, MTA and MaineDOT respectfully request that *Part IV.H.2.ii Coordinate with regulated community(s)* read as follows:
*"The permittee shall **continue to** coordinate efforts by providing information on planned construction, and maintenance activities to Regulated Small MS4 municipal stormwater coordinators. The permittee may develop a strategy to ensure involvement, mutual cooperation and coordination with the Regulated Small MS4 municipalities, and report on such efforts annually pursuant to Part IV(J) on joint efforts, meetings attend, projects and coordination."*

Response 5: the phrase such as road resurfacing has been removed from the permit.

Comment #6 MTA and MaineDOT respectfully request the word "ground" be struck in *Part IV.H3.a.i. as follows:*
"By June 30, 2018 each permittee shall verify all watershed based storm sewer system infrastructure map(s)…"

Response 6: The Permit has been changed to *"By June 30, 2015 each permittee shall ground verify its watershed based storm sewer system infrastructure map(s) in its highest priority watershed…"*

Part IV.H.6.a.vi indicates that industrial stormwater requirements apply to MTA and MaineDOT. As you know, MTA and MaineDOT do not conduct regulated industrial activities and are not subject to Multi-Sector General Permit (MSGP) requirements, such as quarterly visual monitoring.

Comment #7: Please strike the last sentence of *Part IV.H.6.a.vi* to remove the requirement

Response 7: The permit language will remain unchanged; vehicle maintenance facilities within the UA must develop and implement a SWPPP that meets the requirements of Maine's April 26, 2011 MSGP.

QUALIFYING STATE OR FEDERAL PROGRAM:
The heading for ***Part IV.I.2 Qualifying State or Federal Program*** does not match the content of the paragraph, which discusses third party responsibilities.
According to *40 CFR 122.44,* a qualifying state program involves *"establishing limitations, standards and other permit conditions"* to address (1) construction operators implementation of erosion and sedimentation control (ESC) best management practices (BMPs): (2) construction operators control wastes on-site; (3) construction operators develop and implement site-specific ESC Plans; and (4) site plans are reviewed for potential water quality impacts.

Comment #8: MTA and Maine DOT would Like to take this opportunity to remind DEP that ***MaineDOT*** and MTA have adopted standard contract language since 2007 (when Chapter 500 was revised) to address each of these four criteria, as a qualifying state program.

Response 8: MTA and MaineDOT's program does not meet the criteria as a qualifying State Program because neither MTA nor MaineDOT has enforcement/sanction capabilities.

From 40 CFR 122.44

"2), conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

(s) *Qualifying State, Tribal, or local programs.* (1) For storm water discharges associated with small construction activity identified in §122.26(b)(15), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph (s)(1), then the Director must include those elements as conditions in the permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in §122.26(b)(14)(x), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is one that includes the elements listed in paragraph (s)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

TOTAL MAXIMUM DAILY LOAD (TMDL):

As you know, any MPDES permit may be a regulatory/enforcement mechanism for an EPA-approved TMDL. A non-traditional TMDL applied on a statewide basis is particularly challenging for the transportation agencies, especially since the surrogate pollutant in the non-traditional TMDL is IC. In other words, the %IC in a watershed becomes the waste load allocation to be reduced during TMDL implementation.
Part I. D. 4-5 discuss, respectively, that the MS4 permit cannot "*authorize a direct discharge inconsistent with any EPA approved TMDL waste load allocation"* or *"that causes or contributes to a violation of a water quality standard."*

Comment #9: Please clarify what the implications and/or consequences may be if the transportation agencies contribute to the exceedance of the waste load allocation (i.e.%IC) in the 30 watersheds where the IC TMDL applies.

Response 9: If a transportation agency contributes to the exceedances of a waste load allocation of an EPA approved TMDL issued by the State, the Department may evoke its enforcement discretion to resolve the matter. The Department expects the transportation entities to work in partnership with other stakeholders to meet the requirements of the waste load allocation in the TMDL.

In previous discussions around the IC TMDL, DEP has indicated that if a MS4 permittee is in compliance with the MS4 permit and associated requirements, then the permittee is considered to be in compliance with the IC TMDL.

Comment #10: Please confirm that compliance with MS4 requirements will be considered appropriate TMDL implementation. Will the MS4 permit provide permit shield to MS4 permittees with respect to the IC TMDL implementation:

Response 10: Compliance with the MS4 GP does not necessarily equate to appropriate TMDL implementation. To meet the intent of the MS4 General Permit, the permittee has to reduce polluted stormwater runoff to the Maximum Extent Practicable (MEP). This is not necessarily the same standard as trying to restore an impaired water body with an approved TMDL. Permittees may have to implement other measures independent of its MS4 to bring the water body back to attainment.

Through the stakeholders' process for the IC TMDL, DEP indicated that additional watersheds can be add to the list of 30 in the IC TMDL at any time without modifying and providing public notice of the modification to the parent TMDL document.

Comment #11: For this reason please include the following sentence in ***Part I.D.4:***

"DEP must notify MTA and MaineDOT at least 18 months prior to adding additional watersheds to the list of 30 included in the IC TMDL

Response 11: The Department has reviewed this comment, and permit language will remain unchanged.

Part IV.A.1.b indicates that a MS4 permittee should *"implement measures necessary to control, to the maximum extent practicable, the discharge of stormwater runoff included known pollutants of concern."* As previously mentioned, the non-traditional IC TMDL has identified IC as the surrogate for the pollutant(s) of concern.

Comment #12: Please clarify what DEP May have for expectations in these instances where control measures are to be implemented as it applies to the IC TMDL and particularly the transportation agencies, who have limited real estate for structural controls and limited resources for non-structural controls.

Response #12: The Department expects transportation entities to work within the constraints that it may have, and diligently work to reduce pollutants from its IC areas. The Department also expects the transportation entity to partner with other stakeholders within the given watershed to help the given waterbody meet its water quality classification.

It is our understanding that only one NPDES permit is required for a stormwater discharge at any given time.

Comment #13: In instances where MTA and MaineDOT already have NPDES permit coverage in the Long Creek Watershed for post-construction stormwater discharges, please confirm that MS4 requirements are not applicable in those areas with existing MPDES permit coverage.

Response # 13: The MS4 GP is based on the implementation of six minimum control measures, one of which is post construction. The Long Creek GP stipulates requirements of Tier 1 and Tier 2, in-stream and riparian projects; maintenance of stormwater treatment practices and good housekeeping and pollution prevention practices covered by the Plan; implementation of monitoring and assessment plan. The Department will require the regulated MS4 transportation entity to report on Maintenance of stormwater infrastructure, post construction BMPs to ensure that the BMPs are functioning as intended, and good housekeeping activities associated with its MS4 within the Long Creek Watershed. The Department will also require MS4 Transportation permittees to outline in its stormwater program management plan, the following where applicable, within the Long Creek watershed: name and length of road; number of catch basins per road; anticipated number of times the road will be swept; requirements per the Long Creek General Permit to reduce pollutants associated with the Transportation MS4.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the General Permits may be obtained between the hours of 7:00 a.m. and 4:00 p.m. Monday through Friday excluding holidays from: David Ladd; Maine Department of Environmental Protection; 17 State House Station; Augusta, Maine 04333; telephone: 207-215-7168, fax 207-287-3435. E-mail: david.ladd@state.me.us