



Division of Surface Water Response to Comments

National Pollutant Discharge Elimination System (NPDES) General Permit for Municipal Separate Storm Sewer Systems (MS4) to Discharge Storm Water

Ohio EPA General Permit No.: OHQ000003

Agency Contact for this General Permit

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Ohio EPA held a public hearing January 22, 2014 regarding NPDES General Permit for Municipal Separate Storm Sewer Systems (MS4) to Discharge Storm Water (OHQ000003). This document summarizes the comments and questions received at the public hearing and/or during the associated comment period, which ended on January 29, 2014.

Ohio EPA reviewed and considered all comments received during the public comment period. The comments have been organized by the Part of the general permit. The commenter's name(s) follows the comment.

General

Comment 1: As a Permit Holder that operates in a manner consistent with a Non-Traditional MS4, as defined in the permit, and as a highway system with limited access by the people other than the traveling public or staff, the Public Involvement and Public Education Minimum Control Measures has been difficult to implement effectively or with much measurable success. It is requested that future versions of the permit include an exemption in the Public Involvement and Public Participation MCMs for non-traditional MS4s that have limited abilities to provide education and allow involvement activities within the limits of their jurisdiction.

(Ohio Turnpike and Infrastructure Commission)

Response 1: Ohio EPA believes that OHQ000003 provides adequate flexibility for non-traditional MS4s and addresses this comment. Part III.B.1.a includes the following language, “In the case of non-traditional MS4s (e.g., ODOT, universities, hospitals, prisons, military bases, and other government complexes), you are only required to provide educational materials and outreach to your employees, on-site contractors, and individuals using your facilities.” In addition, Part III.B.2.a includes the following language, “In the case of non-traditional MS4s (e.g., ODOT, universities, hospitals, prisons, military bases, and other government complexes), you are required to involve employees, on-site contractors, and individuals using your facilities.” The intent of the language is to include the Ohio Turnpike and Infrastructure Commission (OTIC), but the final permit will specifically add this non-traditional MS4 within the existing example lists for clarification.

Comment 2: **Regarding the MCMs that require a Permit Holder to enact ordinances to provide a means for requiring compliance with various aspects of the MS4 permit by developers, contractors, home associations, etc., it is requested that an exemption from this requirement be included in future versions of the MS4 Permit for non-traditional MS4s. In the Commission’s case, this requirement cannot be complied with without asking the State Legislature to make the appropriate revisions to the Ohio Revised and/or Ohio Administrative Codes.**

(Ohio Turnpike and Infrastructure Commission)

Response 2: The three minimum control measures which require an ordinance or other regulatory mechanism identify that such mechanism are performed to the extent allowable under state or local law. The current permit language addresses this concern and no changes to the final permit were made based on this comment.

Comment 3: **The draft permit makes no reference to urban or Phase II communities. Does this mean that all townships within the county will need to be included in our Phase II reporting with the next permit term? Do the non-urban townships have to apply as co-permittees if they want to join the county storm water program?**

(Trumbull Soil and Water Conservation District)

Response 3: Permit coverage is required for Small MS4s located fully or partially within an urbanized area as determined by the 2000 and 2010 Census by the Bureau of Census and any MS4 which has been designated for permit coverage by Ohio EPA. As such, permit conditions only apply to these urbanized areas. Townships which do not meet these criteria are not required to have coverage under OHQ000003.

Part I

Comment 4: **Part I.C.5.** The Draft Permit's current language, "This permit does not authorize...: Discharges that would cause or contribute to in-stream exceedances of water quality standards" should be revised to make clear that discharges from the permittee's MS4 that cause or contribute to the violation of water quality standards are prohibited. We recommend the following language be inserted to Part I.C.5:

"Any discharge that causes or contributes to a violation of a water quality standard is a violation of the permit."

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 4: Such a discharge would not be authorized by the general permit; therefore, would not be in compliance with it. This comment was evaluated but a revision to the existing language is unnecessary. No change to the final permit was made based on this comment.

Comment 5: **Part I.C.6.** Please clarify how non-traditional MS4s are to comply with U.S. EPA TMDLs. As a linear transportation, non-traditional MS4, ODOT requests flexibility in this area. Please provide separate, appropriate performance standards for non-traditional MS4s.

(Ohio Department of Transportation)

Response 5: OHQ000002 required MS4 discharges to be consistent with total maximum daily load (TMDL) approved by U.S. EPA. For clarification, language was added to Parts III.A.1.a and III.A.1.e that requires MS4s to be aware of and use U.S.

EPA-approved TMDL report recommendations in their decision process for selection of BMPs. OHQ000003 does not require MS4s to monitor storm water discharges to ensure that TMDL MS4 wasteload allocations are being met. Rather, OHQ000003 requires that MS4s use the recommendations found within TMDL reports to better tailor their mix of BMPs to address noted water quality problems contributed to MS4 discharges. This would be applicable for watersheds which have U.S. EPA approved TMDLs.

Ohio EPA understands that ODOT's MS4 is located statewide and crosses multiple TMDLs. However, Ohio EPA believes that enough flexibility is built into the permit that meeting the intent of this permit condition is not infeasible for ODOT. Ohio EPA recommends that ODOT develop a toolbox identifying common causes and sources of impairment along with possible BMPs that may be utilized in the decision process.

Comment 6:

Part I.D.2. The Notice of Intent (NOI) form is a very important document, not just because it indicates that the entity is an MS4 permittee, but also because it provides critical information about the MS4 and its staff. The permit must conform to the 9th Circuit's decision in *Environmental Defense Center vs. EPA*, and with EPA's memorandum directing the states on how to implement that decision, available at <http://www.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf>. This is necessary to ensure that NOIs and the Storm Water Management Programs receive meaningful review by OEPA, ensuring that the permittees are not simply "self-regulating" by writing their own plans that may or may not achieve pollution reduction to the maximum extent practicable (MEP).

In addition, OEPA should require that each NOI form contains the additional information identified below and be made publicly available.

We recommend the following language be inserted to Part I.D.2:

"Your NOI, to be completed on a form furnished by Ohio EPA, shall be signed and dated in accordance with Part V.G of this Permit and posted on the MS4's website. In addition, you must provide on the form the name, title, cell phone number, email and mailing address for the

person responsible for daily compliance with this Permit. This person, or their alternate, must be available to receive and respond to Ohio EPA communications during business hours within 24 hours of a telephone call or email if requested. You must provide notice to OEPA of any change in this information within 3 business days after the change.”

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 6:

Ohio EPA has performed a review of all of the permittee’s initial SWMPs and provided comments with required updates to address any noted deficiencies if applicable. All new initial MS4 applications will be reviewed and posted at <http://epa.ohio.gov/dsw/storm/index.aspx>, with guidance on how to obtain copies, submit comments or request a public hearing on the applications prior to issuance of general permit coverage.

Small MS4 permittees are already required to make records associated with the general permit available to the public upon request. Ohio EPA provides a list of MS4 general permittees at <http://epa.ohio.gov/dsw/permits/gplist.aspx>, and also provides records associated with MS4 general permittees available to the public upon request. This comment was evaluated but no changes were made to the final permit based on this comment.

Part II

Comment 7:

Part II.C. As written, the existing and draft permit duplicates the language in the existing permit. However, the participants at the meeting made evident that multiple MS4 operators are sharing expertise and resources as co-permittees for the purpose of meeting the requirements of the permit in the most efficient manner possible. During the OEPA’s 2011 audit of Franklin County, a question arose as to whether each co-permittee was required to meet all of the permit requirements individually or alternatively, if co-permittees could meet some of the permit requirements as a group. This matter is addressed in the 2013 letters from OEPA to Franklin County Townships and the subsequent replies from some townships to the OEPA.

Members of our storm water committee believe the Draft Permit could be improved if language were added to more clearly define that some permit requirements can be met collectively when MS4 operators utilize co-permittee relationships.

(Franklin County Drainage Engineer)

Response 7:

Operators of regulated MS4s are encouraged to use partnerships with other governmental entities to fulfill public education and public involvement activities. It is generally more cost-effective to use an existing program, or to develop a regional program, than to have operators developing their own local programs. Ohio EPA understands that co-permittees use regional public educational and involvement programs to satisfy performance standards of the permit. A regional program can create difficulties when quantifying some educational mechanisms for each co-permittee's jurisdiction.

Regional programs should have a well thought out outreach plan to include how to measure the impact of their program and determine its effectiveness. There are expectations that each co-permittee will document how public educational activities apply to their respective jurisdictions as well as possible to adequately demonstrate compliance. Where possible, regional programs must try to document the audience reached by each co-permittee jurisdiction; however, it is also understood that this may not always be practical, depending upon the mechanism used. The permit recognizes this difficulty and does not require demonstration of every mechanism and theme reaching 50 percent of each co-permittee's population.

Part III

Comment 8:

Part III.A. It is recommended that the following language be inserted to address total maximum daily load (TMDL) allocation or watershed management plans for a specific waterbody. The following language is taken directly from the Illinois General NPDES Permit No. ILR40 for Discharges from Small Municipal Separate Storm Sewer Systems:

"If a total maximum daily load (TMDL) allocation or watershed management plan is approved for any waterbody into which you discharge, you must review

your storm water management program to determine whether the TMDL or watershed management plan includes requirements for control of storm water discharges. If you are not meeting the TMDL allocations, you must modify your storm water management program to implement the TMDL or watershed management plan within eighteen months of notification by OEPA of the TMDL's approval. Where a TMDL or watershed management plan is approved, you must:

- a. Determine whether the approved TMDL is for a pollutant likely to be found in storm water discharges from your MS4.***
- b. Determine whether the TMDL includes a pollutant wasteload allocation (WLA) or other performance requirements specifically for storm water discharge from your MS4.***
- c. Determine whether the TMDL addresses a flow regime likely to occur during periods of storm water discharge.***
- d. After the determinations above have been made, if it is found that your MS4 must implement specific WLA provisions of the TMDL, assess whether the WLAs are being met through implementation of existing storm water control measures or if additional control measures are necessary.***
- e. Document all control measures currently being implemented or planned to be implemented. Also include a schedule of implementation for all planned controls. Document the calculations or other evidence that shows that the WLA will be met.***
- f. Describe and implement a monitoring program to determine whether the storm water controls are adequate to meet the WLA.***
- g. If the evaluation shows that additional or modified controls are necessary, describe the type and schedule for the control additions/revisions.***
- h. Continue Paragraphs d above through g until two continuous monitoring cycles show that the WLAs are being met or that WQ standards are being met.”***

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 8:

The final permit requires a MS4 to select BMPs to address U.S. EPA-approved TMDL recommendations for identified

water quality problems associated with MS4 discharges within the MS4's watershed. In addition, the MS4's SWMP shall provide a rationale for how and why BMPs and measurable goals were selected, including how BMPs address applicable TMDL recommendations. This comment was evaluated but no changes were made to the final permit.

Comment 9: **Part III.A.1.a.** It is recommended that the following language be inserted:

“The U.S. Environmental Protection Agency’s National Menu of Storm Water Best Management practices (www.epa.gov/oaintrnt/stormwater/best_practices.htm) should be consulted regarding the selection of the appropriate BMPs;”

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 9: Language was added to the BMP definition in Part VI referencing U.S. EPA’s *Menu of BMPs* as a guidance document for possible BMPs to address OHQ000003’s six minimum control measures.

Comment 10: **Part III.A.1.c.** Under the Clean Water Act, all NPDES permits are required to contain monitoring provisions sufficient to assure compliance with permit conditions, “including conditions on data and information collection, reporting, and such other requirements as [the permitting authority] deems appropriate (33 U.S.C 1342(a)(2)).” Specifically, the Act states:

Whenever required to carry out the objective of this chapter, including but not limited to...(2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance...(A) the Administrator shall require the owner or operator of any point source to...(iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods)...as he may reasonably require (33 U.S.C 1318(a)).

Accordingly, federal regulations require all NPDES permits to contain monitoring requirements “to assure compliance with permit limitations.” (40 C.F.R. 122.44(i)) As such, these monitoring requirements must be of the “type, intervals, and frequency sufficient to yield data which are representative of the monitored activity.” (40 C.F.R. 122.48(b))

To ensure that the Ohio permit is consistent with federal law, we recommend that the permit clarify that monitoring data must be collected in order to evaluate the actual effectiveness of each BMP in terms of reducing pollution loads and meeting water quality requirements.

To comply with the Clean Water Act, the Draft Permit must also be revised to make clear that discharges from the permittee’s MS4 that cause or contribute to the violation of water quality standards are prohibited, and to require that the MS4 must attain all wasteload allocations by a date certain, in compliance with TMDL Action Plans that OEPA will approve and incorporate into the Draft Permit as enforceable permit terms. Such plans must contain enforceable interim milestones with associated mandatory pollutant reductions so that the permittee is held accountable for staying on track. Finally, the plans must include a sound rationale for determining that the compliance schedule meets the requirement that standards be met “as soon as possible.” (40 C.F.R. 122.47(a)(1))

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 10: MS4s do monitor and report data to Ohio EPA in the form of the required annual report. Monitoring does not always take the form of analytical monitoring. The final permit contains minimum performance standards that are enforceable and requires that the storm water management program (SWMP) reflect local water quality issues and USEPA-approved TMDLs.

Comment 11: **Part III.A.2. The City of Bedford has limited resources and a greatly reduced budget due to the current economic climate and respectfully requests that the**

mandate to update the Storm Water Management Program (SWMP) within the next two years be extended to five years. This extension will allow for the proper planning and budgeting to properly prepare the SWMP.

(City of Bedford)

Response 11: Current MS4s are already required to have an SWMP which satisfies the requirements of OHQ000002. Updates are required for existing SWMPs to be in compliance with OHQ000003, and Ohio EPA believes that two years provides adequate time for these updates to be made. No changes to the final permit were made based on this comment.

Comment 12: **Part III.B.1.a. Green Infrastructure has become an increasingly valuable and important tool in addressing storm water runoff. As more and more cities implement green infrastructure programs it is critical that the general public is educated about green infrastructure and the benefits it provides. Secondly, the public education program should, at a minimum, also include information on the variety of homeowner and property care actions and green infrastructure strategies that property owners can implement. As such, we recommend including the below language in the revised permit.**

“You must incorporate into your education materials information about green infrastructure strategies such as green roofs, rain gardens, rain barrels, bioswales, permeable piping, dry wells and permeable pavement, that mimic natural processes and direct storm water to areas where it can be infiltrated, evapotranspired or reused, as well as the costs and benefits of such strategies and guidance on how to implement them.

Your public education program shall contain general storm water management guidance for property owners including information on keeping gutters clear of yard waste, limiting the use of lawn and garden chemicals, proper disposal of pet waste, avoiding discharges from vehicle maintenance and washing, minimizing use of de-icing materials and the disconnection of downspouts.”

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper,

Natural Resources Defense Council and Ohio Environmental Council)

Response 12: Ohio EPA agrees that green infrastructure is becoming a common tool in addressing storm water runoff. However, Ohio EPA wants to provide MS4s flexibility in implementing their public education themes to address total maximum daily load (TMDL) recommendations and other known local water quality problems. No changes to the final permit were made based on this comment.

Comment 13: **Part III.B.1.c. Add the following sub-part to 1.c performance standards:**
i. Provide examples of mechanisms that are working
ii. Provide example storm water themes that are working.

(Ohio Storm Water Association)

Response 13: Ohio EPA believes that the suggestions included within this comment would be more applicable to a guidance document. Ohio EPA will evaluate the possibility of developing such guidance as resources allow. No changes to the final permit were made based on this comment.

Comment 14: **Part III.B.1.d and Part III.B.2.d. One of the primary goals of the public education and outreach program is, or should be, to reduce the volume, velocity and/or pollution of storm water runoff. Therefore, it is important that MS4s identify SMART (specific, measurable, achievable, realistic, timely) goals for their education programs related to storm water discharge. This goes beyond simply evaluating how the MS4 "selected the measurable goals for each of the [promoted] BMPs" (Part III B.1.b.vii). MS4s should be required to evaluate whether the education and outreach campaign had an impact on storm water discharges. As such, we recommend including the below language in the revised permit.**

Part III.B.1.d. (Insert language)

"You must identify measurable goals to ensure that the public education and outreach program results in reduction of pollutants of concern in storm water discharges to the maximum extent practicable."

Part III.B.2.d. (Insert language)

“You shall include how it reduced pollutants of concern in storm water discharges to the maximum extent practicable.”

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 14: Part III.B.1.b.vii and Part III.B.2.b.vi requires that a MS4’s SWMP identify how to evaluate the success of these two minimum control measures. In addition, the annual report requires a summary of results and effectiveness of each BMP. This comment was evaluated but no changes to the final permit were made based on this comment.

Comment 15: **Part III.B.2.c. Add the following sub-part to 2.c. performance standards:**
i. Provide example public involvement activities that are working.

(Ohio Storm Water Association)

Response 15: Ohio EPA believes that the suggestions included within this comment would be more applicable to a guidance document. Ohio EPA will evaluate the possibility of developing such guidance as resources allow. No changes to the final permit were made.

Comment 16: **Part III.B.3. Our IDDE program has developed a baseline that shows all of our outfalls have a minimal % of illicit discharge. ODOT requests that this program be modified to only require a random test of an agreed upon percentage of outfalls per year. This modification will allow funding to be directed to other aspects of the MS4 program in an effort to strengthen the program and improve water quality. The ODOT IDDE program has consumed significant resources over the course of several years that have made very little impact to improving water quality.**

(Ohio Department of Transportation)

Response 16: OHQ100000 and OHQ000001 (first generation Small MS4 general permits) did not include performance standards and simply indicated that your illicit discharge detection and elimination program must include dry-weather screening of

outfalls. OHQ000002 included a performance standard that required MS4s to perform or have performed an initial dry-weather screening of all storm water outfalls over the permit term. In addition, OHQ000002 also included the following performance standard for long-term system-wide surveillance of your MS4:

“Your program shall establish priorities and specific goals for long-term system-wide surveillance of your MS4, as well as for specific investigations of outfalls and their tributary area where previous surveillance demonstrates a high likelihood of illicit discharges. Data collected each year shall be evaluated and priorities and goals shall be revised annually based on this evaluation.”

OHQ000002 required MS4s to have completed at least an initial dry-weather screening of all their storm water outfalls by the end of that permit term. The illicit discharge detection and elimination program performance standard language remains unchanged from the previous generation general permit. OHQ000003 does not require a minimum number or percentage of outfalls to be re-screened for existing permittees; whereas, OHQ000003 provides MS4s the flexibility, based upon information learned to date, in establishing their priorities and goals for long-term system-wide surveillance of their MS4, which includes dry-weather screening.

Comment 17: **Part III.B.3.** **There are several shortcomings of the Illicit Discharge Detection and Elimination section of the draft permit. In order to be protective of water quality, this section should be revised to address the following issues.**

(1) The Draft Permit should include a standard of performance for correction of identified illicit discharges, rather than allowing MS4s to identify illicit discharges but never fix the problems; (2) The inspection of outfalls needs to happen on an ongoing basis by the MS4s to identify illicit discharges into the storm water system; (3) MS4s should establish enforceable requirements for the prompt reporting to the MS4 of all releases, spills and other unpermitted discharges to the separate storm sewer system, and a program to respond to such reports in a timely manner; and (4) MS4s should be required to provide OEPA a list of HSTS systems which have been identified and are

unable to be disconnected from the MS4, and as such require coverage under an NPDES permit (Part III.B.3.e).

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 17: The four issues raised in this comment were evaluated, but no changes to the final permit were made. Ohio EPA believes that the following permit conditions address each of the four issues raised in this comment. (1) Part III.B.3.k requires that an MS4's annual report include a list of all illicit connections that have been identified but have yet to be eliminated, including estimated schedules for elimination. (2) Part III.B.3.j requires that a program establish priorities and specific goals for long-term system-wide surveillance of their MS4. (3) The overall intent of the illicit discharge detection and elimination program (Part III.B.3) is to develop, implement and enforce a program for illicit discharges to the MS4. The permit requires that an ordinance prohibiting illicit discharges to the MS4 exist along with a plan to proactively detect and eliminate illicit discharges to the MS4. (4) Part III.B.3.c requires that a MS4 submit a list and map of HSTSs discharging to their MS4 to Ohio EPA within five years of their initial Small MS4 general permit coverage.

Comment 18: **Part III.B.3.j. General comments pertaining to these performance standards:**

- **Provide direction or clarification on how to update outfall map and frequency of revisions to outfall data.**
- **Provide clarity on Household Sewage Treatment System (HSTS) outfalls and discharges with respect to the NPDES permit governing these discharges. See language in permit OHK000002: Discharge wastewater from selected new, replacement and/or older HSTSs.**

(Ohio Storm Water Association)

Response 18: MS4s are required to develop and maintain a comprehensive storm sewer system map (see Part III.B.3.b of the permit). Part III.B.3.j of the permit requires that the map be updated annually if needed (i.e., annexations, new development, etc.). The MS4 system includes components identified in Part III.B.3.b. These conditions remain unchanged from the previous version of the permit.

Ohio EPA has issued two general National Pollutant Discharge Elimination System (NPDES) permits for select new and replacement discharging household sewage treatment systems. Though effluent limitations, monitoring, record keeping and siting criteria for the two permits are identical, implementation or determination of coverage under the applicable general NPDES permit is different.

General NPDES permit OHK000002 allows the local board of health where the household sewage treatment system is to be located to determine eligibility or coverage under the permit. Under the conditions and criteria of general NPDES permit OHL000002, Ohio EPA will be responsible for making this determination. In either case, coverage under the general NPDES permits cannot be granted if the residence can be served by an on-site soil absorption system or connected to sanitary sewers; only the local board of health can make this determination. Therefore, any residence or property owner should first contact the local board of health to determine the proper course of action. For additional information on OHK000002 and OHL000002, please see http://epa.ohio.gov/dsw/permits/GP_HouseholdSewageTreatmentPlants.aspx.

Comment 19: **Part III.B.4.a.i & Part III.B.5.c. The City of Bedford continues to evaluate the ordinance for the construction and post-construction control and monitoring. We are requesting that the time frame to comply with the new permit requirements be extended from two years to five years to insure that the revised ordinance is responsive to the new permit and the City of Bedford.**

(City of Bedford)

Response 19: OHQ000002 required that an MS4's construction and post-construction ordinance or other regulatory mechanism be, at a minimum, equivalent with the technical requirements set forth in the Ohio EPA NPDES General Storm Water Permit(s) for Construction Activities applicable for the MS4's area. Since issuance of OHQ000002 the NPDES Statewide (OHC000004), Big Darby Creek Watershed (OHCD000002) and Olentangy River Watershed (OHCO000002) construction storm water general permits have been renewed. OHCO000002 has been renewed since public noticing draft OHQ000003 and has been added to the final permit. OHQ000003 requires that MS4s update their current ordinance or other regulatory mechanism to be consistent

with the technical requirements of the NPDES construction storm water general permit(s) applicable to their area within a two-year period. Ohio EPA believes that two years is sufficient to update current regulations. No change to the final permit was made in response to this comment.

Comment 20: **Part III.B.4.a.ii. It is recommended that the following language be inserted:**

“Including the use of green infrastructure storm water management techniques, where appropriate and practicable.”

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 20: The suggested language seems more appropriate under the post-construction minimum control measure. Language similar to the suggested language has been added to Part III.B.5.e.iii and Part III.B.5.e.iv as possible examples of structural and non-structural BMPs.

Comment 21: **Part III.B.4.c. General comments pertaining to these performance standards:**

- **Can soil and water conservation districts be granted enforcement powers for construction activities which would be regulated by proposed HB41 – Authorization to a political subdivision to enact and enforce health and safety standards for oil and gas drilling and exploration?**

(Ohio Storm Water Association)

Response 21: Certain oil and gas exploration, production, processing or treatment operations or transmission facilities are conditionally exempt from NPDES construction and industrial storm water permitting under the federal Clean Water Act (CWA). Please see the following Ohio EPA fact sheet for a discussion of the conditional exemption and common examples of exempt and non-exempt activities associated with the oil and gas industry:

<http://epa.ohio.gov/Portals/0/general%20pdfs/StormWaterPermittingforOilandGasRelatedOperations.pdf>

U.S. EPA delegated authority to Ohio EPA to issue and administer NPDES storm water permits. As such, Ohio EPA follows the conditional exemption for NPDES storm water permitting under the CWA. Ohio EPA would advise soil and water conservation districts to consult their legal counsel on what authorities HB41 provides to them.

Comment 22: **Part III.B.5. The Draft Permit should improve post-construction storm water management requirements for new development and redevelopment. In several instances, this proposed section requires that developers simply “address storm water runoff from new development and redevelopment”. To have a meaningful impact on water quality, throughout the section it should clearly require:**

- 1. measurable reductions in the volume and pollutant load of storm water runoff from project sites, including the capture of runoff from the 95th percentile storm;**
- 2. that all government projects, including buildings, roads, sidewalks, alleys and parking lots be covered by the volume and pollutant load reduction requirements; and**
- 3. that permittees adopt strategies to encourage the infiltration, reuse and evapotranspiration of storm water into each project. OEPA should determine what amount of green infrastructure should be implemented to reduce pollutants to the MEP.**

The Draft Permit should include specific language pertaining to the use of green infrastructure (GI) as post-construction controls. Using GI to reduce storm water runoff has multiple benefits including cleaner water, reduced flooding and sewer overflows, enhanced community aesthetics and green space. GI measures, such as minimization of soil disturbance, green roofs, rain gardens, and porous surfaces, focus on using natural features to capture, infiltrate and reuse rainfall preserving natural hydrology as much as possible, see www.epa.gov/nps/lid#guide for more information on LID, see www.epa.gov/greeninfrastructure for more information on GI. Case studies in areas where GI are central to storm water management have shown high rates of success in capturing water on-site, reducing costs of water treatment, and improving water quality. Further, these techniques are often more cost-effective

than traditional techniques. The U.S. Environmental Protection Agency (EPA) recognizes the multiple benefits of managing storm water on-site using GI and strongly supports incorporation of these techniques into NPDES permits. MS4 permittees should be required to perform a review of their local codes against a checklist to ensure good storm water best management practices and green infrastructure are encouraged and allowed by local rules and regulations.

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 22: OHQ000003 requires that post-construction regulations for MS4s' be, at a minimum, equivalent to the post-construction water quality requirements of the NPDES construction storm water general permit(s) applicable to their area. U.S. EPA was working on national rulemaking to establish a program to reduce storm water discharges from newly developed and redeveloped sites as well as other regulatory changes to the national storm water program. Please see the following for recent information:
<http://cfpub.epa.gov/npdes/stormwater/rulemaking.cfm>. No changes to the final permit were made based on this comment.

Comment 23: Part III.B.5. after d. and before e. It is requested that the following specific language be inserted in two separate bullets under Part III.B.5. after d. and before e:

- You shall develop and implement a program to minimize the volume of storm water runoff and pollutant load from public highways, streets, roads, parking lots and sidewalks (public surfaces) through the use of BMPs that alone or in combination result in physical, chemical and biological pollutant load reduction and the capture runoff from a 95th percentile storm through increased infiltration, evapotranspiration, and reuse. The program shall include the following elements:
 - i. appropriate training for all MS4 employees who manage or are directly involved in (or who retain others who manage or are directly involved in) the routine maintenance, repair and replacement of

- public surfaces in current green infrastructure design techniques.**
- ii. appropriate training for all contractors retained to manage or carry out routine maintenance, repair or replacement of public surfaces in current green infrastructure design techniques applicable to such projects. Contractors may provide training to their employees for projects which include green infrastructure design techniques.**
- You shall develop and implement a program to minimize the volume of storm water runoff and pollutant load from existing private developed property that contributes storm water to the MS4 within the MS4 jurisdictional control.**

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 23: Please see the Response 22.

Comment 24: **Part III.B.5.f. General comments pertaining to these performance standards:**

- Provide clarification on required annual maintenance operations reporting. We propose revision of standards based on review of current audits performed and lessons learned to date.**

(Ohio Storm Water Association)

Response 24: Based on MS4 evaluations performed to date, Ohio EPA does not believe changes to these conditions are warranted. The performance standards (Part III.B.5.f) and annual reporting requirements (Part III.B.5.g) remain unchanged.

Comment 25: **Part III.B.6. The training outlined should include an enforceable requirement of training for all MS4 employees who manage or are directly involved in (or who retain others who manage or are directly involved in) the routine maintenance, repair or replacement of public surfaces in current green infrastructure design techniques applicable to such projects. In addition, the program should include an enforceable requirement of specific training for all contractors retained to manage or carry out routine maintenance, repair or replacement**

of public surfaces in current green infrastructure design techniques applicable to such projects.

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 25: The final permit requires that an MS4 program include employee training to prevent and reduce storm water pollution from activities such as park and open-space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. The final permit includes a performance standard that MS4 programs include, at a minimum, an annual employee training. This comment was evaluated, but the current permit requirement provides needed flexibility for MS4 programs to develop/implement an employee training program which addresses varying municipal operations. No change was made to the final permit based on this comment.

Comment 26: **Part III.B.6.e. Suggest revising the wording of the second sentence as follows:**

“Your operation and maintenance program shall include appropriate documented procedures, controls, maintenance schedules and recordkeeping to address Part III.B.6.d.iii of this permit.”

(Ohio Storm Water Association)

Response 26: The intent of this language is that these are documented. The suggested revision will be added to the final permit for clarification.

Comment 27: **Part III.C. Suggest revising the wording of the title as follows:**

“C. Sharing Responsibility – Co-Permittee Commitment”

(Ohio Storm Water Association)

Response 27: Part II.C addresses co-permittee relationships under a single permit by stating that the SWMP shall clearly describe which permittees are responsible for implementing each of the control measures. The intent of Part III.C is to identify that a regulated MS4 may rely on another entity, including non-

regulated entities such as soil and water conservation districts, health departments, etc., to implement control measures on behalf of the MS4s. No changes to the final permit were made based on this comment.

Comment 28: **Part III.D.2. As written, the existing and draft permits seem to discourage permittees from writing more into their SWMP than what is necessary to meet the minimum permit requirements. A permittee may be hesitant to introduce a new idea or pursue a new initiative if some variables are uncertain. It is our belief that the permit could be improved if it encouraged permittees to include, in their SWMPs, goals or BMPs in excess of the minimum permit requirements and allowed permittees to remove or replace such “in excess BMPs” without conditions imposed by OEPA.**

(Franklin County Drainage Engineer)

Response 28: It is not Ohio EPA’s intent to discourage MS4s from introducing new ideas or pursuing new initiatives. However, the SWMP is a plan that documents how the permit requirements will be met. If an activity is not being developed and implemented to meet permit requirements, then it should not be included within the SWMP. Ohio EPA recommends that MS4s study the feasibility of new initiatives before including within the SWMP. In addition, not including the activity within the SWMP could actually support storm water innovation because then the project/practice becomes eligible for potential funding since it is not being used to satisfy an NPDES permit requirement. No changes to the final permit were made based on this comment.

Comment 29: **Part III.D.4. Clarify the specifics of what is expected in the one year timeframe for all new areas added to the MS4 area.**

(Ohio Department of Transportation)

Response 29: This condition requires that your SWMP, which addresses all applicable permit conditions, be implemented within one year for all new areas added to your regulated MS4. Part III.D.4 provides an exception to this one-year timeframe for completing the comprehensive storm sewer system map and dry-weather screening of storm water outfalls for these new areas. MS4s that are unable to complete both permit requirements within one year of becoming responsible for

new areas, must submit an alternative schedule to complete with the next annual report.

Comment 30: **Part IV.A.1.** It is requested that the following language be inserted:

“You must collect data sufficient to evaluate the actual effectiveness of programs in terms of pollutant loadings, water quality and storm water controls.”

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 30: The current permit language does not specifically require an MS4 to perform monitoring and/or modeling to evaluate program effectiveness. The permit provides flexibility for MS4s to determine program effectiveness and this is evaluated by Ohio EPA with MS4 evaluations and/or annual report reviews. No changes to the permit occurred based on this comment.

Comment 31: **Part IV.C.** It is requested that the following language be inserted:

“Annual reports shall be posted on your website and otherwise made available to the public.”

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 31: Ohio EPA encourages MS4s to post their SWMP and annual reports on their respective websites. Many already do this; however, there are some MS4s that do not have a website. At this time, the permit will not require that an MS4 have a website. However, such documents are public documents that MS4s and Ohio EPA are required to provide upon request. Please see Part IV.B.2, the term “annual reports” will be added to Part IV.B.2 for clarification.

Comment 32: **Part IV.C.1.** It is requested that the following language be inserted:

“Including a primary point of contact with an email and telephone number at which someone can be reached during all business hours.”

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 32: It is the intent of the current language for contact information to be included within the table of organization. The permit will be revised to clearly state that contact information must be included.

Comment 33: **Part V. The Hamilton County Stormwater District (HCSWD), which provides permit compliance services to 12 townships and 26 municipalities within Hamilton County Ohio, requests a detailed interpretation from Ohio EPA on the relevance of the following new permit terms added to Part V. Standard Permit Conditions:**

- **T. Bypass**
- **U. Upset**
- **V. Monitoring and Records**
- **W. Reporting Requirements**

By and large, these sections incorporate certain provisions of 40 CFR Section 122.41 into the permit verbatim. We have reviewed the permit language and the pertinent provisions of 40 CFR Section 122.41, and find these conditions relevant to NPDES permits for wastewater treatment facilities, not MS4 stormwater permits. While we understand Ohio EPA’s stated intention to “be consistent with 40 CFR 122.41”, we request written clarification on the relevance of these terms to permittees seeking to comply with General Permit OHQ000003.

(Hamilton County Stormwater District)

Response 33: Ohio EPA agrees that these conditions are more relevant to NPDES wastewater permits. It should be noted that these conditions do not change any permit condition applicable to MS4s under the previous MS4 general permit (OHQ000002). However, 40 CFR 122.41 identifies standard conditions that must be included within all NPDES permits. U.S. EPA noted that these conditions were not included in Ohio EPA’s storm water general permits and requested that they be included to

satisfy 40 CFR 122.41. As such, these conditions have been included.

Comment 34: **Part VI.** It is requested that the permit include the following definitions:

- ***Best Management Practices (BMPs) means [...]The U.S. Environmental Protection Agency’s National Menu of Storm Water Best Management practices (www.epa.gov/oaintrnt/stormwater/best_practices.htm) should be consulted regarding the selection of the appropriate BMPs.***
- ***Green Infrastructure means wet weather management approaches and technologies that utilize, enhance or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration and reuse. Green infrastructure approaches currently in use include green roofs, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, porous and permeable pavements, porous piping systems, dry wells, vegetated median strips, reforestation/revegetation, rain barrels and cisterns and protection and enhancement of riparian buffers and floodplains.***

(Alliance for the Great Lakes, American Rivers, Center for Neighborhood Technology, Lake Erie Waterkeeper, Natural Resources Defense Council and Ohio Environmental Council)

Response 34: A link to U.S. EPA’s Menu of BMPs has been included with the definition of BMPs in Part VI. In addition, a definition of “green infrastructure” has been included within Part VI.

End of Response to Comments