



Division of Surface Water Response to Comments

National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems (MS4)

Ohio EPA General Permit No.: OHQ000004

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Ohio EPA held a public information session on Aug. 5, 2020, and a public hearing on Sept. 1, 2020, regarding a NPDES General Permit for Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems (OHQ000004). This document summarizes the comments and questions received at the public hearing and/or during the associated comment period, which ended on Sept. 8, 2020.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health. Often, public concerns fall outside the scope of that authority. For example, concerns about zoning issues are addressed at the local level. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

General Comments

Comment 1: The Fact Sheet indicates the duration of the upcoming permit will be 5 years. Would Ohio EPA consider extending this to 7-10 years? This would help lower the annual costs of the program which is even more important given the reduction in our revenue due to the COVID-19 pandemic. (Eric Saylor)

- Response 1:** Implementation of this suggestion is not possible as the Clean Water Act and Ohio Administrative Code (OAC) 3745-38-02(I)(3) specifies that NPDES permits may not be issued for a term longer than five years.
- Comment 2:** **The Permit uses the “P”, in SWMP, to mean Program in some cases, Plan in others. Our understanding of Federal and State regulations is that the “P” should mean “Program.” The proper term should be determined and made consistent throughout the Permit.** (Hamilton County Storm Water District)
- Response 2:** The “P” stands for Program. Plan has been changed to Program within the permit.
- Comment 3:** **These regulations appear to put significant financial burden on our community. We have several people working reduced hours because the city budget has been gutted by the COVID virus. This situation will continue throughout at least 2021 due to less income tax revenue from 2020.** (City of Cambridge)
- The impact of the COVID-19 pandemic on municipalities operating under this permit has been significant and therefore we ask that Ohio EPA be flexible in compliance regarding the new requirements for the next couple of years.** (City of Cincinnati)
- Response 3:** Changes were made throughout the final permit which provides additional time to implement requirements. Such changes will provide more flexibility.
- Comment 4:** **Fiscal Challenges in Meeting New Performance Standards in the Coronavirus Era. The proposed MS4 General Permit and its requirements, particularly the new performance standards and associated costs, are coming at a very inopportune time as many counties, townships, and municipalities are facing the impacts of the coronavirus pandemic. Each community is experiencing impacts on resources – funding and staff – due to funding shortfalls during the current economic crisis. There are no available resources to implement new programs.** (Hamilton County Storm Water District)
- Response 4:** While no change was made to specifically address this concern, Ohio EPA understands the hardship that COVID-19 has brought to Ohio communities. Where compliance is jeopardized, communities are encouraged to communicate these issues with Ohio EPA program staff. It should be noted that many of the changes in this permit, including the more detailed manner that communities are to respond to the existence of a Total Maximum Daily Load (TMDL), are not new requirements, but are an attempt to make performance measures more concrete and associated costs more predictable.

- Comment 5:** If a TMDL is developed and approved after a permittee obtains coverage under the MS4 permit, how long would that permittee have to comply with the TMDL-based requirements? Would these not take effect until the next MS4 permit cycle? (Clermont County)
- Response 5:** MS4 communities may, but are not required to, incorporate changes due to new TMDLs until the next MS4 permit is issued. MS4s are only required to comply with TMDL based requirements for those TMDLs that are finalized (U.S. EPA approved) at the time of OHQ000004 permit issuance.
- Comment 6:** Ohio EPA's Construction General Permit is due to be renewed in April 2023. Assuming the new permit includes more stringent requirements, will MS4 permittees be required to update their construction/post-construction regulations within 180 days of the CGP renewal (during the upcoming MS4 permit cycle), or not until the issuance of the next MS4 permit? (Clermont County)
- Response 6:** The next Small MS4 general permit (OHQ000005) will identify the timeframe to update local regulations to be consistent with the next Construction General Permit (CGP - OHC000006). Due to appeal rights, OHQ000004 cannot require updates to the next generation CGP because it does not exist and cannot be reviewed and commented on during this permit's public notice period. However, Ohio EPA would encourage MS4s to be proactive and update local regulations if possible, shortly after final issuance of OHC000006.
- Comment 7:** Across the permit, change all timelines from 180 days to 1 year. (Toledo Metropolitan Area Council of Governments, City of Perrysburg)
- Across the permit, Lucas County requests that updates to existing codes, regulations, or SWMPs be changed from the proposed 180 days to one year. The previous version of the Small MS4 permit gave permittees two years to submit these updates or changes. While we agree that two years was too long of a time period, 180 days is too short of a time period to make changes/updates and then get those documents through the appropriate approving authorities. (Lucas County)**
- Response 7:** The time requirement has been changed to one year for updating construction and post-construction regulations and updating the Storm Water Management Program (SWMP).
- Comment 8:** Across the permit, provide clear guidance on all performance standards. Without clear guidance when developing SWMPs, MS4s are forced to use their best judgment, then hit with

enforcement actions during audits. Often enforcement is left up to interpretation of individual Ohio EPA staff. Clear guidance is needed to efficiently develop SWMPs and meet permit requirements and ensure equitable enforcement. (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

We would like Ohio EPA to provide clear guidance on performance standards. Too often Small MS4 communities have used their best judgement in developing programs with performance standards, only to receive notice that the performance standards in place do not meet requirements. Setting clear guidance and expectations from Ohio EPA would ensure an equitable enforcement policy across the state, not district to district. (Lucas County)

Response 8: We acknowledge that this can take effort, but we have not added any new language to the permit. With each renewal, considerable energy is focused on clarifying the performance standards. We will continue to provide and expand educational opportunities regarding this issue, as we are able.

Comment 9: **Verify that MS4s will be able to include implementation schedules in their SWMP for new Permit requirements and the new performance standards. Many of these new requirements have budgetary and resource allocation implications that may require time to complete implementation.** (Hamilton County Storm Water District)

Response 9: Based on comments received, Ohio EPA has provided additional time within the permit for MS4s to implement any new requirements. Whereas some of the requirements are to be completed by the end of the permit term (i.e., five years to complete). MS4s should provide implementation schedules that coincide with applicable timeframes within the final permit.

Comment 10: **Overall, the proposed changes in this draft permit will help improve water quality in Ohio.** (Chagrin River Watershed Partners)

Response 10: We agree.

Comment 11: **One item that should be addressed is the use of the word “potential” anywhere in the MS4 language. Providing inspectors/municipalities the ability to define issues as potential would lead to subjective enforcement by local officials on items they would interpret as potential. Either an action has an adverse effect on water quality, or it does not as define by OEPA/USEPA. This change could lead to a never-ending cycle changes to standards as there could be**

potential, non-defined effects to water quality. (Ohio Homebuilders Association)

Response 11: No change was made in response to this comment. The MS4 permit focuses on the application of minimum control measures (MCMs) to prevent, or stop, current, or future, predictable pollution through or as a result of the permittee's storm sewer system. The permit language has been examined and where "potential" is used, it communicates commonly found or predictable issues that are generally prevented or minimized by the use of the MCMs or best management practices required by the permit. We do not think this opens the application or enforcement to greater subjectivity as there are standards and specifications or objective measures for these items.

Comment 12: **Changes to construction storm water provisions as related to cost impacts are currently being further evaluated, so we can provide a more detailed analysis, but we wanted to document as a potential concern.** (Ohio Homebuilders Association)

Response 12: Noted.

Comment 13: **Due to several wide-ranging changes in this draft permit, it will be challenging to even calculate the labor hours necessary to meet these requirements, if they become final.** (City of Perrysburg)

Response 13: No change in the permit was made because of this comment. Many of the changes proposed are not new requirements but a detailing of practical methods that will meet what was an open-ended requirement (e.g., MS4 response to local TMDLs). Some changes (e.g., mapping of post-construction storm water facilities) are the incorporation of better MS4 community practices that enable them to meet current requirements. While the latter will have some cost for older facilities, it will be low cost to perform this as development occurs.

Comment 14: **The Friends of the Lower Olentangy Watershed (FLOW) were pleased to see the changes proposed for the draft small MS4 permit renewal. The highlights in the power point presentation and the 6 page fact sheet indicate that Ohio EPA is deeply committed to helping reduce storm water impacts in urban areas and help watershed groups like ours ensure good water quality. The linkage made between MS4s and watershed TMDL contaminants of concern should go a long way to helping with outreach and education. The addition of specific actions for watersheds that have a TMDL plan and the targeted messages will be very helpful.** [Friends of the Lower Olentangy Watershed (FLOW)]

Response 14: Thank you for your comments.

Comment 15: **The Friends of the Lower Olentangy Watershed (FLOW) would like to know how we can view copies of the annual reports from small MS4s in our watershed.** [Friends of the Lower Olentangy Watershed (FLOW)]

Response 15: These can be requested by contacting Anthony Robinson at anthony.robinson@epa.ohio.gov.

Comment 16: **A storm water improvement that could help the Olentangy is if ODOT did not directly discharge their storm water from the top of bridges or State Route 315 that passes high above the watershed (like at King at Olentangy River Road Park Access).** [Friends of the Lower Olentangy Watershed (FLOW)]



Response 16: No changes have been made due to this comment, but storm water program staff will monitor this issue.

Coverage Under this Permit

Comment 17: **Part I.A. Municipal codes and policies should be reflected in the updated SWMPs, and 180 days may be too short of a turn-around for many municipal review processes if the urbanized area changes with the census data.** (Franklin County Storm Water Management Committee)

Response 17: Based on comments received, the final permit provides one year for MS4s renewing coverage to update their construction and post-construction regulations and provides one year to update SWMPs to comply with OHQ000004. The updated SWMP will be required to be submitted as an attachment with the 2021 Annual Report that will be due on Apr. 1, 2022.

Comment 18: **Part I.A. “...and areas outside of urbanized areas that the director of Ohio EPA designates.” Please clarify the defining criteria that will be evaluated in this designation.** (Lucas County)

Response 18: Please see Ohio Administrative Code (OAC) 3745-39-03(A)(1)(b) and OAC 3745-39-03(F) for criteria for director to designate Small MS4s outside of urbanized areas.

Comment 19: **Part I.B.2.c. What are the fees associated with the renewal application and the annual cost / per square mile for the discharge fee? Have these changed? We feel the cost should be stated in this permit, or at a minimum, there should be a statement referencing where this information is located.** (City of Zanesville, Jefferson County, City of Belpre)

Part I.B.2.c. This part refers to applicable fees. Have these changed from previous permits? (Kathy Davis)

Response 19: Applicable fees are unchanged from the previous generation general permit. Fees associated with the Small MS4 General Permit include a \$200.00 application fee and an Annual Discharge Fee (ADF). There is not a fee associated with submitting the Annual Report. The \$200.00 application fee will be required when a MS4 submits their Notice of Intent (NOI) for coverage under this general permit renewal [per ORC 3745.11(S)(1)(c)(i)]. Ohio EPA will supply MS4s, required to apply for coverage, the necessary instructions once the general permit is issued.

The NOI form that is submitted by a MS4 applying for coverage under this general permit requires that a MS4 drainage area (square miles) be provided. This information will be used to determine an MS4 operator's ADF (which is due annually on or before January 30). The fee is \$10 per one-tenth of a square mile of area permitted and shall not exceed \$10,000 [per ORC 3745.11(L)(4)]. Ohio EPA will send an annual notification regarding an MS4s specific fee prior to it being due.

OHQ000004 includes the appropriate fee citations applicable to the NOI and ADF in Part I.D.1 of final permit.

Comment 20: **Part I.B.3.b. Regarding desalinated swimming pool discharges, please consider a fact sheet or suggested handling of salt water pool discharges given that this needs to be desalinated to be considered a non-storm water discharge.** (City of Zanesville, Jefferson County, City of Belpre)

Response 20: Guidance on the handling of pool discharges is provided at the following Ohio EPA Storm Water Program website:
<https://epa.ohio.gov/dsw/storm/index#116445712-permit-compliance-materials>.

Comment 21: **Part I.B.3.b. Regarding planned fire-fighting activities, what is considered proper disposal for this activity? Is it reasonable to expect - in many cases - volunteer fire departments to have**

funds for professional clean-up of these chemicals? Can the area be contained with a berm or filter sock with no discharge to an area within the storm drain system, time of travel to a public potable water well, or to any water body? (City of Zanesville, Jefferson County, City of Belpre)

Part I.B.3.b and Part III.B.3.g. Please clarify are fire departments expected to develop containment and collection plans for “planned” firefighting activities. Is this intended to address PFAS contamination? (EMH&T)

Response 21:

This is not a new condition associated with OHQ000004, rather updates the permit with the words “not planned exercises” to be consistent with OAC 3745-39-03(C)(2)(c)(iii). The intent has always been that authorized discharges from fire-fighting activities are from actual fire-fighting events and not from training exercises. A planned fire-fighting exercise generates wastewater that would need managed accordingly. This wastewater would be generated whether only water or the foams are used during the exercise. This wastewater is not authorized to be discharge under the Small MS4 General Permit.

Comment 22:

Part I.B.3.b. The draft permit authorizes MS4s to discharge the following non-storm water sources provided that the discharges do not violate OAC 3745 (Ohio’s Water Quality Standards) and Ohio EPA has not determined, and notified you in writing, these sources are substantial contributors of pollutants to your MS4: waterline flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration...

It seems like it would be challenging to ensure all discharges from authorized sources do not violate OAC 3745 without substantial and potentially unreasonable amount of testing. We request additional clarification on this point. (Great Parks of Hamilton County)

Part I.B.3.b. It may be beyond the capability of MS4s to ensure that all the listed non-storm water discharges will indeed meet WQS. (City of Perrysburg)

Response 22:

The intent of the added language was to provide a minimum standard that could be used, if needed, to determine if a source is a significant/substantial contributor of pollutants. The intent is not that a MS4 need to sample each listed non-storm water discharge and determine if permissible or not. Ohio EPA intends that MS4s will address all allowable non-storm water flows categorically rather than individually. The permit’s reference to OAC 3745-1 (Ohio’s Water Quality Standards) is the basis, if needed, to determine if a source is a significant/substantial contributor of pollutants and not an allowable non-storm water discharge under

the permit.

Comment 23: **Part I.B.4 and Appendix A. If a community has two watersheds, both with a Total Phosphorus TMDL, does that count as 1 TMDL or 2 for that communities MCM requirements?** (Elizabeth Hiser)

Response 23: The permit's TMDL performance standards only require that you implement that performance standard within the applicable watersheds. As an example, City of X MS4 is located within two watersheds and Watershed A has a TMDL performance standard for phosphorus and Watershed B has no TMDL performance standard requirements. The permit would require, at a minimum, the MS4 to implement the TMDL performance standards for phosphorus only within City of X's jurisdictional regulated area and within Watershed A. If both watersheds have a TMDL performance standard for phosphorus, then the performance standard needs implemented within both watersheds within City of X's jurisdictional regulated area.

Comment 24: **Part I.B.4 and Appendix A. NPDES Permit Requirements Should Only Apply to Areas Draining to MS4s Owned/Operated by a Jurisdiction. It should be clarified in the appendix that what is being permitted is the owner/operator of the outfall of the MS4, not the entire jurisdiction (i.e., it's a point source discharge permit) and that the Permit requirements apply to only those MS4s that are located within a TMDL watershed (or portion of a TMDL watershed) where MS4 discharges were identified as a major source of TMDL pollutant(s).** (Hamilton County Storm Water District)

Response 24: To provide clarification, the following language has been added to Appendix A of the final permit:

"If your small MS4 is identified in Appendix A, you shall develop and implement the TMDL Performance Standards within this permit for your MS4 discharges. Implementation shall occur, at a minimum, for your regulated MS4 discharges within each TMDL Project watershed identified."

Comment 25: **Part I.B.4 and Appendix A. MS4 communities in multiple watersheds. Please verify that TMDL performance standards for communities located in multiple watersheds apply only to the parts of the community served by an MS4 operated by the community that discharges to the water body covered by the TMDL. This interpretation was presented at the August 5, 2020 Ohio EPA Virtual Meeting and is consistent with 40 CFR.122.26.a.(v).¹** (Hamilton County Storm Water District)

¹ 40 CFR.122.26.a.(v) Permits for all or a portion of all

discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

Response 25: Correct. Please see Response 23 and Response 24 for additional information.

Comment 26: **Part I.B.4 and Appendix A. Co-permittee MS4 groups in multiple watersheds. Please verify that a co-permittee MS4 group is responsible for meeting TMDL performance standards for TMDL pollutants identified only in those areas within communities served by an MS4 operated by the community that discharges to the water body covered by the TMDL.(i.e., the TMDL performance standards do not apply to co-permittee MS4s in watersheds without existing TMDLs)** (Hamilton County Storm Water District)

Response 26: Correct. Please see Response 23 and Response 24 for additional information.

Comment 27: **Part I.B.4 and Appendix A. MS4s are not the Primary Contributor of TMDL Pollutants to the Lower Little Miami River. The lower Little Miami River Watershed Total Maximum Daily Load (TMDL) report approved by U.S. EPA on March 28, 2011 calculates TMDLs for E. coli bacteria, total phosphorus, chemical oxygen demand, total suspended solids, and sedimentation and habitat. It lists the two primary causes of aquatic life impairment as the high proportion of fine sediment in the channel and the extremely low water levels due to a drought year. Other stressors include degraded habitat from agricultural drainage and the "armoring" of the stream channel in urban areas (primarily in waters dominated by combined sewer overflows); nutrient enrichment from wastewater plant effluent and cropland runoff, and oxygen demanding substances from inadequately treated storm water at the former ABX Airpark and combined sewer discharges within the Metropolitan Sewer District (MSD). Sources of bacteria are wastewater emanating from sanitary sewer and combined sewer overflows, inadequate treatment from home septic systems, and runoff of bacteria-laden crop fields where manure or sludge are likely applied.**

Recommendations include point source controls on the airpark, MSD's combined sewer system, and the Blanchester wastewater treatment plant. Nonpoint source actions include improving home septic systems and implementing

conventional management practices that are designed to abate pollutant loading from cropland and urban landscapes.

The findings of the TMDL indicate that discharges from MS4s in Hamilton County are not primary contributors to TMDL pollutants and, as such, should not be listed in Appendix A. Specifically:

- Per the TMDL, CBOD seems to be related to CSO discharges and/or discharges from deicing activities at airports (i.e., a stormwater discharge associated with industrial activities). These types of discharges are not the responsibility of the MS4 or covered under the MS4 General Permit and should not be subject to its performance standards.
- E-coli is listed for main stem of Little Miami (but not tributaries outside CSO areas). This would suggest that the primary source would be upstream/agricultural and CSOs, with urban storm water a secondary (or tertiary) source. As such, we suggest that e-coli be removed as a pollutant to be addressed by MS4s. In addition, the BMPs listed for this TMDL do not appear effective at e-coli control.

More generally, Ohio EPA should revise Appendix A to include only those MS4s where the TMDL found MS4 discharges to be a primary source of a specific TMDL pollutant. (Hamilton County Storm Water District)

Response 27: In a TMDL project, all sources contributing the pollutant are given an allocation. All sources must have an allocation to have a permissible discharge. An entity may not be the primary source but is a contributor therefore must have a waste load allocation (WLA) for that pollutant.

Comment 28: Part I.B.4 and Appendix A. TMDL Performance Standards Complicate Compliance. Achieving Permit compliance for different TMDL performance standards within a community, or an entire co-permittee MS4 group, that lies within multiple watersheds may be exceedingly complex, may not be legally feasible, and may not be cost-effective. What consideration has been given to the appropriate level of compliance for this situation?

- **Example 1:** Creating a leaf collection program to be implemented in a portion of a community would be complicated (e.g., community or contracted leaf collection crews would need to adhere to detailed service area maps) and may be challenged by residents who pay local taxes but are not receiving this this service. Extending the program throughout

the community to be equitable would also increase costs with no TMDL benefits (i.e., it would implicitly require controls beyond the MEP criteria).

• **Example 2: Creation of a county ordinance requiring developers to use Table 4b (green infrastructure) practices that would apply to only those townships completely or partially located in a TMDL watershed would be complicated. It could also be subject to legal challenges by impacted townships citing adverse economic hardship when developers choose to relocate to areas not impacted by the ordinance. (Hamilton County Storm Water District)**

Response 28: Based on comments received, the final permit includes revisions and more options to satisfy TMDL Performance Standards.

Comment 29: **Part I.D.2.a. Reference is made that a Co-Permittee NOI shall be submitted in accordance with Part II.C, however, Part II.C has been stricken from the permit. Please clarify.** (Lake County Stormwater Management Department)

Response 29: The final permit has the correct reference of Part II.B instead of the incorrect reference of Part II.C.

Notice of Intent Requirements/Storm Water Management Programs (SWMP)

Comment 30: **Part II.A.4. Is it reasonable to expect MS4 communities to be able to update the SWMP and get it approved within 6 months? In order to accomplish this other items will need to be addressed, such as a salt storage ordinance, department SWP3 updates, and post-construction O&M requirements. With this in mind, we feel a 2-year time frame from the effective date of the new permit, for an updated SWMP is reasonable.** (City of Zanesville, Jefferson County, City of Belpre)

Part II.A.4. The amount of time given to update the SWMP has been changed from 2 years to 6 months. To appropriately implement the proposed changes, we would like to request at least 12 months to submit an updated SWMP. (Great Parks of Hamilton County)

Part III.A.2. Decreasing the timeline for updating the SWMP from 2 years to 6 months is unreasonable. Some MS4s will have to hire a consultant to update the SWMP, which in some cases requires budgeting and waiting until the next fiscal year. 18 months is more reasonable. (City of Piqua)

Part II.A.4 and Part III.A.2. It is necessary to provide at least one year, not 180 days, to update the SWMP and to update ordinances to correspond with the updated SWMP and the

latest CGP (OHC000005). (City of Perrysburg)

Part III.A.2, Part III.B.4.c.i and Part III.B.5.f.i. Communities have 180 days to comply with the new Permit (Part III.A.2 and Part III.B.4.c.i and Part III.B.5.f.i). CRWP recommends a minimum compliance period of one year. If the agency desires a shorter compliance period, discussions with our members and partners indicate that a minimum of 9 months are required for updates to community codes (review and required readings) and updates to Storm Water Management Programs (SWMPs) and Memorandums of Understanding (MOUs). CRWP recommends that Ohio EPA allow flexibility whereby a small MS4 can provide documentation if they are unable to meet the 180-day deadline and allow them to provide a schedule with steps included and anticipated dates. (Chagrin River Watershed Partners)

Part III.A.2, Part III.B.4.c.i and Part III.B.5.f.i. It is requested that that deadline to update the SWMP, ordinances and other appropriate documents from 180 days to a minimum of one year and preferably two. This will allow the updates to be made, reviewed and adopted by municipalities with ample time to go through the legislative process. (Lake County Stormwater Management Department)

Part II.A.4 and Part III.A.2. It is recommended that the proposed timeframe for submittal of a SWMP meeting the new Permit requirements be increased from the proposed 180 days, dramatically decreased from the two years in the existing Permit, to two years to allow adequate time for public involvement required under minimum control measure (MCM) 2. The proposed 180 days is inadequate to accommodate stakeholder involvement in developing the SWMP, providing the opportunity for public review and comment on the draft SWMP, meeting public noticing timelines, holding public meetings/hearings, and for addressing and incorporating responses to public comments. (Hamilton County Storm Water District)

Response 30: Based on comments received, the final permit provides one year for MS4s renewing coverage to update their construction and post-construction regulations and provides one year to update SWMPs to comply with OHQ000004. The updated SWMP will be required to be submitted as an attachment with the 2021 Annual Report that will be due on Apr. 1, 2022.

Comment 31: **Part II.A.4. Will Ohio EPA provide assistance to MS4s preparing permit renewals? We are a community of just over 10,000 people and don't have the personnel or the financial resources, especially with COVID-19's effect on the city budget, to hire a consultant. (City of Cambridge)**

Response 31: Ohio EPA will provide guidance and instructions on how to prepare a permit renewal on our Storm Water Program website at: <https://epa.ohio.gov/dsw/storm/index#116445712-permit-compliance-materials>.

Comment 32: **Part II.B. Will the permittee be able to submit the Co-Permittee NOIs with the Permittee NOI on the Permittee ebiz account? This will eliminate the need for multiple ebiz accounts.** (Lake County Stormwater Management Department)

Response 32: The main NOI will need to be renewed in eBiz. After the main NOI is renewed, then all Co-Permittees will be able to submit a Co-Permittee NOI in eBiz. Each MS4, including Co-Permittees will need to have an eBiz account and PIN to renew coverage. Ohio EPA will provide guidance for this and staff will be available to provide assistance.

Comment 33: **Part III.A.1.a. Replace references to “TMDL recommendations” with “causes and sources of impairment identified in the Ohio Integrated Water Quality Monitoring and Assessment Report (aka Integrated Report).” Many waterways in Ohio have been determined to be impaired, but do not have a TMDL in place. By requiring identified impairments to be addressed, additional water quality gains can be made without the need to wait for the recently lengthy TMDL development process.** (Cuyahoga Soil and Water Conservation District)

Response 33: Your comment was evaluated but no changes to the permit were made. Ohio EPA agrees that MS4s should be aware of and review the most recent Integrated Report to identify impairment status of their watershed(s), and if impaired, the causes and sources of impairment. The Integrated Report does aid MS4s in targeting local impairments. However, it is Ohio EPA’s opinion that for the permit to require implementation measures, this should be based on a U.S. EPA approved TMDL. Ohio EPA will highlight in guidance the usefulness of the Integrated Report on our Storm Water Program website to assist MS4s in identifying local water quality concerns.

Comment 34: **Part III.A.1.b. “...or how you intend to partner with an entity that does.” Authority to implement BMPs for Counties is provided in the Ohio Revised Code. If the Ohio Revised Code does not provide for implementation of a BMP, it is not clear how Ohio EPA can require an entity to partner with if no entity exists within the MS4 boundaries. Is it Ohio EPA’s intention that Ohio EPA be the partner organization?** (Lucas County)

Part III.A.1.c. “...the ones you believe you have the authority

to implement.” This is related to the comment above. It is not clear how a County MS4 can be held accountable for implementation of a BMP if the authority is not present for implementation. (Lucas County)

Response 34: Ohio EPA understands that counties and townships only have the authority which the Ohio Revised Code (ORC) provides them; as such, the requirements of the permit are to the extent allowable under state law. However, townships partner with counties and many MS4s partner with local boards of health and soil and water conservation districts (SWCDs) to implement aspects of the permit. This SWMP component simply has the MS4 identify whether they believe they have legal authority to implement and if not, how they intend to partner with another entity that does to implement said BMP.

Public Education & Outreach & Public Involvement/Participation

Comment 35: **Part III.B.1 and Part III.B.2. A better definition and expectation of what "reaching" means when trying to conduct education programs is needed. There is no conceivable way to physically "reach" at least 50 percent of the population. You cannot "make" people attend an event or program. You can make the program "available" to at least 50 percent of your population by ensuring advertisement gets to that population and they are aware of it. This should be realistically clarified.** (Geauga Soil and Water Conservation District)

Response 35: The performance standard to reach 50 percent of your population over the permit term only applies to the Public Education and Outreach MCM not the Public Involvement/Participation MCM. Ohio EPA believes it is feasible to reach this percentage of the population with educational materials over the five-year permit term. Possible mechanisms such as: educational fliers included in monthly sewer/water bills; posting on social media; and having an accessible user-friendly website could assist to meet this percentage.

Comment 36: **Part III.B.1.c.i. Require at least 3 different outreach mechanisms. This will lead to more comprehensive Public Education programs.** (Cuyahoga Soil and Water Conservation District)

Response 36: Ohio EPA evaluated this comment but determined to maintain the existing performance standard in Part III.B.1.c.i that, at a minimum, at least two outreach mechanisms are required. This provides MS4s flexibility to best reach their targeted audience while still setting a measurable standard.

Comment 37: **Part III.B.1.c.iv and Part III.B.2.c.ii. Clarify whether the requirement for a TMDL performance standard of a minimum**

of two programs targeting the TMDL pollutants is part of the 5 programs required or in addition to. (Geauga Soil and Water Conservation District)

Part III.B.1.c. This increases the minimum of 5 themes for community listings with 3 or more targeted pollutants and likely increases the number of themes or messages overall as some existing programs may not address listed TMDL concerns. (Franklin County Storm Water Management Committee)

Part III.B.1.c. and Part III.B.2.c. The challenges of the COVID-19 pandemic vary across cities and counties and if a surge(s) of cases occurs within a permittee's area these requirements may be difficult to achieve. We request that, during the first year of the permit cycle, Ohio EPA be flexible in meeting these requirements due to limitations posed by the pandemic. (City of Cincinnati)

Part III.B.1.c. and Part III.B.2.c. Due to the unknown of how long the COVID-19 pandemic will last, we suggest that a specific number of public education and involvement activities be eliminated. We recommend that each permittee be able to propose what it believes it can accomplish within the initial SWMP and its annual updates. (Eric Saylor)

Part III.B.1.c.ii and iv. "Those MS4s with a TMDL Performance Standard may be required to implement additional themes or messages." The word "may" indicates that Ohio EPA could mandate this requirement at a later date. We believe it would be unreasonable to provide an open-ended mandate on the scope of this requirement.

"...include two storm water themes or messages targeting each TMDL pollutant..." With this provision it is unclear on the extent of the outreach effort. It could be defined that if a MS4 has five TMDL pollutants across its entire area, that 10 themes or messages need to be part of the outreach program? If true, this provision would significantly increase the public education and outreach requirements and the resources and costs required to meet the requirement.

Part III.B.2.c.ii. "...include two public involvement/participation activities targeting each TMDL..." To mirror comment above, this would suggest that there needs to be multiple involvement activities per TMDL, substantially increasing the requirements of a Small MS4s involvement program that has been successful in the past. It is unclear whether one involvement activity can handle multiple TMDLS. (Lucas County)

Part III.B.1.c.iv. The permit states, “...Your storm water public education and outreach program shall, at a minimum, include two storm water themes or messages targeting each TMDL pollutant identified for your small MS4.” There is a requirement to have a minimum of five themes already. Can the original five be modified to address the TMDL performance standards, or must we add on to our existing SWMP’s messages? (City of Delaware)

Response 37:

Ohio EPA evaluated the comments received and made changes to the final permit. The final permit now contains the following revised language for Part III.B.1.c.ii and Part III.B.1.c.iv:

A minimum of five ~~different~~ storm water themes or messages over the permit term. ~~Those MS4s with a TMDL Performance Standard may be required to implement additional themes or messages. At a minimum, at least one theme or message shall be targeted to the development community.~~

TMDL Performance Standard (see Appendix A). If your small MS4 discharges to a watershed with a U.S. EPA approved TMDL, your storm water public education and outreach program shall, at a minimum, target include two storm water themes or messages targeting each TMDL pollutant identified for your small MS4 at least once towards satisfying your minimum of five storm water themes or messages over the permit term. Single themes or messages can target multiple pollutants.

This revised language within the final permit provides MS4s flexibility while still setting a minimum measurable standard. This revision maintains the previous permit’s minimum total of five different storm water themes or messages over the permit term while requiring MS4s subject to the TMDL Performance Standard to target their educational themes/messages to their respective TMDL pollutants.

MS4s that have more than five TMDL pollutants to target can either provide more than the minimum five themes/messages or address multiple pollutants with single themes/messages.

Comment 38:

Part III.B.1.c.iv. We will need guidance from Ohio EPA as to which Best Management Practices (BMPs) apply to our Total Maximum Daily Loads (TMDLs). We recommend that this be included in the Storm Water Management Program (SWMP). (City of Cincinnati)

Response 38:

The Northeast Ohio Stormwater Training Council (NEOSWTC) has developed very useful TMDL Fact Sheets for various pollutants. These fact sheets provide possible themes/activities to

target the various pollutants. You can view the NEOSWTC TMDL Fact Sheets at <http://nehiostormwater.com/index.html>.

Comment 39: **Part III.B.1.c.iv. Cuyahoga SWCD supports the requirement for additional outreach themes/messages correlated to TMDL pollutants. Replace references to “TMDL Performance Standard” with “Impaired Waterway Performance Standard.” Many waterways in Ohio have been determined to be impaired, but do not have a TMDL in place. By requiring identified impairments to be addressed, additional water quality gains can be made without the need to wait for the recently lengthy TMDL development process. (Cuyahoga Soil and Water Conservation District)**

Response 39: Please see Response 33.

Comment 40: **Part III.B.1.c.v. Cuyahoga SWCD supports the clarification that reporting should include an estimate of people reached within the permittee’s jurisdiction. (Cuyahoga Soil and Water Conservation District)**

Part III.B.1.c.v and Part III.B.2.c.iii. Most MCM #1 and #2 efforts are collaborative across MS4 boundaries. It is impossible to track how many individuals from within each jurisdiction were reached. Develop a different mechanism for tracking success. (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Response 40: Ohio EPA agrees that many educational/involvement efforts are collaboration efforts across multiple MS4 jurisdictions. It is understood that it may be difficult to provide an estimate of people reached depending upon the mechanism used. However, the final permit simply requires an estimate of the number of people from the MS4 that participated. When reporting, you can provide a note what the total number of participants was for the mechanism and how you best estimated the participation for the MS4.

Comment 41: **Part III.B.2.c. Include a minimum number of participants in involvement events over the term of the event, similar to the minimum requirement to reach 50% of the population in MCM1 (e.g., 50 participants, 0.25% of the population, etc.). (Cuyahoga Soil and Water Conservation District)**

Response 41: The comment was evaluated but no changes to the final permit were made.

Comment 42: **Part III.B.2.c.i and ii. The City asks that additional public involvement/participation programs and/or activities not be included in this permit. The City, like many public entities, has experienced significant reduction in funds due to the pandemic and recovery will take several years. Instead, the**

City asks that the Ohio EPA consider adding language that the current required number of activities includes targeting the TMDL pollutant identified for our MS4. (City of Sidney)

Part III.B.2.c.ii. The permit states, "...If your MS4 discharges to a watershed with a USEPA approved TMDL, your storm water public involvement/participation program shall, at a minimum, include two public involvement/participation activities targeting each TMDL pollutant identified for your small MS4." Are these activities in addition to the minimum five activities already required, or including? Can the Ohio EPA provide examples of public involvement activities pertaining to TMDL pollutants? Two involvement activities per pollutant, if in addition to the existing five activities, seem high. If one activity touches on all three TMDL pollutants, such as citizen science stream monitoring, would that be sufficient, or would there still need to be five separate, additional involvement opportunities addressing the pollutants? (City of Delaware)

Part III.B.2.c.ii. Communities with 3 or more identified pollutants will exceed the minimum required. It is unclear how some traditionally used activities, like stream clean ups, storm drain marking, and tree plantings, can be used to meet some of these requirements. OEPA should provide examples of activities that meet their expectations and relate them to specific pollutants in Appendix A. (Franklin County Storm Water Management Committee)

Response 42:

Ohio EPA evaluated the comments received and made changes to the final permit. The final permit now contains the following revised language for Part III.B.2.c.i and Part III.B.2.c.ii:

*Five public involvement activities over the permit term.
~~Those MS4s with a TMDL Performance Standard may be required to implement more.~~*

TMDL Performance Standard (see Appendix A). If your MS4 discharges to a watershed with a U.S. EPA approved TMDL, your storm water public involvement/participation program shall, at a minimum, target include two public involvement/participation activities targeting each TMDL pollutant identified for your small MS4 at least once towards satisfying your minimum of five public involvement activities over the permit term. Single public involvement activities can target multiple pollutants.

This revised language within the final permit provides MS4s flexibility while still setting a minimum measurable standard. This revision maintains the previous permit's minimum total of five public involvement activities over the permit term while requiring

MS4s subject to the TMDL Performance Standard to target their involvement/participation activities to their respective TMDL pollutants.

MS4s that have more than five TMDL pollutants can either provide more than the minimum five involvement/participation activities or address multiple pollutants with single involvement/participation activities.

Illicit Discharge Detection & Elimination

Comment 43: **Part III.B.3.b. Can Ohio EPA clarify and confirm that the mapping of private post-construction facilities (including the types) will only be required for those practices completed from the date of this permit renewal?** (Lake County Stormwater Management Department)

Response 43: The overall intent of this requirement is for MS4s to know where post-construction practices are located, know the type of BMP, and ensure long-term operation and maintenance is being performed on these BMPs.

The requirement to include public and private post-construction water quality BMPs, that are installed to satisfy Ohio EPA's NPDES Construction Storm Water General Permit and/or the local MS4's post-construction requirements, as a component of the comprehensive storm sewer map has existed since the second generation Small MS4 general permit that was issued on January 30, 2009:

3. Illicit Discharge Detection and Elimination

- a. You shall develop, implement and enforce a program to detect and eliminate illicit discharges, as defined in Part VI of this permit, into your small MS4 (for illicit discharges to your MS4 via an adjacent, outside of your jurisdiction, interconnected MS4, you are only required to inform the neighboring MS4 and Ohio EPA in your annual report submission, of their existence);
- b. You shall develop, if not already completed, a comprehensive storm sewer system map, showing the location of all outfalls and the names and location of all surface waters of the State that receive discharges from those outfalls. Within five years of when your coverage under this

general permit was granted, your comprehensive storm sewer system map shall also include your MS4 system (owned and/or operated by you), including catch basins, pipes, ditches, flood control facilities (retention/detention ponds), post-construction water quality BMPs and private post-construction water quality BMPs which have been installed to satisfy Ohio EPA's NPDES Construction Storm Water general permit and/or your local post-construction water quality BMP requirements. If you will be unable to develop your comprehensive storm sewer system map during this permit term, you shall provide an alternative schedule to complete with your 2009 Annual Report.

At the least, this mapping requirement has applied to all post-

construction BMPs (public and private) that have been installed five years past (three years for MS4s within rapidly developing watersheds) the date the MS4 was issued their initial Small MS4 general permit coverage.

Language has been added to provide the full permit term (five years) to identify BMP type for already existing BMPs that should already be mapped.

Comment 44: **Part III.B.3.c. U.S. EPA recommends that Ohio strengthen the steps permittees will take to identify and eliminate illicit discharges. Specifically, U.S. EPA recommends the addition of language in the Illicit Discharge Detection and Elimination as a requirement in Section 3. Part c.**

“Cross-walk the list developed in (1) against the list of permittees covered under the Household Sewage Treatment System general permit (OHK000003) <https://epa.ohio.gov/dsw/permits/NonStormqplist>, identify any HSTS without NPDES permit coverage that is connected or discharging to your small MS4, and notify the owner of the requirement to pursue coverage under an appropriate Ohio EPA general NPDES permit.” (U.S. EPA)

Response 44: Ohio EPA has not added the suggested requirement for the MS4 to notify the owner to pursue coverage under the NPDES Household Sewage Treatment System (HSTS) General Permit for all existing discharging HSTSs. The eligibility requirements for the NPDES HSTS General Permit will only allow coverage for new and replacement systems. Part III.B.3.c of OHQ000004 states that for replacement of discharging HSTSs that cannot be eliminated through connection to central sewers or installation of soil absorption systems, the property owner must be notified of the requirement to pursue coverage under an appropriate Ohio EPA general NPDES permit. MS4s should already be cross walking their list of discharging HSTSs to the HSTS General Permit list to determine permitted versus illicit discharges that require a plan for elimination.

Comment 45: **Part III.B.3.c.i and Part III.B.3.c.ii. Will the Ohio EPA notify MS4 communities if they have not previously submitted an HSTS list and/or storm sewer map of known HSTS locations? The list of HSTS sites is dynamic as the City annexes new areas. Is it an expectation that the MS4 community submits an updated list with the Annual Report every year? Clarification on this in the permit language would be helpful.** (City of Delaware)

Response 45: Ohio EPA has been reviewing this information during Small MS4 evaluations to determine compliance. However, Ohio EPA may

request this information from the MS4, if needed, for purposes other than for an evaluation.

As part of OHQ000004's annual reporting requirements, Part III.B.3.j.viii requires a list of illicit discharges that have been identified but have not been eliminated to be attached to your annual report. This attached document should be an on-going list from previous years as well as that reporting year. As such, it will provide the total illicit discharges a MS4 has identified and not been eliminated. For newly annexed areas that a MS4 becomes responsible for the MS4 should add any illicit discharging HSTs to this list as identified.

Part III.D.4 of OHQ000004 addresses timeframes for implementing program requirements for new areas the MS4 becomes responsible for (i.e., annexation):

"4. Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation: You shall implement the SWMP on all new areas added to your portion of the small MS4 (or for which you become responsible for implementation of storm water quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately. An exception to this one-year timeframe exists for requirements associated with the comprehensive storm sewer system map and dry-weather screening of storm water outfalls. If you will be unable to complete these requirements within one year from the addition of the new areas, you shall provide an alternative schedule to complete with the following annual report.

a. Within 90 days of a transfer of ownership, operational authority, or responsibility for SWMP implementation, you shall have a plan for implementing your SWMP on all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the SWMP shall be included in the annual report.

b. Only those portions of the SWMPs specifically required as permit conditions shall be subject to modification. Addition of components, controls, or requirements by the permittee(s) and replacement of an ineffective or infeasible BMP implementing a required component of the SWMP with an alternate BMP expected to achieve the goals of the original BMP shall be considered minor changes to the SWMP and not modifications to the permit."

Comment 46:

Part III.B.3.c.i. Should the word "on-site" sewage be "off-lot" sewage since an on-site system does not discharge which is contrary to this list requirement and there is no definition for

"on-site". (Geauga Soil and Water Conservation District)

Part III.B.3.c.i and ii. "located within your jurisdiction and are connected or discharging to your small MS4..." It is unclear whether this provision requires only "discharging" septic systems be mapped or all HSTs. It should be noted that many of the HSTs by design do not discharge to the Small MS4 system. They are on-lot systems with a leach field. If all must be mapped it would be difficult to meet this requirement for a large area as well as require a significant investment of resources to comply with this provision. (Lucas County)

Response 46: OHQ000004 contains the following two definitions in Part VI of the permit:

Off-Lot Home Sewage Treatment System (HSTS) means a system designed to treat home sewage onsite and discharges treated wastewater off-lot.

On-Lot Home Sewage Treatment System (HSTS) means a system designed to treat home sewage on-lot with no discharges leaving the lot.

This requirement applies to off-lot HSTs that are connected to discharge to your MS4. However, it could also apply to an installed On-Lot HST that is failing which results in a discharge off-lot and to your MS4. Properly functioning on-lot HSTs are not an illicit discharge therefore are not required to be listed nor mapped under this requirement.

Comment 47: **Part III.B.3.e.** If the national requirement is for all discharges carrying pollutants to be covered under an NPDES permit, why do existing household sewage treatment systems (HSTs) installed before 2007 that discharge into the state waterways and storm sewers get a pass without need for an NPDES permit? Shouldn't the proposed draft renewal permit OHQ000004, require that once HSTs are identified as discharging to state waterways or to an MS4, that they are required to obtain an NPDES permit? If not, why not? Other states have done it. (Chris Griffith)

Response 47: Many discharging HSTs have been authorized in Ohio contrary to state law based upon past practices and misunderstanding of state and federal law requirements. Under state law, no discharging HST has been allowed without meeting Ohio EPA standards since the 1970s. Therefore, the State needs to address the issue of this legacy of discharging systems that have been in operation without proper or legal authority.

The intent of the language outlined by Part III.B.3.e of the draft permit is to require or foster the MS4 entity to work with all

interested parties to develop the plan for “elimination” of discharging HSTSs. It is true that Ohio EPA’s preference is the elimination of the physical discharge if possible, but this should, and can only be accomplished if it is “technically, economically and legally feasible” and this standard must be answered by each individual MS4 while working with its constituents. Also, it needs to be stressed that if an HSTS is fully functioning as intended and authorized by a local health department, then Ohio EPA is not asking that the discharge be physically eliminated right away. The intent of the recommended language in the draft was to highlight the need for the communities within the MS4 areas to begin planning for when the need for replacement or repairs of the system come up. In that instance, connection to sewers may be the best alternative. Planning is the key issue and areas need to be evaluated for all aspects of the program and discharges eliminated when appropriate.

Regarding Ohio’s NPDES HSTS general Permit, this general permit only allows coverage for new, replacement, and/or updated HSTSs. So existing legacy discharging HSTSs are not eligible for coverage under the HSTS general permit. In time, these legacy discharging systems will either be connected to sewer or will be required to be replaced. Such replacement systems would then obtain coverage under the HSTS General Permit.

Comment 48:

Part III.B.3.e. U.S. EPA also recommends that Ohio consider the below additions (underlined) and deletions (strikethrough) to the draft permit language for Illicit Discharge Detection and Elimination Section 3. Part e.

e. You shall develop and implement a plan to detect and eliminate non-storm water discharges, including illegal dumping, to your system. At a minimum, for household sewage treatment systems (HSTSs), your plan shall address or include provisions for:

i. Working with the appropriate Board(s) of County Commissioners, other public officials, local waste water authorities, any other appropriate entity and local board(s) of health to proactively identify residences with existing individual discharging HSTSs that can be legally, feasibly and economically connected to central sewers. At a minimum, the plan shall evaluate applying provisions identified by ORC 6117.51 and other applicable State and local laws and/or regulations. For any discharging HSTS, at a minimum, this activity should require (a) connection to central sewers, ~~for any discharging HSTS that is not operating as designed and intended if feasible, but it does not preclude connection to central sewers of any HSTS if local planning and coordination recommends such;~~ (b) replacing the system with a soil absorption system that does not discharge, or (c) notification

to the owner of the requirement to pursue coverage under an appropriate Ohio EPA general NPDES permit,

ii. Working with local board(s) of health to develop a proactive operation and maintenance program or implement/enhance an existing operation and maintenance program which ~~determines if existing discharging HSTSs are operating as designed and intended and, for those not meeting these criteria,~~ requires elimination, upgrade or replacement of the systems as appropriate;

iii. Actively investigating the source(s) of contamination in outfalls identified during dry weather screening process. When the contamination source has been identified as discharging HSTS that is not operating as designed and intended or is not authorized by an NPDES permit, work with the local board(s) of health to determine proper course of action in resolving the non-functioning or noncompliant HSTS with connection to central sewers being preferred alternative, followed by replacing system with a soil absorption system that does not discharge and only allowing a replacement discharging HSTS when no other option is available and the owner has first obtained NPDES permit authorization. For replacement discharging HSTSs that cannot be eliminated through connection to central sewers or installation of soil absorption systems, the property owner must be notified of the requirement to pursue coverage under an appropriate Ohio EPA general NPDES permit; and working with local waste water authorities, planning agencies or other appropriate agencies involved to evaluate the planned or possible future installation of sewers for areas which contain high densities of discharging HSTSs. (U.S. EPA)

- Response 48:** This comment was evaluated but no changes to the final permit were made. For additional information, please see Response 47.
- Comment 49:** **Part III.B.3.g. Quantification of the word "significant" should be made. What is significant to one may not be significant to another.** (Geauga Soil and Water Conservation District)
- Response 49:** This permit language is copied from 40 CFR 122.34(b)(3)(ii). The word significant does provide flexibility to the MS4 in whether the MS4 elects to address any of the permit's allowable non-storm water discharges. MS4s can elect to provide more stringent language within their local code in relation to this. Ohio EPA would consider a significant contributor to be a discharge which violates OAC 3745 (Ohio's Water Quality Standards). No changes to the permit language were made since this language mirror's the federal rules.
- Comment 50:** **Part III.B.3.g. Please provide a measurable definition for "uncontaminated pumped ground water," and if one is not**

available please remove the adjective “uncontaminated” from the permit. (City of Columbus)

- Response 50:** In the context of authorized non-storm water discharges, a discharge that does not cause or contribute to an exceedance of applicable water standard would be uncontaminated. Therefore, contaminated pumped ground water would be a discharge which exceeds OAC 3745-1.
- Comment 51:** **Part III.B.3.g. Residual chorine levels in potable water are in the 1-4 ppm range per OEPA rules. Residual chlorine levels for pool water are in the 2-4 ppm range per health codes. Why are these two apparently similar sources treated different?** (City of Columbus)
- Response 51:** The federal regulations pertaining to the Small MS4 Program make this distinction. Guidance on the handling of pool discharges will be provided at the following Ohio EPA Storm Water Program website: <https://epa.ohio.gov/dsw/storm/index#116445712-permit-compliance-materials>.
- Comment 52:** **Part III.B.3.g. Pool water may be treated with chemicals other than chlorine. As written the permit suggests that only chlorine needs to be removed from pool water. Should there be any other treatment of pool water before it can discharge to the storm sewer, and if so, what must that treatment be?** (City of Columbus)
- Response 52:** Debrominated has been added to the permit’s language of dechlorinated/desalinated. Guidance on the handling of pool discharges will be provided at the following Ohio EPA Storm Water Program website: <https://epa.ohio.gov/dsw/storm/index#116445712-permit-compliance-materials>.
- Comment 53:** **Part III.B.3.i.iii. The permit states, “Your plan shall include dry weather field screening for non-storm water flows. Ohio EPA recommends using field tests of selected chemical parameters as indicators of discharge sources.” The City would like to see “dry weather screening” added to the definitions section. Listing the maximum amount of rainfall in inches allowed to fall during the dry period as well as the minimum number of hours without rainfall would be helpful as well. A list of specific chemical parameters the Ohio EPA recommends would be beneficial. If the City tests dry weather flows for each of the three TMDL pollutants within Appendix A during dry weather screening, could this offset one of the new TMDL related requirements being added to the new permit (i.e., one less public involvement activity addressing a TMDL pollutant)?** (City of Delaware)

Response 53: Dry-weather screenings are inspections of storm water outfalls during dry periods. Most literature defines dry weather as a minimum of 48 to 72 hours of no rainfall. Ohio EPA believes that the definition dry-weather screening of outfalls needs to be flexible, especially in terms of hours between rainfall events. This general permit is applicable to MS4 systems of varying complexities. A great resource to review in terms of performing dry-weather screening is "Illicit Discharge Detection and Elimination Program Manual – A Guidance Manual for the State of Ohio which can be viewed at:
http://www.epa.state.oh.us/dsw/storm/ms4_index.html.

Comment 54: **Part III.B.3.i.iv. Ohio townships lack any statutory authority to adopt enforcement procedures regarding any illicit discharge ordinance. Ohio townships lack any statutory authority to adopt any illicit discharge ordinance. This statutory authority lies with the regional storm water district under ORC 6119. Further, as a creature of statute Ohio counties generally enjoy only those powers enumerated in the Ohio Revised Code. The following sentence should replace the comparable sentence in the section. "Your plan to ensure through appropriate enforcement procedures and actions, in accordance with the authority delegated by the Ohio Revised Code, that your illicit discharge ordinance (or other regulatory mechanism) is implemented to the maximum extent allowed by State of Ohio law." (Franklin County Storm Water Management Committee)**

Response 54: All conditions of the permit are intended to be to the extent allowable under State law. This language will be added to Part III.B.3.i.iv.

Comment 55: **Part III.B.3.i.i. Inspecting 20% of our outfalls per year over this proposed 5-year permit term is a significant expense. At the writing of this letter we are nearing the end of the second time through our outfall inventory and have not found any dry-weather violations. Therefore, we request consideration of a reduced inspection frequency for systems which do not routinely have issues with dry-weather violations for low priority/risk locations. High priority/high risk locations could still be monitored at the current frequency, and would include outfalls: a) whose source is salt storage or an industrial area, b) where past illicit discharges occurred, c) that are in close proximity to a daycare or school. The permittee's proposed approach would be included with the initial submittal and annual updates of its SWMP. (City of Cincinnati)**

Part III.B.3.i.i. If a permittee has been through its outfall inventory once (or more) would OEPA consider letting us re-inspect these on a risk-based approach (i.e., an industrial area as the source)? With a reduction in our revenue due to

COVID-19, we believe this would be a wiser use of our limited funds. (Eric Saylor)

Part III.B.3.j.i. Should this statement read a “minimum” of 1000 total outfalls, instead of “maximum”? (EMH&T)

Part III.B.3.j.i. Prior generations of the Small MS4 permit required all outfalls within the small MS4 system to be dry-weather screened during the 5-year term of the permit. This is a key measure to identify outfalls that are impacted by illicit discharges. During the August 5, 2020 information session, Ohio EPA staff stated that the language of the Draft Permit was intended to make clear that Ohio EPA expects, and has always expected, that 100% of MS4 outfalls must be dry-weather screened over the 5-year permit term.

Despite this representation, the Draft Permit only requires a maximum of 1,000 outfalls to be screened over the duration of the 5-year permit term. For MS4s that have more than 1,000 outfalls, this is a significant reduction in the dry-weather screening requirement. This change is made without a factual basis and is contrary to law. The revision is especially egregious in light of the fact that illegal aerators and other HSTs are, according to Ohio EPA, significant contributors to water quality problems throughout the State. See deposition of Anthony Robinson in *Cox v. Board of County Commissioners of Franklin County, Ohio*, Civil Action No. 2:18-cv-1631 (S.D. Ohio), p. 57.

Ohio EPA should therefore, revise the language of the draft permit as follows: “Dry-weather screening of either 100% of your storm water outfalls ~~or a maximum of 1,000 total outfalls over the permit term.~~” (Altman Newman Co. LPA on behalf of Franklin County resident Jeffery Cox)

Part III.B.3.j.i. To be consistent with 40 CFR.122.34 (b)(3)(iii),³ the Permit language should be revised to allow renewing MS4s and co-permittee MS4 groups who have performed field screening of their outfalls in prior Permit terms to have the option to propose alternative field screening methods under III.B.3.j.i. (field screening of all outfalls or a maximum of 1000 outfalls) and focus their IDDE Permit compliance on III.B.3.j.ii. by developing and implementing a long-term system-wide surveillance program based on a prioritized approach focused on areas likely to have illicit discharges.

It is also recommended that the Permit be revised to allow an alternative approach to allow field screening sites other than outfalls that reflects knowledge gained about the inefficiencies of outfall field screening and is consistent with the flexibility to use field screening sites other than outfalls

provided under the Ohio EPA draft MS4 General Permit section III.B.3.i.iii.1.

Dry-weather field screening of all MS4 outfalls as a mandated approach to illicit discharge detection has proven to be an inefficient use of resources as it does not recognize the fact that most illicit discharges tend to be transient in nature. The likelihood of an illicit discharge being present on any single day has proven to be quite small.

Application of this approach to the Hamilton County Storm Water District's 9,969 field screening locations yielded 753 sites exhibiting flow during screening, of which 438 were further screened and cleared, 284 were investigated and cleared, and 31 were confirmed illicit discharges – or only 0.03% of the outfall site inventory. This is not a sustainable use of resources based on the rate of return. By comparison, during the first six months of 2020, 30 illicit discharges have already been confirmed while implementing proven, practical, reactive portions of a gained knowledge-based approach – MCM6 training, education and outreach activities, the availability of public reporting mechanisms, and responses to reported potential discharges. The proactive, prioritized long-term surveillance approach following language in the current Permit – based on knowledge gained about illicit discharge source types during the past two Permit terms – is under development and has a much higher likelihood of detecting, and eventually eliminating, illicit discharges – which is the overarching goal of this program.

Suggested language: Insert after existing language in III.B.3.j.i.: “In lieu of this performance standard, renewing MS4s and co-permittee MS4 groups who can demonstrate they have performed dry-weather field screening of their outfalls in prior Permit terms may propose alternative field screening methods and locations based upon a prioritization developed using previous program findings.”

Suggested language: Revise III.B.3.j.ii. to read: “...specific investigation of outfalls or other field screening sites and their tributary area where previous surveillance demonstrates a high likelihood of illicit discharges.” (Hamilton County Storm Water District)

³ 40 CFR.122.34 (b)(iii)³ which states the USEPA “recommends that the (small MS4) permit require the plan to detect and address illicit discharges include the following four components: Procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and

assessment. EPA recommends that the permit require the permittee to visually screen outfalls during dry weather and conduct field tests of selected pollutants as part of the procedures for locating priority areas.” (emphasis added)

Response 55:

After evaluating these comments, Ohio EPA has elected to revise the Part III.B.3.j.i. performance standard language found within the draft permit. Part III.B.3.j.i. has been replaced with the following language which is consistent with OHQ000003’s performance standard regarding dry-weather screening:

“If you are renewing coverage under OHQ000004, your storm water illicit discharge detection and elimination program shall have already included an initial dry-weather screening of all your storm water outfalls. If you are obtaining initial coverage under OHQ000004, your storm water illicit discharge detection and elimination program shall include an initial dry-weather screening of all your storm water outfalls within five years of obtaining initial coverage. For reference, see the definition of “Outfall from an MS4” in Part VI of this permit.”

Part III.B.3.j.ii. performance standard language remains and addresses long-term surveillance of the MS4 system while providing flexibility to all MS4s to focus efforts and resources where needed.

Comment 56:

Part III.B.3.j.v. It is requested that Ohio EPA consider removing this requirement from the permit for several reasons, the first of which, is whether the County or Municipalities would have any legal authority to enforce such requirements. Secondly, in our experience with issues of salt storage in the past, we have used our IDDE process to eliminate an illicit discharge along with public education on the benefits and reasons for proper salt storage. Lastly, there is no minimum requirement for the amount of salt to be regulated. This would cause a great deal of interpretation and would be difficult to regulate. We would rather see the function of proper salt storage managed through an educational outreach campaign rather than through legal regulations. (Lake County Stormwater Management Department)

Part III.B.3.j.v. As creatures of statute, Counties and townships do not have any inherent legal authority to regulate salt storage by private parties other than through changes to their zoning authority, and that authority may be limited. Changes to zoning laws and regulations cannot be applied retroactively under federal or state law. Also, discharges from salt have not been identified as a pollutant of concern by any TMDL report covering urbanized areas within Ohio, and are covered by the IDDE plan. (Franklin County

Storm Water Management Committee)

Part III.B.3.i.v. Salt Storage at commercial, institutional and non-NPDES permitted industrial facilities. This section appears to require a small MS4 regulate, monitor and enforce salt storage best practices at all of the above locations in the MS4 area. As mentioned previously, a County MS4 only has authority to regulate as provided by the Ohio Revised Code. If enacted, this requirement is a substantial increase in the amount of regulatory actions and work to be performed by the MS4. With a lack of enforcement powers on private sites, this provision appears to be unenforceable. We suggest that if the Ohio EPA is deeming salt storage and BMPs to be this impactful on water quality statewide, requiring private sites to apply for a NPDES permit under Ohio EPA regulatory authority over would be a more effective method to meet the goals of this provision. (Lucas County)

Part III.B.3.i.v. The permit states “Require proper salt storage at commercial, institutional and non- NPDES permitted industrial facilities.” Could the permit list specific examples as to what facilities this applies to? Will site inspections have to be conducted by the MS4 community to ensure compliance with the storage requirements? Do any salt storage specification sheets exist that communities could incorporate into their illicit discharge detection and elimination program? (City of Delaware)

Part III.B.3.i.v. Salt is not an identified pollutant in TMDL watersheds. Ohio EPA has publicly stated that the requirement to adopt an ordinance addressing its storage at commercial, institutional and non-NPDES industrial facilities in this Permit is to address ground-water contamination – not a surface water runoff or surface water quality issue. Additionally, the relatively small salt storage footprint has a much smaller potential impact on groundwater than widespread application to address snow and ice events.

It is recommended that this requirement be addressed under a different regulatory framework.

It is recommended that the requirement to regulate the manner of salt storage at commercial, institutional and non-NPDES permitted facilities be modified. Many MS4s (e.g., County, County Health, and/or specific cities, villages, and townships) may not have the legal authority to impose such regulations on private property.

Alternatively, to allow time for eventual issuance of regulations related to salt storage at commercial, institutional and non-NPDES permitted facilities, it is suggested that the

MS4 be allowed to present a phased schedule in the SWMP Plan for implementation of the new salt storage requirements that starts with an education campaign and leads to proposed regulations and enforcement provisions later in the Permit term that is targeted toward major sources where education did not achieve appropriate control. (Hamilton County Storm Water District)

Part III.B.3.j.v. Regarding the new requirement to require through ordinance that proper salt storage at commercial, institutional, and non-NPDES industrial facilities, has Ohio EPA considered how the MS4 is going to determine which properties fall under this new requirement and how it will be enforced? The City does not have the resources, budget, or staff to meet this proposed requirement. (City of Piqua)

Part III.B.3.j.v. MS4s should strive for proper salt storage on private property, but this may not be feasible. (City of Perrysburg)

Part III.B.3.j.v. This section implements a requirement to regulate salt storage on certain private property. Please provide a minimum threshold quantity where this requirement would apply. Does Ohio EPA expect small MS4 communities to develop an inventory of sites that store salt and then provide periodic inspection and enforcement? Please provide guidance on how this regulation is anticipated to be implemented by small MS4 communities. (EMH&T)

Part III.B.3.j.v. What will the record keeping, inspection and reporting requirements be pertaining to the salt storage facilities at commercial, institutional and non-NPDES permitted industrial facilities be to meet the new permit terms in this section? (Warren County Engineer's Office, Warren County SWCD, City of Mason, Turtlecreek Township, City of Lebanon, Village of Morrow, Clearcreek Township, City of Franklin, Village of South Lebanon, Deerfield Township)

Part III.B.3.j.v. It is unknown if MS4 municipalities have the authority to regulate private businesses in a manner to comply with this regulation? (Warren County Engineer's Office, Warren County SWCD, City of Mason, Turtlecreek Township, City of Lebanon, Village of Morrow, Clearcreek Township, City of Franklin, Village of South Lebanon, Deerfield Township)

Part III.B.3.j.v. Do municipalities have the legal authority to require this on private property? (City of Zanesville, Jefferson County, City of Belpre, Kathy Davis)

Part III.B.3.j.v. Do MS4 municipalities have the authority to enter private property for inspection/enforcement? (Warren

County Engineer's Office, Warren County SWCD, City of Mason, Turtlecreek Township, City of Lebanon, Village of Morrow, Clearcreek Township, City of Franklin, Village of South Lebanon, Deerfield Township)

Part III.B.3.i.v. It is unclear how enforcement would be handled. Certainly, a discharge into a MS4's system would be a violation of the IDDE regulations but what if the discharge is directly into a stream or river? It would be much more efficient if Ohio EPA were to promulgate a state-wide regulation for salt storage. Otherwise, we will have a patchwork of regulations across the state. (Warren County Engineer's Office, Warren County SWCD, City of Mason, Turtlecreek Township, City of Lebanon, Village of Morrow, Clearcreek Township, City of Franklin, Village of South Lebanon, Deerfield Township)

Part III.B.3.i.v. How can we enforce this? (City of Zanesville, Jefferson County, City of Belpre, Kathy Davis)

Part III.B.3.i.v. Will Non NPDES facilities be expected to obtain a permit for storage - is there a volume to consider with this regulation? Outdoor storage only or do we need to include indoor as well? Can these facilities be covered by Industrial NPDES permits or Industrial No Exposure Certifications? (City of Zanesville, Jefferson County, City of Belpre, Kathy Davis)

Response 56:

Ohio EPA evaluated comments received on this draft permit condition and will remove this requirement from the final permit. As indicated by comments, many MS4s have addressed improper salt storage utilizing existing Illicit Discharge Detection and Elimination (IDDE) regulations and targeted educational outreach to commercial/institutional entities where needed. This topic will be further evaluated over this permit term to determine if additional measures are needed in the future.

Comment 57:

Part III.B.3.i.vi. Is it acceptable to not report any CSO and SSO as these are reported to Ohio EPA by a wastewater authority? We understand that these are only for those instances where they are not reported as a CSO or SSO. Also, a report form with a detail of conditions for reporting would be appreciated. Where would these illicit discharges be reported on the annual report? (City of Zanesville, Jefferson County, City of Belpre)

The City is issued an NPDES permit that includes reporting requirements for Sanitary Sewer Overflows (SSOs). It is the City's position this notification requirement is redundant and may lead to confusion when being regulated by two separate Ohio EPA divisions for one system. In addition, is it Ohio EPA's position that leaking or broken sanitary sewer lines are

to only be reported when discovered during dry-weather screening events or is it Ohio EPA's position any condition regardless of a dry-weather screening requires notification?
(City of Sidney)

Response 57: Combined Sewer Overflows (CSOs) and Sanitary Sewer Overflows (SSOs) already have a notification/reporting requirement under a different NPDES permit. However, any such discharge to a MS4 would need to be included within the MS4's annual report as an illicit discharge.

MS4s need to coordinate with the sanitary sewer collection system and publicly owned treatment works (POTW) authorities to be aware of the location of all SSOs and CSOs which may impact the MS4 and the implementation of their IDDE program.

OHQ000004 requires that the following illicit discharges to the MS4 be notified to Ohio EPA within 24 hours of discovery of the source of the of the illicit discharge:

- Illicit sanitary cross connections from industrial, commercial, or multi-family sources; and
- Leaking or broken sanitary sewer lines that are actively contributing sewage to your small MS4.

These illicit discharges could be found during dry-weather screening or any other means which the illicit discharge is found.

Comment 58: **Part III.B.3.j.vi. Regarding the requirement to notify Ohio EPA within 24 hours of "discovery of the source". Source tracking can be time consuming resulting in a time lag between discovery of discharge and determination of the source. Please clarify – will Ohio EPA take issue with the time lag between the discovery of discharge, determination of the source and reporting?** (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Response 58: It is understood there can be a lag time to determine the source. The final permit requires notification within 24 hours of discovery the source.

Comment 59: **Part III.B.3.j.vii. This section is listed twice. The second section discussing the annual report documentation requirements should be subsection viii.** (EMH&T)

Part III.B.3.j.vii. This sub-section is listed twice. Currently listed as III.B.3.j.vii. Should this be III.B.3.j.viii? (Hamilton County Storm Water District)

Response 59: Thank you for these comments. Ohio EPA has fixed this typo in the final permit.

Comment 60: **Part III.B.3.i.vii.1. This section now requires an annual training, the City is uncertain of what percentage of employees need to be involved in illicit discharge detection and elimination training “topics”? We have one Storm Water Monitoring Technician who performs the screening. (City of Sidney)**

Response 60: This permit requirement does not specify a percentage or certain number of employees which would require training targeted at illicit discharge detection and elimination. The final permit provides flexibility and simply requires that MS4s provide an annual training on illicit discharge detection and elimination. Ohio EPA recommends that employees directly involved in illicit discharge and MS4 system maintenance should be provided such annual training.

Comment 61: **Part III.B.3.i.vii. Based on a response provided by Ohio EPA during the August 5, 2020 webcast, it is our understanding that if we discover a dry-weather discharge it is permissible to commence an investigation using our staff and investigative equipment (i.e., CCTV truck) rather than immediately perform water sampling and analyses. Please confirm that assumption is correct. (City of Cincinnati)**

Part III.B.3.i.vii.2. What specific water quality field and/or laboratory testing is required? What are MS4s required to test for? (Warren County Engineer’s Office, Warren County SWCD, City of Mason, Turtlecreek Township, City of Lebanon, Village of Morrow, Clearcreek Township, City of Franklin, Village of South Lebanon, Deerfield Township)

Part III.B.3.i.vii.2. Ohio EPA should provide statewide standardized guidance on action levels, sampling protocols, how to prioritize areas of concern, interpretation of results and how to use results for source tracking. Most MS4s are not equipped to make these determinations without direct guidance from Ohio EPA. Staffing issues are also a concern, so need direct guidance in order to efficiently meet this performance standard. (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Part III.B.3.i.vii.2. Requiring this testing will be challenging in terms of staffing, timing and cost and may not be feasible. (City of Perrysburg)

Part III.B.3.i.vii.2. The permit states, “Include water quality testing (field and/or laboratory) of all observed dry-weather flows, unless source is known, to prioritize areas of concern.” As mentioned in a previous comment, listing out specific tests the Ohio EPA recommends would be useful. (City of

Delaware)

Part III.B.3.j.vii.2. Testing beyond easily accessible methods will increase costs for municipalities. Expectations and a standard of practices need to be defined. In our experience, it is a very expensive and time consumptive activity that does not yield any additional insights or knowledge into the IDDE program. For Franklin County, the TMDLs include: e-coli which cost-effective testing does not provide a source for: i.e. human or animal, and for which visual or olfactory observation easily detect), TSS (which is easily visually determined), and TP (which, if present, often triggers the excessive vegetative growth parameter during dry weather screening, and is one of our outreach/education themes). Many of the dry weather flows we observe are from detention basins (which we would consider a ‘determined’ source), infiltration, and occasional drinking water line breaks. During dry weather screening and the subsequent tracing of the flow, determinations can accurately be made without the need for the costly (time and money) sampling and lab analysis. The reasoning stated for sampling (to prioritize areas of concern) for undetermined flows is so minimal, that we believe the extra cost and time associated with it is, respectfully, unwarranted for a successful IDDE program. (Franklin County Storm Water Management Committee)

Part III.B.3.j.vii.2. The draft permit requires MS4s with certain TMDL pollutants of concern (nutrients, E. coli, Bacteria, and Dissolved Oxygen) to include water quality testing of all observed dry-weather flows through their IDDE programs, unless the source is known (Part III.B.3.j.vii). CRWP recommends that Ohio EPA define “water quality testing” including guidance regarding what parameters should be tested and if certain field observations trigger the need for testing. (Chagrin River Watershed Partners)

Part III.B.3.j.vii.2. It is requested that Ohio EPA consider removing this requirement from the permit and allow the MS4 to determine from field observational criteria such as visual inspection, presence of odor etc. when water quality lab testing is required when a dry weather flow is observed. Lake County has many high-water table soils and thus water quality lab testing of groundwater will be a costly and timely endeavor. (Lake County Stormwater Management Department)

Part III.B.3.j.vii.2. Water quality testing. While we approve of the reasoning behind water quality testing, we believe this provision and the substantial cost associated with an enhanced IDDE program would be better justified if the uses of the testing and the prioritization of action based on the results were known. This provision does not include

guidance on what the results will be used for, the types of pollutants to test, action criteria, etc. (Lucas County)

Part III.B.3.j.vii.2. Under the illicit discharge section, the draft permit requires water quality testing for all observed dry weather flows if an approved TMDL is in place for specific parameters. The permit also contains other requirements related to dry weather flow. In many communities, intermittent and even perennial streams are now carried in storm sewers, especially in older developments. In these systems, flow is expected in dry weather. Dry weather flow requirements, such as that requiring water quality testing, should not apply in these cases. We recommend the permit include a definition of dry weather flow that excludes these situations. (Clermont County)

Response 61: Ohio EPA evaluated all comments received on this draft condition and has removed this permit condition from the final permit. The final permit's Illicit Discharge Detection and Elimination TMDL Performance Standard still includes an annual employee training which includes illicit discharge detection and elimination topic(s). The final permit maintains previous permits' language in Part III.B.3.i.iv. that Ohio EPA recommends using field tests of selected chemical parameters as indicators of discharge sources. Guidance for this can be found in the following document: [https://epa.ohio.gov/Portals/35/storm/IDDE Manual July 2006.pdf](https://epa.ohio.gov/Portals/35/storm/IDDE_Manual_July_2006.pdf).

Comment 62: **Part III.B.3.j.viii.g. Estimating volume will be a challenge for field staff. Please provide resources and guidance or remove this requirement.** (Toledo Metropolitan Area Council of Governments)

Response 62: There are various options for estimating volume. Which one to use will depend on an MS4's available equipment and the nature and location of the illicit discharge. For example, if the entire contents of a container are discharged, the container volume would be used. If the source is pumped, pumping rates and operational time may be used. For either gravity flow or force mains, field staff might measure the time it takes to fill a one-gallon or a five-gallon bucket. A flow meter may be used for larger and more continuous illicit discharges. For pipes or channels under gravity flow, staff can use records or measure the pipe or channel dimensions and slope, then measure the depth of flow (e.g. "2 inches" or "less than 1/4 full") and calculate a volume. Where outfall accessibility is a challenge or the outfall is fully or partially submerged, the MS4 might be able to measure the volume at an upstream point in the MS4.

Comment 63: **Part III.B.3.j.viii.b – e (renumbered). If the Permit changes to allow an alternative to performing outfall dry weather**

screening (see Comment 8 above), items b. through e. should be modified to read "... **outfalls or other field screening sites which had...**" (Hamilton County Storm Water District)

Response 63: Due to the changes to the final permit's Illicit Discharge Detection and Elimination requirements the annual reporting information will be maintained. No changes were made to the final permit based on this comment.

Construction Site Runoff Control

Comment 64: **Part III.B.4.a.** A definition for a "larger common plan of development" must be provided in order for communities to determine what, if any, regulatory authority they possess under Ohio law to comply with this requirement. (Franklin County Storm Water Management Committee)

Response 64: OHQ000004 requires that a MS4's construction/post-construction regulations be, at a minimum, equivalent with the technical requirements of the Ohio EPA NPDES Construction Storm Water General Permit. The definition of "larger common plan of development or sale" can be found in Part VII.P of the general permit.

Comment 65: **Part III.B.4.a.iv.** The point of entry for the development/construction community is sometimes different. Some communities rely on the planning department, others on the building department for NPDES applicability. In order to minimize the number of projects requiring SWP3 reviews that might be missed as a result of different city divisions having oversight require that MS4 implement a process whereby ALL development or redevelopment projects are reviewed for NPDES applicability. A **Recommended Performance Standard:** MS4s shall report all building/development activity and the number that required SWP3 reviews. (Cuyahoga Soil and Water Conservation District)

Response 65: This comment was evaluated but no changes to the final permit were made.

Comment 66: **Part III.B.4.a.i and Part III.B.4.b.i.** Clarification on what constitutes non-sediment pollutant controls would be helpful. Columbus suggests including a definition in Part VI Definitions. (City of Columbus)

Response 66: OHQ000004 requires that a MS4's construction/post-construction regulations be, at a minimum, equivalent with the technical requirements of the Ohio EPA NPDES Construction Storm Water General Permit. The general permit's "non-sediment pollutant controls" requirements are found within Part III.G.2.g.i of the general permit.

Comment 67: **Part III.B.4.b.vi. More guidance is needed from Ohio EPA to develop escalating enforcement policies that are standard across the state and take into account the limitation in authority of townships and counties.** (Toledo Metropolitan Area Council of Governments)

Part III.B.4.b.vi. “Include a written enforcement escalation plan describing...” Counties are required to follow ORC 307.79 for any enforcement issues. If Ohio EPA is proposing County MS4s cite this provision as the escalation plan, then this provision is feasible. We believe this provision would be better used if Ohio EPA provides a sample escalation plan for cities, villages and county MS4s that the OEPA has found to be satisfactory in previous audits performed of MS4 programs. (Lucas County)

Response 67: The commenters are correct that counties are required to follow ORC 307.79 regarding the enforcement escalation plan. For guidance, Ohio EPA will provide examples of written enforcement escalation plans on our website at:
<https://epa.ohio.gov/dsw/storm/index#116445712-permit-compliance-materials>.

Comment 68: **Part III.B.4.c. Better define what qualifies an MS4 community staff member to be able to perform required monthly inspections. In many communities performing storm water inspections is an additional duty assigned to building or engineering inspectors. These inspectors may not be best qualified to perform these inspections.**

Recommended Performance Standard: Storm water inspectors should have a relevant certification and/or qualifying experience to addition.

Recommended Performance Standard: Require MS4s to conduct relevant yearly internal training for city staff performing storm water inspections. (Cuyahoga Soil and Water Conservation District)

Response 68: Ohio EPA evaluated this comment, but no changes were made to the final permit.

Comment 69: **Part III.B.4.c.i. Including a date certain (e.g., 180 days) will help ensure communities adapt to new changes in a timely manner.** (Cuyahoga Soil and Water Conservation District)

Part III.B.4.c.i. This section calls for ordinance amendments, if needed, to be made within six months. The City requests this section be amended to read “...within 180 days of receiving the Ohio EPA staff opinion letter that ordinance amendments

are acceptable”. (City of Sidney)

Part III.B.4.c.i. Updating the MS4 construction ordinance in a timely manner could prove to be difficult with the additional requirements in sections c.ii. & iii. The process required to pass an updated ordinance would take time. We feel that 2 years is a reasonable goal. (City of Zanesville, Jefferson County, City of Belpre)

Response 69: The final permit has changed and provides one year for MS4s to update, if needed, their construction and post-construction regulations to be equivalent with the technical requirements of OHC000005.

Comment 70: **Part III.B.4.c.ii. What qualifies as communications, phone calls or just written communications? Do MS4s need to require that all correspondence take place via email in order to document? If no, what is Ohio EPA looking for in documenting phone communication? Specify timeframe for records retention (as long as construction is active or beyond)?** (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Part III.B.4.c.ii. Documentation of any communications. We are unclear regarding the definition of communications and the extent of communication Ohio EPA is proposing to require record of communication. i.e., Will notes have to be taken and put into official record of any conversations had within in-person meetings, telephone calls, etc.? Does this mean all communications will need to be done in writing to satisfy this requirement? In addition, we are unclear regarding the method and time that an MS4 will be required to maintain these communications. (Lucas County)

Response 70: OHQ000004 requires documentation to ensure compliance and communication during the Storm Water Pollution Prevention Plan (SWP3) review process. Ohio EPA does not require that all communication occur via email. Appropriate phone call and meeting documentation would include date, time, participant name(s), and details of the major discussion points. A note in file or a follow-up email which includes this information would satisfy this requirement.

Regarding record keeping requirements, Part IV.B of OHQ000004 specifies the record keeping requirements of the permit. For clarification the words “and documents” and “document” has been added to Part IV.B.1 as follows:

“You shall retain copies of all reports and documents required by this permit, a copy of the NPDES permit, and records of all data used to complete the NOI for this permit,

for a period of at least three years from the date of the report, document or application, or for the term of this permit, whichever is longer. This period may be extended by request of Ohio EPA at any time.”

Comment 71: **Part III.B.4.c.ii.** Including larger common plan of definition in MS4 permit will serve to reinforce the same provisions in OHC000005. Requiring the use of an objective tool for SWP3 inspections will help ensure comprehensive and consistent reports. (Cuyahoga Soil and Water Conservation District)

Response 71: OHQ000004 requires that a MS4’s construction/post-construction regulations be, at a minimum, equivalent with the technical requirements of the Ohio EPA NPDES Construction Storm Water General Permit. The definition of “larger common plan of development or sale” can be found in Part VII.P of the general permit.

Comment 72: **Part III.B.4.c.iii.** The District requests revising the minimum required frequency of follow-up inspections to be shortened to 14 calendar days. Given the fact that the majority of grading operations occur within 31 days after initial earth disturbing activity, the period of time when sediment controls are most crucial, the District believes monthly inspections by regulatory personnel with enforcement powers are too infrequent to be effective. (Northeast Ohio Regional Sewer District)

Response 72: Ohio EPA evaluated this comment but no changes to the final permit were made.

Comment 73: **Part III.B.4.c.iii.** Specify what the construction site conditions should look like during the initial inspection. We read the initial inspection requirement as a pre-construction meeting or a mobilization meeting; in many cases BMPs are not yet installed at this point. The concern is that if BMPs are not installed at the initial inspection it would require the MS4 to begin the enforcement escalation process.

Recommended performance standard: Change the requirement to read pre-construction meeting at which a date certain for BMP installation will be determined.

Retain the previously written requirement that “follow-up inspections shall be on a monthly basis” and remove the 31-calendar day requirement. We have used the flexibility of the “monthly basis” requirement in certain circumstances to conserve resources while maintaining effective oversight. As an example, if stabilization was installed on 6/1/2020 we may not revisit the site until 7/31/2020 to allow the grass to germinate and establish. Other circumstances could include:

if the job site is frozen, if the project is idle due to financial issues, is paused for an interim condition, etc.

Recommended performance standard: If the 31 calendar days are to remain, we suggest allowing certain documented circumstances to be exempted. (Cuyahoga Soil and Water Conservation District)

Response 73:

At the time of the pre-construction meeting, it is understood that some site mobilization is typical. At a minimum, the rock construction entrance and perimeter controls should be installed if site mobilization has occurred. However, a pre-construction meeting is held ideally before any construction activities begin, giving the local MS4 the opportunity to discuss the SWP3 and its implementation schedule with the contractor before any site work occurs.

A pre-construction meeting is not the same as an initial inspection, although if site mobilization has begun at the time of the pre-construction meeting, it is possible that both occur on the same day. The term “initial inspection” refers to the first compliance inspection conducted by the MS4 or their agent. The initial inspection of a construction site should occur within 14 days of the commencement of construction activity, which is the trigger established in Ohio EPA’s Construction Storm Water General Permit to require installation of sediment controls. However, MS4s have flexibility and are encouraged to conduct an initial inspection after site access and perimeter controls are installed and prior to any significant clearing, grubbing, or grading activity.

The minimum 31-day follow-up inspection frequency added to the MS4 permit is in alignment with requirements of the MS4 Remand Rule published by U.S. EPA on Dec 9, 2016 (see 81 FR 89320). Ohio EPA has chosen to implement the Comprehensive General Permit option for permitting small MS4s and thus, must ensure that the small MS4 general permit contains clear, specific, and measurable compliance terms.

Comment 74:

Part III.B.4.c.iii. What are the applicable sites that require monthly inspections? Is it sites referenced to in Part III.B.4.c.ii with land disturbance greater than an acre or which are a part of common plan of development which will disturb greater than an acre (NOI sites)? Does this include sites that may not require an NOI, but that the MS4 still inspects due to stricter requirements at the local level?

Columbus recommends retaining a mechanism for prioritizing inspection frequencies as a potential alternative to the 31 day requirement for all applicable sites. The increased inspection frequency of 14 days for non-compliant sites in areas with applicable TMDLs, outlined in Part

III.B.4.c.iv, could be difficult for larger MS4s to sustain due to insufficient staffing and available funding. (City of Columbus)

Response 74: OHQ000004 requires SWP3 reviews and site inspections for construction activities that result in a land disturbance of greater than or equal to one acre and construction activity disturbing less than one acre if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. MS4s that may regulate sites that do not satisfy the above criteria would not be required under OHQ000004 to perform a SWP3 review nor perform site inspections for such sites.

The second comment was evaluated but no change was made regarding the increased inspection frequency for sites with the permit's identified compliance issues.

Comment 75: **Part III.B.4.c.ii, iii and iv. It appears there will be significant on-going requirements for inspections and plan review. Like other small communities we do not have a building department and do not inspect residential construction projects occurring in the city. What, if any, assistance would be provided for inspections and plan review? (City of Cambridge)**

Response 75: SWP3 plan reviews and construction site inspections by the MS4 have always been required by the MS4 permitting program. Ohio EPA is available to provide training resources and technical assistance when needed.

Comment 76: **Part III.B.4.c.iv. This timeframe conflicts with existing CGP requirements for installing a basin that is not functioning as planned (10 days), permanent or temporary stabilization within 50 feet of a waterway (2-7 days depending on timing and conditions). (Franklin County Storm Water Management Committee)**

Response 76: Part III.G.2.d.i. of the Construction General Permit states, "Sediment basins and perimeter sediment barriers shall be implemented prior to grading and within seven days from the start of grubbing," which is consistent. The ten days referenced here refers to repairing a non-functioning sediment basin.

Comment 77: **Part III.B.4.c.iv. The additional TMDL performance standard, the permit lists four scenarios triggering site inspections once every 14 days instead of a monthly basis. For clarification purposes, it is requested that the word "major" be added so that the sentence reads "...*applicable construction sites which have the following major compliance issues shall be inspected once every 14 calendar days...*" (Ohio Turnpike and Infrastructure Commission)**

Response 77: Ohio EPA does consider these to be significant compliance issues but does not believe it is necessary to include the word “major” or “significant”. No changes to the final permit were made based on this comment.

Comment 78: **Part III.B.4.c.iv. Clarification needed to specify that additional performance standards are only needed if the project is located within a watershed within a TMDL not just that any project requires the additional performance standards if any of your MS4 is located in a watershed that has TMDLs listed.** (Geauga Soil and Water Conservation District)

Response 78: To provide clarification, the following language has been added to Appendix A of the final permit:

“If your small MS4 is identified in Appendix A, you shall develop and implement the TMDL Performance Standards within this permit for your MS4 discharges. Implementation shall occur, at a minimum, for your regulated MS4 discharges within each TMDL Project watershed identified.”

Comment 79: **Part III.B.4.c.iv.a. The District requests revising the minimum required frequency of inspections necessitated by previously identified compliance issues be shortened to 7 calendar days. Given the severity of not complying with the items in this section (i.e., 1-4), the District believes the proposed 14 calendar day window is too long and that a higher priority should be placed on these blatant matters of non-compliance. The District believes inspections spaced 14 calendar days apart by regulatory personnel with enforcement powers are too infrequent to be effective. Furthermore, additional references to monthly inspections in this section should be revised to 14 calendar days to reflect the intent of our comment to Part III.B.4.c.iii.** (Northeast Ohio Regional Sewer District)

Response 79: Ohio EPA evaluated this comment but no changes to the final permit were made. Ohio EPA will evaluate the inspection frequencies over this permit term and adjust accordingly in future generations of the general permit.

Comment 80: **Part III.B.4.c.iv.a. The TMDL performance standards should apply to all MS4s, not only to those with a portion of their MS4 in a TMDL watershed. Developers are asking for consistency and predictability in enforcement. It will be difficult for MS4 staff to explain on site why rules apply in one MS4 and watershed but not another due to TMDLs. It will be even more difficult for developers to understand this. Regarding the permit’s four listed compliance issues:**

1. There should be an immediate stop work order if a SWP3 has not been approved.
2. No issues
3. No issues
4. For turbid discharges, clearer language is needed. For example, should MS4s re-inspect after 14 days even if the discharge was eliminated in 3 days? (Toledo Metropolitan Area Council of Governments)

Response 80: A MS4 which only has TMDL performance standards applicable to part of their jurisdiction can implement the increased standard jurisdiction wide for consistency if they so choose. Currently, there are MS4s already inspecting sites at a greater frequency than the minimum monthly frequency.

Regarding your comment to compliance issue #1 above, Ohio EPA would encourage MS4s to issue stop work orders for sites that have started construction activities without a SWP3 completed and approved by the local MS4. However, OHQ000004 provides flexibility for the various public entities covered under the permit regarding the MS4's enforcement escalation plan for non-compliance.

Regarding your comment to compliance issue #4 above, OHQ000004 contains the following language in Part III.B.4.c.iv.a:

“Your inspections can be returned to a monthly basis for the construction site once compliance with the above compliance issues have been addressed and verified.”

Therefore, as soon as a MS4 verifies the compliance issue has been addressed, inspections can be returned to a monthly basis.

No changes to the final permit were made based on these comments.

Comment 81: **Part III.B.4.c.iv.a.1. “....completed” should be replaced with “reviewed and approved by the MS4” to comply with the Ohio EPA Construction General Permit requirements and help greatly reduce the likelihood of this situation occurring.** (Hamilton County Storm Water District)

Response 81: Ohio EPA agrees with this comment and has included the suggested language within the final permit.

Comment 82: **Part III.B.4.c.iv.a.2. Suggest providing flexibility to the MS4 to determine whether the site is in violation and thus requiring 14-day re-inspection. In some circumstances the SWP3 may list sediment-basin installation as an early step but the**

general contractor's means & methods have installation being later in the construction sequence.

Recommended: Insert the phrase “when necessitated by site conditions.” (Cuyahoga Soil and Water Conservation District)

Response 82: Ohio EPA evaluated this comment but no changes to the final permit were made.

Comment 83: **Part III.B.4.c.iv.a.3. For MCM4 in the additional TMDL performance standard, the permit lists four situations that could trigger construction site inspections once every 14 days instead of on a monthly basis. The third bullet states: “Failure to implement any sediment/erosion controls.” ODOT agrees with Ohio EPA’s intent but recommends changing the language as follows for clarity: “Construction activities taking place with no sediment/erosion controls.”** (Ohio Department of Transportation)

Response 83: Ohio EPA agrees with the suggested language from this comment and has included this revision within the final permit.

Comment 84: **Part III.B.4.c.iv. It is unclear that if an inspection is performed on the site, and the “performance issue” is remediated while the inspector is on-site, does the inspection frequency have to be 14 days per this language. We believe this requirement will lead to a non-uniform inspection frequency across MS4s and regions. It appears that a site that is within eyesight to another site may have different requirements per this section leading to issues with enforcement. It is unclear how does OEPA want the MS4 to “address and verify” compliance with the performance issues.** (Lucas County)

Response 84: OHQ000004 contains the following language in Part III.B.4.c.iv.a:

“Your inspections can be returned to a monthly basis for the construction site once compliance with the above compliance issues have been addressed and verified.”

Therefore, as soon as a MS4 verifies the compliance issue has been addressed, inspections can be returned to a monthly basis. This would include if the compliance issue is addressed by the contractor the day of the inspection.

Regarding verification, during a site inspection, the MS4 inspector would verify if the compliance issue were addressed or not. The inspection would be documented with an objective tool such as software or checklist as required by Part III.B.4.c.iii.

Comment 85: **Part III.B.4.c.v.a. Does “reporting year” mean “calendar year”? If so, specify this.** (Toledo Metropolitan Area Council of Governments)

Response 85: OHQ000004’s reporting year is described in Part IV.C of the permit which states that each report shall cover the period from January through December of the previous year.

Comment 86: **Part III.B.4.c.v.f. Replace “resolved” with “addressed”. Not all cases have a resolution.** (Toledo Metropolitan Area Council of Governments)

Part III.B.4.c.v.f. Section f redlined “followed up on” and inserted “resolved”. We believe “addressed” would be a better term as many complaints are received that do not require a resolution.

Response 86: Language in the final permit has been changed from “resolved” to “addressed” as suggested by the comments.

Post-Construction Storm Water Management

Comment 87: **Part III.B.5.d. Tracking SCMs through property transfers. Any suggestions on methods for accomplishing this requirement?** (Cuyahoga Soil and Water Conservation District)

Response 87: Tracking of storm water control measures (SCMs) should occur through an MS4 or individual property owner management of inspections. If the MS4 conducts inspections, then this becomes a non-issue. If the MS4 depends upon the property owner to submit inspection reports, then identified private SCMs that do not submit a report should have an in-person follow up to see if the property has changed hands.

Comment 88: **Part III.B.5.e.vi. This permit part identifies an “agreement” as an option to ensure O&M responsibilities with property owners are met. (Part III.B.5.f.iv) reads that MS4s “shall ensure...agreements are in place.”**

Recommended Performance Standard: We support the concept that MS4s should be required to ensure that maintenance agreements (as distinguished from maintenance plans/manuals) are in place. Furthermore, these maintenance agreements should be recorded with the deed. Recording the agreement will help satisfy the requirement to track SCMs through property transfers. Revise the draft general permit to require maintenance agreements. (Cuyahoga Soil and Water Conservation District)

Response 88: Ohio EPA believes that the current Performance Standard language within OHQ000004 already addresses this comment.

Part III.B.5.f.iv includes the following language:

“Your program shall also ensure that long-term O&M plans are developed and agreements in place for all applicable sites, including after changes of ownership.”

Comment 89: **Part III.B.5.e.vi. Provide more clarity regarding which post-construction BMPs this applies to. Does this apply only to those installed since the first-generation permit? Only water quality BMPs? Does this apply to water quantity/flood control BMPs as well?** (Toledo Metropolitan Area Council of Governments)

Response 89: The requirement to ensure the long-term operation and maintenance (O&M) of post-construction water quality controls has existed since the first generation Small MS4 general permit that was effective on December 27, 2002:

- 3.2.5.2.5 What are the mechanisms (ordinance or other regulatory mechanisms) you will use to address post-construction runoff from new developments and redevelopments and why you chose that mechanism. If you need to develop a mechanism, describe your plan and a schedule to do so. If your ordinance or regulatory mechanism is already developed, include a copy of the relevant sections with your program.
- 3.2.5.2.6 **How you will ensure the long-term operation and maintenance (O&M) of your selected BMPs. Options to help ensure that future O&M responsibilities are clearly identified include an agreement between you and another party such as the post-development landowners or regional authorities.**
- 3.2.5.2.7 Who is responsible for overall management and implementation of your post-construction SWMP and, if different, who is responsible for each of the BMPs identified for this program.

At the least, this requirement has applied to all post-construction BMPs (public and private) that have been installed five years past (three years for MS4s within rapidly developing watersheds) the date the MS4 was issued their initial Small MS4 general permit coverage. It would apply to post-construction water quality controls that have been installed to satisfy the MS4’s post-construction water quality requirements.

Comment 90: **Part III.B.5.f. Permit Proposes New Performance Standards that will Require Substantial and Currently Unavailable Fiscal Resources.** Development and implementation of new or expanded programs – even if cooperative efforts or partnerships are acceptable – are nearly impossible now and in the foreseeable future due to reduced fiscal resources available to MS4s in the pandemic economy. The District and its co-permittees want to work with Ohio EPA on program improvements to meet Clean Water Act requirements. At this moment in time it is not financially possible. **Request:** The District is requesting leniency in meeting these new performance standard requirements for at least the next two years – focusing our timelines for beginning the implementation to the end of the Permit term. (Hamilton County Storm Water District)

Response 90: Regarding the Performance Standards associated with this

minimum control measure that are new to OHQ000004:

- Updating local ordinance or other regulatory mechanism to be consistent with OHC000005 – the final permit has been changed from 180 days to one year to make this update.
- Requirement to utilize an objective tool such as software or checklist to review SWP3s and perform site inspections – the final permit provides one year to be implementing such a tool.
- Requirement to include at least one on-site inspection (by MS4 or landowner) of each post-construction runoff control – OHQ000004 provides the full five-year permit term to satisfy this requirement.
- The TMDL Performance Standard provides the full five-year permit term to:
 - Provide an educational opportunity to contractors, SWP3 designers, and/or employees on OHC000005 Table 4b practices and/or other green infrastructure practices, and select/perform one of the permit's provided options.

Ohio EPA believes that OHQ000004 provides flexibility in the timeframes provided to implement requirements.

Comment 91:

Part III.B.5.f.i. Updating the MS4 post-construction ordinance in a timely manner could prove to be difficult with the additional requirements in sections f.ii.,iii.,& iv. The process required to pass an updated ordinance would take time. We feel that 2 years is a reasonable goal. (City of Zanesville, Jefferson County, City of Belpre)

Part III.B.5.f.i. This section calls for ordinance amendments, if needed, to be made within six months. The City requests this section be amended to read "...within 180 days of receiving the Ohio EPA staff opinion letter that ordinance amendments are acceptable". (City of Sidney)

Part III.B.5.f.i. Including a date certain (e.g. 180 days) will help ensure communities adapt to new changes in a timely manner. (Cuyahoga Soil and Water Conservation District)

Response 91:

The final permit has changed and provides one year for MS4s to update, if needed, their construction and post-construction regulations to be equivalent with the technical requirements of OHC000005.

Comment 92:

Part III.B.5.f.ii. Need Ohio EPA to provide an objective tool and/or checklist and other guidance. (Toledo Metropolitan Area Council of Governments)

Response 92: Small MS4s can develop their own SWP3 Checklist. Here is Ohio EPA's SWP3 Review Checklist that can also be used:
https://www.epa.ohio.gov/dsw/storm/const_SWP3_check.

Comment 93: **Part III.B.5.f.iii.** Requiring the use of an objective tool for SWP3 inspections will help ensure comprehensive and consistent reports.

Suggested Revision: (Part III.B.5.f.iii) This section reads that applicable sites shall be inspected to ensure controls are installed properly. **Recommended Performance Standard:** Require that MS4s collect as-built drawings of applicable sites as part of ensuring proper installation. (Cuyahoga Soil and Water Conservation District)

Response 93: Part III.B.5.f.iii. refers to development of an inspection tool that determines if post-construction BMPs have been constructed per the approved plan. Collection of an as-built drawing is recommended but such drawings may not reveal all deficiencies in construction, e.g., failure to properly grade areas to drain into a bioretention area. It is Ohio EPA's intent that MS4s provide oversight during the construction process and evaluate the post-construction BMP at the final site inspection when construction is complete through a physical inspection of the BMP. As such, the objective tool is a checklist or software that would be used by an inspector to make such a determination. As such, Ohio EPA will not make the suggested change to this performance standard.

Comment 94: **Part III.B.5.f.iii.** In other sections that OEPA requires a software or checklist for a MS4, OEPA has provided one. We request Ohio EPA provide a checklist for Post-Construction BMP inspections to ensure that this performance standard is met to the satisfaction of the intent of the Permit. (Lucas County)

Response 94: Ohio EPA intends to develop post-construction BMP inspection and maintenance guidance during this permit cycle. However, there is available guidance and checklists currently available by other parties. One such resource is the Chagrin River Watershed Partners (CRWP) which has developed much guidance on post-construction storm water management, including example inspection and maintenance checklists. You can view these materials at: <https://crwp.org/index.php/member-services/storm-water-mpdes-phase-ii/mcm-5-post-construction>.

Comment 95: **Part III.B.5.f.iv.** Regarding the requirement for MS4s to document long-term post-construction BMP O&M inspections, it appears that MS4s are being tasked with documenting that the owner inspects the post-construction BMP after construction ends. We do not have the resources

to do this. (City of Piqua)

Part III.B.5.f.iv. Can you please provide ordinance language that would cover this? Who will be checking the long-term O&M sites and plans that are outside of the MS4 areas? (City of Zanesville, Jefferson County, City of Belpre)

Part III.B.5.f.iv. We strongly encourage Ohio EPA to remove the requirement to track the number of privately-conducted long-term O&M inspections of post-construction controls (Section III.B.5.f.vi). Larger MS4s, especially county MS4s, have hundreds of post-construction controls in their service area (Clermont County has over 700). We feel this requirement would be an enormous burden from an administrative standpoint. Additionally, in terms of ensuring long-term O&M of these controls, we also feel this requirement is duplicative and unnecessary, as the Small MS4 permittees are required to conduct their own inspections. (Clermont County)

Part III.B.5.f.iv. The District requests language be added to this permit that would require, or at least recommend, that the MS4's post-construction ordinance or other regulatory mechanism require an annual on-site inspection be completed by the owner/operator of each post-construction runoff control and that the owner/operator maintain these records for a minimum of 5 years. If the MS4 chooses to complete inspections more frequently than the proposed minimum of once every permit term, the inspections completed by the owner/operator could be adjusted accordingly. The District believes each post-construction runoff control should be inspected on an annual basis. (Northeast Ohio Regional Sewer District)

Part III.B.5.f.iv. Regarding "one on-site inspection...during this permit term", can land-owners self-inspect and report? Does this apply to all post-construction storm water BMPs regardless of the installation date? Also, townships may lack enforcement authority. (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Part III.B.5.f.iv. This will be difficult in terms of staffing to accomplish these inspections and may not be feasible. (City of Perrysburg)

Part III.B.5.f.iv. The permit states, "Your program shall include, at a minimum, one on-site inspection of each post-construction runoff control during this permit term." Please clarify this section. Including the minimum number of inspections recommended, per five-year permit term, of each post-construction runoff control would be helpful. (City of

Delaware)

Part III.B.5.f.iv. Provide the applicable date for facilities that require inspection documentation and Ohio EPA expectations of inspections (i.e. as-builts, benthic survey data, etc.) for post construction. (Franklin County Storm Water Management Committee)

Part III.B.5.f.iv. Please provide confirmation that the requirement to inspect post-construction runoff controls is only once per permit term not once per year anymore. (Geauga Soil and Water Conservation District)

Part III.B.5.f.iv. Does the inspection that verifies whether a post-construction runoff control is built per requirements (inspection referenced to in Part III.B.5.f.iii) count toward the one inspection per permit term for that control or is a separate O+M inspection expected? (City of Columbus)

Part III.B.5.f.iv. SCM inspections should occur at a greater frequency than once per permit term. Recommended Performance Standard: MS4s shall develop a program that ensures maintenance of BMPs within their community based on established guidance (e.g. Ohio RLD, NEOSWTC SCM Maintenance Manual, etc.). (Cuyahoga Soil and Water Conservation District)

Response 95:

All previous generations of the Small MS4 General Permit required that MS4s ensure the long-term O&M of post-construction runoff controls; therefore, an inspection of such controls should have been occurring. Previous generations of the general permit never set a minimum standard regarding inspection frequencies for such controls. OHQ000004 is now setting a minimum performance standard for inspection frequencies to ensure controls are maintained and functional.

Ohio EPA agrees and recommends that post-construction runoff controls be inspected on an annual basis. However, as a starting point, OHQ000004 requires that existing controls be inspected during this permit term and then put existing and new controls on a plan to inspect every five years.

OHQ000004 allows the inspection to be performed by either the MS4 or the landowner and reported to the MS4.

Example ordinance language requiring long-term O&M of post-construction runoff controls can be found at:

<https://epa.ohio.gov/dsw/storm/index#116445712-permit-compliance-materials>.

Please see Response 89 for more information.

Comment 96: **Part III.B.5.f.v. There are two separate performance standards included in this section. The first standard involves creating an educational opportunity, while the second standard requires implementation of additional actions under subsections a through c. I suggest separating these two performance standards into separate subsections for clarity. (EMH&T)**

Response 96: The final permit was revised per this comment for clarification.

Comment 97: **Part III.B.5.f.v. There is no direction as to the frequency of this training. More specifics are needed for the proposed requirements. Is it one project per TMDL? One project per permit or co-permittee? Over the permit term? Franklin County and township's permit has multiple TMDLs, and these requirements will most likely not be economically feasible without additional funding from Ohio EPA. (Franklin County Storm Water Management Committee)**

Response 97: For clarification, the language "during the permit term" has been added to Part III.B.5.f.v.

Part III.B.5.f.v.a. (educational opportunity) is applicable to all MS4s subject to this TMDL performance standard. This educational opportunity will be in addition to the five public educational themes (Part III.B.1.c.) and five public involvement activities (Part III.B.2.c.). MS4s can partner together to satisfy this requirement.

MS4s subject to this TMDL performance standard must also select and implement one of the four options found in Parts III.B.5.f.v.b. – e. within each TMDL Project watershed identified for the MS4. MS4s may partner together to satisfy paragraph c (i.e., three MS4s perform 900 feet of stream restoration) and paragraph e (i.e., two MS4s install a Table 4b practice to treat two acres of existing untreated impervious surface). Parts III.B.5.f.v.b. – e. can be implemented on public or private property. To add additional flexibility, language has been added that allows these TMDL performance standards to be implemented outside a MS4's jurisdictional boundaries but still required within the identified TMDL project watershed. For example, Village of X could partner with County X and perform 600 feet (satisfying paragraph c., 300 feet each) of stream restoration as long as the restoration project was within the identified TMDL project watershed for both the Village of X and County X.

Comment 98: **Part III.B.5.f.v.a - c. Provide Additional Flexibility to MS4s in Deriving Practicable Control Measures. It is recommended that these performance standards be revised. Requiring implementation of either a retrofit to an existing storm water**

practice, restoration of a channelized stream, or passing an ordinance requiring use of Table 4(b) or other green infrastructure practices for each MS4 identified in Appendix A be broadened as they may be infeasible for one or more of the following reasons:

- **Older, smaller urban communities may not have existing flood control basins (peak-discharging storm water practices).**
- **Many of the same communities may not have a channelized stream within their jurisdiction.**
- **Older, established, urban communities tend to have little to no development or redevelopment – making passage of an ordinance to mandate use of Table 4(b) practices an ineffective means to improve water quality.**

Even where it may be applicable, retrofitting a basin or restoring a stream may not be cost-effective to implement. There are communities barely holding their heads above water fiscally now and for the foreseeable future. This would be an unwanted – and in their eyes unwarranted – unfunded mandate. An alternative approach that allows integration of stormwater controls into another required capital improvement project would provide a more cost-effective approach.

Suggested language: Replace paragraphs a, b, and c with the following: “Implement a structural storm water control measure that meets the performance standard for redevelopment projects in Ohio EPA’s latest Construction General Permit as part of a capital improvement project implemented during the Permit term”. (Hamilton County Storm Water District)

Response 98:

Retrofit opportunities exist for all communities and are not limited to retrofitting a flood control pond for treatment of the Water Quality Volume (WQv). Retrofit opportunities are generally not tied to NPDES-regulated construction projects as they have their own, specific regulatory requirements for post-construction BMP implementation that must be met regardless of MS4 permit requirements. Rather, a retrofit opportunity needs to be identified and pursued proactively and apart from any other regulatory requirement. An option to meet this requirement in an older, developed community with little or no new development or redevelopment that disturbs one or more acres of land would be to require implementation of water quality BMPs on private development that disturbs less than one acre. For example, the city of Lakewood in northeast Ohio requires post-construction

BMPs for all construction projects that disturb 8,000 ft² or more.

Older, developed communities should focus on retrofitting with green infrastructure, e.g., installation of a bioretention area in a public parking lot or replacement of existing pavement with permeable pavement. Ohio EPA agrees that the most cost-effective opportunities are generally incorporated into a planned capital improvement project and encourages that MS4s subject to this requirement take that route if feasible. Ohio EPA encourages MS4s to evaluate their properties, including streetscape or road enhancement projects, for potential retrofits and develop a project list that can be referenced when a capital improvement project is being planned. However, it is important to remember that this is one of several options for meeting this TMDL-based permit requirement and another one of the options may be more feasible for a particular MS4. Ohio EPA feels confident that between the options provided, all MS4s subject to this TMDL-based permit requirement will be able to meet the performance standard.

Comment 99: **Part III.B.5.f.v. Allow MS4 Collaboration on Retrofit Projects. It is recommended that the Permit language be revised to allow storm water control measures to be performed jointly with other entities, MS4s, or co-permittees (i.e., similar to the construction permit allowing “in-lieu of controls in the same watershed) which would allow Permit compliance when the options are infeasible for an individual MS4.**

Suggested language: Add the following statement to the end of paragraph v: “Should an MS4 community subject to TMDLs demonstrate in their SWMP Plan that it is not practicable to implement a structural storm water control as part of a capital improvement project, the MS4 is allowed to recommend an equivalent alternative control measure and/or implement a structural storm water control jointly with other entities, MS4 communities, developers, or co-permittees.” (Hamilton County Storm Water District)

Response 99: Ohio EPA has added more options and flexibility to the final permit. Please see Responses 97, 103, and 104.

Comment 100: **Part III.B.5.f.v.c. Allow MS4s to Define Feasibility of Table 4b requirements. Feasibility is not currently defined under the third (paragraph c) performance standard option. We suggest that the feasibility of Table 4b requirements be determined by the MS4 based on a feasibility determination provided by the developer.**

Suggested language: Remove Paragraph III.B.5.f.v.c and add the following statement after the first sentence of the second paragraph of Section III.B.5.f.v: “In addition, the MS4 shall require development plans subject to MS4 approval to

demonstrate why implementation of a Table 4b storm water control is not feasible, and if not, define alternative controls that address the TMDL pollutant". (Hamilton County Storm Water District)

Response 100: Please see Response 101.

Comment 101: **Part III.B.5.f.v. We believe the additional requirements put into place for the post-construction program creates severe burden on MS4 communities. In addition, it should be noted that many voluntary restorations of channelized systems are supplemented with OEPA grant funding. Many OEPA grants require that funds cannot be used for permit requirements. As such, a major source of funding for environment restoration could be closed if the provisions of this permit are enacted. It is unclear which entity would make a determination of feasibility if an MS4 updates design requirements to require 4b practices and/or other green infrastructure practices. We request Ohio EPA provide specific guidance or a review process on the feasibility on the feasibility of the installation of these practices.** (Lucas County)

Response 101: The regulated MS4 entity responsible for the review and approval of a Storm Water Pollution Prevention Plan determines the feasibility of a practice. This evaluation would be comparable to the evaluation of the feasibility of Table 4a/4b practices on small construction activities as defined in the NPDES general permit for construction activities.

The technical criteria for practice feasibility can generally be derived from the Rainwater and Land Development Manual or other industry-accepted technical guidance. The MS4 may choose to make a feasibility evaluation on a project-by-project basis, by pre-establishing requirements based on an area assessment of the soil, geology, topography, etc. within a sewershed or other means.

Comment 102: **Part III.B.5.f.v. The permit states, "Your post-construction storm water management program shall provide an educational opportunity to contractors, SWP3 designers, and/or employees on OHC000005 Table 4b practices and/or other green infrastructure practices." Is this in addition to the one required message tailored to the development community in MCM 1, and could it also count towards a TMDL pollutant outreach message? Please consider clarifying if this is an annual initiative or expected once every permit term.** (City of Delaware)

Response 102: This educational requirement is only required once during the five-year permit term. This educational requirement would be in

addition to the educational requirements of minimum control measures (MCM) 1 and involvement activities of MCM 2.

Comment 103: **Part III.B.5.f.v.** Cuyahoga SWCD supports the inclusion of the requirements identified in sections a, b, and c (retrofit/restoration/Table 4b required) as part of the permittee's MS4 program.

Recommendation:

- (Part III.B.5.f.v) Add performance measures for post-construction facility inspections in watersheds with a TMDL. This could in some ways be similar to Part III.B.4.c.4.a

Recommended Performance Standard: If the SCM is failed then the MS4 should require the property owner to submit a plan to fix the issue within 90 days. Repairs should be completed within one year. Definition of failure could include:

- Practice is no longer functioning as designed.
- Water quality volume:
 - Flow rate is greater than designed.
 - Volume has been reduced more than 50%
- Infrastructure collapse or damage
- Erosion compromising the flow of water into, out of, or through the practice.

Recommendations:

- (Part III.B.5.f.v) Create a new paragraph before the words "In addition, your program shall include...." This will set apart and highlight the requirement for retrofit/restoration/ Table 4b required.
- (Part III.B.5.f.v) Add the phrase "per permit term" to the sentence stating "In addition, your program shall include, at a minimum, one of the following performance standards [per permit term]."
- (Part III.B.5.f.v) Clarify this section to indicate whether in the case of shared MS4 permits the requirement is per permit or per municipality.
- (Part III.B.5.f.v) Clarify whether the retrofit/restoration must occur within the geographical boundaries of the MS4 or whether it can occur within the watershed (what HUC level?)
- (Part III.B.5.f.v) Include information about whether MS4s within watersheds that develop a new TMDL during the permit term are required to complete the retrofit/restoration/ Table 4b required during the permit term. Conversely, if a TMDL is dropped from a watershed do MS4s within that watershed still need to

complete the requirement? (Cuyahoga Soil and Water Conservation District)

Response 103: After review and evaluation of these comments, the following changes were made to the final permit:

- Language was added to clarify that the options are “during the permit term”.
- Language was added to clarify per MS4.
- Language was added to clarify that the retrofit/restoration can be in coordination with other MS4s and be outside a MS4’s jurisdictional boundaries but must be within the identified TMDL project watershed.
- Language was added to clarify that the TMDL requirements are only for TMDLs that are U.S. EPA approved at the time of final issuance of OHQ000004. Any new TMDLs during the permit term will not affect requirements until the next permit renewal (OHQ000005).

Comment 104: **Part III.B.5.f.v. For the performance standards listed within this section, please provide further clarification on their frequency. For example, if a community chooses to retrofit an existing storm water practice, is the expectation that this is done once every five-year permit term to satisfy the requirement if option a. is selected? Similarly, how often would a stream restoration have to take place to satisfy this performance standard? Consider including a minimum linear footage of restoration for this option. Requiring the use of Table 4b practices would likely be challenging, especially considering it is not a requirement of the general OHC000005 permit. Perhaps this could be adjusted to “encourage the use of” where feasible and have a minimum number of green infrastructure practices implemented per permit term. Alternatively, this could be required for sites near streams, floodplains, and wetlands as opposed to a blanket requirement. For watersheds with approved or pending Nine Element Plans, perhaps a fourth performance standard option could be added that credits MS4 communities for minimizing any one of the three TMDL pollutants once per permit term, through initiatives like stream restoration projects. (City of Delaware)**

Response 104: Language has been added to clarify that implementation of the options is one project per the five-year permit term. For the stream restoration option, a minimum of 300 linear feet has been added to the final permit.

Simply “encouraging the use of” would not be considered a “clear and measurable” goal. Specifying minimum number is certainly measurable, but the variability associated with the watersheds in

question may encourage practices to be installed under non-ideal conditions to meet quotas.

Ohio EPA agrees that sites near streams and floodplains are likely to have soils conducive to green infrastructure and feels the permit language affords the MS4 the ability to pre-establish green infrastructure requirements for these types of areas.

For more flexibility in options to choose from for this TMDL Performance Standard, Ohio EPA has added the following option (e) to the final permit:

“Install one (1) or more Table 4b practice(s) to treat a minimum of 1 acre of existing impervious area developed prior to 2003.”

Comment 105: **Part III.B.5.f.v. Rural townships that are also small MS4 communities may have difficulty implementing options A (detention basin retrofit) and B (stream restoration project) unless the land is already included in a petition maintenance program. If the land is (or becomes) part of a petition maintenance program, this work may also create an additional financial burden on the benefiting properties by way of an assessment to cover the project costs. I suggest offering additional options for communities to consider, possibly including a “design your own” program option. (EMH&T)**

Response 105: The addition of option (e) discussed in Response 104 provides another option for MS4s to choose from; thus, providing more flexibility.

Comment 106: **Part III.B.5.f.v. The draft permit requires MS4s with certain TMDL pollutants of concern (TSS and Nutrients) to include one of three performance standards: retrofit an existing peak-discharging storm water practice, perform a stream restoration project, or update local storm water post-construction control requirements to require Table 4b practices (bio-retention or infiltration) or green infrastructure instead of detention basins (Part III.B.5.f.v). CRWP agrees with Ohio EPA’s intent to improve storm water quality and decrease runoff volumes from developed areas. (Chagrin River Watershed Partners)**

Response 106: Thank you for your comment.

Comment 107: **Part III.B.5.f.v.a and b. If option a or b are chosen would these projects be eligible for grant funding (grant funds typically don’t cover projects that are required by a permit)? Can these projects, if grant funded, be reported to meet this permit requirement? More clarification is needed on types of**

allowable projects and how to quantify the water quality benefits as they relate to the TMDL. (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

- Response 107:** Federal Section 319 subgrants could not be used to comply with this permit, but other sources of funding might be utilized. This would really be dependent on the grantor and their rules.
- Comment 108:** **Part III.B.5.f.v.a.** **The District requests this section be revised to read as follows:**
- “Retrofit an existing storm water practice that solely provides a peak-discharge function. The retrofit shall meet the performance standard for an extended detention post-construction practice provided in Table 4a of the NPDES Permit OHC000005.”** (Northeast Ohio Regional Sewer District)
- Response 108:** Ohio EPA agrees with this suggested language and has made the change to the final permit.
- Comment 109:** **Part III.B.5.f.v.a and b.** **Options a. and b. could be a costly venture. This regulation is part of an unfunded mandated program that does not provide funding to MS4 communities. Funding for these types of projects can be very limited for many municipalities and a. and b. might pose a particularly difficult hardship. Are these projects to happen on MS4 owned property or out in the community?** (Warren County Engineer’s Office, Warren County SWCD, City of Mason, Turtlecreek Township, City of Lebanon, Village of Morrow, Clearcreek Township, City of Franklin, Village of South Lebanon, Deerfield Township)
- Response 109:** Either. Such projects can be performed on private or MS4 owned property. The only requirement is that it occurs within the applicable TMDL watershed.
- Comment 110:** **Part III.B.5.f.v.b.** **Add the phrase “during the permit term” for clarification purposes.** (Cuyahoga Soil and Water Conservation District)
- Response 110:** Agreed. Language has been added to the final permit to clarify “during the permit term”.
- Comment 111:** **Part III.B.5.f.v.c.** **Regarding the OHC000005 Table 4b TMDL option, that table lists BMPs for sites disturbing 2 or more acres of ground. Is that the intent of the Small MS4 general permit? Does Ohio EPA only want those Table 4b practices on sites of 2 acres or more or is it the intent to require these practices on all sizes of development.** (City of Piqua)
- Part III.B.5.f.v.c.** **The District believes additional clarification is**

warranted in this section. Is the intent to retrofit a facility owned/operated by the MS4, or is the intent to ensure the MS4's post-construction ordinance or other regulatory mechanism includes specific language that requires Table 4b practices as a first choice over Table 4a practices? (Northeast Ohio Regional Sewer District)

Part III.B.5.f.v.c. Define "feasible". Is this locally defined or will Ohio EPA define? It's probably NOT feasible to require these across the board. (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Part III.B.5.f.v.c. Please define "facility" as referenced in this section. Is the intent of this requirement to apply only to municipal owned projects, or to all development projects? (EMH&T)

Part III.B.5.f.v.c. It appears option "c" to update design requirements to include green infrastructure would be the straightest forward to accomplish during the permit term. (City of Perrysburg)

Part III.B.5.f.v.c. The requirement to require a project involving retrofitting or restoration or require the use of Table 4b practices is an undue financial burden since many grants that could involve retrofitting or restoration specifically state "not part of a permit requirement". The use of Table 4b practices should be included in regulations or codes and encouraged but not required due to excessive maintenance cost associated with these and high failure rates. (Geauga Soil and Water Conservation District)

Part III.B.5.f.v.c. Please define "feasible" more specifically. Is this limited to technical feasibility, or is financial feasibility also included? In cases where OHC000005 Table 4b practices and/or other green infrastructure practices are determined to be not feasible or not required, Cuyahoga SWCD encourages Ohio EPA to require documentation of the decision process that resulted in that determination. (Cuyahoga Soil and Water Conservation District)

Response 111: Please see Responses 97 – 110.

Comment 112: **Part III.B.5.f.vi.** Include language that better regulates communities that rely on owner self-inspection of BMPs.

Recommended Performance Standard:

- Only qualified personnel should conduct routine SCM inspection.
- Communities shall maintain a registry of individuals/companies that perform post-construction.

- **Self-inspection reports require follow-up by trained community staff.** (Cuyahoga Soil and Water Conservation District)

Response 112: Ohio EPA evaluated this comment but made no changes to the final permit. During the permit term MS4 programs will be evaluated to determine if such recommendations are needed for the next generation of the general permit.

Comment 113: **Part III.B.5.f.vi.d. Provide guidance on enforcement escalation of post-construction SCMs. Based on the proposed once per permit term inspection it would seem as if a facility has potentially five years before it would be re-inspected. Proper enforcement escalation should be tied to RLD suggested inspection frequencies for various types of SCMs.** (Cuyahoga Soil and Water Conservation District)

Response 113: The current and future versions of the Rainwater Manual focus on the planning and design of practices with limited discussion on inspection and maintenance operations. Inspection frequency may vary by practice, age of practice, risk of failure, prior maintenance, and other variables. An effective inspection program should consider these and other variables when prioritizing inspections. This section of the permit adds the criteria of potential watershed impacts to that list.

Comment 114: **Part III.B.5.f.vi.f. We currently do not receive privately conducted O&M post-construction inspections and feel that this will be a challenging performance standard to meet and include in the annual report.** (Lake County Stormwater Management Department)

Response 114: It is the Small MS4 Program's intent that the MS4 develop a proactive program to ensure the long-term maintenance of post-construction BMPs. To ensure such a program is effective MS4s need to ensure that practices are being inspected and maintained. OHQ000004 requires that a physical inspection of the BMP by the MS4, third party or landowner occur at least once during the five-year permit term. If a third party or landowner conducts the inspection the MS4 would need to have the inspection report submitted.

Comment 115: **Part III.B.5.h. MS4s shall submit a map of all post-construction SCMs within their community as part of their annual report.** (Cuyahoga Soil and Water Conservation District)

Response 115: OHQ000004 requires that the MS4 update their comprehensive storm sewer system map on an annual basis, which includes the addition of new public and private post-construction control measures. The annual report requires that a summary of any storm sewer system mapping updates be provided but Ohio EPA

has elected to not require the entire map to be submitted each year with the report.

Pollution Prevention/Good Housekeeping for Municipal Operations

Comment 116: **Part III.B.6.e. Permit Proposes New Performance Standards that will Require Substantial and Currently Unavailable Fiscal Resources.** Development and implementation of new or expanded programs – even if cooperative efforts or partnerships are acceptable – are nearly impossible now and in the foreseeable future due to reduced fiscal resources available to MS4s in the pandemic economy. The District and its co-permittees want to work with Ohio EPA on program improvements to meet Clean Water Act requirements. At this moment in time it is not financially possible.

Request: The District is requesting leniency in meeting these new performance standard requirements for at least the next two years – focusing our timelines for beginning the implementation to the end of the Permit term. (Hamilton County Storm Water District)

Part III.B.6.e. Based on information presented at the August 5, 2020 Ohio EPA Virtual Meeting, phased implementation of the new pollution prevention/good housekeeping requirements should be allowed, with the schedule included in the revised SWMP Plan. A number of the proposed performance standard minimum requirements are new and will take time and funding to implement (e.g., secondary containment; bollard or barriers for brine tanks, development and implementation of a storm water outfall and drainage system maintenance program to ensure that stable outfalls and conveyances are provided, development of a street sweeping program). These will require at least a year to put into a village, city, or township budget. (Hamilton County Storm Water District)

Response 116: Ohio EPA has evaluated such comments and additional time to implement such requirements has been provided within the final permit. Please see the remainder of this document and final permit for specific changes.

Comment 117: **Part III.B.6.e.iii. Need guidance on design and siting.** (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Response 117: For guidance please refer to the Ohio Water Resource Council's "Recommendations for Salt Storage Guidance for Protecting Ohio's Water Resources". This document can be found at: <https://www.epa.ohio.gov/portals/35/owrc/SaltStorageGuidance.pdf>.

In addition, this permit requirement has been changed from 180

days to two years to implement within the final permit.

Comment 118: **Part III.B.6.e.iv.** The increased cost may make it prohibitive to complete this needed task and could lead to no ditch cleaning causing uncontrolled flooding. Could the timeframe for stabilization be changed to 14 days for any location? The MS4s need more time to prepare for this cost. If this condition is met, please consider extending the requirement from starting until the new SWMP is in place, which hopefully, will be 2 years from the effective date of the new MS4 permit. Will ODOT be held responsible under their MS4 permit to stabilize their channels as per the requirements as well? (City of Zanesville, Jefferson County)

Part III.B.6.e.iv. The ditch stabilization requirements included in Section III.B.6.e.iv could be an extreme burden for townships that have some urbanized area but are essentially rural in nature. Many of these townships have significantly more miles of ditches than pipe and have exceptionally small service departments (sometimes only one part-time employee). We recommend including a distance threshold over which the requirements would apply (e.g., if maintenance is performed on more than X feet of ditch). (Clermont County)

Part III.B.6.e.iv. May be difficult for agencies doing large maintenance projects on ditches to stabilize so quickly. (Franklin County Storm Water Management Committee)

Part III.B.6.e.iv. Retain the language from paragraph #2 “For all areas of soil disturbance caused by the small MS4” and include the same language in paragraph #1. This will avoid confusion about whether the requirement in paragraph #1 applies only to ditch maintenance. The suggested edit will ensure that stabilization is applied to ALL soil disturbances caused by the MS4. (Cuyahoga Soil and Water Conservation District)

Part III.B.6.e.iv. The text states that bare inactive soils “shall be stabilized” in the first paragraph, and that for areas of soil disturbance “soil stabilization shall be applied” in the second paragraph. ODOT recommends language more consistent with the Construction General Permit to indicate that “soil stabilization shall be initiated” within the appropriate time frames. This change would clarify the distinction between applying seed to an area vs. requiring vegetation to be established within two or seven days.

The text also states: “For areas of soil disturbance caused by the small MS4, soil stabilization shall be applied within 7 days of reaching final grade or within the first 7 days if a disturbed

area will remain inactive for over 14 days.” No minimum area is applied to this standard. Therefore, a small MS4 would be required to apply soil stabilization to every disturbance, no matter how small and with no consideration of whether runoff from small disturbed area would reach the small MS4’s conveyance system or a stream. This proposed regulation would seem to require quick remediation of small MS4 activities such as tire ruts and mowers accidentally scalping grass on uneven terrain. ODOT believes that it would be inappropriate for Ohio EPA to regulate small earth disturbance activities through an NPDES permit without regard to whether sediment laden runoff would be expected to leave the site and runoff to streams. ODOT recommends that this requirement be more consistent with the Construction General Permit to require timely initiation of stabilization for areas disturbed by the small MS4 that are equal to or greater than one acre.

ODOT recommends the following text for Part III.B.6.e.iv:

“Where ditch/MS4 maintenance has been performed, the small MS4 shall initiate soil stabilization for bare inactive soils within 50 feet of a surface water within two days of reaching final grade or within two days if the area is to remain inactive for over 14 days.”

“For areas of soil disturbance greater than or equal to one acre caused by the small MS4, the small MS4 shall initiate soil stabilization within seven days of reaching final grade or within seven days if the area is to remain inactive for over 14 days.” (Ohio Department of Transportation)

Part III.B.6.e.iv. The permit requires that soils disturbed by maintenance activities “*shall be stabilized*”. To remain consistent with the existing Construction General Permit, it is recommended that either a reference to the Construction General Permit or the language from Construction General Permit Section Part II.B be added to this section.

Additionally, it is also recommended to identify a minimum threshold for when stabilization initiation requirements are to be met. Failure to do so will cause some confusion as to when stabilization will be required as part of the permit and could be construed to mean that any time vegetative turf is damaged, or soil exposed. Again, a requirement similar to the Construction General Permit for a minimum one (1) acre threshold is recommended. (Ohio Turnpike and Infrastructure Commission)

Part III.B.6.e.iv. This section involves stabilization of ditch maintenance sites.

Please define “surface water of the site” as it is referenced in this section. Was this intended to read “surface water of the State”?

Please elaborate on the expectations of the small MS4 community for this section. Are you intending for road maintenance crews to install practices such as seed and matting, temporary check dams, etc. in roadside ditches following maintenance work? If yes, has Ohio EPA solicited feedback on this requirement from stakeholders such as the County Engineers Association of Ohio and the Ohio Township Association?

Can this section be further limited to addressing bare inactive soils specifically caused by the actions of the maintenance activity? As the section currently reads, the MS4 community could be required to address bare soils that were present at the project site and not caused by the maintenance action. (EMH&T)

Part III.B.6.e.iv (paragraph 2). It is requested that Ohio EPA consider removing this requirement from the permit. The first paragraph requires that bare inactive soils within 50 feet of a surface water of the site be stabilized within 2 days. Requiring the remaining soil disturbance caused by the ditch cleaning operation to be stabilized will cause an undue hardship on the MS4 resulting in additional costs on already tight budgets and potential flooding of roadways if straw mulch were to clog drive culverts. We feel that by stabilizing the bare soils within 50 feet of a surface water of the site will effectively create a buffer strip and will capture any loose sediment prior to entering the water body. (Lake County Stormwater Management Department)

Part III.B.6.e.iv. This is laudable, however, it would appear to create recordkeeping for minor soil disturbance by the MS4 and raises the question "would anything be considered so small as to be insignificant and not require recordkeeping?" A de minimus disturbance should be unregulated. (City of Perrysburg)

Part III.B.6.e.iv. The draft permit requires that MS4s stabilize ditch maintenance performed within 50 feet of a surface water within 2 days of reaching final grade (Part III.B.6.e.iv, First Paragraph). CRWP agrees with Ohio EPA’s intent to stabilize soils and ditch spoil material after ditching activities within two days as failure to stabilize bare ditches after a ditching operation can lead to significant erosion and sediment runoff. If Ohio EPA’s intention is that ditches greater than 50 feet from a surface water have 7 days to be stabilized, we think

the language about this in the permit could be clarified.
(Chagrin River Watershed Partners)

Part III.B.6.e.iv. Need specific guidance and reference to NPDES construction storm water general permit. Need clarification on temporary vs. permanent stabilization.
(Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Response 118:

After evaluation of the comments received, the final permit has been revised to include only the first paragraph of this permit part. The second paragraph has been removed from the final permit. Additionally, the paragraph has been revised as follows and provides two years to begin implementation:

“For areas of soil disturbance associated with ditch/MS4 maintenance caused by the small MS4, soil stabilization shall, at a minimum, be initiated in accordance with the time frames specified in the following table.

Ditch/MS4 Maintenance Areas	Time Frame to Initiate Soil Stabilization
<i>Not within 50 feet of a surface water of the State</i>	<i>Within 7 days of reaching final grade or within the first 7 days if a disturbed area will remain inactive for over 14 days.</i>
<i>Within 50 feet of a surface water of the State</i>	<i>Within 2 days of reaching final grade or within 2 days if the area is to remain inactive for over 14 days.</i>

Implementation of this permit requirement shall commence no later than two years after the effective date of this permit for small MS4s renewing coverage under this permit.”

Erosion of unstabilized ditch banks and adjacent soils are a significant contributor to sediment loads. While stabilization should be a standard practice for all ditching, permittees are only required to implement this permit condition within the regulated MS4 area. On large projects, limiting the amount of exposed earth at any time (phasing) is an important BMP.

Please see Chapter 7 of the Rainwater and Land Development Manual for guidance on soil stabilization practices:
https://epa.ohio.gov/Portals/35/storm/technical_assistance/6-24-09RLDCh7.pdf.

Comment 119:

Part III.B.6.e.v. This requires the creation of a program to ensure stable outfalls and conveyances are provided. This

requirement looks like a slippery slope towards Ohio EPA's involvement in how MS4s maintain their system. System maintenance and the setting of priorities should be at the discretion of the MS4. The City understands the need for stable outfalls and conveyances. We also understand we need functioning catch basins and adequate volume in our system to reduce flooding. Programs and decisions on how to balance those needs are best left to the City and not something that needs to be documented and shared with Ohio EPA. (City of Piqua)

Part III.B.6.e.v. The City is unsure what the Ohio EPA's intent is with the development of a "maintenance program". Is the intent to have the development of a CMOM type program for the storm water system? The City, like many municipalities across the state, is not in the position to add staff or even additional tasks to the current staff with the downturn in revenue experienced during the pandemic. (City of Sidney)

Part III.B.6.e.v. Developing an outfall maintenance program is a huge burden for MS4s and should not be included in one sentence within the permit. This should be removed for the following reasons: (1) No detail provided on what is required of programs, (2) No measurable goals, no performance standards, and (3) No specification of which outfalls fall under this requirement. Consider including in next generation permit when Ohio EPA has had time to develop benchmarks and measures by which compliance will be assessed. (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Part III.B.6.e.v. This section involves development of a storm water outfall and drainage system maintenance program. The draft permit does not establish any expectations regarding execution of this program, leaving it open to interpretation. Please provide minimum expectations for this program for the benefit of both the small MS4 communities and Ohio EPA personnel to assess future compliance. (EMH&T)

Part III.B.6.e.v. Does OEPA have examples that can be provided or shared with respect to their expectations of a stable outfall? (Franklin County Storm Water Management Committee)

Part III.B.6.e.v. Storm water outfall and drainage system maintenance program. We believe enactment of this section would place a severe burden on MS4 communities. We request more specific guidance on the expectations of this program in the General Permit, including a clearer definition of "stable" as written in this section. (Lucas County)

Part III.B.6.e.v. Is this for MS4 outlets as well as private

outlets? Are there requirements for inspections & time constraints on scheduling repairs? Access and topography might be an issue when it comes to stabilizing some outfalls, will Ohio EPA still require stabilization at these outfalls? (City of Zanesville, Jefferson County, City of Belpre, Kathy Davis)

Part III.B.6.e.v. We recommend that Section III.B.6.e.v be revised to read “You shall develop and implement a storm water outfall and drainage system maintenance program for the MS4 to ensure that stable outfalls and conveyances within the MS4 are provided. (Clermont County)

- Response 119:** Ohio EPA evaluated all comments received on this permit condition and has removed it from the final permit. Ohio EPA will evaluate this concept over the permit term and evaluate the appropriateness for the next generation general permit.
- Comment 120:** **Part III.B.6.e.vi. Will ODOT be required to submit the information from their litter program to local MS4s if the litter program takes place inside the local MS4s?** (Jefferson County)
- Response 120:** OHQ000004 will not require Ohio Department of Transportation (ODOT) and Ohio Turnpike & Infrastructure Commission (OTIC) to supply such information to local jurisdictions. However, information related to the NPDES Small MS4 General Permit is public information.
- Comment 121:** **Part III.B.6.e.vi. As a watershed with two longitudinal state routes and lots of roadway debris, we also appreciate the requirement in Part III.B.6.e.vi that requires ODOT to develop and implement a roadside litter collection program. Although we hate to add to ODOT’s workload, we have seen an increase of roadway debris especially along State Route 315 which often ends up in the Olentangy River. Since Keep Columbus Beautiful has ended their Kick Butt Columbus program to clean ramps ways, this requirement will be a big help to cleaning up this trash along right-of-ways and keep it from the Olentangy.** [Friends of the Lower Olentangy Watershed (FLOW)]
- Response 121:** Thank you for the comment.
- Comment 122:** **Part III.B.6.e.vii. One of the potential TMDL performance standards for MCM6 is to develop and implement a proactive street sweeping program. This standard requires: “At a minimum, sweeping shall occur on curbed streets four times per year.” ODOT implements an extensive, locally prioritized street sweeping program throughout the state. ODOT prioritizes road and bridge sweeping based on debris load and safety, and not whether a roadway is curbed or within the urbanized areas. If ODOT were forced to reallocate street**

sweeping activities to accomplish the goal of sweeping ODOT's curbed roads within the urbanized areas at least four times per year, that would reduce the amount of debris collected and increase the amount of debris running off into ODOT's MS4 and to Ohio's streams. High traffic roadways with higher debris loads often have barriers in the median and therefore would not be held to this standard. There may be very little environmental benefit to sweeping low-traffic residential curbed roads where there is almost no sediment build-up. ODOT recommends keeping the language "Your program shall document debris collected in order to prioritize areas to sweep and/or document lane miles swept" but removing the requirement to sweep curbed roads four times per year. For ODOT, requiring four sweepings of all curbed roads would make ODOT disregard our current prioritization to meet a permit obligation to the detriment of Ohio's streams. Also, ODOT does not have an inventory of all roads that are curbed and within urbanized areas. Creating and utilizing this new roadway inventory would be a significant financial burden with no environmental benefit. ODOT believes this roadway tracking and unprioritized sweeping would be an irresponsible use of taxpayer money. ODOT expects that other small MS4s already prioritize high-debris area for sweeping and would be against quarterly sweeping of small, clean, low-traffic roads with very low debris loads.

ODOT understands that there are two other performance standard options, but proactive catch basin cleaning as described in the draft permit would be impossible for ODOT and ODOT cannot implement a leaf/yard waste collection program. (Ohio Department of Transportation)

Part III.B.6.e.vii. MS4s Should be Provided Flexibility to Develop TMDL Performance Standards for MCM6. MS4s should be provided the opportunity to identify alternative BMPs for addressing TMDL pollutants when the Permit's performance standard options are not applicable to the identified TMDL pollutant or are infeasible. While providing a set list of BMP options to choose from is a straightforward approach to Permit compliance, the BMP options in the draft Permit may not apply to certain settings or may not be appropriate for specific TMDL pollutants. The TMDL performance standard options - street sweeping, catch basin cleaning, and leaf collection programs – should be revisited and revised to provide options that better match their effectiveness in improving water quality for each TMDL pollutant. The current performance standard options are not equally effective in improving local water quality for the listed TMDL pollutants. For example:

- Development and implementation of new street sweeping, catch basin, and leaf collection programs could be cost-prohibitive to some MS4 communities and may not be appropriate if those communities do not have curb and gutters.
- Leaf collection programs may not be applicable in areas of low-density development.
- Street sweeping and catch basin cleaning have proven to be only modestly effective in reducing water quality impacts related to nutrients.²
- Sources other than MS4s (e.g., HSTS, combined sewer, and sanitary sewer programs) are primary contributors of e-coli.

One suggestion would be to revise this section of the Permit to include a matrix identifying suitable performance standard options for addressing the individual TMDL pollutants as an efficient way to provide a wider, more appropriate selection of alternatives.

TMDL Performance Standards & Applicable TMDL Pollutants	TSS	Nutrients	E.coli	Bacteria	Metals	DO & Organic Enrichment
Option 1	X				X	
Option 2	X	X				X
Option 3			X	X		
Option 4		X				X
Option 5		X	X	X		X

In addition, the Permit should be revised to allow the MS4 some flexibility to include alternate BMPs that are appropriate for identified TMDL pollutants in their SWMP.

Suggested Language: “Should implementation of one of the above performance standards be cost-prohibitive for an individual MS4 or co-permittee, there are two options:

1. The MS4 or co-permittee could propose an alternative to this requirement from Ohio EPA, or
2. The MS4 or co-permittee may participate in a collaborative effort to create such a program allowing multiple communities to share equipment and personnel.” (Hamilton County Storm Water District)

² 2016, Schueler, Giese, Hanson, and Wood, “Recommendations of the Expert Panel to Define Removal Rates for Street and Storm Drain Cleaning Practices,” Chesapeake Stormwater Network, Chesapeake Research Consortium, and Virginia Tech (review of more than 100 research papers from 2006 through 2016)

Part III.B.6.e.vii.1. Street Sweeping Performance Standard does not Meet MEP Standard. Requiring street sweeping 4 times per year appears to be an arbitrary metric and is unlikely to result in tangible TMDL pollutant control. While frequency is an important consideration for a street sweeping program and more frequent sweeping should, theoretically, result in more material collected, it is not the only factor in reducing pollutant loads in nearby waterways. A major factor affecting quantity of materials removed is the average daily traffic on each roadway. Roads with higher daily traffic are more likely to accumulate pollutants, including solids and metals. Sweeping those roadways with higher average daily traffic rates at a much more frequent rate has a greater potential to have a positive impact on reducing water quality impact from roadway runoff. The seasons also impact sweeping locations and frequency – with higher sweeping frequency scheduled for fall months on wooded roadways. It is suggested that the Permit language be modified to read:

Suggested Language: “Develop and implement a proactive street sweeping program that prioritizes curbed roadways with the highest average daily traffic rates for more frequent sweeping and adjusts the scheduling and frequency of sweeping of all roads to accommodate the fall leaf season.”

Clarification: The District is also seeking a definition of “proactive” as applied to the proposed performance standard. (Hamilton County Storm Water District)

Part III.B.6.e.vii. A performance standard for MCM6 is now required for developing and implementing a proactive street sweeping program, a proactive catch basin cleaning program or a leaf/yard waste collection program. Each of these standards requires the following:

1. ***“At a minimum, sweeping shall occur on curbed streets four times per year” for a Street Sweeping Program***
2. ***“At a minimum, catch basins shall be cleaned whenever material deposited in the bottom of the basin reaches a height greater than one-third of the depth from the basin bottom to the lowest opening into or out of the catch basin” for a Catch Basin Cleaning Program***

3. “Develop and implement a leaf/yard waste collection program”

The Turnpike currently has an extensive program in place for sweeping the median roadway and reports these quantities each year. Additionally, the Commission regularly cleans material collected in the sumps of its catch basins and disposes of the material on a regular basis. It is understood that the EPA would like to include performance standards to be met within the permit, but the standards indicated do not take into consideration areas of concentrated debris and sediment accumulation. As would be the case with street sweeping, it would require removing a concentration of efforts away from more problematic areas to meet the performance standard in areas where less frequent cleaning is more appropriate.

As for the other performance standards listed, the Commission also has a program in place for regular cleaning of catch basins, but to go further by placing a requirement that would require regular inspections of the thousands of catch basins to see if they have accumulated sediment to one-third their capacity prior to actual cleaning would take an inordinate amount of additional manhours and equipment to accomplish the same goal. Applying this type of standard across such a broad classification of infrastructure would be grossly uneconomically and inefficient.

As for a leaf/yard waste collection program, the Turnpike does not have the population to support a program that would make this type of program a worthwhile venture.
(Ohio Turnpike and Infrastructure Commission)

Part III.B.6.e.vii. This section requires small MS4 communities to implement one of three additional activities/programs to address TMDL concerns for MCM #6. The three activities/programs listed may not be practical nor cost effective for a rural small MS4 community to implement. Please provide other options that are more applicable for rural communities, provide an exemption for rural communities based on appropriate parameters, or allow the rural small MS4 community to design their own activity/program for this item. (EMH&T)

Part III.B.6.e.vii. These required performance standards do not consider the non-urban MS4 which typically do not have a curbs or catch basins. In these non-urban MS4 settings lot sizes are typically larger and people compost their leaf/yard waste which is a much more sustainable practice than collecting and having to take to a large facility to be disposed of and managed. There needs to be flexibility or other options

that are more conducive for the non-urban MS4. (Geauga Soil and Water Conservation District)

Part III.B.6.e.vii. We believe the additional requirements put into place for the PPGH program creates a severe burden on MS4 communities.

Street Sweeping:

• We request a clearer definition of “proactive” including additional guidance on “proper debris management and disposal”?

Catch Basin Program:

• We request a clearer definition of “proactive”.
• It should be noted that the catch basin program requirements as written do not meet what is present out in field as some catch basins by design do not have sumps. Please provide guidance on the acceptable methods to deal with existing catch basins as well as what constitutes proper debris management and disposal of materials from catch basins.

Leaf/Yard Waste Collection Program:

• Please provide guidance on the acceptable methods for Leaf/Yard Waste Collection Program. (Lucas County)

Part III.B.6.e.vii.1 and 3. The TMDL requirement of street sweeping 4 times per year and a yard waste collection program is not financially feasible for many communities. The goal to reduce sediment and nutrients in watersheds where the TMDL lists those pollutants is worthwhile but urban streets are not the only source of those pollutants. MS4s would be more willing to spend money on sediment and nutrient removing practices if the agricultural community where doing the same. (City of Piqua)

Part III.B.6.e.vii.1-3. Options 1-3 could be a costly venture if a small MS4 community does not currently have a program in place. This regulation is part of an unfunded mandated program that does not provide funding to MS4 communities. Funding for these types of programs can be very limited for many municipalities and options 1-3 might pose a particularly difficult hardship. (Warren County Engineer’s Office, Warren County SWCD, City of Mason, Turtlecreek Township, City of Lebanon, Village of Morrow, Clearcreek Township, City of Franklin, Village of South Lebanon, Deerfield Township)

Part III.B.6.e.vii.1-3. It is requested that Ohio EPA consider revising the performance standards. Performance Standard 1 would require that street sweeping be performed on curbed

streets at least 4 times per year. We feel this standard will be costly and challenging.

Performance Standard 2 would require catch basins to be cleaned when the sump is filled to within 1/3 of the lowest invert elevation. We feel that this standard will be challenging to meet.

Performance Standard 3 would require the MS4 to develop a leaf and yard waste collection program. We feel this would be very costly to implement, not to mention the different regulations, such as composting and leachate requirements associated with type of operation.

We currently have a street sweeping and catch basin cleaning program in place that effectively fulfills the requirements Ohio EPA is intending to meet. We provide street sweeping services to our co-permittees. All curbed streets are swept two (2) times per year and we feel that this is an effective approach to removing pollutants from the roadways. All material collected is disposed of at the County solid waste facility.

Additionally, we provide catch basin cleaning services to our co-permittees and have for a number of years now. Rather than clean basins based on the amount of debris in the basin,, we and our co-permittees have developed a program that cleans basins within the municipality based on geographic location with the intent to meet a 5 year rotational cycle whereby the entire municipality's catch basins are cleaned on a 5 year cycle.

We request that Ohio EPA allow flexibility within the performance standards to develop a program that meets the intent of the Ohio EPA requirements. (Lake County Stormwater Management Department)

Part III.B.6.e.vii.2. What if catch basins don't have sumps (opening is at the bottom)? (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Part III.B.6.e.vii.3. One municipality in this group is curious what a compliant leaf/yard waste collection program would entail. This municipality does not currently offer a formal leaf/yard waste collection where residents place leaves along the street at certain times during the year for sweeping. However, they do allow leaf/yard waste to be comingled with weekly trash pickup and encourage residents to use a mulching mower when cutting the grass to use the leaves as a natural nutrient. At a very base minimum, would this qualify as a "progam"? (Warren County Engineer's Office, Warren

County SWCD, City of Mason, Turtlecreek Township, City of Lebanon, Village of Morrow, Clearcreek Township, City of Franklin, Village of South Lebanon, Deerfield Township)

Response 122:

After evaluation of the comments received, the final permit has been revised. The final permit now includes the following revised TMDL performance standard language and includes an additional option to satisfy this requirement. Additionally, this requirement now provides two years to begin implementation:

“TMDL Performance Standard (see Appendix A). If your small MS4 discharges to a watershed with a U.S. EPA approved TMDL and any of the following pollutants are identified for your small MS4:

- *Total Suspended Solids (Includes Sediment and Siltation);*
- *Nutrients (Includes Phosphorus, Nitrogen and Ammonia);*
- *E. coli;*
- *Bacteria;*
- *Metals; or*
- *Dissolved Oxygen and Organic Enrichment.*

Your pollution prevention/good housekeeping program shall include, at a minimum, one of the following performance standards. Implementation of this permit requirement shall commence no later than two years after the effective date of this permit for small MS4s renewing coverage under this permit.

1. Develop and implement a street sweeping program with proper debris management and disposal. Your program shall document debris collected to prioritize areas to sweep and/or document lane miles swept. At a minimum, sweeping shall occur on curbed streets two times per year; or

2. Develop and implement a catch basin cleaning program with proper debris management and disposal. Your program shall document debris collected to prioritize areas to clean. At a minimum, catch basins shall be scheduled to be cleaned once every five years; or

3. Develop and implement a leaf/yard waste collection program; or

4. For small MS4 facilities that do not require NPDES industrial storm water general permit coverage but require a SWPPP in accordance with Part III.B.6.c of this permit, conduct routine facility inspections for these facilities at

least quarterly (i.e., once each calendar quarter. You shall document the findings of each routine facility inspection performed and maintain this documentation onsite with your SWPPP. At a minimum, your documentation of each routine facility inspection shall include:

- *The inspection date and time;*
- *The name(s) and signature(s) of the inspector(s);*
- *Weather information and a description of any discharges occurring at the time of the inspection;*
- *Any previously unidentified discharges of pollutants from the site;*
- *Any control measures needing maintenance or repairs;*
- *Any failed control measures that need replacement;*
- *Any incidents of failure to implement your SWPPP observed; and*
- *Any additional control measures needed.*

Comment 123:

Part III.B.6.e.viii. Additional reporting requirements as specified will be difficult and costly to implement, since not all the requested parameters are tracked and may be difficult to quantify. We request that Ohio EPA remove these specific requirements and allow each permittee to propose a monitoring and reporting schedule in its initial SWMP and annual updates. (City of Cincinnati)

Part III.B.6.e.viii.c and g. Reporting Waste Collection and Disposal Effectiveness. Obtaining the specific information related to tracking metrics may prove problematic to MS4s. For example, based on knowledge gained during MCM6 operation and activity reviews, most street sweeping is contracted out and the MS4 is billed by miles swept. The actual amount collected is typically not available if the contracted operator services more than one community prior to taking the entire load to a disposal facility. Many communities perform catch basin cleaning on an ongoing basis while performing other tasks and do not have the means to measure the amount of material collected. It is typically only the larger communities who can afford regularly planned catch basin cleaning programs.

Street sweeping and catch basin cleaning is typically targeted toward times and areas of extreme deposition which can vary from year to year – e.g., following winter deicing, leaf collection, and special events such as festivals and street fairs. Disposal locations for collected MS4 waste, street sweepings, and catch basin cleaning material can change over the course of a year.

It is suggested that the Permit language be changed as follows:

- **III.B.6.e.viii.c.** should be changed to “Document the types of wastes generated by your small MS4 and your municipal operations, the pollution prevention practices employed while properly disposing these wastes, the disposal location(s), and the pollution prevention practices used to control run-on/runoff from these locations.”
- **III.B.6.e.viii.g.** should be changed to: “Document the miles of streets swept and number of catch basins cleaned.” (Hamilton County Storm Water District)

Part III.B.6.e.viii.d - f. Reporting Pollution Prevention/Good Housekeeping Practices for Material Storage and Use. There are many factors that affect use of salt and other deicing agents, pesticides, herbicides, and fertilizer that are beyond the control of the MS4. Those that are universal include geography, site conditions, and weather patterns. Salt and deicing solutions depend on type of roadway and road conditions; pesticides and herbicide use can increase or decrease in types and extent of infestations. Reporting annual usage independent of these factors could misrepresent their use.

Suggested Language: Replace paragraphs d, e, and f with the following: “Describe the pollution prevention/good housekeeping practices used when applying and storing deicing materials, pesticides, herbicides, and fertilizers, and the rationale for any changes in the use of these materials over the previous year.” (Hamilton County Storm Water District)

Part III.B.6.e.viii.c - g. Implementation of Compliance Tracking Systems. Adding these reporting requirements presents a data collection/reporting burden to many MS4 co-permittees who do not currently maintain such records.

Suggested Language: “The MS4 has the option to provide a timeline in the SWMP for development of programs or mechanisms to implement the new requirements for tracking of pollution prevention/good housekeeping practices for MS4 wastes and disposal locations; salt storage and usage; pesticides, herbicides, and fertilizer used; and street sweeping and catch basin activities, and the disposal locations.” (Hamilton County Storm Water District)

Part III.B.6.e.viii.c. Solid waste removed from our municipal operations weekly as part of the solid waste contract. There is no tracking of weight involved with the disposal. Is the Ohio EPA looking for tonnage tracking of waste streams or a

pickup frequency in these situations? (City of Sidney)

Part III.B.6.e.viii.d. Because the reporting period covers a calendar year and winter de-icing activities typically cover parts of successive calendar years, the District requests the following language be added to the end of this section:

“Your report shall cover the most recent full winter season (October thru April).” (Northeast Ohio Regional Sewer District)

Part III.B.6.e.viii.d. Does this mean total lane miles in MS4 or total lane miles treated (which would include complicated calculations including application rate, number of passes, etc.). (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Part III.B.6.e.viii.d. It is unclear whether this refers to the amount of lane miles within MS4, or lane miles throughout an entire winter of snow and ice operations. If the latter, this provision will be difficult to measure without substantial hardware and software upgrades to snow and ice equipment, and operator training. (Lucas County)

Part III.B.6.e.viii.g. This annual reporting requirement asks for documentation of the amount of material collected during catch basin cleaning. The City has no way to measure this. Catch basins are cleaned on an as-needed basis, sometime by hand, but the material is never weighed. (City of Piqua)

Response 123:

The documentation listed in the annual reporting requirements is the information that is currently listed in the paper Small MS4 annual reporting form available at:

<https://epa.ohio.gov/dsw/storm/index#1164410089-electronic-small-ms4-annual-report> and the electronic Small MS4 annual reporting form available via the eBusiness Center.

Evaluating, Record Keeping and Reporting

Comment 124:

Part IV.C. Required Changes to Ohio EPA’s Annual Reporting Format. There have been issues with the use of the online Ohio EPA eBusiness Center for submittal of annual compliance reports over the last couple years (e.g., incorrect document status appearing and replacement of punctuation marks with upside-down question marks after the information is entered online). At the August 5, 2020 Ohio EPA Virtual Meeting it was stated that the online forms are being updated – it is hoped that these issues are part of those updates.

At the same meeting, a statement was made that revisions were being considered to accommodate co-permittee MS4 groups. If the format is to change dramatically – e.g., a

separate set of forms is to be completed for each co-permittee – that would greatly increase the time it takes to complete these forms and for little gain – the total Permit compliance numbers for our District would be the same. As a large co-permittee MS4 group, we are offering assistance in developing and/or reviewing these changes to the online forms. (Other attendees at the meeting requested an opportunity to review these changes to the online forms.)
(Hamilton County Storm Water District)

Response 124: Ohio EPA Storm Water Program has worked with the Ohio EPA's IT Department to correct problems with the electronic annual report. Upcoming needed updates to the electronic annual reporting form to address OHQ000004 will be shared with MS4s to allow for comments/suggestions once developed.

Appendix A

Comment 125: **Appendix A. The municipal boundary for the City of Zanesville and the boundary of the Salt Creek Watershed do not overlap. Zanesville does not contribute to this watershed and this line should be removed from Appendix A.** (City of Zanesville)

Response 125: This is correct. Ohio EPA's TMDL Program confirmed that incorrect city of Zanesville corporation limits were used with the Salt Creek TMDL. As a result, the city of Zanesville has been removed from Appendix A and Ohio EPA's TMDL Program will start the process of modifying the TMDL to make this correction.

Comment 126: **Appendix A. The draft permit requires additional TMDL performance standards throughout the document for small MS4s listed in Appendix A. Great Parks of Hamilton County is not listed in Appendix A, even though we have property in the Little Miami and Mill Creek Watersheds, both of which have TMDLs. Was this omission intentional? Are we expected to comply with the additional requirements for small MS4s that discharge to watersheds with TMDLs? Please provide clarification on this selection process.** (Great Parks of Hamilton County)

Response 126: Thank you for catching this error. Ohio EPA has evaluated Great Parks of Hamilton County regulated MS4 areas and made the following revision to Appendix A of the final permit:

COUNTY	REGULATED MS4	TMDL PROJECT	TMDL POLLUTANT(S)
Hamilton	Great Parks of Hamilton County (Armleder)	Little Miami River (Lower)	Sediment, TSS
	Great Parks of Hamilton County	Mill Creek	Dissolved Nitrogen, TP

	(Winton Woods)		
	Great Parks of Hamilton County (Glenwood Gardens)	Mill Creek	Dissolved Nitrogen, TP

Comment 127: **Appendix A. Wondering why many MS4 communities are not listed in Appendix A despite being within the TMDL watersheds listed? Seems like many communities have been missed and should be added into Appendix A. If the current proposed list in Appendix A is correct, please explain the science and rationale for allowing so many MS4 communities out of the proposed requirements found in the draft of OHQ000004, that are immediately contributory to the TMDL watersheds?** (Chris Griffith)

Response 127: To be listed in Appendix A, the MS4 would first have to be within a watershed that has a U.S. EPA approved TMDL. Within the TMDL document you will see that allocations are usually given to subsections of the larger study area, also known as a sub watershed. The allocation will list out all responsible parties in this sub watershed area, if MS4 is listed then all the MS4's in that area receive that allocation.

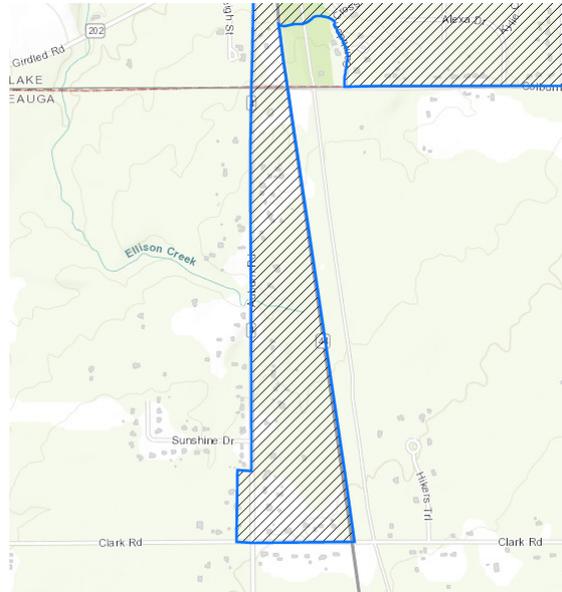
Comment 128: **Appendix A. Explain how the TMDL pollutants for each MS4 was determined? Based on watershed TMDL or sampling point impairments? If sampling point, should consider the downstream effects of each pollutant (source may be from upstream of the MS4).** (Toledo Metropolitan Area Council of Governments, City of Perrysburg)

Response 128: In a TMDL project, all sources contributing the pollutant are given an allocation. All sources must have an allocation to have a permissible discharge. It is true in some watersheds that upstream sources contribute pollutants. This would be handled in the specific watershed TMDL report. There are several ways to handle pollutant reductions amongst sources. This is also handled in the specific watershed TMDL report. For an example of how MS4s are addressed in a TMDL project, please see the Sandusky River (lower) and Bay Tributaries TMDL report available at: https://epa.ohio.gov/Portals/35/tmdl/LSanduskyTMDL_final%20with%20cover_20140528.pdf.

Comment 129: **Appendix A. Geauga County - when an entire county is listed but the entire land area of the county is not within the Phase 2 area, the watersheds not within the Phase 2 area should not be listed since the requirements for the communities within these non-phase 2 areas don't exist. Example -- Phase 2 areas in Geauga County do not extend to the Grand River (lower).** (Gauga Soil and Water Conservation District)

Response 129: The following is the urbanized area (i.e., MS4 regulated area)

identified for the Grand River (lower) TMDL performance standard for Geauga County:



This TMDL performance standard will apply to Geauga County within this MS4 regulated area if the County owns/operates any MS4s within this regulated area.

End of Response to Comments