



Response to Comments

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

Ohio EPA NPDES General Permit No.: OHQ000002

Agency Contacts for this Project

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Ohio EPA held a public hearing and information session on February 14, 2008 regarding NPDES General Permit for Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems (MS4) (OHQ000002). This document summarizes the comments and questions received at the public hearing and during the associated comment period, which ended on February 21, 2008.

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.

General Comments

Comment 1: **In light of the serious economic challenges faced in Ohio by the development community, it is imperative that each and every new requirement have an actual and significant benefit to our environment. It was stated that such to be in line with Governor Strickland's new (2/12/08) Executive Order on Common Sense Business Regulation. As stated therein "Required regulatory reviews will determine if existing rules are needed to implement the underlying statute and ensure consistency with federal rules and the Common Sense Business Regulation process. After a review, state agencies must amend or rescind rules that are unnecessary, that unnecessarily impede economic**

growth, or that have had unintended negative consequences.”

Response 1: Ohio EPA does not believe that the general permit renewal is in conflict with Governor Strickland’s Executive Order on Common Sense Business Regulation. The underlying regulations that the general permit is based upon already exist in the Ohio Administrative Code (OAC). The regulations addressing which storm water discharges are to be regulated can be found in OAC 3745-39. Specifically, Ohio’s Small MS4 rules essentially mirror the federal Small MS4 regulations. The regulations allowing the use of NPDES general permits can be found in OAC 3745-38.

Comment 2: **Many communities are concerned about activities included in their Storm Water Management Plan being an enforceable part of the MS4 permit. As such, some communities may have the tendency to scale back management programs if they are afraid that an activity may not get completed. In other words, they are afraid to take risks to improve their programs for fear of being in violation of the permit. Perhaps the MS4 permit could allow permittees to identify two sets of activities under each minimum measure in their SWMP – one set that would meet the minimum requirements of the permit that must be implemented, and therefore be enforceable under the permit; and a second set of activities that go above and beyond the minimum requirements set forth by the permit that a permittee desires to implement, but is not sure can be accomplished. This may encourage permittees to take extra steps to improve their overall Storm Water Management Program.**

Response 2: The expired Small MS4 general permits (OHQ000001 and OHQ100000) required MS4s to select their own measurable goals to guide program development and implementation. The renewal permit (OHQ000002) includes performance standards which set minimum permit requirements for program implementation. With this approach, MS4s could set “higher” goals for their program; whereas, MS4s would be in permit compliance as long as the minimum performance standards are satisfied. The “higher” goals could be identified within the Annual Report or an attachment to the report could be included entitled “bonus activities”.

Comment 3: One comment requested that Ohio EPA provide MS4s a way and/or means to pay for implementing the program.

Response 3: Ohio EPA has included a section on our Storm Water Program web page which identifies potential funding sources for MS4 programs. If Ohio EPA becomes aware of any additional sources they will be added to the website. You can view the website at:
http://www.epa.state.oh.us/dsw/storm/ms4_index.html

Comment 4: It was requested that the permit include the websites where the following references in the permit can be found: Ohio Administrative Code, Ohio Revised Code, Code of Federal Regulations [40 CFR], Clean Water Act, NOI and NOT forms and instructions, this permit and any other referenced documents.

Response 4: Ohio EPA will include the relevant references and identify websites within the Definitions Section (Part VI) of the general permit.

Comment 5: It was stated that the permit fails to account for water quality conditions, or to even attempt to evaluate the relative potential for water quality impacts among those subject to it. Conventional NPDES permits allow for variation in complexity and potential for water quality damage by such mechanisms as variations in sampling and staffing requirements. It is important to maintain flexibility within the proposed requirements to avoid making this a “one size fits all” program.

Response 5: USEPA’s decision to designate on a national basis small MS4s in urbanized areas is supported by studies that clearly show a direct correlation between urbanization and adverse water quality impacts from storm water discharges. Please see section I.B.1, of the December 8, 1999 Federal Register (Federal Phase II Rule), for studies and assessments of the link between urban development and storm water impacts on water resources. This document can be viewed at the following:
http://www.epa.state.oh.us/dsw/rules/phase2_64fr68721.pdf

Ohio EPA feels that the general permit does provide the needed flexibility for regulated MS4s to develop and implement programs that target their local concerns and storm water problems.

- Comment 6:** **Comments recommended that Ohio EPA change the rules to encourage permittees (communities) to actively participate with and financially support environmental and conservation organizations that are actively engaged in water quality based public education and public involvement activities. This will broaden public participation and take advantage of the existing public education efforts of non-profit and other types of organizations.**
- Response 6:** Operators of regulated MS4s are encouraged to utilize partnerships with other governmental entities to fulfill public education and public involvement activities. It is generally more cost-effective to use an existing program, or to develop a regional education program, than to have numerous operators developing their own local programs. Operators also are encouraged to seek assistance from non-governmental organizations (e.g., environmental, civic, and industrial organizations), since many already have educational materials and perform outreach activities. MS4 operators are permitted to create these partnerships but Ohio EPA does not agree that the rules or permit should require it.
- Comment 7:** **Part I.C.6. It was requested that Ohio EPA clarify the phrase "...unless your discharge is consistent with that TMDL". For example: How is the MS4 operator to determine "consistency"? What opportunities will MS4 operators be provided to demonstrate "consistency"? What if achieving the TMDL requires controls beyond the "maximum extent practicable" criteria for MS4 discharges?**
- Without appropriate clarification, there were concerns that stringent and unnecessary controls will be required for any pollutant named in a TMDL that is commonly found in storm water, without adequate demonstration that storm water discharges are "contributing to water quality impairment", leading to an open-ended and escalating set of requirements that far exceed a reasonable interpretation of "maximum extent practicable" control. It was requested that MS4s be involved early during any future TMDL development actions.**
- Response 7:** The development and implementation of total maximum daily loads (TMDLs) provide a link between water quality

standards and effluent limitations. Clean Water Act section 303(d) requires States to develop TMDLs to provide more stringent water quality-based controls when technology-based controls are inadequate to achieve applicable water quality standards. A TMDL is the sum of the individual wasteload allocations (WLA) for point sources and load allocations (LA) for nonpoint sources, with consideration for natural background conditions. A TMDL quantifies the maximum allowable loading of a pollutant to a water body and allocates this maximum load contributing point and nonpoint sources so that water quality criteria will not be exceeded and designated uses will be protected. A TMDL also includes a margin of safety to account for uncertainty about the relationship between pollutant loads and water quality.

NPDES-regulated storm water discharges must be addressed by the WLA component of a TMDL. USEPA recognizes that the available data and information usually are not detailed enough to determine WLAs for NPDES-regulated storm water discharges on an outfall-specific basis. In this situation, USEPA recommends expressing the WLA in the TMDL as either a single number for all NPDES-regulated storm water discharges, or when information allows, as different WLAs for different identifiable categories (e.g., MS4s). NPDES permits must include any more stringent limitations when necessary to meet water quality standards. However, even if a regulated small MS4 is subject to water quality based effluent limits, such limits may be in the form of narrative effluent limitations that require the implementation of BMPs.

The six minimum control measures focus on and address well-documented threats to water quality associated with storm water discharges. It is believed that implementation of the six minimum control measures will substantially reduce the adverse impacts of MS4 discharges on water quality and ultimately protect water quality on a statewide basis. The process of linking TMDLs and regulated storm water discharges is an evolving science. To date, Ohio EPA believes the only two approved TMDLs in Ohio that would require a mix of more stringent BMPs to be consistent with the TMDL are the Big Darby Creek Watershed and Olentangy River Watershed TMDLs. As such, the general permit renewal requires regulated small MS4s within these watersheds to adopt construction and post-construction regulations that are equivalent to the technical requirements

of these alternative NPDES construction storm water general permits specific for these watersheds.

MS4s should use TMDLs and Ohio EPA's 303(d) list to identify water quality problems associated with their watershed(s). This effort could aid MS4s in better tailoring their mix of BMPs to better address negative water quality effects from storm water discharges. Please see the following website to identify if your watershed has an approved TMDL or when a TMDL will be developed for your watershed and how to provide comment:
<http://www.epa.state.oh.us/dsw/tmdl/index.html>

Comment 8: **Part II.A.4. It was questioned whether a fee will be required for the renewal in addition to the fee submitted with the annual report due by April 1st of each year?**

Response 8: 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. Ohio EPA will supply MS4s, required to apply for coverage, the necessary forms and instructions once the general permit is issued. Generally, a renewal NOI will be required no more frequently than once every five years.

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 \$100 per square mile of MS4 permitted with a maximum fee of \$10,000 [per ORC 3745.11(L)(6)]. Ohio EPA will send an annual notification regarding an MS4s specific fee prior to it being due.

Comment 9: **Part III.A.1.a. This section should state that Ohio's Manual "Rainwater and Land Development" is the standard that local communities and all parts of the construction industry must follow in the selection, design, installation, construction inspection and As-built-drawings for BMPs.**

Response 9: Part III.A.1.a requires that the SWMP identify the BMPs that you or another entity will or already does implement for each

of the storm water minimum control measures. This requirement of the permit pertains to all six of the minimum control measures, not just the construction and post construction minimum control measures. This general permit will require that a MS4's ordinance or other regulatory mechanism to address construction and post-construction runoff be equivalent with the technical criteria set forth in the current, at time of issuance of this permit, Ohio EPA NPDES General Storm Water Permit for Construction Activities applicable for the MS4's permit area.

Ohio EPA's Construction general permits recommend that the erosion, sediment, and storm water management practices used to satisfy the conditions of these permits meet the standards and specifications in the current edition of Ohio's Rainwater and Land Development manual or other standards acceptable to Ohio EPA. Watershed specific Construction general permits could have more restrictive requirements. Ohio EPA believes no changes are warranted.

Comment 10: **Part III.A.1.d. It is understood the importance of maintaining an accurate Table of Organization. However, due to the nature of governmental entities where personnel changes and position eliminations may occur often, it was suggested to not include the persons name or title on the table. It would be sufficient to identify the responsible Division or Department, along with contact number.**

Another comment questioned whether it would be acceptable for the Table of Organization to include only one contact and associated information, assuming this one contact is responsible to coordinate all communication with the OEPA?

Response 10: Ohio EPA doesn't believe that this requirement will be overly burdensome. As indicated in the comment, personnel changes and position eliminations may occur often; therefore, Ohio EPA believes that there is a justified need to develop this Table of Organization and update it annually. This allows the MS4 as well as Ohio EPA to identify who is responsible for different aspects of the program. This Table of Organization would need to include a primary contact and all other persons, including title and contact information, that are responsible for implementing or coordinating the BMPs for a SWMP.

Comment 11: **Part III.A.1.e.** A two year implementation schedule may not be appropriate for all measures especially since a couple of the Performance Standards indicate a different schedule as acceptable. It was requested to allow a three year implementation schedule for MS4s to revise programs to satisfy minimum performance standards. Based upon already determined budgets, a two year implementation is actually only one year. This is insufficient time to adjust a program both programmatically and financially. Several MS4 operators brought this to the attention of OEPA's staff while waiting for the revised permit. Many budgets were set in the fall of last year (2007). Secondly, this will be especially difficult for permittees with multiple co-permittees under one permit. Finally, Part III.B.1.c states the minimum control measure performance standard is over the permit term of five years, these two requirements are in conflict and are misleading.

Response 11: Language within Part III.A.1.e will be re-written to be clearer and not cause confusion for MS4 operators renewing coverage in regards to implementation schedules for various permit conditions.

Almost all performance standards provide MS4 operators flexibility to develop and implement BMPs over the five year permit term to satisfy the standards. An exception to this would be for the Construction and Post-Construction minimum control measures. MS4 operators renewing coverage should already have procedures in place for SWP3 reviews, site inspections and enforcement protocols. As a result of the renewal, MS4 operators may need to increase SWP3 reviews and site inspections to be in conformance with this permit's performance standards. Ohio EPA believes that since the foundation for these two minimum control measures should be in place, a two year implementation schedule for MS4 operators renewing coverage is sufficient.

Comment 12: **Part III.D.2.a.** This language appears to indicate that changes that involve only additions to the components, controls or requirements of the SWMP may be made to Ohio EPA. Subtracting or replacing items in the SWMP appear to be prohibited based on the wording in this paragraph, unless they fall under Item "b" of this section. It was assumed that additions to programs,

that may involve subtraction or replacement of certain components of a SWMP, will be afforded to permit holders, provided they meet the original intent or enhance the SWMP. Since replacement of BMPs is essential to the evolution of a SWMP, clarification of this issue was requested.

Another comment questioned whether a proposed change to a BMP is described in an Annual Report (per Part IV.C.5), is it deemed approved 60 days from submittal of the Annual Report unless such changes are denied by Ohio EPA (per Part III.D.2.b)? Another commenter stated that the 60 day timeframe for Ohio EPA's notification, if denied, is impractical. Seven to fourteen days would be a more workable timeline.

Response 12:

Part III.D.2 of the general permit identifies the requirements associated with SWMP updates. MS4 operators can add BMPs or other components to their SWMP with no justification needed. These additions should be identified with the following annual report. MS4 operators can request to replace an ineffective or infeasible BMP with an alternate BMP at any time. These requests can be made within an annual report or anytime throughout the year. Requests to replace an ineffective or infeasible BMP shall include the following information: (1)An analysis of why the BMP is ineffective or infeasible (including cost prohibitive), (2)Expectations on the effectiveness of the replacement BMP, and (3)An analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.

The general permit provides Ohio EPA 60 days to review and deny these requests. If the request is denied, Ohio EPA will send a written response giving a reason for the decision. The 60 day timeframe is needed by Ohio EPA to adequately review requests.

Comment 13:

It was stated that several places in the draft permit, such as Part III.B.3.d (page 8) and Part III.B.4.a.i (page 10) and Part III.B.5.d (page 11) state that "local law" can limit the communities' compliance with these rules. That is the same as giving all communities a free pass on all the rules. All they have to do is limit their local laws to whatever level they wish to follow. This should not be allowed. The words "or local law" must be eliminated from the limiting factors for compliance with state and federal laws and rules. Instead it should be made clear

that communities must pass local laws that are at least as stringent as the federal and state laws and regulations.

- Response 13:** The intent of this language was not to give MS4 operators a free pass on the requirements of the general permit but to identify that traditional and non-traditional MS4 operators must comply with the conditions of the general permit to the extent allowable under State or local law. This language mirrors the federal language and does not give a “free pass”. Therefore, no changes will be made.
- Comment 14:** **Part V.J. It was stated that this language does not allow the “administrator” (USEPA) the same access as Ohio EPA as the current rules do. All sections of the permit should be changed to allow the “administrator” of USEPA the same access and information as Ohio EPA.**
- Response 14:** As a NPDES delegated state, Ohio EPA implements the federal storm water program on USEPA’s behalf. USEPA maintains the authority to oversee Ohio EPA’s program and has full access to all NPDES general and individual permits; likewise, any documents associated with them. As such, USEPA has the authority to take enforcement action under an Ohio EPA NPDES permit. All general permits are submitted to USEPA Region V prior to issuance. The director of Ohio EPA cannot issue a general permit or renewal if the regional administrator objects in writing to the issuance or renewal general permit. Changes to the general permit are not needed.
- Comment 15:** **Part VI. It was stated that the definitions section should include “Local Law” defined as local laws and ordinances and rules that are, as a minimum, as stringent as federal and state, laws, rules and regulation.**
- Response 15:** Please see the Response to Comment #13.
- Comment 16:** **Part VI. It was stated that “Administrator” should be included and defined as US EPA Region V Administrator.**
- Response 16:** Ohio EPA doesn’t believe that there is a need to define this term in the permit. No changes are warranted.

Comment 17: **Part VI. It was suggested that the definition of “Outfall” should define the smallest pipe that is considered an outfall. It was recommended that this pipe diameter should be 12 inches round diameter (or the smallest dimension for pipes that are not round) and larger. It was requested that dimensions and volumes throughout the permit be listed in both imperial and metric measures. An example is “pipe diameters to be 12 inches (30.5 mm). This method is included in publications by the American Society of Civil Engineers, Ohio Department of Transportation and other technical organizations.**

Response 17: The first generation Small MS4 general permit, based upon federal regulations, did not specify a minimum pipe diameter or ditch width as being an outfall. Ohio EPA doesn't believe that a change to this is warranted for the general permit renewal.

Comment 18: **Part VI. It was requested that the term “dry weather screening” be defined.**

Response 18: 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 19: **Part VI. It was requested that the term “performance standard” be defined.**

Response 19: The general permit renewal includes performance standard requirements. These requirements are simply minimum permit requirements. The first generation Small MS4 general permits required MS4 operators to select their own measurable goals to guide program development and implementation. During the first permit term it was evident that the permit needed to include “minimums” to help determine permit compliance. This approach will help set clear minimum permit expectations. At a minimum, MS4 operators will need to select measurable goals for program

elements that will result in satisfying the minimum performance standards included within the general permit renewal. Ohio EPA doesn't believe a definition within the permit for this term is needed.

Public Education & Outreach Comments

Comment 20: **Part III.B.1.b.iii. It was requested that Ohio EPA provide additional assistance to MS4s in the form of funding for campaign planning and implementation, in the form of research-based recommendations on what behavior changes would most benefit our surface waters, and in the form of a state-wide awareness-building campaign that would be the foundation of local behavior-change initiatives.**

Response 20: In terms of funding opportunities for such a campaign, the Ohio Environmental Education Fund (OEEF) may be a possibility. If approached, Ohio EPA storm water staff would, to the extent possible, participate with groups to develop a campaign.

Comment 21: **Part III.B.1.c. Clarification was requested on what is meant by "...50 percent of the population..." and the term "reach". Is it referring to the population of the urban area or the entire population of the jurisdiction? For a growing jurisdiction, is the 50 percent to be measured at the beginning or the end of the permit cycle? Another commenter questioned what is meant by "mechanism" and requested examples of acceptable and unacceptable mechanisms.**

Response 21: The Small MS4 general permit is only applicable to urbanized area portions of a community. The term "reach" refers to the target audiences receiving the storm water educational message. If a MS4 operator wishes to limit their educational and outreach efforts to their urbanized areas, which is allowed by the permit, they should estimate the population within these area(s) at the beginning of their permit term and measure off that value. Examples of mechanisms include: printed brochures, newspapers, media, workshops, etc. For additional guidance on public education and examples of mechanisms and messages, please see:
<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>

Comment 22: **Part III.B.1.c. One comment suggested that it is unnecessary to require MS4s to target the development**

community with one of their themes or messages. Another commenter suggested that one required theme should be discharging HSTs. It was questioned what is meant by “themes or messages” and requested examples of acceptable and unacceptable themes or messages.

Response 22: Ohio EPA still supports that one theme or message over the permit term shall be targeted to the development community. At least two minimum control measures (construction and post-construction) and to some degree the illicit discharge detection and elimination (cross-connections, improper disposal of construction waste, etc.) are related to the construction industry. In regards to HSTs, MS4 operators that have identified HSTs as a significant problem within their community should target one or more of their themes or messages to owners of HSTs. No changes to this permit requirement will be made.

The general permit’s “themes or messages”, for this minimum control measure, refer to a storm water topic or subject that a MS4 operator is communicating to the target audience. Examples of appropriate themes or message could include: the MS4’s sediment and erosion requirements, post-construction requirements, applying lawn-chemicals, washing cars, etc. To view guidance on these topics and mechanisms to deliver, please see the following link:

<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>

Examples of unacceptable themes or messages include topics that are non-storm water related such as disposing of used phone books (not likely citizens would place used phone books in the MS4). For additional guidance on public education and examples of mechanisms and messages, please see:

<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>

Comment 23: **Part III.B.1.c. Many comments suggested that MS4s need flexibility to implement their educational programs to address their greatest storm water pollution threats while targeting the appropriate audience. The permit’s Public Education and Outreach performance standards limit MS4s’ flexibility and could lead to ineffective educational programs. In marketing, a more succinct and repeated message, is more likely to get recognized. Overall, many comments suggested to remove the**

numerical and percentage performance standards for this minimum control measure.

- Response 23:** Ohio EPA agrees that MS4s need flexibility in developing effective public educational programs. Although, Ohio EPA believes that the minimum performance standards for this minimum control measure will not impede flexibility. MS4s can still develop effective educational programs while satisfying the minimum permit requirements. No changes to this minimum control measure's performance standards will be made.
- Comment 24:** **Part III.B.1.c. One comment stated that the permit will require MS4s to measure outcomes of educational efforts. It is very difficult, if not impossible, to measure changes brought about by educational activities.**
- Response 24:** It is very difficult to measure changes brought about by educational activities. Potential mechanisms to measure the effectiveness of outreach efforts could include surveys, more residents involved in storm water events, greater compliance with construction and post-construction regulations, etc. Ohio EPA agrees that it is difficult to evaluate the effectiveness of educational efforts but has an expectation that MS4s will to the maximum extent practical try to gauge effectiveness. For additional information, please see the USEPA guidance document: "Getting in Step: A Guide for Conducting Watershed Outreach Campaigns".
- Comment 25:** **Part III.B.1.c. One commenter suggested the following permit language for this minimum control measure's performance standards:**
- "Your storm water public education and outreach program shall establish specific, quantifiable education and outreach goals for each theme and mechanism, with a goal of reaching a broad cross-section of your population over the permit term."**
- Response 25:** Ohio EPA appreciates the commenter's suggested language but still supports the draft permit's performance standards for this minimum control measure. The performance standards will set clear minimum permit expectations.

Public Involvement/Participation Comments

Comment 26: **Part III.B.2.a. The wording does not describe the overall intent and expectations of this minimum control measure (MCM), as subsections "a" do in the other respective MCM sections. This particular section only describes a particular sub-requirement of this MCM (to "comply with State and local public notice requirements..."). It was recommended that subsection "a" be reworded such that the overall requirements and expectations of this MCM are clearly stated.**

Response 26: Ohio EPA agrees with this comment. Wording will be added to the permit that more clearly describes that the performance standards associated with this minimum control measure shall also be satisfied.

Comment 27: **Part III.B.2.b.i. Does Ohio EPA really expect public involvement in the submittal of the NOI? The NOI is a one sheet of paper that simply asks for some general information about the community. Why would the public need to be involved in the submittal of the NOI form? For those communities already permitted (by the 1st generation permit in 2003), are we still expected to involve the public in the development and implementation of our SWMPs? Perhaps there should be additional wording added to the new permit to clarify this.**

Response 27: Ohio EPA believes there are two important reasons why the public should be allowed and encouraged to provide valuable input and assistance to the MS4 operator's program.

First, early and frequent public involvement can shorten implementation schedules and broaden public support for the program. Opportunities for members of the public to participate in program development and implementation could include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. Moreover, members of the public may be less likely to raise legal challenges to a MS4's storm water program if they have been involved in the decision making process and program development and, therefore, internal

personal responsibility for the program themselves. Second, public participation is likely to ensure a more successful storm water program by providing valuable expertise and a conduit to other programs and governments. Interested stakeholders may offer to volunteer in the implementation of aspects of the program, thus conserving limited municipal resources.

MS4 operators should continue to actively involve their public with their on-going storm water programs. Program elements such as annual reports and NOIs for renewing coverage could be made available to the public via the MS4 operator's web page or community meetings.

Comment 28: Part III.B.2.c. **Comments suggested removing the performance standard for this minimum control measure. Five public involvement/participation activities seem arbitrary. MS4s should be allowed to establish their own individual standards for their community. It will be impossible to measure change brought about by the involvement/participation activities.**

The storm water program will benefit more from strategically planned and targeted public involvement/participation events as opposed to a randomly selected five events. Each community is different and has its own unique storm water issues. The total number of events does not determine the effectiveness of a public involvement/participation program for a MS4.

It was requested to clarify what is meant by a public involvement/participation activity.

Response 28: Examples of public involvement/participation activities, are not limited to, but could include citizen representatives on a storm water management panel, public hearings, working with citizen volunteers willing to educate others about the program, volunteer monitoring or stream/beach clean-up activities. Ohio EPA agrees that these events should be strategically planned and targeted to address local storm water issues. Ohio EPA strongly believes that the more involved the local public is the more successful storm water programs will be. The performance standard associated with this minimum control measure is very achievable and can be coordinated with a strategically planned public

involvement/participation program. No changes to the permit will be made.

Illicit Discharge Detection & Elimination Comments

Comment 29: **Part III.B.3.b. Overall, most comments requested clarification on this draft permit requirement. Specifically, the extent of the mapping requirement on private property needs to be more clearly defined as to whether the entire storm system (catch basins, ditches, pipes) needs to be mapped or just the storm water management facilities (e.g., retention/detention and water quality basins).**

Comments stated that by definition private storm water facilities are not part of the MS4 and therefore should not be required to be mapped. Comments suggested that mapping the entire storm sewer system including catch basins, pipes, ditches and public and private storm water facilities will be extremely burdensome. This is expected to significantly impact available funding to support program elements that more directly address illicit discharges and storm water pollution.

One commenter stated that in regards to the mapping of illicit discharges to include portions of an MS4 outside the public road right-of-way, it was requested to require this only when funding other than a county's allocation of gasoline tax and/or motor vehicle tax is used to fund these MS4 activities. Although there is benefit towards an overall mapping product, the benefit to the highway system is lacking especially in view of funding shortages.

It was suggested that the permit establish a minimum size requirement for mapping of open ditches and enclosed pipe conveyances, as has been done in Indiana and other states. It was requested that the pipe diameters to be included in the map be 12 inches round diameter (or the smallest dimension for pipes that are not round) and larger.

Response 29: Ohio EPA agrees that this permit requirement needs better clarification. Ohio EPA's intent with the MS4 mapping requirements was for MS4s to develop a comprehensive storm sewer system map (which is owned and/or operated by the MS4) that only includes catch basins, pipes, ditches,

storm water outfalls and the names and location of surface waters receiving discharges from these outfalls. This only includes the storm sewer system owned and/or operated by the MS4, not portions of a private storm sewer system. The first generation general permit did not include minimum size criteria for outfall mapping. As such, this general permit will not include minimum pipe diameters nor minimum ditch widths for mapping purposes.

Ohio EPA's intent with the term "public and private storm water facilities" was to include flood control facilities (retention/detention ponds) and post-construction water quality BMPs owned/operated by the MS4 operator as well as private post-construction water quality BMPs which have been installed to satisfy Ohio EPA's NPDES Construction Storm Water general permit and/or the MS4 operator's local post-construction water quality BMP requirements. The MS4 general permit requires that the MS4 operator ensure long-term operation and maintenance of these BMPs either by the MS4 or by another party. This would apply to both private and public projects which have post-construction water quality BMPs. Ohio EPA's expectation is for MS4 operators to know the locations and maintenance requirements of these BMPs. Therefore, MS4s can either include these BMPs on their storm sewer system map or develop and maintain an inventory.

Permit language that more clearly identifies the mapping requirements, as discussed above, will be included within the final general permit.

Comment 30: **Part III.B.3.b. Does any connection to the MS4 need to be mapped and identified? For example, a swale that drains two residential yards and private residential rear yard drains need to be included on the map? Other examples include roof drains, parking lot catch basins, foundation drains and HSTs.**

Response 30: Private connections to the MS4 are not required to be mapped. As with the first generation general permit, this generation will require that the storm sewer map show the locations of all HSTs connected to the MS4. Obviously, detected illicit discharges or dry weather flows that need further screening or follow-up from private connections do need to be identified on the map or an inventory developed and maintained.

Comment 31: **Part III.B.3.b. What is a “storm water facility” – is it any public or private conveyance, storage, and/or treatment facility (which could be interpreted as broadly as roof gutters, downspouts, swales along property lines, and lateral connections that collect storm water from private property), or is a facility only those devices designed to control storm water pollution?**

Response 31: Ohio EPA’s intent with the term “public and private storm water facilities” was to include flood control facilities (retention/detention ponds) and post-construction water quality BMPs owned/operated by the MS4 operator as well as private post-construction water quality BMPs which have been installed to satisfy Ohio EPA’s NPDES Construction Storm Water general permit and/or the MS4 operator’s local post-construction water quality BMP requirements. Please see the Response to Comment #29 for additional clarification.

Comment 32: **Part III.B.3.b. Is the mapping required to be in GIS or are hardcopy maps appropriate?**

Response 32: MS4 operators have the flexibility to determine the type (e.g., topographic, GIS, hand or computer drafted) and size of maps which best meet their needs.

Comment 33: **Part III.B.3.b. It was questioned as to what updates are expected by the permit for the storm sewer system map for the Illicit Discharge Detection and Elimination minimum measure?**

Response 33: The annual comprehensive storm sewer system map update needs to include: (1) any additions (catch basins, pipes and ditches) to the system which are owned and/or operated by the MS4. (2) any additionally connected HSTSs identified. (3) any additional post-construction water quality BMPs (or these BMPs can be maintained in an inventory). (4) any additional illicit discharges identified or dry weather flows that need further screening (or these can be maintained in an inventory).

Comment 34: **Part III.B.3.b. If the storm sewer map is to contain the entire MS4 system, and an MS4, by definition, is a “...municipal separate storm sewer system...owned or operated by the...municipality...”, then how can the new requirement include “...private storm water facilities”? “Private” conflicts with the definition of an MS4.**

Response 34: The only private storm water facility that the final general permit will require to be mapped or be maintained in an inventory is post-construction water quality BMPs that are installed per the requirements of Ohio EPA's Construction Storm Water general permit and/or the local MS4's post-construction requirements. The MS4 general permit requires that MS4 operators ensure the long-term operation and maintenance of these BMPs so it is imperative that MS4 operators know the location of these BMPs. Please see the Response to Comment #29 for additional clarification.

Comment 35: **Part III.B.3.b. If the requirement is truly meant to include private "facilities", is it retro-active? Is the map only required to show new "facilities" added to it after the permit effective date or some other date?**

Response 35: The map or an inventory (such as a spreadsheet) needs to include all post-construction water quality BMPs which have been installed per the MS4 operator's post-construction requirements (this includes both public and private developments). As required within the first generation Small MS4 general permits, MS4 operators were required to ensure long-term operation and maintenance of these BMPs. As a result, these applicable sites should have agreements in place for this long-term operation and maintenance. These BMPs need to be included within the map or an inventory. MS4 operators should make an effort to include any post-construction water quality BMPs that existed prior their local regulations.

Comment 36: **Are downspouts considered "private storm water facilities"?**

Response 36: No, please see the Response to Comment #29 for additional clarification.

Comment 37: **Part III.B.3.b. What types of detailed information are required for, say, "pipes" - are we expected to provide sizes, material types, slopes, capacities, etc.? One comment stated that Appendix 7 MS4s will be forced to revise their storm sewer mapping program and pursue an aggressive mapping schedule while simultaneously working to implement the remaining BMPs listed within their SWMP. It was suggested to provide additional time for the fulfillment of the MS4 mapping requirements, or**

setting a milestone which determines the estimated percentage of the MS4 system to be mapped at the end of 5 years.

Response 37:

The general permit renewal does not require that any specific detailed information be provided for pipes and ditches; although, a coding system (e.g., 001, 002, etc.) should be used to mark and identify each outfall. It would likely be beneficial for MS4 operators to record useful information on their system while the mapping effort and dry-weather screening processes are being performed. The manual titled "Illicit Discharge Detection and Elimination Program Manual – A Guidance Manual for the State of Ohio" provides model inventory and inspection forms and can be viewed at:

<http://www.ccbh.net/ccbh/opencms/CCBH/modules/services/Stormwater.html>

Ohio EPA believes that the 5 year timeframe for the MS4 mapping requirements is sufficient time for MS4s. Although, the final permit will provide flexibility and allow a MS4 to propose an alternative schedule to complete the mapping requirements if unable to complete within 5 years.

Comment 38:

Part III.B.3.b. Two commenters suggested the following permit language:

- **"You shall develop, if not already completed, a 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 two years of when your coverage under this general permit was granted, you shall develop a plan to extend your storm sewer system map to include remaining major elements of the MS4 System, including catch basins along public roadways, pipes within the MS4 that are larger than 18 inches in diameter, major roadside ditches, and any new public and private (to the extent access is available or provided to the private facility) structural storm water pollution control BMPs serving a drainage area of one acre or more. The plan shall define the specific types of MS4 features that will be shown on the map, provide a prioritized mapping schedule based on critical program needs such as supporting illicit discharge investigations and/or pollution prevention, and provide rationale if the**

schedule extends beyond the end of the five-year permit term.”

- **“You shall develop, if not already completed, a 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 storm sewer system map shall also include the entire MS4 system, including catch basins, pipes, ditches and public storm water facilities. The storm sewer system map shall identify those parcels with private storm sewer facilities outside of the ownership or operation of the MS4. The MS4 shall identify the owner or responsible party of those private storm water facilities;”**

Response 38: Ohio EPA appreciates the two commenter’s suggested language but supports the rationale discussed in the Response to Comment #29. Ohio EPA will add language to more clearly state the intent of this requirement as was discussed in the Response to Comment #29.

Comment 39: **Part III.B.3.e. The cost to hook into a sewer system is generally much more expensive than HSTSs and this could put a tremendous financial burden on the property owner. As such, it was stated that this provision directly contradicts Governor Strickland’s new (2/12/08) Executive Order on Common Sense Business Regulation.**

Response 39: First, to address the comment specifically, the issue of connecting to sewers typically being much more costly than HSTSs and, thus, being a “tremendous financial burden” is not the case. The cost of any connection or HSTS installation is dependent on site characteristics and every site would need to be evaluated independently. A survey conducted by the Ohio Department of Health indicates that the installation of an HSTS—meeting current day standards—may cost anywhere from approximately \$8,000 to \$20,000 depending on site and soil characteristics. Ohio EPA consultations with various POTWs and/or consultants indicate that the installation of a sewer lateral for a private residence to connect to existing sanitary sewers may cost approximately \$10,000 if the residence is within 400 feet of the sewers.

Additionally, based upon comments received, Ohio EPA feels that the entire issue related to connection to existing sanitary sewers as discussed in the draft permit are being misconstrued and/or misunderstood. As intended by the language, Ohio EPA is not mandating that all systems be abandoned and tied into sanitary sewers immediately or regardless of any situation. 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 when the need for replacement or repairs of the system come up and are necessary. In that instance, then 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.

Ohio EPA will modify the language contained in the draft permit to better reflect this overall intent.

Comment 40: **Part III.B.3.e.i. ORC 6117.51 is a discretionary option for the Board of Health and County Commissioners. Cities and Villages do not have the legal ability under this section of the code to make such requirements, especially if the property is adjacent to their corporation limits, thus outside of their sewer service boundary. If OEPA enforces/requires this component of the permit, cities will require properties to annex and incorporate properties and/or assets within the township. Annexation law between Cities and Townships is under heavy economic dispute at the State and Local level; this adds another complexity in resolving annexation disputes that OEPA must take in consideration. Therefore Part III.B.3.e.i should be removed from this permit.**

In addition, we believe systems subject to Part III.B.3.e.i should be permitted to remain if modifications of replacement of the system can be accomplished if they meet the requirements of the Health Departments rule and regulations. OEPA should modify the ORC and State Board of Health Rules rather than trying to circumvent existing options and procedures permitted by law.

Response 40:

Ohio EPA is fully aware that the provisions of ORC 6117.51 are discretionary and only applicable to county sewers and County Commissioners. However, the intent of the language again is to promote area wide planning within the MS4 community and the reference to this statute is simply that and needs to be considered in that planning. The recommendations of the draft permit are asking that considerations under this statute be considered sooner than later.

As for the impact of cities and villages and the potential annexation of properties, Ohio EPA does acknowledge that this is a complex issue. Again, the conditions recommended in the draft permit are to promote planning among all of the appropriate parties to bring them together and address issues as appropriate. Annexation can be part of this planning and discussion process. Additionally, annexation issues are best addressed at the local level through local negotiations and discussion and it is not Ohio EPA's intent to force the issue from the state level. It needs to be stressed that throughout the recommendation in the permit that the theme of "technically, economically and legally feasible" needs to be considered.

Comment 41:

Part III.B.3.e.i. Many commenters objected to the permit language that if within two hundred feet of public sewers require the owner of the HSTS to connect per ORC 6117.51. Current state law permits the use of HSTS. In fact, state legislators, regulators (including Ohio EPA) and the regulated community are currently in the process of reviewing, revising and improving the HSTS law in Ohio in order to prevent health hazards and illegal dumping. It was requested that this legislatively mandated HSTS study process be afforded an opportunity to work prior to language such as this being included within the permit.

Response 41: The statement within this comment that “current state law permits the use of HSTS” is only partially true and the thought expressed is incomplete. State law **does not allow discharging** HSTSs to occur without proper siting and permitting and various state and federal laws address this issue. That is why the state must look at how to minimize or address discharging HSTS in Ohio. Many discharging HSTSs 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 HSTS has been allowed without meeting Ohio EPA standards since the 1970’s. Therefore, the state needs to address the issue of this legacy of discharging systems that have been in operation without proper or legal authority. Ohio EPA is also fully aware of the legislatively mandated study taking place and is a party of the committee or commission overseeing the evaluation. Nothing in the proposed language in the draft permit will prevent that legislative activity from taking place and then in turn having the MS4 work with all parties involved in implementing the outcome of such evaluation in the planning requests being promoted. Any plan addressed or agreed to must comply with all applicable laws and regulations.

Comment 42: **Part III.B.3.e.i. One commenter requested clarification on the HSTS language. What about township residents who do not have a failing HSTS but who reside within two hundred feet of a public sewer system? Would they be forced to connect even though their system is not creating a health hazard? Under the provisions of the proposed permit, will existing functional off-lot home sewage treatment systems (HSTS) require coverage under an NPDES permit? If yes, is an appropriate general permit in place for use by HSTS owners? Also, please clarify how to measure the 200 feet distance?**

Response 42: Again, the intent of the language is to evaluate and possibly require connection to sanitary sewers when it is necessary to replace or repair an HSTS and not to require the physical elimination of all discharging HSTS immediately. However, it will be the determination of the local health district as to if an existing HSTS is meeting the standard of functioning as intended and authorized and not causing a public health hazard. Currently, Ohio EPA is not requiring existing discharging HSTS that are functioning as designed and authorized to obtain coverage under an NPDES permit. However, Ohio EPA does stress that coverage under an

NPDES permit may or may not be an option when it becomes necessary to repair or replace that system when its useful life has been exhausted.

Comment 43: **Part III.B.3.e.i.** The requirement to require the owner of the HSTS to connect to the public sewer if it is within two hundred feet of public sewers does not address whether the existing sanitary sewers have sufficient capacity to accept the added flow nor does it address any of the multitude of physical constraints to making such connections. Wastewater agencies such as the Metropolitan Sewer District of Greater Cincinnati (MSDGC) are under a separate set of rules, regulations, permits and orders, and in the case of MSDGC a consent decree that does not allow MSDGC to accept additional flow without removing flow from the system.

Additionally, the Ohio EPA's proposed permit language to require HSTSs to connect to public sewers under Part III.B.3.e.i is not enforceable by many storm water permittees. The reference to ORC 6117.51 only applies to county sewer districts and is not applicable to cities or other forms of sewer district. There are also several exceptions under the statute. Furthermore, MS4 operators do not have the legal authority to "require" connections to public sewers. Rather, such connections are subject to both the local regulations of the applicable sewer agency as well as any state law, NPDES permits, and/or compliance orders pertaining to the public sewer system operator. We request that this requirement be dropped from the MS4 general permit. If that is not possible, we request that this provision be revised in a manner as illustrated below to clearly recognize the overriding jurisdiction of the public sewer system operator and to shield MS4 operators from legal liability in the case that public sewer operators are not legally able to accept HSTS discharges:

"You shall develop and implement a plan to detect and eliminate non-storm water discharges, including illegal dumping, to your system. Your plan to address HSTSs connected to your MS4 shall include, at a minimum, the following components:

~~i. If within two hundred feet of public sewers require the owner of the HSTS to connect per ORC 6117.51.~~

i. Work with your local waste water agency to develop an appropriate requirement for HSTS owners to connect to the public sewers. This requirement shall be consistent with applicable state law, local health code, and NPDES permits and orders applying to the waste water agency, and shall recognize physical capacity, social, and economic constraints that may impede connection to the public sewer. Permitted HSTS discharges to MS4s may continue until such time that the operator of the local waste water agency requires the HSTS to connect in accordance with the developed requirement.”

Another commenter suggested the following language:

“Your plan to address HSTSs connected to your MS4 shall include, at a minimum, the following components:

i.If within two hundred feet of public sanitary sewers consider require requiring the owner of the HSTS to connect per ORC 6117.51. For those systems currently under another NPDES permit, OEPA shall require or consider requiring the owner of the HSTS to connect to public sanitary sewers;

ii.Work with your local board of health to develop an inspection program to determine if HSTSs are operating as designed and intended. HSTSs that are not operating as designed and intended should be repaired or replaced. Replacement systems that have a discharge shall obtain NPDES general permit coverage; and
iii.Evaluate installing public sanitary sewers for areas which contain high densities of discharging failed HSTSs.”

Another commenter suggested the following language:

“i. For discharging HSTSs connected to the MS4, work with your local board of health to enforce the connection of homes to the sanitary sewer per Ohio Administrative Code (OAC) 3701-29-02(m). Accessibility to the sanitary sewer shall be determined by the local board of health and in no way shall conflict with ORC 6117.51; and”

Response 43:

As previously discussed, connection should only be considered when it is “technically, economically and legally feasible”. This standard is broad enough to account for all

aspects of the program and allows the local MS4 communities and their partners to address the issue. If a POTW does not have the physical capacity to handle the additional flows then it can easily be determined that connection is not feasible. Again, the language in the draft permit will be modified to reflect this intent more clearly.

Comment 44: **Part III.B.3.e.ii.** The draft permit is placing a requirement on the permittee to encourage cooperation with the local health department to develop an HSTS inspection program. There were concerns that MS4s will be held responsible for the lack of cooperation of another government agency. Some health districts do not have an accurate list of HSTSs and do not conduct regular or scheduled inspections. MS4s are in no position to demand a reprioritization of their resources. How does the Ohio EPA intend to help the MS4 communities to satisfy this requirement if the MS4 cannot force work onto these agencies at the local level?

Another commenter stated that it would not be prudent to require communities to request local Boards of Health to begin inspection programs for existing HSTSs at this time. Most health departments are still trying to fully implement new local rules that they were forced to adopt once the legislature rescinded the new 2007 rules. The Agency is well aware that there are many communities where discharging systems were the installed systems of choice. The Phase II program does not provide a funding mechanism for local health departments to staff an inspection program for existing discharging systems. Further, most local rules, including the interim state sewage rules (OAC 3701-29) do not address inspection of existing systems, unless there is a nuisance condition. To that end, a local health department would have to adopt new rules that would give them authority to conduct an inspectional program for existing systems. It was advised to not focus on the inspection of existing HSTSs unless they are connected to a problem outfall found during routine screening. It was recommended that the following language be substituted for Part III.B.3.e.ii:

“Actively investigate the source(s) of contamination in outfalls identified during the dry weather screening process. When the contamination source has been identified as potential malfunction or failure of HSTSs,

work with your local Board of Health to determine if suspect HSTs are operating as designed and intended. Malfunctioning or failing HSTs should be repaired or replaced. Replacement systems that have a discharge shall obtain NPDES general permit coverage; and”

Response 44:

As previously stated, it is Ohio EPA’s opinion and intent to have the MS4 communities work with all parties involved in the area to come up with a workable and agreed upon plan for the area. Development of an “inspection” or an enhanced operation and maintenance program of HSTs in the area to more proactively determine proper operations and to identify systems that need to be updated and/or replaced can be an integral part of this plan. HSTs that are not functioning properly need to be updated or replaced and increasing some form of operation and maintenance program needs to be considered. However, even though it should be encouraged and the MS4 is being asked to promote that effort, the extent of such a program is not highlighted in the draft permit. It may simply be enough to formalize what is already in place within the local health department and should be evaluated based upon need, economics, extent of existing program. Again, it is part of a plan that is agreed to by all parties involved in the MS4 area and must be implementable.

The comment to the dry-weather screening process to be used as a tool to aid in determining if there is a nuisance condition is recognized and the draft permit language can be modified to reflect incorporating or referencing this program in the operation and maintenance program identified above. However, Ohio EPA does not feel that the dry weather screening process would be adequate or extensive enough to proactively identify malfunctioning or poorly operated systems due to proximity of sampling activities. They should be used together.

Comment 45:

Part III.B.3.e.iii. It was requested that guidance be provided for what constitutes a high-density area for discharging HSTs? Also, please clarify the level of evaluation for installing sewers in these areas.

Response 45:

Ohio EPA has no pre-determined concept of what should be considered a “high density area” for evaluating sewer installation and planning. Again, this is best addressed at the local level based upon what sewer authorities are in area, the size of those facilities, the areas in question, etc.

Sewer planning is in many instances already being considered by these sewer authorities and the development of the illicit discharge elimination plan highlighted by the draft MS4 permit simply asks that all parties work together to highlight areas of concern and possibly address those areas proactively rather than after the fact.

Comment 46: **Part III.B.3.g. This section causes confusion by stating that you shall address flows from riparian habitats and wetlands only if you identify them as significant contributors. This language seems confusing and contradictory. Clarification is requested.**

Response 46: The included language of Part III.B.3.g mirrors the language found in CFR 122.34(b)(3)(iii) (federal small MS4 regulations). Part III.B.3.g simply provides a list of categories of non-storm discharges or flows that are permitted to discharge to a MS4 unless the regulated MS4 operator determines that the discharge or flow is significantly contributing pollutants to their MS4. If this would be the case, then the MS4 operator would need to take measures to address the flow or discharge.

Comment 47: **Part III.B.3.j. It was requested that Ohio EPA reference a manual on how to conduct dry-weather screening that sets standards and recommendations for implementing a successful program.**

Response 47: The Cuyahoga County Board of Health developed a manual to assist communities in developing an illicit discharge detection and elimination program which includes dry-weather screening procedures. The manual titled "Illicit Discharge Detection and Elimination Program Manual – A Guidance Manual for the State of Ohio" can be viewed at:<http://www.ccbh.net/ccbh/opencms/CCBH/modules/services/Stormwater.html>

Comment 48: **Part III.B.3.j. Many comments suggested that the performance standard to dry-weather screen all storm water outfalls over the permit term will be ineffective and resource intensive. These comments can be summarized as follows:**

- **The MS4 operator's storm water outfalls may be located on private property which may not have an easement.**

- It appears that this requirement is more stringent than the screening requirements for Large and Medium MS4s which shall screen no more than 500 or 250 major outfalls respectively. Screening requirements for Phase II MS4s should not be more stringent than those for Phase I MS4s.
- It was suggested that the permit mirror the State of Indiana which requires the screening of all enclosed storm water outfalls with a pipe diameter of 12 inches or larger and all ditches with a 2 feet or larger bottom width.
- It was suggested that the permit allow a more focused effort of dry-weather outfall screening in areas suspected of illicit discharges whose source are unknown. Devoting limited resources to dry-weather screening all outfalls on a 5-year cycle would detract from meeting the true goal of this program – identifying the source of illicit discharges and eliminating them.
- What is the required frequency of dry-weather screening of outfalls?

Two commenters suggested the following revised permit language:

- **“Performance Standards. Your storm water illicit discharge detection and elimination program shall include dry-weather screening of all storm water outfalls over the permit term establish priorities and specific goals for long-term system-wide surveillance of the MS4, as well as for specific investigations of outfalls and their tributary area where previous surveillance demonstrates a high likelihood of illicit discharges. Data collected each year shall be evaluated and priorities and goals shall be revised annually based on this evaluation. Your storm sewer system map shall be updated annually as needed. “**
- **“Your storm water illicit discharge detection and elimination program shall include dry-weather screening of public all storm water outfalls that the MS4 suspects an illicit discharge is occurring over the permit term. If the MS4 has identified a public storm water outfall as either a potential hotspot or as a hotspot for illicit discharge, dry-weather screening of those outfalls should be monitored over the permit**

term. Your storm sewer system map shall be updated annually as needed.”

Response 48: The draft permit required that dry-weather screening be performed at all outfalls over the permit term. Ohio EPA believes that a MS4 operator needs to conduct an initial dry-weather screening of all their outfalls to increase their knowledge of the quality of their MS4 discharges and to identify problem issues that can help direct other SWMP elements, such as public education or post-construction storm water management. This initial screening effort could have been completed during the first permit term for Appendix 6 MS4s. The permit does allow the MS4 to determine priority areas for performing dry-weather screening. Once an illicit discharge has been detected, steps are to be taken as soon as possible to identify the source and eliminate the discharge. This is important as some discharges may pose an immediate threat to health and safety. Also, due to the intermittent nature of many illicit discharges, Ohio EPA recommends that the MS4 be prepared to use video cameras, chemical analysis, and have specific criteria (which could be numeric criteria) to determine whether a discharge is illicit. Otherwise, the MS4 will miss an opportunity to identify the source. It should be noted that several types of non-storm water discharges, including uncontaminated ground water, are authorized by the permit and are not illicit discharges. Ohio EPA mostly agrees with the suggested language from the first commenter above. The dry-weather screening performance standard will be modified to reflect this.

Comment 49: **Part III.B.3.j. It was requested that the storm sewer map should be required to be updated twice within the permit term instead of annually.**

Response 49: Ohio EPA believes this requirement not to be overly burdensome. No changes to this permit requirement will be made.

Construction Site Runoff Control Comments

Comment 50: **Part III.B.4.a. One comment suggested that it is redundant to require a MS4’s sediment and erosion control ordinance or other regulatory mechanism to be at least as stringent and not conflict with the criteria of Ohio EPA’s NPDES Construction Storm Water General Permit because the construction site is already required**

to get the Ohio EPA NPDES permit by law. Also, it was requested that the Ohio EPA Construction Storm Water general permit number be provided within the permit.

Some comments had concerns related to having two regulatory authorities (local and state) being responsible for compliance and inspections – which can leave the regulated community in the untenable position of potentially having two conflicting governmental opinions on matters. As the agency requires more and more layers of compliance, there is a growing potential for conflict related to how rules are to be implemented.

One commenter questioned whether the minimum expectation is for a MS4 to require that relevant construction activities be required to obtain the NPDES permit at the local level; whereas, any non-compliance would be referred to Ohio EPA for enforcement.

Response 50:

Federal regulations require that construction projects obtain coverage under an NPDES permit whenever the larger common plan of development or sale is one or more acres of land disturbance. As a result, construction site operators must obtain Ohio EPA's NPDES Construction Storm Water general permit (CGP) applicable for that area which contains sediment and erosion requirements and also post-construction requirements. Likewise, the MS4 general permit requires that these CGP aspects be developed and enforced at the local level.

The Small MS4 general permit renewal requires a regulated Small MS4's construction and post-construction requirements to be, at a minimum, equivalent with the technical requirements of the NPDES CGP applicable for their permit area at the time of issuance of this permit. This approach would deter conflicting requirements and allow for a lessened presence of Ohio EPA in regards to the CGP requirements within MS4 jurisdictions. Under this approach, regulated MS4s located within the Big Darby Creek Watershed and specific portions of the Olentangy River Watershed would need to have their local regulations be equivalent with the technical requirements of Ohio EPA's alternative NPDES CGPs (OHCD00001 and OHCO00001) for these watersheds. All other regulated MS4s would be required to have their local regulations be equivalent with the technical requirements of Ohio EPA's statewide NPDES CGP (OHC000003). As requested, Ohio EPA will include

these CGP general permit numbers within the general permit.

There is no specific condition that requires MS4 operators to verify that applicable construction projects within their jurisdiction have obtained Ohio EPA's NPDES CGP coverage. Ohio EPA does encourage regulated MS4 operators to include this as part of their local review process. In regards to enforcement, the Small MS4 general permit requires regulated MS4s to implement their construction and post-construction programs and take enforcement action when necessary.

Comment 51: **Part III.B.4.a.iii. Should be amended to read ".....Control waste such as, but not limited to, discarded...." This would eliminate the excuse that they only have to deal with what is specifically listed in this section.**

Response 51: This language was not intended to only include those listed (...control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality). The intent was to control any wastes that may cause adverse impacts to water quality. As recommended by the comment, the addition will be made.

Comment 52: **Part III.B.4.b.iv. The requirement refers to "site plans" and "pre-construction site plans". The proposed wording implies 2 different plans and 2 different reviews. Please clarify the intent and expectation of this section with respect to "site plan" reviews and "pre-construction site plan" reviews.**

Response 52: The intent is for the review of storm water pollution prevention plans (SWP3s). The language in the general permit renewal will be changed to reflect this.

Comment 53: **Part III.B.4.c. Many comments were received on the construction program minimum performance standards. One comment stated that requiring sites to be inspected on a monthly basis is inflexible and may reduce the effectiveness of the MS4 program. MS4s should target their resources at the problem areas to address construction site runoff. MS4s should be allowed to establish their own individual standards. This requirement fails to consider site conditions such as stabilization, or even whether construction has**

commenced. One commenter recommended that inspection frequencies be consistent with Ohio EPA's Construction General Permit and allow for inspections to be suspended when a site is stabilized, there is no construction activity and the ground is frozen.

One commenter requested that this performance standard require sites to be inspected bi-weekly. When a more regular appearance of local government inspectors on site, it sends a message that enforcement is a priority.

Requiring sites to be inspected on a monthly basis will reduce the effectiveness of the construction site runoff control program. It was agreed that 100 percent of the sites should be inspected initially. However, due to the large number of sites that may be under construction in a community at any given time and the manpower available, it may not be practical or feasible to inspect each site monthly. The frequency that a site is inspected should be based on priorities set by the community such as, location to a waterway, size of disturbed area, quality of BMPs, to name a few. By imposing a monthly inspection schedule, sites that have a greater potential to impact storm water may not be visited as frequently as needed because time is being spent on sites with less of a priority.

One commenter stated that MS4s have a variety of inspectors at sites on a regular basis for a variety of compliance needs other than storm water. Developers are notified when these inspectors determine non-compliance with storm water requirements. This procedure meets the once/month requirement but is not logged as a storm water inspection. What is the expectation of the reporting of these types of inspection activities as they are not currently logged but serve the intent of the permit.

Response 53:

Construction site inspections performed by the MS4 need to be documented. Ohio EPA has developed a construction site inspection checklist (available at http://www.epa.state.oh.us/dsw/storm/CGP_Ins1.pdf) that can be used to perform the inspections and provide the documentation that the inspection has been performed. Documentation such as this will be needed when Ohio EPA performs an audit of a MS4 program.

Ohio EPA agrees with the commenter that stated all sites should be initially inspected and the frequency of follow-up inspections should be based on priorities set by the MS4 operator such as location to a waterway, amount of disturbed area, compliance of site, etc. As such, Ohio EPA agrees that site inspections by the MS4 can be suspended for sites that are entirely temporarily stabilized or runoff is unlikely due to weather conditions (e.g., site is covered with snow, ice, or the ground is frozen). The performance standard for this minimum control measure will be changed to reflect this rationale.

Post-Construction Storm Water Management Comments

Comment 54: **Part III.B.5.d. One comment suggested that it is redundant to require a MS4's post-construction water quality ordinance or other regulatory mechanism to be at least as stringent and not conflict with the criteria of Ohio EPA's NPDES Construction Storm Water General Permit because the construction site is already required to get the Ohio EPA NPDES permit by law.**

Some comments had concerns related to having two regulatory authorities (local and state) being responsible for compliance and inspections – which can leave the regulated community in the untenable position of potentially having two conflicting governmental opinions on matters. As the agency requires more and more layers of compliance, there is a growing potential for conflict related to how rules are to be implemented.

One commenter questioned whether the minimum expectation is for a MS4 to require that relevant construction activities be required to obtain the NPDES permit at the local level; whereas, any non-compliance would be referred to Ohio EPA for enforcement.

We are generally supportive of Ohio EPA's proposed Statewide Construction Stormwater general permit and have used Ohio EPA's current permit as the model for our draft construction and post-construction regulations. However, the proposed permit language will make it increasingly more difficult for development to occur. Our permittees require flexibility in appropriately balancing environmental concerns with the serious economic challenges that most of our jurisdictions face.

We believe that storm water quality control can best be achieved by promoting redevelopment and infill development in County's such as ours. We further believe that redevelopment and infill development can occur and be protective of the environment using alternatives to the GCP. Because of these challenges, we seek permit language that allows local jurisdictions, with the approval of Ohio EPA, to adopt the requirements of the GCP as appropriate for local environmental, land use, and economic conditions. As a result, the following permit language was suggested:

"Your ordinance or other regulatory mechanism shall be at least as stringent and not conflicting with the criteria set forth in the current, at time of issuance of this permit, Ohio EPA NPDES General Storm Water Permit for Construction Activities applicable for your permit area, unless you propose and Ohio EPA accepts, alternative regulatory language in the ordinance or other regulatory mechanism that establishes alternative requirements specifically for construction activities in re-development and infill development areas."

Response 54:

Federal regulations require that construction projects obtain coverage under an NPDES permit whenever the larger common plan of development or sale is one or more acres of land disturbance. As a result, construction site operators must obtain Ohio EPA's NPDES Construction Storm Water general permit (CGP) applicable for that area which contains sediment and erosion requirements and also post-construction requirements. Likewise, the MS4 general permit requires that these CGP aspects be developed and enforced at the local level.

The Small MS4 general permit renewal requires a regulated Small MS4's construction and post-construction requirements to be, at a minimum, equivalent with the NPDES CGP applicable for their permit area at the time of issuance of this permit. This approach would deter conflicting requirements and allow for a lessened presence of Ohio EPA in regards to the CGP requirements within MS4 jurisdictions. Under this approach, regulated MS4s located within the Big Darby Creek Watershed and specific portions of the Olentangy River Watershed would need to have their local regulations be equivalent with the technical requirements of Ohio EPA's alternative NPDES CGPs (OHCD00001 and OHCO00001) for these watersheds. All

other regulated MS4s would be required to have their local regulations be equivalent with the technical requirements of Ohio EPA's statewide NPDES CGP (OHC000003). However, a MS4 operator can limit which post-construction structural BMPs from Table 2 of the CGPs that it will allow within its jurisdiction. Those that are allowed must meet the design requirements prescribed in the permit. As requested, Ohio EPA will include these CGP general permit numbers within the general permit.

The CGP does allow for alternatives to be proposed and would be acceptable if they are equivalent in effectiveness to the standard CGP requirements. Ohio EPA believes that the current permit language of the Small MS4 general permit renewal and the CGP would allow for a MS4 to propose alternative requirements for approval by Ohio EPA.

There is no specific condition that requires MS4 operators to verify that applicable construction projects within their jurisdiction have obtained Ohio EPA's NPDES CGP coverage. However, Ohio EPA encourages regulated MS4s to include this as part of their local review process. In regards to enforcement, the Small MS4 general permit requires regulated MS4s to implement their construction and post-construction programs and take enforcement action when necessary.

Comment 55: A comment recommended that the following text be added to Part III.B.5.f:

"Detailed drawings and maintenance plans, including as-built drawings, shall be required of the site developer by the community for all post-construction BMPs. The completed BMPs shall be incorporated as part of the communities' storm water infrastructure. The community shall ensure adequate long-term operation and maintenance of the BMPs.

All structural and non-structural post-construction BMPs require an access easement to perform inspections and maintenance. A map is required that clearly shows all structural and non-structural post-construction BMPs and access easements."

Also, the commenter recommended that this section of the permit should ask that communities have a mechanism of addressing the transfer of responsibility from developer to new landowner.

Response 55: Ohio EPA appreciates the commenter's suggested language and agrees with most of the suggested language. Ohio EPA doesn't agree that the MS4 permit should specifically require that the MS4 community be the responsible party for performing the long-term operation and maintenance of post-construction water quality BMPs, unless the MS4 so chooses. It is Ohio EPA's intent to allow MS4s to only be the responsible party to perform maintenance if they so choose. Although, the required maintenance agreements associated with these BMPs must give the MS4 authority to perform the work if the responsible party fails to do so. Please see Ohio EPA's Storm Water Program website for a model maintenance agreement for guidance.

Comment 56: **Part III.B.5.f.iii. The language that states "...protect sensitive areas such as wetlands and riparian areas...provides buffers along sensitive water bodies ..."** should be split out into its own section. This is too important a concept and need to allow any confusion on the subject. Comments stated that Ohio EPA is only recommending protection of sensitive areas such as riparian areas and wetlands. Ohio EPA needs to require that these sensitive areas be protected.

Also, the last part of this section starting with "...education programs for developers..." should be eliminated from this section. This should be a separate section or made a part of the Public Involvement/Participation section. Communities should not be given the idea that an education program will take the place of actually making the conservation happen.

Response 56: Ohio EPA agrees that protecting sensitive areas such as wetlands and riparian areas is very important and strongly supports the protection of these critical areas. Although, it is not a requirement that MS4s have ordinances or other regulatory mechanisms in place to protect these areas, unless the MS4 operator is within the Big Darby Creek Watershed or the Olentangy River Watershed. It is however a BMP that MS4s can implement to satisfy requirements of the post-construction minimum control measure. In regards

to the education programs for developers comment, Ohio EPA took this language from USEPA's model general permit and will leave the language. No changes to the general permit will be made.

Comment 57: **Part III.B.5.f.vi. This section states that MS4s must show how they will ensure the long-term operation and maintenance (O&M) of BMPs. If Ohio EPA will ultimately hold the MS4 responsible for future operation & maintenance of practices (given a Construction General Permit has been terminated for a particular site), this should be more clearly communicated here. Additional language is needed regarding the need to ensure the function of practices as well as example methods or mechanisms for accomplishing this, such as the incorporation of practices within a drainage district.**

One commenter questioned whether the long-term O&M is the responsibility of the Township, County or State? Also, it was requested that a sample agreement be provided. Another commenter stated that organizations, such as homeowners associations, will likely not perform maintenance in accordance with agreements; therefore, enforcement of the agreements will be difficult. It was suggested that the general permit should require that the MS4 operator be the responsible party for conducting the O&M. As such, MS4s would need a dedicated funding source, such as a storm water utility, to perform long-term O&M.

Most long-term O&M agreements seem to merely describe ownership and responsibilities but do not seem to deal with the MS4 operator "ensuring" the long-term O&M in case the owner fails to do so. There needs to be solid clarification and guidance provided on how to accomplish this.

Response 57: Ultimately, the MS4 operator is responsible to ensure that the needed long-term O&M is performed by either the MS4 operator or another responsible party. As indicated by the commenter, many MS4 operators are developing storm water utilities to provide a dedicated funding source to implement their storm water activities. Although, funding mechanisms is at the discretion of the MS4.

Ohio EPA recommends that MS4 operators evaluate various O&M management agreement options. The most common options are agreements between the MS4 operator and another party such as post-development landowners (e.g., homeowners' associations, office park owners, other government departments or entities), or regional authorities (e.g., flood control districts). These agreements typically require the post-construction property owner to be responsible for the O&M and may include conditions which: allow the MS4 operator to be reimbursed for O&M performed by the MS4 operator that is the responsibility of the property owner but is not performed; allow the MS4 operator to enter the property for inspection purposes; and in some cases specify the property owner submit periodic reports. For guidance, please see Ohio EPA's Storm Water Program website for model maintenance agreements:
<http://www.epa.state.oh.us/dsw/storm/index.html>

Comment 58: **Part III.B.5.e. Is the requirement intended to include structural post-construction BMPs only or does it also include non-structural BMPs as well? This is especially questionable for BMPs in which no "public" runoff drains through them - in this case the BMP would not be part of an MS4, which makes me question whether or not it would be able to be regulated under this permit (should it have its own separate/individual NPDES permit?)**

Response 58: Normally, residential and commercial development projects will not need a NPDES permit for post-construction BMP discharges. If the discharge is from an industry required by 40 CFR 122.26(b)(14) to obtain an NPDES industrial storm water permit or Ohio EPA's Director designates a discharge due to water quality impairment, then a permit would be required.

The requirement for MS4s to ensure long-term operation and maintenance of post-construction water quality BMPs would apply to BMPs that have been installed to satisfy post-construction storm water management requirements, including both structural and non-structural BMPs. It is the intent of the permit to ensure that both private and public post-construction BMPs that are installed to satisfy post-construction requirements have a legally binding document to ensure the intended function of the BMP. If a MS4 operator has concerns with the maintenance associated with certain post-construction BMPs then they should prohibit

them from being used to satisfy post-construction requirements within their local jurisdiction.

Comment 59: **One comment requested clarification to Part III.B.5.h(3) in regards to the purpose of the inspections performed. It currently refers to “as built per requirements”.**

Response 59: The purpose of these inspections is to ensure that the post-construction BMPs are built as designed.

Pollution Prevention/Good Housekeeping Comments

Comment 60: **Part III.B.6.e. It was requested that the annual employee training requirement be changed to twice during the permit term and have new employee orientation include relevant training.**

Response 60: The general permit renewal requires, at a minimum, that an annual employee training event be held. This doesn't require that each employee receive an annual training. One approach a MS4 operator could take would be to focus on a different department each year. Ohio EPA believes that the current language provides MS4 operators adequate flexibility in implementing an effective employee training program. No changes to the permit will be made.

Comment 61: **Part III.B.6.c. Many comments were received on requiring MS4s to develop SWP3s for municipally owned facilities that are not subject to the Industrial Storm Water General Permit but that conduct activities defined as industrial activity. It seems MS4s are already required to provide for this under our Good Housekeeping requirements in the existing permit. It was requested that the permit identify which typical municipal facilities this requirement would be applicable too and the industrial general permit number that the SWP3 needs to be in conformance with.**

If this is required, at a minimum the full permit term should be allowed to develop the SWP3s. Twelve months to develop the plan is overly burdensome. One commenter requested that the timeframe for this objective be extended to two years. Many storm water districts or counties serve more than one Phase II community, and may be required to develop multiple SWP3s.

According to the Phase II Final Rule – Report to Congress on the Phase II Storm Water Regulations; Notice,

“EPA designed this minimum control measure (i.e., Pollution Prevention/Good Housekeeping for Municipal Operations) as a modified version of the permit application requirements for medium and large MS4s...in order to provide more flexibility for these smaller MS4s.” (Federal Register Volume 64, Number 235, Page 68762, December 8, 1999)

It was not disagreed with the need to develop pollution prevention/good housekeeping plans for such operations as fleet maintenance; however, it was felt the SWP3 requirements that take up over 11 full pages of the Industrial Storm Water General Permit are much too prescriptive, and that it prevents the flexibility the Phase II Final Rule sought to provide. It was recommended that the permit maintain the requirement to develop SWP3s for activities described in 40 CFR 122.26(b)(14), but do not require these plans to conform to the requirements of Ohio EPA’s Industrial Storm Water General Permit. The MS4 could be required to address some general categories (e.g., inspections, maintenance and training) in the SWP3, but otherwise the permittee should be provided the flexibility to determine the content and the format of the SWP3 in a way that best suits that particular operation.

It was suggested that the permit should specifically exclude wastewater treatment plants (WWTP) from activities for which a SWP3 must be developed, as this requirement is already contained in WWTP individual NPDES discharge permits. Alternatively, this requirement could be included in the MS4 permit and dropped from the individual WWTP discharge permits; however, there is no need to include it in both.

It was stated that requiring SWPPPs equivalent to Ohio EPA’s Industrial Storm Water General Permit appears to be redundant and burdensome. Many of the Industrial Permit requirements are similar to the Pollution Prevention/Good Housekeeping requirements. It was suggested to re-evaluate this and perhaps incorporating the SWPPP with the Pollution Prevention/Good Housekeeping requirements.

Response 61: The Pollution Prevention/Good Housekeeping minimum control measure requires that MS4s develop and incorporate measures, including a training component, into municipal operations to reduce storm water pollution from these activities. Ohio EPA believes that certain facilities have a higher potential to negatively impact surface waters through storm water discharges; due to, the nature of activities performed and materials typically present at these facilities. As a result, Ohio EPA believes these facilities need a more comprehensive plan (SWP3) to reduce or eliminate storm water pollutants from these facilities.

Federal industrial storm water requirements contain a loophole which doesn't require some municipally owned facilities to obtain NPDES coverage; whereas, the same facility if privately owned would require coverage. The categories of industrial activity covered under the storm water program are either described by standard industrial classification (SIC) codes or narrative descriptions. This loophole exists for the categories identified by SIC code. The general permit renewal will still contain this requirement but contain some revisions based on comments received. These revisions will include:

- MS4 operators obtaining initial coverage under this permit will be allowed the five year permit term to develop SWP3s for applicable facilities. MS4 operators renewing coverage under this permit will be allowed 2 years to develop SWP3s for applicable facilities.
- The permit will list the specific facilities, if owned or operated by the MS4, which this requirement will be applicable. These facilities include: vehicle maintenance facilities, bus terminals, composting facilities, impoundment lots and waste transfer stations.

The general permit renewal will not require these facilities to conduct analytical monitoring as would be described in the industrial storm water permit, but only to develop and implement a SWP3. Also, if a MS4 has a facility subject to this permit requirement, the MS4 should evaluate if a condition of no exposure would exist. No exposure means all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff. If a condition of no exposure would exist at a facility then the MS4 would not need to develop a SWP3 for the facility and document that no exposure exists.

For additional information on the industrial storm water general permit and no exposure, please see the following webpage:

http://www.epa.state.oh.us/dsw/storm/industrial_index.html

In regards to the WWTP comment, this category of industrial activity is described by a narrative:

“Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system for facilities with a design flow greater than 1.0 MGD (million gallons per day) or required to have a pretreatment program”

WWTPs which satisfy this narrative description are subject to industrial storm water permitting. To satisfy these storm water requirements, WWTPs can either obtain the general permit or have the storm water requirements included within their existing individual NPDES discharge permit. This category of industrial activity will not be listed in the MS4 general permit because it does not receive the loophole which Ohio EPA is attempting to address.

Annual Report Form Comments

Comment 62: **Part IV.C. There were concerns that use of a standardized annual reporting form focused primarily on “Yes / No” questions may not clearly convey the breadth of activities of our 42-member jurisdiction spanning communities in very different situations (e.g., some developing, some not). Also, we envision that it may be difficult to properly express the compliance of individual communities within the context of a regional program that “shares” many activities. We are currently preparing a web-based reporting system to allow us to efficiently manage this task, and envision that we will be seeking Director-approval of an alternative reporting format more appropriate to the size and complexity of our program, as allowed under the draft permit language. We request clarification of Ohio EPA’s expectations about an acceptable “alternative reporting format”, as our members’ need to efficiently evaluate and summarize compliance data parallels that of Ohio EPA (i.e., our 42 jurisdictions represent approximately 8 percent of all MS4 permittees in Ohio).**

Response 62: As indicated, the general permit renewal will allow for MS4s to request the use of their own reporting format. Approvals of these requests will be performed on a case-by-case

review. Ultimately, an alternative reporting format will need to provide necessary information and data that is outlined in Part IV.C of the general permit renewal.

Comment 63: **Part IV.C.** In regards to the post-construction section of the annual report form, the report asks to list structural and non-structural standards being used. This item has the potential to be lengthy and the format of the report does not allow the space for such a question. In addition, what is the purpose of asking this question? According to the general construction permit, it is required to put these practices in place; therefore, it is assumed these standards are being installed and used. What purpose does it serve for the Ohio EPA to know what specific items are being used?

Response 63: Most MS4 operators use the most current edition of Ohio's Rainwater and Land Development manual for their post-construction standards and specifications. There are a few MS4 operators who chose to develop their own manual. For this section of the report the MS4 operator needs to simply identify what standards are being used such as the Rainwater and Land Development manual, their own or other. If a manual other than the Rainwater and Land Development manual is used a MS4 operator should also include the website for the manual.

Comment 64: **Part IV.C.** In regards to the pollution prevention/good housekeeping section of the annual report form, the report asks to list the municipal facilities subject to the program. The next column asks whether O&M procedures have been developed for the facilities. Some facilities may have procedures and some may not. The format of the report does not allow room to report on each individual facility. The box to summarize maintenance activities and schedules is also small. The format does not allow room to elaborate.

Response 64: For any section of the annual report form, if more space is needed than is provided, identify within the space that Attachment A, B, C, etc. has been attached.

Comment 65: **Part IV.C.** It was requested that the annual report form include a section for "bonus activities".

Response 65: Ohio EPA doesn't believe that a "bonus activities" section is needed on the annual report form. At a minimum, MS4s

need to satisfy the performance standards of this general permit renewal. MS4s can identify more planned activities than are needed for the following year within the annual report and then document the implementation of these activities that next year. In essence, the annual report form would allow for the reporting of “bonus activities”. Also, MS4s are permitted to provide attachments to the form if additional space is needed and an attachment could be included and titled “bonus activities”.

Comment 66: **Part IV.C. It was requested that a section be added for results of information collected and analyzed. It is mentioned in the permit that results be included. It would be convenient to have a section for this in the annual report.**

Response 66: Results of information collected and analyzed, including any monitoring data if available, should be included within the Summary of Results/Activities sections of the report. As with all sections of the report, if not enough space is provided, MS4s are permitted to provide attachments to the form. Within the appropriate space, just note that Attachment A, B, C, etc is attached.

Comment 67: **Part IV.C. The annual report form asks for numbers in the report, i.e., numbers of inspections, numbers of enforcement cases, tons of salt used, numbers of population reached, etc. Is this a good measurement of a storm water program? Is that a good indicator of a benefit to water quality?**

Response 67: The MS4 program is a BMP-based program that requires the development and implementation of BMPs. If MS4 operators are proactive in reviewing SWP3s, performing site inspections to ensure compliance with local requirements and taking enforcement action when needed will result in a positive effect on local water quality.

End of Response to Comments