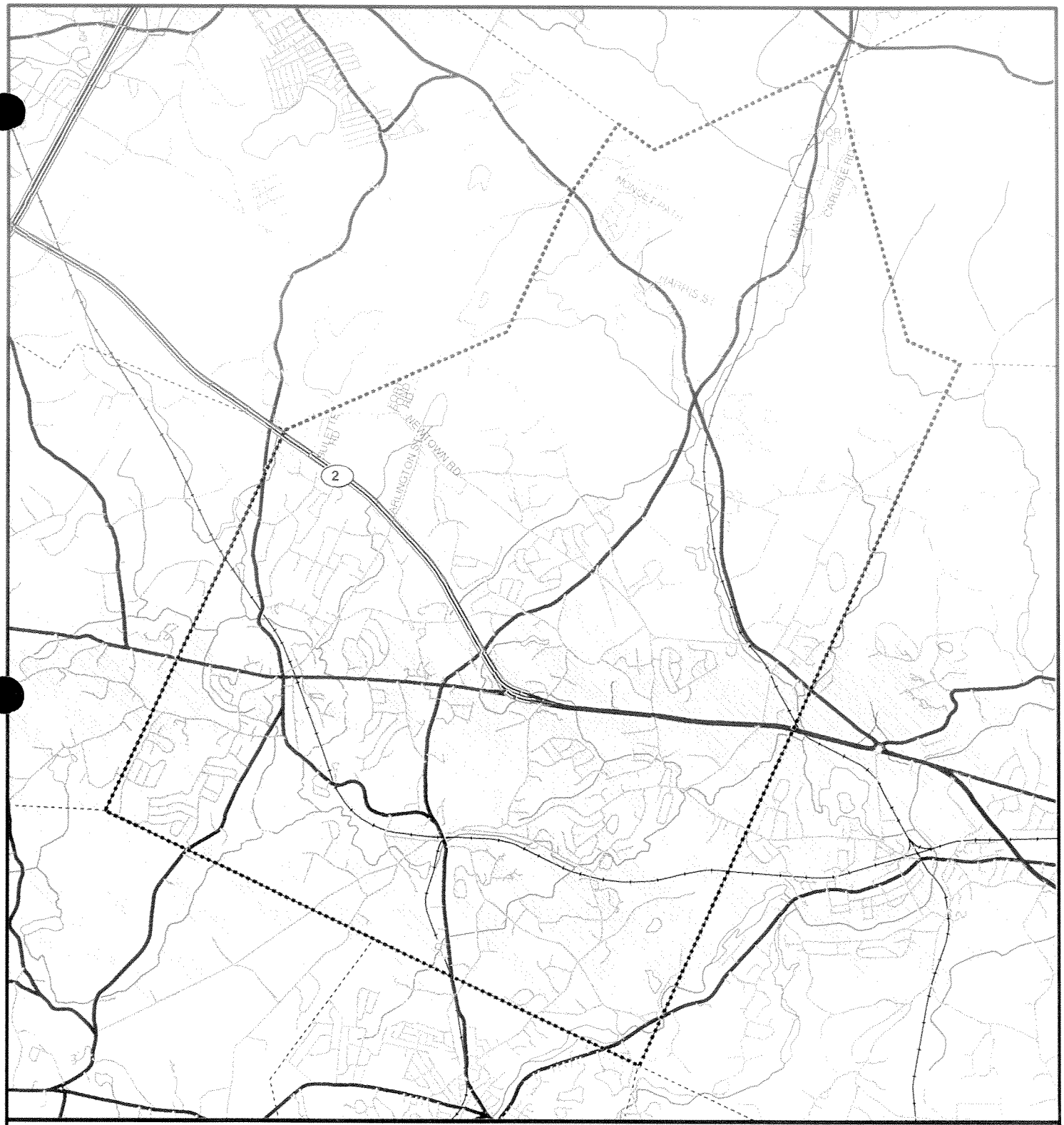
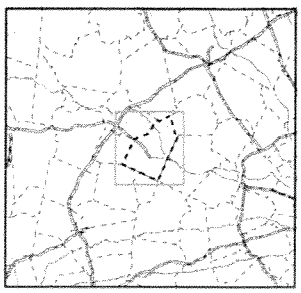
APPENDIX B
FINAL PERMIT AND RESPONSE TO COMMENTS



Area of Focus:



NPDES Phase II Stormwater Program
Automatically Designated MS4 Areas
Acton, Massachusetts

Acton Town Boundary

Regulated Area (2000 Urbanized Area)

Town Population: 20,331
Regulated Population: 19,763

N W E S

EPA New England

0 0.5 1 1.5 Miles

Data Sources: Urbanized Areas from US Census Bureau (2000). Political boundaries from MassGIS. Hydrography from NHD. Transportation data from GDT at 1:24,000.
Map Created: 9.27.02, US EPA- New England GIS Center
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET, BOSTON, MA 02114

Memorandum

Date: May 16, 2003

Subj: Final MS4 - NPDES General Permit

The final NPDES General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems was issued and effective on May 1, 2003.

Enclosed for you information and assistance are the following items:

1. A copy of the Federal Register Notice of Final Issuance - dated May 1, 2003.

2. A copy of the final NPDES General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4). The permit became effective on May 1, 2003. Notice of Intents (NOI) must be submitted by July 30, 2003. To facilitate your submittal forms are available from both the Massachusetts Department of Environmental Protection and the New Hampshire Department of Environmental Services at the following websites:
   MA: http://www.state.ma.us/dep/brp/stormwtr/strmfms.htm
   NH: http://www.state.nh.us/StormWater

   EPA does not require the use of a specific form, however we will accept these forms with an original signature.

3. A copy of the Response to Comment document.

4. A short list of available resources for assistance in development of the Storm Water Management Program. (See reverse side)

Forms which were submitted prior to the issuance of the final permit, must be updated, if necessary, with new information and certifications/signatures.

If you have any questions, please contact:
Thelma Murphy 617/918-1615
Shelly Puleo 617/918-1545
Ann Herrick 617/918-1560
David Gray 617/918-1577

Websites

EPA/HQ Storm Water Homepage: http://cfpub.epa.gov/npdes/home.cfm?program_id=6

EPA Region 1: http://www.epa.gov/region01/

Massachusetts Department of Environmental Protection: http://www.state.ma.us/dep

New Hampshire Department of Environmental Services: http://www.state.nh.us/des

Menu of BMPs : www.epa.gov/npdes/menuofbmps/menu/htm

Measurable Goals Guidance:
www.epa.gov/npdes/stormwater/measurablegoals/index.htm

Urbanized Area Maps: www.epa.gov/region01/npdes/stormwater/regcommunities.html

Storm Water Center: www.stormwatercenter.net
This site has sample ordinances, library, slide shows as well a links to other site

Illicit Discharge Detection and Elimination Manual available for down loading from:
www.neiwpcc.org

Storm Water Month Outreach Materials: http://cfpub.epa.gov/stormwatermonth.cfm
This site contains outreach and education material which can be downloaded and customized

Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. The permit being issued is not a "rule" subject to the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, *e.g.*, UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law * * *" NPDES general permits are not "rules" under the APA and thus not subject to the APA requirements to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

Dated: April 21, 2003.

Robert W. Varney,

Regional Administrator, Region 1.

[FR Doc. 03–10762 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of New Interpretation of Federal Financial Accounting Standards, Accounting for Imputed Intra-Departmental Costs: An Interpretation of SFFAS No. 4

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued a new Interpretation, *Accounting for Imputed Intra-Departmental Costs: An Interpretation of SFFAS No. 4.*

A summary of the Interpretation follows: On April 18, 2003, the Federal Accounting Standard Advisory Board (FASAB) issued Interpretation No. 6, Accounting for Imputed Intra-Departmental Costs: An Interpretation of SFFAS No. 4. The proposed interpretation clarifies that paragraph 110 of SFFAS No. 4 does not limit the recognition of imputed intra-departmental costs. The interpretation further explains that intra-departmental costs should be accounted for in accordance with the full cost of provisions of SFFAS No. 4, which includes the recognition of imputed intra-departmental costs.

The interpretation is available on the FASAB Home page *http://www.fasab.gov/interpretations.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350, or *Joughanm@fasab.gov.*

Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

For Further Information, Contact: Wendy Comes, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92–463.

Dated: April 28, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–10796 Filed 4–30–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

April 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via internet at *Kim_A._Johnson@omb.eop.gov*, and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or a copy of the information collection(s) contact Les Smith at 202–418–0217 or via internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by April 25, 2003.*

OMB Control Number: 3060–0692.

are conducted in accordance with 40 CFR part 22.

Under RCRA section 3008, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated RCRA or its implementing regulations. Proceedings under RCRA section 3008 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is June 2, 2003. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: April 24, 2003.

Robert A. Kaplan,

Acting Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–10761 Filed 4–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7491–4]

Notice of Final Issuance of a National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems in the States of Massachusetts and New Hampshire and Indian Lands in the States of Connecticut, Massachusetts, and Rhode Island and Federal Facilities in Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Issuance of NPDES General Permits MAR040000; NHR040000; MAR04000I; CTR04000I; RIR04000I and VTR04000F.

SUMMARY: The Environmental Protection Agency—Region 1, is today providing notice of final issuance of a National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges from small municipal separate storm sewer systems (MS4s) in the States of Massachusetts, New Hampshire, for federal facilities in the State of Vermont, and for Indian Country lands in the States of Connecticut, Massachusetts, and Rhode Island. The final NPDES general permits establish Notice of Intent (NOI) requirements, standards, prohibitions, and management practices for discharges of storm water from municipal separate storm sewer systems.

Owners and/or operators of small MS4s that discharge storm water will be required to submit an NOI to EPA—Region 1 to be covered by the general permit and will receive a written notification from EPA—Region 1 of permit coverage and authorization to discharge under the general permit. This general permit does not cover new sources as defined at 40 CFR 122.2.

DATES: The effective date of the permit is May 1, 2003. The permit will expire five years from the effective date. The Notice of Intent required by the permit must be submitted no later than July 30, 2003.

ADDRESSES: The final permit is based on an administrative record available for public review at EPA—Region 1, Office of Ecosystem Protection (CMU), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. Copies of information in the record are available upon request. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Thelma Murphy, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023; telephone: 617–918–1615; e-mail: *murphy.thelma@epa.gov.*

SUPPLEMENTARY INFORMATION: The final general permit and the Response to Comments may be viewed over the Internet via the EPA—Region 1 Web site *http://www.epa.gov/ne/npdes/index.html.* To obtain a hard copy of the document, please contact Thelma Murphy. Contact information is provided above. A reasonable fee may be charged for copying requests. The Response to Comments document addresses comments received on the draft permit and identifies parts of the final permit which were changed based on the comments received on the draft permit.

Pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342, EPA proposed and solicited public comment on NPDES draft general permits: MAR04000, NHR040000, MAR04000I, CTR04000I, RIR04000I and VTR04000F at 67 FR 61103 (September 27, 2002). Region 1 held four informational public meetings and one public hearing. The Region received comments from communities, transportation agencies, watershed associations, and private citizens. Based on the comments received, some changes were made to the permit. Two addenda, one for endangered species and the other for historic properties, were added to the final permit. The purpose of the addenda is to provide guidance for municipalities in determining permit eligibility regarding endangered species and historic properties. Watershed specific requirements contained in the Massachusetts section of the general permit have been removed. Infiltration language has been clarified. Record retention has been increased from three years to five years. Other comments and questions are addressed in the response to comments document.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the state in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and state law. The Region received certifications from the Commonwealth of Massachusetts and the State of New Hampshire.

B. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a "significant regulatory action" under the terms of

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR STORM WATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

Authorization to discharge under the National Pollutant Discharge Elimination System

In accordance with the provisions of the Clean Water Ac t, as amended, (33 U.S.C. §1251 et. seq. (the Act) operators of small municipal separate storm sewer systems, located in the areas specified in Parts I.A.2., 3.,.and 4 are authorized to discharge in accordance with the conditions and requirements set forth herein.

Only operators of storm water discharges from small m unicipal separate storm sewer systems in the general permit area who submit a Notice of Intent and a storm wate r management program in accordance with Part I.E. of this permit and obtain written authorization from EPA are authorized under this general permit.

This permit becomes effective on May 1, 2003.

This permit and authorization to discharge expire at midnight five years from the effective date.

Signed this 18 day of April 2003

_____

Linda M. Murphy, Director
Office of Ecosystem Protection
United States Environmental Protection Agency
One Congress Street - Suite 1100
Boston, Massachusetts 02114

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR STORM WATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

Authorization to discharge under the National Pollutant Discharge Elimination System

In accordance with the provisions of the Clean Water Ac t, as amended, (33 U.S.C. §1251 et. seq. (the Act) operators of small municipal separate storm sewer sy stems, located in the area specified in Part I.A.1, Commonwealth of Massachusetts, are authorized to disc harge in accordance with the conditions and requirements set forth herein.

Only operators of storm water discharges from small m unicipal separate storm sewer systems in the general permit area who submit a Notice of Intent and a storm wate r management program in accordance with Part I.E. of this permit and obtain written authorization from EPA are authorized under this general permit.

This permit becomes effective on May 1, 2003.

This permit and authorization to discharge expire at midnight five years from the effective date.

Signed this 18 day of April 2003

_____
Linda M. Murphy, Director
Office of Ecosystem Protection
United States Environmental Protection Agency
One Congress Street - Suite 1100
Boston, Massachusetts 02114

_____
Glenn Haas, Director
Division of Watershed Management
Bureau of Resource Protection
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

PART I

A. Area of Coverage: Small municipal separate storm sewer systems (MS4s) located within

1. Commonwealth of Massachusetts;
2. State of New Hampshire;
3. Indian Country lands within the States of Connecticut, Massachusetts, and Rhode Island; and
4. Federal Facilities within the State of Vermont.

B. Eligibility criteria:

1. This permit authorizes the discharge of storm water from small MS4s defined at 40 CFR §122.26(b)(16). This includes small MS4s designated under 40 CF R §122.32(a)(1) and 40 CFR §122.32(a)(2). The permittee is authorized to discharge under this permit if:

(a). The permittee is the operator of a small MS4 within the permit areas described in Part I.A;
(b). The permittee is not a large or medium MS4 defined in 40 CFR §§122.26(b)(4) or (7);
(c). The municipality is located fully or partially in an urbanized area as determined by the latest Decennial Census by the Bureau of Census; and
(d). The permittee submits a Notice of Intent in acco rdance with Part I.E. of this permit and obtains written authorization from EPA.

Small municipal separate storm sewer system means all separate storm sewers that are:

(a) owned or operated by the United States, a Stat e, city town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity and Indian tribe or an authorized Indian tr ibal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.
(b) not defined as large or medium municipal separate storm sewer systems pursuant to 40 CFR §122.26(b)(4) and (b)(7) or designated under 40 CFR §122.26(a)(1)(v).
(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospitals or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

2. The following storm water discharges are not authorized by this permit:
(a) Discharges that are mixed with sources of non-storm water unless such non-storm water discharges are:
i. In compliance with a separate NPDES permit, or
ii. Determined by EPA not to be a substantial contributor of pollutants to waters of the U.S.
(b) Storm water discharges associated with industrial activity as defined in 40 CFR§122.26(b)(14)(i)-(ix) and (xi).
(c) Storm water discharges associated with construction activity as defined in 40 CFR§122.26(b)(14)(x) or 40 CFR §122.26(b)(15).
(d) Storm water discharges currently covered unde r another permit, including discharges covered under other regionally issued general permits.
(e) Discharges or discharge related activities that may adversely affect any species that are listed as endangered or threatened under the Endangered Species Act (ESA) or result in the adverse modification or destruction of habitat th at is designated as critical under the ESA.

i. Coverage under this permit is available only if the storm water discharges, allowable non-storm

water discharges, and discharge related activities do not adversely affect any species that are listed as endangered or threatened ("listed") under th e ESA or result in the adverse modification or destruction of habitat that is designated as criti cal under the ESA ("critical habitat"). Submission of a signed NOI will be deemed to constitute certification of eligibility.

ii. "Discharge related activities" include: activitie s which cause, contribute to, or result in storm water point source pollutant discharges; and measur es to control storm water discharges, including the siting, construction and operation of best mana gement practices (BMPs) to control, reduce or prevent storm water pollution.

iii. In order to demonstrate eligibility, the permittee must use the guidance in Addendum A and the most recent Endangered and Threatened Speci es County-Species List available from EPA. Eligibility must be determined prior to submission of the NOI. The most current list is available at: http://www.epa.gov/npdes/. The permittee must meet one or more of the criteria described below for the entire term of the permit. The information used to determine eligibility must be maintained as part of the Storm Water Management Program.

- Criterion A: No endangered or threatened species or cr itical habitat are in proximity to the MS4 or the points where authorized disc harges reach the receiving waters; or
- Criterion B: In the course of a separate federal action involving the MS4, formal or informal consultation with the U.S. Fish and Wildlife Serv ice (FWS) and/or the National Marine Fisheries Service (NMFS) under Section 7 of the ESA has been concluded and that consultation:
-Addressed the effects of the MS4 storm water di scharges, allowable non-storm water discharges, and discharge related activities on listed species and critical habitat; and
- The consultation resulted in either a no jeopa rdy opinion or a written concurrence by FWS and/or NMFS on a finding that the storm water discharges, allowable non-storm water discharges, and discharge related activities are not likely to advers ely affect listed species or critical habitat; or
- Criterion C: The activities are authorized under Secti on 10 of the ESA and that authorization addresses the effects of the storm water discha rges, allowable non-storm water discharges, and discharge related activities on listed species and critical habitat; or
- Criterion D: Using the best scientific and commercial data available, the effects of the storm water discharges, allowable non-storm water discharges, and discharge related activities on listed species and critical habitat have been evaluated. Based on those evaluations, a determination is made by the permittee and affirmed after review by EPA that the storm water discharges, allowable non-storm water discharges, and discharge related activities will not affect any federally threatened or endangered species or designated critical habitat.
- Criterion E: The storm water discharges, allowable non-storm water discharges, and discharge related activities were already addressed in anot her operator's certification of eligibility which includes the MS4 activities. If certification is under this criteria, the permittee agrees to comply with any measures or controls upon which the other operator's certification was based.

iv. The permitting authority may require any permittee or applicant to provide documentation of the determination of eligibility for this permit where the EPA or the FWS and/or NMFS determines that there is a potential impact on listed species or critical habitat.

v. A discharge is not authorized if the discha rge or discharge related activities cause a prohibited "take" of endangered or threatened species (a s defined under Section 3 of the ESA and 50 CFR 17.3), unless such actions are authorized by FW S or NMFS under sections 7 or 10 of the ESA.

vi. Discharges are not author ized where the discharge or discharge related activity are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the ESA or result in the adverse modification or de struction of habitat that is designated as critical under the ESA.

vii. Operators who conduct informal consultation to meet the eligibility requirements of Criterion

B are automatically designated as non-Federal re presentatives under this permit. See 50 CFR §402.08. Operators who choose to conduct informal consultation as a non-Federal representative must notify EPA and the appropriate serv ice office in writing of that decision.

(f) Discharges whose direct or indirect impacts may adversely affect any Essential Fish Habitat.

(g) Discharges, or implementation of a storm wa ter management program, which adversely effects properties listed or eligible to be listed on the Na tional Register of Historic Places. The permittee must determine eligibility prior to submission of the Notice of Intent. The permittee should follow the guidance detailed in Addendum B. Discha rges may be eligible for coverage under this permit if the permittee is in compliance with requirements of the National Historic Preservation Act and has coordinated any necessary activities to avoid or minimize impacts. These requirements must be coordinated with the State Historic Preservation Officer. Information used to determine eligibility must be maintained as part of the Storm Water Management Program.

(h) Discharges to territorial seas, the contiguous zone, and the oceans unless such discharges are in compliance with the ocean discharge criteria of 40 CFR 125 subpart M.

(i) Discharges prohibited under 40 CFR 122.4. Th is includes discharges not in compliance with the state's antidegradation policy.

(j) Discharges mixed with non-storm water except those discharges which are in compliance with another NPDES permit or are an allowable non-stor m water discharge as discussed in Part I.F.

(k) Discharges that would cause or contribute to instream exceedance of water quality standards. The storm water management program must include a description of the BMPs that will be used to ensure that this will not occur. EPA, MA DE P , or NH DES may require corrective action or an application for an individual permit or alternative general permit if an MS4 is determined to cause an instream exceedance of water quality standards.

(l) Discharges of any pollutant into any wate r for which a Total Maximum Daily Load (TMDL) has been established or approved by the EPA unless the discharge is consistent with the TMDL. This eligibility condition applies at the time of submission of the NOI. If conditions change after submission of the NOI, coverage may continue pr ovided the applicable requirements of Part I.C. are met. In order to remain eligible for this permit, any limitations, conditions and requirements applicable to discharges authorized by this perm it, must be incorporated into the storm water management program. This may include monitoring and reporting. Discharges not eligible for this permit, must apply for an indivi dual or alternative NPDES general permit.

C. Discharges to Water Quality Impaired Waters

1. The permittee must determine whether storm wate r discharges from any part of the MS4 contribute, either directly or indirectly, to a 303(d) listed water body.

2. The storm water management program must incl ude a section describing how the program will control the discharge of the pollutants of concern and ensu re that the discharges will not cause an instream exceedance of the water quality standards. This disc ussion must specifically identify control measures and BMPs that will collectively control the discharge of th e pollutant(s) of concern. Pollutant(s) of concern refer to the pollutant identified as causing the impairment.

D. Total Maximum Daily Load Allocations

If a TMDL has been approved for any water body into which the MS4 discharges, the permittee must:

1. Determine whether the approved TMDL is for a pollutant likely to be found in storm water discharges from the MS4.

2. Determine whether the TMDL includes a pollutant waste load allocation (WLA), BMP recommendations or other performance requirements for storm water disc harges. This storm water WLA may be expressed in the TMDL as a gross allotment for the impaired water body. Or, provided no specific WLA for the MS4 exists, determine if a Performance Agreement or Memorandum of Understanding has been established between the MS4, EPA , and MA DEP or NH DES wh ich modifies the BMPs or performance standards of the TMDL. Such Memoranda are posted on the TM DL websites. The Massachusetts site is: http://www.state.ma.us/dep/brp/wm/tmdl.htm The New Hampshire site is: http://www.des.state.nh.us/wmb/TMDL

3. If the MS4 is required to implement storm wate r waste load allocation provisions of the TMDL, the permittee must assess whether the WLA is being met through implementation of existing storm water control measures or if additional control measures are necessary. The permittee's assessment of whether the WLA is being met is expected to focus on th e adequacy of the permittee's storm water controls (implementation and maintenance), not on the response of the receiving water.

4. Highlight in the storm water management progr am and annual reports all control measures currently being implemented or planned to be implemented to control pollutants of concern identified in approved TMDLs. Also include a schedule of implementati on for all planned controls. Document the assessment which demonstrates that the WLA will be met including any calculations, maintenance log books, or other appropriate controls.

E. Obtaining Coverage

1. Small MS4s seeking coverage under this permit, must submit a Notice of Intent which contains the following information:

(a). Name of person responsible for overall coor dination of the storm water management program, mailing address and phone number
(b). Name of municipality and state. For m unicipalities seeking coverage under Part V. of this permit, only identify the name of the agency, the c ity or town, and the state in which it is located.
(c). Identify the legal status of the operator of th e MS4 as either, Federal, State, Tribal, county, or other Public Entity. If the municipality is a city or town, indicate if there are other MS4s within its boundaries such as state highways, universities, prisons.
(d). Identify the names of all known waters that receive a discharge from the MS4. If known, indicate the number of outfalls to each water.
(e). Using the guidance in Addendum A, describe how the eligibility criteria for listed species and critical habitat have been met.
(f). Using the guidance in Addendum B describe how the requirements to protect historic properties have been met.
(g). Identify best management practices for each minimum control measure described in Part II B (1-6); Part III B(1-6); Part IV. B(1-6) or Part V.B(1-6)., depending upon the type of MS4.
(h). Identify measurable goals for each best management practice described in paragraph (g) above including implementation time frames and contact person..
(i). The NOI must be signed by an appropriate offi cial (see Part VI. G. of this permit). The NOI must contain the following certification:
I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a sy stem designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those pers ons directly responsible for gathering the information, I certify that the information subm itted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations.

Print the name of the appropriate official, followed by signature, and date.

Municipalities in Massachusetts must use the form designated by the Massachusetts Department of Environmental Protection (MA DEP). The form is available at http://www.state.ma.us/dep/brp/stormwtr/strmfms.htm or by contacting MA DEP at 508/792-7470. The permit code for the form is BRP WM 08 A EPA does not require the use of this form. but will accept information submitted on this form. All signatures must be originals.

Municipalities in New Hampshire should use the form developed by the New Hampshire Department of Environmental Services. The form is available at: http://www.des.state.nh.us/StormWater/. EPA does not require the use of this form, but will accept information submitted on this form. All signatures must be originals.

2. The Notice of Intent must be submitted by March 10, 2003, if designated under 40 CFR 122.32(a)(1)- those MS4s located fully or partially in an urbanized area; or within 180 days of notice, if designated under 40 CFR 122.32(a)(2), unless granted a longer period of time by EPA;

3. Submission of Notice of Intent

(a) All permittees must submit the Notice of Intent to EPA-Region I at the following address:
United States Environmental Protection Agency
Municipal Assistance Unit (CMU)
One Congress Street – Suite 1100
Boston, Massachusetts 02114-2023

(b) MS4s located in Massachusetts, subject to Pa rt II, Part IV, or Part V, except Indian lands, must also submit a copy of the NOI to the MA DEP at the following address:
Massachusetts Department of Environmental Protection
Division of Watershed Management
627 Main Street
Worcester, Massachusetts 01608

The appropriate fee must accompany the submission to MA DEP. The application fee is $60.00. A fee exemption applies to any Massachusetts city, town or state agency. The fee does apply to Massachusetts state authorities.

(c) MS4s located in New Hampshire subject to Part III, Part IV or Part V, must also submit a copy of the NOI to the New Hampshire Department of Environmental Services (NH DES) at the following address:
New Hampshire Department Environmental Services
Water Division
Wastewater Engineering Bureau
P.O. Box 95
Concord, New Hampshire 03302-0095

New Hampshire may also adopt this permit as a state permit pursuant to RSA 485-A:13,I.(a).

4. Effective date of coverage. The authorizati on to discharge begins on the date of receipt of EPA's written authorization. The initial written receipt w ill detail the completeness of the submission. The permittee may be contacted by either EPA or MA DEP/NHDES at a later date requesting additional or updated information concerning the storm water ma nagement program. The initial response will not provide detailed comments on the submission.

5. A municipality is not prohibited from submitting a No tice of Intent after the dates provided in paragraph E.2. However, if a late NOI is submitted, authori zation is only for discharges that occur after permit coverage is granted. The permitting authority reserves the right to take appropriate enforcement actions for any unpermitted discharges.

F. Allowable Non-Storm Water Discharges

The following non-storm water discharges are authorized provided it has been determined by the permittee that they are not significant contributors of pollutant s to the MS4. If these discharges are identified as significant contributors to the MS4, they must be addressed in the Illicit Discharge Detection and Elimination minimum control measure described in Parts II, III, IV and V.

1. water line flushing,
2. landscape irrigation,
3. diverted stream flows,
4. rising ground waters,
5. uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)),
6. uncontaminated pumped ground water,
7. discharge from potable water sources,
8. foundation drains,
9. air conditioning condensation,
10. irrigation water, springs,
11. water from crawl space pumps,
12. footing drains,
13. lawn watering,
14. individual resident car washing,
15. flows from riparian habitats and wetlands,
16. dechlorinated swimming pool discharges,
17. street wash water, and
18. Residential building wash waters, without detergents.

Discharges or flows from fire fighting activities occu r during emergency situations. The permittee is not expected to evaluate fire fighting discharges with regard to pollutant contributions. Therefore, these discharges are authorized as allowable non-storm water discharges, unless identified, by EPA, as significant sources of pollutants to Waters of the U.S..

PART II
MASSACHUSETTS SMALL MS4 STORM WATER MANAGEMENT PROGRAM

A. Storm Water Management Program

The permittee must develop, implement and enforce a program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable; protect water quality, and satisfy the water quality requirements of the Clean Water Act and Massachusetts Water Quality Standards.

1. The permittee must develop a storm water mana gement program implementing the minimum measures described in Paragraph II.B.

2. All elements of the storm water management pr ogram must be implemented by the expiration date of this permit.

3. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully implement the measure(s). When another entity fully implements a minimum control measure for the permittee, the following applies:

(a.) the other entity, in fact, implements the control measure;
(b.) the particular control measure, or component of that measure is at least as stringent as the corresponding permit requirement.
(c.) The other entity agrees to implement the c ontrol measure on the permittee's behalf. A legally binding written acceptance of this obligation is expect ed. This obligation must be maintained as part of the storm water management program. If the other entity agrees to report on the minimum measure, the permittee must supply the other entity with the reporting requirements contained in this permit under Part II.E.
(d) The permittee remains responsible for permit compliance and implementation of the minimum measure if the other entity fails to do it.

4. Permittee may use the following state program to im plement some of the requirements of Part II.B.4 and Part II.B.5: The Massachusetts Department of E nvironmental Protection, Wetland Protection Act (MGL Chapter 131, Section 40) Storm Water Management Policy
(a) Standard 8 of the Policy may be used for the minimum control measure regarding construction site storm water runoff control, Part II.B.4(c). Standards 2, 3, 4, and 7 of the Policy may be used for the minimum control measure regarding post construction storm water management in development and redevelopment, Part II.B.5. The permittee may not apply this criterion outside of the jurisdiction of the Wetlands Protection Ac t unless the municipality has specifically provided for such in local by-laws.
(b) Additional information available at: http://www.state.ma.us/dep/brp/stormwtr/stormpub.htm

5. For each minimum measure, the permittee must:
(a.) identify the person(s) or department responsible for the measure;
(b.) identify all Best Management Practices (BMPs) for the measure;
(c.) identify measurable goals for each BMP. Identify time lines and milestones for implementation.

6. EPA's BMP menu found at http://www.epa.gov/npdes/menuofbmps/menu.htm and EPA's guidance on measurable goals, found at http://www.epa.gov/ npdes/stormwater/measurablegoals/index.htm, may be used in the development of the storm water management program.

B. Minimum Control Measures

1. Public education and outreach. The permittee must implement a public education program to distribute educational material to the community. The public education program must provide information concerning the impact of storm water discharges on wa ter bodies. It must address steps and/or activities that the public can take to reduce the pollutants in storm water runoff.

The following should be included in the education and outreach efforts:

(a.) information regarding both industrial and residential activities including illegal dumping into storm drains.

(b.) coordination with local groups (i .e. watershed associations, or schools)

(c.) materials for outreach/education may include , but are not limited to, pamphlets; fact sheets; brochures; public service announcements; storm dr ain stenciling and newspaper advertisements.

(d.) topics may include, but are not limited to, litter disposal, pet waste, household hazardous waste disposal, proper use of fertilizer and pestic ides, and effects of impervious areas on water bodies. (This list is intended to provide examples , the permittee is encouraged to use a variety of activities for public education.)

2. Public involvement and participation. All public involvement activities must comply with state public notice requirements at MGL Chapter 39 Section 23B and local public notice requirements.

(a.) The permittee must provide opportunity for the public to participate in the implementation and review of the storm water management program.

(b.) Activities may also include volunteer str eam monitoring or formation of a storm water management committee. (These are examples of public involvement activities, the permittee is encouraged to use a wide range of activities to maximize public involvement.)

3. Illicit discharge detection and elimination. The permittee must develop, implement and enforce a program to detect and eliminate illicit discharges. An illicit discharge is any discharge to a municipal separate storm sewer that is not composed entirely of storm water. Exceptions are discharges pursuant to a NPDES permit (other that the NPDES permit for discha rges from the municipal sewer system), allowable non storm water discharges described at Part I.F. and discharges resulting from fire fighting activities.

(a.) If not already existing, the permittee must deve lop a storm sewer system map. At a minimum, the map must show the location of all outfalls and the names of all waters that receive discharges from those outfalls. Additional elements may be included on the map, such as, location of catch basins, location of manholes, and location of pipes within the system. Initial mapping should be based on all existing information available to the permittee including city records and drainage maps. Field surveys may be necessary to verify existing records and locate all outfalls.

(b.) To the extent allowable under state or lo cal law, the permittee must effectively prohibit, through an ordinance or other regulatory mechanis m, non storm water discharges into the system and implement appropriate enforcement procedures and actions. If a regulatory mechanism does not exist, development and adoption of such a m echanism must be included as part of the storm water management program.

(c.) The permittee must develop and implement a plan to detect and address non -storm water discharges, including illegal dumping, into the system.

The illicit discharge plan must contain the following elements:

i. Procedures to identify priority areas. This includes areas suspected of having illicit discharges, for example: older areas of the city, areas of hi gh public complaints and areas of high recreational value or high environmental value such as beaches and drinking water sources.

ii. Procedures for locating illicit discharges (i.e . visual screening of outfalls for dry weather discharges, dye or smoke testing)

iii. Procedures for locating the source of the di scharge and procedures for the removal of the source.

iv. Procedures for documenting actions and evaluating impacts on the storm sewer system subsequent to the removal.

(d.) The permittee must inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper waste disposal.

(e.) The non-storm water discharges listed in Part I.F. must be addressed if they are identified as being significant contributors of pollutants to the small MS4.

4. Construction site storm water runoff control. The permittee must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. The permittee must include disturbances less than one acre if part of a larger common plan.

The permittee does not need to apply its construction program provisions to projects that receive a waiver from EPA under the provisions of 40 CFR§122.26(b)(15)(i).

At a minimum, the program must include:

(a.) To the extent allowable under state or local law, an ordinance or other regulatory mechanism to require sediment and erosion control at construction sites. If such an ordinance does not exist, development and adoption of an ordinance must be part of the program.

(b.) Sanctions to ensure compliance with the program. To the extent allowable under state or local law sanctions may include both monetary or non-monetary penalties.

(c.) Requirements for construction site operators to implement a sediment and erosion control program which includes BMPs that are appropriate for the conditions at the construction site, including efforts to minimize the area of the land disturbance.

(d.) Requirements for the control of wastes, including but not limited to, discarded building materials, concrete truck wash out, chemicals, litter, and sanitary wastes.

(e.) Procedures for site plan review including procedures which incorporate consideration of potential water quality impacts. The site plan review should include procedures for preconstruction review.

(f.) Procedures for receipt and consideration of information submitted by the public.

(g.) Procedures for inspections and enforcement of control measures at construction sites.

5. Post construction storm water management in new development and redevelopment.

The permittee must develop, implement and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than one acre and discharge into the municipal system.

The program must include projects less than one acre if the project is part of a larger common plan of development which disturbs greater than one acre.

The post construction program must include:

(a.) To the extent allowable under state or local law, an ordinance or other regulatory mechanism to address post construction runoff from new development and redevelopment. If such an ordinance does not exist, development and adoption of an ordinance must be part of the program..

(b.) Procedures to ensure adequate long term operation and maintenance of best management practices.

(c.) Procedure to ensure that any controls that are put in place will prevent or minimize impacts to water quality.

6. Pollution prevention and good housekeeping in municipal operations .

The permittee must

(a.) Develop and implement a program with a goal of preventing and/or reducing pollutant runoff from municipal operations. The program must include an employee training component.

(b.) Include, at a minimum, maintenance activities for the following : parks and open space (areas such as public golf course and playing fields); fleet maintenance, building maintenance; new construction and land disturbance; and road way drainage system maintenance and storm water system maintenance.

(c.) Develop schedules for municipal maintenance activities described in paragraph (b) above.

(d) Develop inspection procedures and schedules for long term structural controls.

7. Cooperation between interconnected municipal separate storm sewer systems is encouraged. The permittee should identify interconnections within the system. The permittee should attempt to work cooperatively with an interconnected municipality in instances of discharges impacting a system.

8. The permittee must evaluate physical conditions, site design, and best management practices to promote groundwater recharge and infiltration where feasible in the implementation of the control measures described above. During the implementation of the storm water management program, the permittee must address recharge and infiltration for the minimum control measures, as well as any reasons for electing not to implement recharge and infiltration. Loss of annual recharge to ground water should be minimized through the use of infiltration measures to the maximum extent practicable. Permittees in areas identified as "high" or "medium" in the most recent Massachusetts Water Resources Commission's *Stressed Basins in Massachusetts* report in effect at the time the permittee submits a Notice of Intent and accompanying storm water management program, must minimize the loss of annual recharge to ground water from new development and redevelopment, including but not limited to drainage improvements done in conjunction with road improvements, street drain improvement projects and flood mitigation projects, consistent with Standard 3 of the Storm Water Management Policy in areas both within and outside of the jurisdiction of the Massachusetts Wetlands Protection Act.
(See http://www.state.ma.us/dem/programs/intbasin/stressed_basin)

9. MS4s which discharge to coastal waters with public swimming beaches should consider these waters a priority in implementation of the storm water management program. Refer to Part IX , State 401 Certification Requirements, for additional requirements.

C. Public Drinking Water Supply Requirements

1. MS4s which discharge to public drinking wate r sources and their protection areas (Class A and B surface waters used for drinking water and wellhead protection areas) should consider these waters a priority in implementation of the storm water management program.

2. Discharges to public drinking water supply sour ces and their protection areas (Zones I, II, Wellhead Protection Areas, Zone A, B, and C as defined in 310 CMR 22.00) should provide pretreatment and spill control capabilities to the extent feasible.

3. Direct discharges to Class A waters and Z one I wellhead protection areas (as defined in 310 CMR 22.02) should be avoided to the extent feasible.

D. Program Evaluation

1. The permittee must annually evaluate the complian ce of the storm water management program with the conditions of this permit.

2. The permittee must evaluate the appropriateness of the selected BMPs in efforts towards achieving the defined measurable goals. The storm water manageme nt program may be changed in accordance with the following provisions:

(a). Changes adding (but not subtracting or replaci ng) components, controls or requirements to the SWMP may be made at any time upon written notification to EPA and MA DEP

(b). Changes replacing an ineffective or infeas ible BMP specifically identified in the SWMP with an alternative BMP may be requested in writing to EPA and MA DEP at any time. Unless denied, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented 60 days from submittal of the request. If the request is denied, EPA or MA DEP, as applicable, will send you a written explanation of the denial.

(c). Modification requests, must include the following information:
i. an analysis of why the BMP is ineffec tive or infeasible (including cost prohibitive)
ii. expectations on the effectiveness of the replacement BMP, and
iii. an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.
iv. Change requests or notifications must be in writing and signed in accordance with the signatory requirements of Part VI.

3. EPA or MA DEP may require changes to the SWMP as needed to:

(a). Address impacts on receiving water quality caused or contributed to by discharges from the MS4;

(b). To include more stringent requirements necessary to comply with new Federal statutory or regulatory requirement; or

(c). To include such other conditions deemed necessary to comply with the goals and requirements of the CWA.

(d). Any changes requested by EPA or MA DEP will be in writing and will set forth the schedule for the permittee to develop the changes and offer the opportunity to propose alternative program changes to meet the objective of the requested modification.

E. Record Keeping

1. All records required by this permit must be kept for a period of at least five years. Records include information used in the development of the storm water management program, any monitoring, copies of reports, and all data used in the development of the notice of intent.

2. Records need to be submitted only when specifically requested by the permitting authority.

3. The permittee must make the records relating to this permit available to the public, including the storm water management program. The public may view the records during normal business hours. The permittee may charge a reasonable fee for copying requests.

F. Reporting

1. The permittee must submit an annual report. The in itial report is due one year from the effective date of this permit and annually thereafter. The reports s hould contain information regarding activities of the previous calendar year. Reports should be submitted to both EPA and MA DEP at the following addresses:

United States Environmental Protection Agency
Water Technical Unit
P.O. Box 8127
Boston, MA 02114

and

Massachusetts Department of Environmental Protection
Division of Watershed Management
627 Main Street
Worcester, Massachusetts 01608

2. The following information must be contained in the annual report:

(a) A self assessment review of compliance with the permit conditions.

(b) An assessment of the appropriateness of the selected BMPs.

(c) An assessment of the progress towards achieving the measurable goals.

(d) A summary of results of any information that has been collected and analyzed. This includes any type of data.

(e) A discussion of activities for the next reporting cycle.

(f) A discussion of any changes in identified BMPs or measurable goals.

(g) Reference any reliance on another entity for achieving any measurable goal.

G. State Permit Conditions

This permit is issued jointly by the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection under federal and state law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Commissioner of the MA DEP pursuant to M.G.L. Chap. 21, §43 and under regulations found at 314 CMR 3.00. Regulations found at 314 CMR 3.19 (Standard Permit Conditions) are incorporated into this permit by reference.

To the extent allowable by their respective laws and regulations, each agency shall have the independent right to enforce the terms and conditions of this permit. Any modification, suspension or revocation of this permit shall be effective only with respect to the agency taking such action, and shall not affect the validity or status of this permit as issued by the other agency, unless and until each agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this permit is declared invalid, illegal or otherwise issued in violation of the state law such permit shall remain in force and effect under federal law as a NPDES permit issued by the U.S. Environmental Protection Agency. In the event this permit is declared invalid, illegal or otherwise issued in violation of federal law, this permit shall remain in full force and effect under state law as a permit issued by the Commonwealth of Massachusetts.

PART III
NEW HAMPSHIRE SMALL MS4
STORM WATER MANAGEMENT PROGRAM
(This part also applies to Indian Lands in MA, CT, and RI.)

A. Storm Water Management Program

The permittee must develop, implement and enforce a program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable; protect water quality, and satisfy the water quality requirements of the Clean Water Act and state water quality standards

1. The permittee must develop a storm water management program implementing the minimum measures described in Paragraph III.B.

2. All elements of the storm water management program must be implemented by the expiration date of this permit.

3. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully implement the measure. When another entity fully implements a minimum control measure for the permittee, the following applies:

(a.) the other entity, in fact, implements the control measure;
(b.) the particular control measure, or component of that measure is at least as stringent as the corresponding permit requirement.
(c.) The other entity agrees to implement the control measure on the permittee behalf. A legally binding written acceptance of this obligation is expected. This obligation must be maintained as part of the storm water management program. If the other entity agrees to report on the minimum measure, the permittee must supply the other entity with the reporting requirements contained in this permit under Part III.E.
(d) The permittee remains responsible for permit compliance and implementation of the minimum measure if the other entity fails to do it.

4. For each minimum measure, the permittee must:

(a.) identify the person(s) or department responsible for the measure;
(b.) identify Best Management Practices (BMPs) for the measure;
(c.) identify measurable goals for each BMP. Identify time lines and milestones for implementation.

5. EPA's BMP menu found at:
http://www.epa.gov/npdes/menuofbmps/menu.htm and EPA's guidance on measurable goals, found at: http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm, may be used in the development of the storm water management program.

B. Minimum Control Measures

1. Public education and outreach. The permittee must implement a public education program to distribute educational material to the community. The public education program must provide information concerning the impact of storm water discharges on water bodies. It must address steps and/or activities that the public can take to reduce the pollutants in storm water runoff.

The following should be included in education and outreach efforts:

(a.) information regarding industrial, commercial, and residential activities including illegal dumping into storm drains.
(b.) coordinate activities with local groups (i.e. watershed associations, or schools)

(c.) materials for outreach/education may include , but are not limited to, pamphlets; fact sheets; brochures; public service announcements; storm dr ain stenciling and newspaper advertisements.
(d.) topics may include, but are not limited to, litter disposal, pet waste, household hazardous waste disposal, proper use of fertilizer and pesticid es. (This list is intended to provide examples of education topics, the permittee is encouraged to use a variety of methods for public education.)

2. Public Involvement and participation . All public involvement activities in the State of New Hampshire must comply with state public notice requirements, RS A-91A. Activities must also comply with local and Tribal requirements, as appropriate.

(a.) The permittee must provide opportunity for the public to participate in the development, implementation and review of the storm water management program.
(b) Activities may also include volunteer stream monitoring or formation of a storm water management committee. (These are examples of public involvement activities, the permittee is encouraged to use a wide range of activities to maximize public involvement.)

3. Illicit discharge detection and elimination . The permittee must develop, implement and enforce a program to detect and eliminate illicit discharges. An illicit discharge is any discharge to a municipal separate storm sewer that is not composed entirely of storm water. Exceptions are discharges pursuant to a NPDES permit (other that the NPDES permit for discha rges from the municipal sewer system), allowable non storm water discharges described at Part I.F. and discharges resulting from fire fighting activities.

(a.) If not already existing, the permittee must deve lop a storm sewer system map. At a minimum, the map must show the location of all outfalls and the names of all waters that receive discharges from those outfalls. Additional elements may be included on the map, such as, location of catch basins, location of manholes, and location of pipes within the system. Initial mapping should be based on all existing information available to the permittee including city records and drainage maps. Field surveys may be necessary to verify existing records and locate all outfalls.

(b.) To the extent allowable under state, Trib al or local law, the permittee must effectively prohibit, through an ordinance or other regulatory mechanism, non-storm water discharges into the system and implement appropriate enforcemen t procedures and actions. If a regulatory mechanism does not exist, development and adoption of such a mechanism must be included as part of the storm water management program.

(c.) The permittee must develop and implement a plan to detect and address non storm water discharges, including illegal dumping, into the system.

The illicit discharge plan must contain the following elements:
i. Procedures to identify priority areas. This includes areas suspected of having illicit discharges, for example: older areas of the city, areas of hi gh public complaints and areas of high recreational value or high environmental value such as beaches and drinking water sources.
ii. Procedures for locating illicit discharges (i.e . visual screening of outfalls for dry weather discharges, dye or smoke testing)
iii. Procedures for locating the source of the di scharge and procedures for the removal of the source.
iv. Procedures for documenting actions and evaluating impact on the storm sewer system subsequent to the removal.

(d.) The permittee must inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper waste disposal.

(e.) The non-storm water discharges listed in Part I.F. must be addressed if they are identified as being significant contributors of pollutants to the MS4.

4. Construction site storm water runoff control. The permittee must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acr e. The permittee must include disturbances less than one acre if part of a larger common plan.

The permittee does not need to apply its construction program provisions to projects that receive a waiver from EPA under the provisions of 40 CFR§122.26(b)(15)(i).

At a minimum, the program must include:

(a.) To the extent allowable under state, Tribal or local law, an ordinance or other regulatory mechanism to require sediment and erosion control at construction sites. If such an ordinance does not exist, development and adoption of an ordinance must be part of the program.

(b.) Sanctions to ensure compliance with the progr am. To the extent allowable under state, Tribal or local laws, sanctions may include both monetary or non-monetary penalties.

(c.) Requirements for construction site operators to implement a sediment and erosion control program which includes BMPs that are appropriate for the conditions at the construction site.

(d.) Requirements for the control of wastes, including but not limited to, discarded building materials, concrete truck wash out, chemicals, litter, and sanitary wastes.

(e.) Procedures for site plan review includi ng procedures which incorporate consideration of potential water quality impacts. The site plan review should include procedures for preconstruction review.

(f.) Procedures for receipt and consider ation of information submitted by the public.

(g.) Procedures for inspections and enforcemen t of control measures at construction sites.

5. Post construction storm water manageme nt in new development and redevelopment.

The permittee must develop, implement and enforce a program to address storm water runoff from new development and redevelopment projects that disturb gr eater than one acre and discharge into the municipal system.

The program must include projects less than one acre if the project is part of a larger common plan of development.

The post construction program must include:

(a.) To the extent allowable under state, Tribal or local law, an ordinance or other regulatory mechanism to address post construction runoff fro m new development and redevelopment. If such an ordinance does not exist, development and a doption of an ordinance must be part of the program.

(b.) Procedures to ensure adequate long term operation and maintenance of best management practices.

(c.) Procedure to ensure that any controls that are in place will prevent or minimize impacts to

- water quality.

6. Pollution prevention and good house keeping in municipal operations .
The permittee must

(a.) Develop and implement a program with a goa l of preventing and/or reducing pollutant runoff from municipal operations. The program mu st include an employee training component.

(b.) Include, at a minimum, maintenance activities for the following : parks and open space (area such as public golf courses and athletic fields); fleet maintenance, building maintenance; new construction and land disturbance; roadway draina ge system maintenance and storm water system maintenance.

(c.) Develop schedules for municipal maintenance activities described in paragraph (b) above.

(d) Develop inspection procedures and schedules for long term structural controls.

7. Cooperation between interconnected municipal se parate storm sewer systems is encouraged. The permittee should identify interconnections within the system. The permittee should attempt to work cooperatively with an interconnected municipality in instances of discharges impacting a system.

8. MS4s which discharge to coastal waters with public swimming beaches should consider these waters a priority in implementation of the storm water management program.

9. The permittee must evaluate physical conditions, site design, and best management practices to promote groundwater recharge an infiltration wh ere feasible in the implementation of the control measures described above. During the implementation of the storm wa ter management program. the permittee must address recharge and infiltration for the minimum control m easures, as well as any reasons for electing not to implement recharge and infiltration. Loss of annua l recharge to ground water should be minimized through the use of infiltration measures to the maximum extent practicable.

C. Public Drinking Water Supply Requirements

1. MS4s which discharge to public drinking water s ources and their protected areas (Class A and B surface waters used for drinking water and wellhead protecti on areas) should consider these waters a priority in implementation of the storm water management program.

2. Discharges to public drinking water supply sources and their protection areas (wellhead protection areas, Class A and B waters) should provide pretreatment and spill control capabilities to the extent feasible.

3. Direct discharges to Class A waters and the sa nitary radius to supply wells (defined in EnV-Ws 378.06, EnV-Ws 372.13) should be avoided to the extent feasible.

D. Program Evaluation

1. The permittee must annually evaluate the complian ce of the storm water management program with the conditions of this permit.

2. The permittee must evaluate the appropriateness of the selected Best Management Practices in efforts towards achieving the defined Measurable Goals. The SWMP may be changed in accordance with the following provisions:

(a). Changes adding (but not subtracting or repl acing) components, controls or requirements to the SWMP may be made at any time upon written notification to EPA.

(b.) Changes replacing an ineffective or infeas ible BMP specifically identified in the SWMP with an alternative BMP may be requested at any time. Unless denied, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented 60 days from submittal of the request. If the request is denied, EPA will send a written explanation of the denial.

(c.) Modification requests, must include the following information:

i. an analysis of why the BMP is ineffective or infeasible (including cost prohibitive)

ii. expectations on the effectiveness of the replacement BMP, and

iii. an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.

iv. Change requests or notifications must be in writing and signed in accordance with the signatory requirements of Part VI.

3. EPA or NHDES may require changes to the SWMP as needed to:

(a.) Address impacts on receiving water quality cau sed or contributed to by discharges from the MS4;

(b.) To include more stringent requirements n ecessary to comply with new Federal statutory or regulatory requirement; or

(c.) To include such other conditions deemed necessary to comply with the goals and requirements of the CWA.

(d.) Any changes requested by EPA or NHDESwill be in writing and will set forth the schedule for the permittee to develop the changes and offer the opportunity to propose alternative program changes to meet the objective of the requested modification.

E. Record Keeping

1. All records required by this permit must be kept for a period of at least five years. Records include information used in the development of the storm water management program, any monitoring, copies of reports, and all data used in the development of the notice of intent.

2. Records need to be submitted only when specifically requested by the permitting authority.

3. The permittee must make the records relating to this permit available to the public, including the storm water management program. The public may view the records during normal business hours. The permittee may charge a reasonable fee for copying requests.

F. Reporting

1. The permittee must submit an annual report. The in itial report is due one year from the effective date of this permit and annually thereafter. The reports s hould contain information regarding activities of the previous calendar year. Reports must be submitted to EPA at the following address:

United States Environmental Protection Agency
Water Technical Unit
P.O. Box 8127
Boston, MA 02114

Municipalities located in the State of New Hampshire, must also submit reports to the New Hampshire Department of Environmental Services at the following address:

New Hampshire Department of Environmental Services
Water Division
Wastewater Engineering Bureau
P.O. Box 95
Concord, New Hampshire 03302-0095

2. The following information must be contained in the annual report:

(a) A self assessment review of compliance with the permit conditions.

(b) An assessment of the appropriateness of the selected BMPs.

(c) An assessment of the progress towards achieving the measurable goals.

(d) A summary of results of any information that has been collected and analyzed. This includes any type of data.

(e) A discussion of activities for the next reporting cycle.

(f) A discussion of any changes in identified BMPs or measurable goals.

(g) Reference any reliance on another entity for achieving any measurable goal.

PART IV
NON-TRADITIONAL SMALL MS4 -STORM WATER MANAGEMENT PROGRAM
(This covers federal, county, or state owned small MS4s lo cated in any of the areas described in Part I.A. of this permit)

A. Storm Water Management Program

The permittee must develop, implement and enforce a program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable; protect water quality, and satisfy the water quality requirements of the Clean Water Act and state water quality standards.

1. The permittee must develop a storm water mana gement program implementing the minimum measures described in Paragraph IV.B.

2. All elements of the storm water management pr ogram must be implemented by the expiration date of this permit.

3. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully implement the measure. When another entity fully implements a minimum measure for the permittee, the following applies:

(a.) the other entity, in fact, implements the control measure,
(b.) the particular control measure, or component of that measure is at least as stringent as the corresponding permit requirement.
(c.) The other entity agrees to implement the control measure on the permittee behalf. A legally binding written acceptance of this obligation is expect ed. This obligation must be maintained as part of the storm water management program. If the other entity agrees to report on the minimum measure, the permittee must supply the other entity with the reporting requirements contained in this permit under Part IV.E.
(d) The permittee remains responsible for permit compliance and implementation of the minimum measure if the other entity fails to do it.

4. For each minimum measure, the permittee must:

(a.) identify the person(s) or department responsible for the measure;
(b.) identify Best Management Pr actices (BMPs) for the measure;
(c.) identify measurable goals for the BMP. The permittee may also identify an overall goal for the measure. Time lines and milestones for implementation of BMPs should be identified.

5. The following EPA websites may be used in the development of BMPs and measurable goals. EPA's BMP menu: http://www.epa.gov/npdes/menuofbmps/menu.htm EPA's guidance on measurable goals: http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm

B. Minimum Control Measures

1.. Public education and outreach . The permittee must implement a public education program to distribute educational material to the community. For the purpos es of this permit, a community consists of the people who use the facility. For example, at a univers ity it would be the faculty, other staff, students, and visitors. The public education program must provide information concerning the impact of storm water discharges on water bodies. It must address steps and/or activities that the community can take to reduce the pollutants in storm water runoff.

The following should be included in education and outreach efforts:

(a.) information regarding activities that occur at the facility, including illegal dumping into storm drains.
(b.) activities may be coordinated with local gr oups (i.e. watershed associations, or schools).

(c.) materials for outreach/education may include , but are not limited to, pamphlets; fact sheets; brochures: public service announcements; storm dr ain stenciling and newspaper advertisements.
(d.) encourage cooperative efforts with neighbor ing municipalities, watershed associations and others.

2. Public Involvement and participation. All public involvement activities must comply with state public notice requirement. In Massachusetts the public noti ce requirements are at MGL Chapter 39, Section 23B. In New Hampshire. the public notice requirements are at RSA 91A.

(a.) The permittee must provide opportunity for the public to participate in the implementation and review of the storm water management program.

3. Illicit discharge detection and elimination . The permittee must develop, implement and enforce a program to detect and eliminate illicit discharges. An illicit discharge is any discharge to a municipal separate storm sewer that is not composed entirely of storm water. Exceptions are discharges pursuant to a NPDES permit (other than the NPDES permit for discha rges from the municipal sewer system), allowable non-storm water discharges described at Part I.F. and discharges resulting from fire fighting activities.

(a.) If not already existing, the permittee must deve lop a storm sewer system map. At a minimum, the map must show the location of all outfalls and the names of all waters that receive discharges from those outfalls. Additional elements may be included on the map, such as, location of catch basins, location of manholes, and location of pipes within the system. Initial mapping should be based on all existing information available to the permittee including facility records, city records, and drainage maps. Field surveys may be nece ssary to verify existing records and locate all outfalls.

(b.) To the extent allowable under state law, the permittee must effectively prohibit, through regulatory mechanisms available to the permittee, non storm water discharges into the system and implement appropriate enforcement procedures and actions. If a regulatory mechanism does not exist, development and adoption of such a mechanis m must be included as part of the storm water management program. The permittee should evaluate existing procedures, policies, and authorities pertaining to connections to its separate storm sewe r system. These may be used to assist in the development of the required regulatory mechanism.

If an illicit discharger fails to comply with proce dures or policies established at the facility, the permittee may seek assistance from EPA or the stat e agency in enforcing this provision of the permit.

(c.) The permittee must develop and implement a plan to detect and address non -storm water discharges, including illegal dumping, into the system.

The illicit discharge plan must contain the following elements:
i. Procedures to identify priority areas. This includes areas suspected of having illicit discharges, for example: older areas of the city, areas of hi gh public complaints and areas of high recreational value or high environmental value such as beaches and drinking water sources.
ii. Procedures for locating illicit discharges (i.e . visual screening of outfalls for dry weather discharges, dye or smoke testing).
iii. Procedures for locating the source of the di scharge and procedures for the removal of the source.
iv. Procedures for documenting actions and evaluating the impact on the storm sewer system subsequent to the removal.

(d.) The permittee must inform users of system and the general public of hazards associated with illegal discharges and improper waste disposal.

(e.) The non-storm water discharges listed in Part I.F. must be addressed if they are identified as being significant contributors of pollutants to the MS4.

4. Construction site storm water runoff control. The permittee must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acr e. The permittee must include disturbances less than one acre if part of a larger common plan.

The permittee does not need to apply its construction program provisions to projects that receive a waiver from EPA under the provisions of 40 CFR§122.26(b)(15)(i).

At a minimum, the program must include:

(a.) To the extent allowable under state law, a regulatory mechanism to require sediment and erosion control at construction sites. If such a mechanism does not exist, development and adoption of a mechanism must be part of the program. The permittee should evaluate existing procedures. policies, and authorities pertaining to activities occurring on its property, these may be used to assist in the development of the required regulatory mechanism. If attempts to enforce this part of their program are ineffective, the pe rmittee may seek assistance from EPA or the state agency for enforcement of this provision .

(b.) Sanctions to ensure compliance with the program. To the extent allowable under state law sanctions may include both monetary or non-monetary penalties.

(c.) Requirements for construction site operators to implement a sediment and erosion control program which includes best management practices that are appropriate for the conditions at the construction site. The overall goal of a sediment a nd erosion control plan is to retain sediment on site, to the extent practicable. A sediment and er osion control plan should, at a minimum, include provisions to address maintenance and inspection of BMPs, and long and short term stabilization practices.

(d.) Require control of wastes, including but not limited to, discarded building materials, concrete truck wash out, chemicals, litter, and sanitary wastes.

(e.) Procedures for site plan review includi ng procedures which incorporate consideration of potential water quality impacts. The site plan review should include procedures for preconstruction review.

(f.) Procedures for receipt and consider ation of information submitted by the public.

(g.) Procedures for inspections and enforcemen t of control measures at construction sites.

5. Post construction storm water manageme nt in new development and redevelopment.

The permittee must develop, implement and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than one acre and discharge into the MS4.

The program must include projects less than one acre if the project is part of a larger common plan of development.

The post construction program must include:

(a.) To the extent allowable under state law, a regulatory mechanism to address post construction runoff from new development and redevelopment. If such a mechanism does not exist, development and adoption of a mechanism must be part of the program. The permittee should evaluate existing procedures and policies con cerning activities occurring on its property. These may be used to assist in development of the required regulatory mechanism. If attempts to enforce this provision of the program are ineffective, the permittee may seek assistance from EPA or the state agency in enforcing this provision.

(b.) Procedures to ensure adequate long term operation and maintenance of best management practices.

(c.) Procedure to ensure that any controls th at are put in place will prevent or minimize impacts to water quality.

6. Pollution prevention and good housekeeping in community/facility operations.

The permittee must

(a.) Develop and implement a program with a goa l of preventing and/or reducing pollutant runoff from community/facility operations. The program must include an employee training component.

(b.) Include, at a minimum, maintenance activities for the following : parks and open space; fleet maintenance, building maintenance; new constr uction and land disturbance; road way drainage system maintenance, and storm water system maintenance.

(c.) Develop schedules for maintenance activities described in paragraph (b) above.

(d) Develop inspection procedures and schedules for long term structural controls.

7. Cooperation with interconnected municipal separate storm sewer systems is encouraged. The permittee should identify interconnections within the system. These interconnections include both those leaving the system and those entering the system. The permittee should attempt to work cooperatively with an interconnected municipality in instances of discharges impacting either system.

8. MS4s which discharge to coastal waters with public swimming beaches should consider these waters a priority in implementation of the storm water management program.

9. The permittee should consider opportunities for ground water recharge and infiltration in implementation of the control measures described above.
The permittee must evaluate physical conditions, site design, and best management practices to promote groundwater recharge and infiltration where feasible in the implementation of the control measures described above. During the implementation of th e storm water management program, the permittee must address recharge and infiltration for the minimum cont rol measures as well as any reasons for electing not to implement recharge and infiltration. Loss of annual recharge to ground water should be minimized through the use of infiltration measures to the maximum extent practicable.
Massachusetts Only: Permittee in areas identified as "hi gh" or "medium" in the most recent Massachusetts Water Resources Commission's *Stressed Basins in Massachusetts* report in effect at the time the permittee submits a Notice of Intent and accompanying storm water management program, must minimize the loss of annual recharge to ground water from new development and redevelopment, including but not limited to drainage improvements done in c onjunction with road improvements, street drain improvement projects and flood mitigation projects, c onsistent with Standard 3 of the Storm Water Management Policy in areas both within and outside of the jurisdiction of the Massachusetts Wetlands Protection Act.

(See http://www.state.ma.us/dem/programs/intbasin/stressed_basin)

C. Public Drinking Water Supply Requirements

1. MS4s which discharge to public drinking wate r sources and their protection areas (Class A and B surface waters used for drinking water and wellhead protection areas) should consider these waters a priority in implementation of the storm water management program.

2. Discharges to public drinking water supply sources and their protection areas (wellhead protection areas, Class A and Class B waters) should provide pretreatment and spill control capabilities to the extent feasible.

3. Direct discharges to Class A waters and the san itary radius to public supply wells should be avoided the extent feasible.

D. Program Evaluation

1.The permittee must annually evaluate the compliance of the storm water management program with the conditions of this permit.

2.The permittee must evaluate the appropriateness of th e selected Best Management Practices in efforts towards achieving the defined Measurable Goals. The SWMP may be changed in accordance with the following provisions:

(a.) Changes adding (but not subtracting or repl acing) components, controls or requirements to the SWMP may be made at any time upon written notification to EPA and MA DEP.
(b.) Changes replacing an ineffective or infeas ible BMP specifically identified in the SWMP with an alternative BMP may be requested in writing to EPA and MA DEP at any time. Unless denied, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented 60 days from submittal of the request. If the request is denied, EPA or MA DEP, as applicable, will send you a written explanation of the denial.
(c.) Modification requests, must include the following information:
i. an analysis of why the BMP is ineffective or infeasible (including cost prohibitive)
ii. expectations on the effectiveness of the replacement BMP, and
iii. an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.
iv. Change requests or notifications must be in writing and signed in accordance with the signatory requirements of Part VI.

3. EPA or the state agency may requi re changes to the SWMP as needed to:
(a.) Address impacts on receiving water quality caused or contributed to by discharges from the MS4,
(b.) To include more stringent requirements nece ssary to comply with a new Federal statutory or regulatory requirement; or
(c.) To include such other conditions deemed necessary to comply with the goals and requirements of the CWA.
(d.) Any changes requested by EPA or MA DEP/ NH DES will be in writing and will set forth the time schedule for the permittee to develop the changes and offer the opportunity to propose alternative program changes to meet the objective of the requested modification.

E. Record Keeping

1. All records required by this permit must be kept fo r a period of five years. Records include information used in the development of the storm water management program, any monitoring, copies of reports, and all data used in the development of the notice of intent.

2.Records need to be submitted only when specifically requested by the permitting authority.

3. The permittee must make the records relating to this permit available to the public, including the storm water management program. The public may view the records during normal business hours. The permittee may charge a reasonable fee for copying requests.

F. Reporting

1.The permittee must submit an annual report. The initia l report is due one year from the effective date of this permit and annually thereafter. The reports s hould contain information regarding activities of the previous calendar year. Reports should be submitted to EPA. At the following address:

United States Environmental Protection Agency
Water Technical Unit
P.O. Box 8127
Boston, Massachusetts, 02114

Massachusetts MS4s must also submit reports to:

Massachusetts Department of Environmental Protection
Division of Watershed Management
627 Main Street
Worcester, Massachusetts 01608

New Hampshire MS4s must submit reports to:

New Hampshire Department of Environmental Services
Water Division
Wastewater Engineering Bureau
P.O. Box 95
Concord, New Hampshire 03302-0095

2. The following information must be contained in the annual report:

(a) A self assessment review of compliance with the permit conditions

(b) An assessment of the appropriateness of the selected BMPs.

(c) An assessment of the progress towards achieving the measurable goals

(d) A summary of results of any information that has been collected and analyzed. This includes any type of data.

(e) A discussion of activities for the next reporting cycle.

(f) A discussion of any changes in identified BMPs or measurable goals.

(g) Reference any reliance on another entity for achieving any measurable goal.

G. Massachusetts State Permit Conditions

This permit is issued jointly by the U.S. Envi ronmental Protection Agency and the Massachusetts Department of Environmental Protection under federal and state law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Commissioner of the MA DEP pursuant to M.G.L. Chap. 21, §43 and under regulations found at 314 CMR 3.00. Regulations found at 314 CMR 3.19 (Standard Pe rmit Conditions) are incorporated into this permit by reference.

To the extent allowable by their respective laws a nd regulations, each agency shall have the independent right to enforce the terms and conditions of this permit. Any modification, suspension or revocation of this permit shall be effective only with respect to the agen cy taking such action, and shall not affect the validity or status of this permit as issued by the other agen cy, unless and until each agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this permit is declared invalid, illegal or otherwise issued in violation of the state law such permit shall remain in force and effect under federal law as a NPDES permit issued by the U.S. Environmental Protection Agency. In the event this permit is declared invalid, illegal or otherwise i ssued in violation of federal law, this permit shall remain in full force and effect under state law as a permit issued by the Commonwealth of Massachusetts. Refer to Part IX for 401 Certification Requirements.

PART V
TRANSPORTATION MS4 - STORM WATER MANAGEMENT PROGRAM
(This part applies to state and county agencies who ma intain roadways, highways and other thoroughfares in the state including but not limited to Massachusetts Highway Department and New Hampshire Department of Transportation)

A. Storm Water Management Program

The permittee must develop, implement and enforce a program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable; protect water quality, and satisfy the water quality requirements of the Clean Water Act and state water quality standards

1. The permittee must develop a storm water mana gement program implementing the minimum measures described in Paragraph V.B.

2. All elements of the storm water management pr ogram must be implemented by the expiration date of this permit.

3. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully implement the measure. When another entity fully implements a minimum measure for the permittee, the following applies

(a.) the other entity, in fact, implements the control measure;
(b.) the particular control measure, or component of that measure is at least as stringent as the corresponding permit requirement.
(c.) The other entity agrees to implement the control measure on the permittee behalf. A legally binding written acceptance of this obligation is expect ed. This obligation must be maintained as part of the storm water management program. If the other entity agrees to report on the minimum measure, the permittee must supply the other entity with the reporting requirements contained in this permit under Paragraph V.E.
(d) The permittee remains responsible for permit compliance and implementation of the minimum measure if the other entity fails to do it.

4. For each minimum measure, the permittee must:

(a.) identify the person(s) or department responsible for the measure;
(b.) identify Best Management Pr actices (BMPs) for the measure;
(c.) identify measurable goals for each best mana gement practice. The permittee may also identify an overall goal for each measure. Time lines a nd milestones for implementation of BMPs should be identified.

5. The following EPA websites may be used in the development of BMPs and measurable goals. EPA's BMP menu: http://www.epa.gov/npdes/menuofbmps/menu.htm EPA's guidance on Measurable goals: http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm

Minimum Control Measures

1. Public education and outreach. The permittee must implement a public education program to distribute educational material to the community. For the purpos es of this permit, a community consists of the people who use the facility. For a transportation agen cy, this would include employees, contractors, and general public. The public education program must pr ovide information concerning the impact of storm water discharges on water bodies. It must address steps and/or activities that the community can take to reduce the pollutants in storm water runoff.

The following should be included in education and outreach efforts:

(a.) information regarding activities that occur within the facility, including illegal dumping into storm drains.

(b.) coordinate activities with local groups (i.e. watershed associations, or schools)

(c.) materials for outreach/education may include . but are not limited to, pamphlets; fact sheets; brochures; public service announcements; storm dr ain stenciling and newspaper advertisements.

(d.) encourage cooperative efforts with neighbor ing municipalities, watershed associations and others.

2. Public involvement and participation . All public involvement activities must comply with state public notice requirement.

(a.) The permittee must provide opportunity for the public to participate in the development, implementation and review of the storm water management program. In Massachusetts, the public notice requirements are at Chapter 39, Section 23B. In New Hampshire, the public notice requirements are at RSA-91A.

3. Illicit discharge detection and elimination . The permittee must develop, implement and enforce a program to detect and eliminate illicit discharges. An illicit discharge is any discharge to a municipal separate storm sewer that is not composed entirely of storm water. Exceptions are discharges pursuant to a NPDES permit (other that the NPDES permit for discha rges from the municipal sewer system), allowable non-storm water discharges described at Part I.F. and discharges resulting from fire fighting activities.

(a.) If not already existing, the permittee must deve lop a storm sewer system map. At a minimum, the map must show the location of all outfalls and the names of all waters that receive discharges from those outfalls. Due to the magnitude of a transportation agency's drainage system, identification of outfalls may be done on a distri ct basis, and as part of construction and redevelopment projects.

Additional elements may be included on the map, such as, location of catch basins, location of manholes, and location of pipes within the system. Initial mapping should be based on all existing information available to the permittee including proj ect plans, agency records, city records and drainage maps. Field surveys may be necessary to verify existing records and locate all outfalls.

(b.) To the extent allowable under state law, the permittee must effectively prohibit, through a regulatory mechanism, non storm water discharges into the system and implement appropriate enforcement procedures and actions. If a regul atory mechanism does not exist, development and adoption of such a mechanism must be included as part of the storm water management program. The permittee should evaluate existing procedures, policies and authorities pertaining to connections to its separate storm sewer system.

If an illicit discharger fails to comply with procedures or policies established by the agency, the permittee seek assistance from EPA or the state e nvironmental agency in enforcing this provision of the permit.

(c.) The permittee must develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, into the system.

The illicit discharge plan must contain the following elements:

i. Procedures to identify priority areas. This includes areas suspected of having illicit discharges, for example: older areas of a city, areas of hi gh public complaints, and areas of high recreational value or high environmental value such as beaches and drinking water sources.

ii. Procedures for locating illicit discharges (i.e . visual screening of outfalls for dry weather discharges, dye or smoke testing).

- iii. Procedures for locating the source of the di scharge and procedures for the removal of the source.
iv. Procedures for documenting actions and evaluating the impact on the storm sewer system subsequent to the removal.

(d.) The permittee must inform users of the syst em and the general public of hazards associated with illegal discharges and improper waste dispos al. The permittee must train field inspectors to recognize illicit discharges.

(e.) The non storm water discharges listed in Part I.F. must be addressed if they are identified as being significant contributors of pollutants.

4. Construction site storm water runoff control. The permittee must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acr e. The permittee must include disturbances less than one acre if part of a larger common plan.

The permittee does not need to apply its construction program provisions to projects that receive a waiver from EPA under the provisions of 40 CFR§122.26(b)(15)(i).

At a minimum, the program must include:

(a.) To the extent allowable under state law,a regulatory mechanism to require sediment and erosion control at construction sites. If such a mechanism does not exist, development and adoption of a mechanism must be part of the progr am. If attempts to enforce this part of their program are ineffective, the permittee may seek assistance from EPA or the state agency for enforcement of this provision.

(b.) Sanctions to ensure compliance with the pr ogram. To the extent allowable under state law, sanctions may include both monetary or non-monetary penalties. The transportation agency can consider with-holding payment to contractors w ho fail to implement appropriate sediment and erosion control plans.

(c.) Requirements for construction site operators to implement a sediment and erosion control program which includes best management practices that are appropriate for the conditions at the construction site. The Massachusetts Erosion a nd Sediment Control Guidelines for Urban and Suburban Areas may be used as a tool to im plement this provision. The New Hampshire Department of Transportation may use the St orm Water Management Sediment and Erosion Control Handbook as a tool to implement this provision.

(d.) Require control of wastes, including but not limited to, discarded building materials, concrete truck wash out, chemicals, litter, and sanitary wastes.

(e.) Procedures for site plan review includi ng procedures which incorporate consideration of potential water quality impacts. The site plan review should include procedures for preconstruction review.

(f.) Procedures for receipt and consideration of information submitted by the public. This may include the opportunities for public comment during the project development process.

(g.) Procedures for inspections and enforcemen t of control measures at construction sites.

5. Post construction storm water manageme nt in new development and redevelopment.
The permittee must develop, implement and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than one acre and discharge into the MS4.

The program must include projects less than one acre if the project is part of a larger common plan of development.

The post construction program must include:

(a.) To the extent allowable under state law, a regulatory mechanism to address post construction runoff from new development and redevelopment. If such a mechanism does not exist, development and adoption of a mechanism must be part of the program. If attempts to enforce this provision of the program are ineffective, the permittee may seek assistance from EPA of the state agency in enforcing this provision.

(b.) Procedures to ensure adequate long term operation and maintenance of best management practices.

(c.) Procedure to ensure that any controls that are in place will prevent or minimize impacts to water quality.

(d) The Massachusetts Highway Department may use the approved Storm Water Management Handbook as a tool to implement this provision.

6. Pollution prevention and good housekeeping in community/facility operations.
The permittee must

(a.) Develop and implement a program with a goal of preventing and/or reducing pollutant runoff from transportation facility operations. The program must include an employee training component.

(b.) Include, at a minimum, maintenance activities for the following : rest areas along interstates; weigh stations; material storage yards; new construction and land disturbance; roadway drainage system maintenance, and storm water system maintenance.

(c.) Develop schedules for maintenance activities described in paragraph (b) above.

(d) Develop inspection procedures and schedules for long term structural controls.

7. Cooperation between interconnected municipal separate storm sewer systems is encouraged. The permittee should identify interconnections within the system. These interconnections include both those leaving the system and those entering the system. The permittee should attempt to work cooperatively with an interconnected municipality in instances of discharges impacting either system.

8. MS4s which discharge to coastal waters with public swimming beaches should consider these waters a priority in implementation of the storm water management program.

9. The permittee should consider opportunities for ground water recharge and infiltration in the implementation of the minimum measures described above.

The permittee must evaluate physical conditions, site design, and best management practices to promote groundwater recharge and infiltration where feasible in the implementation of the control measures described above. During the implementation of the storm water management program, the permittee must address recharge and infiltration for the minimum control measures as well as any reasons for electing not to implement recharge and infiltration. Loss of annual recharge to ground water should be minimized through the use of infiltration measures to the maximum extent practicable.
Massachusetts Only: Permittees in areas identified as "high" or "medium" in the most recent Massachusetts Water Resources Commission's *Stressed Basins in Massachusetts* report in effect at the time the permittee submits a Notice of Intent and accompanying storm water management program, must minimize the loss of annual recharge to ground water from new development and redevelopment, including but not limited to drainage improvements done in conjunction with road improvements, street drain

improvement projects and flood mitigation projects, c onsistent with Standard 3 of the Storm Water Management Policy in areas both within and outside of the jurisdiction of the Massachusetts Wetlands Protection Act.
(See http://www.state.ma.us/dem/programs/intbasin/stressed_basin)

C. Public Drinking Water Supply Requirements

1. MS4s which discharge to public drinking wate r sources and their protection areas (Class A and B surface waters used for drinking water and well head protection areas) should consider these waters a priority in implementation of the storm water management program.

2. Discharges to public drinking water supply sources and their protection areas (wellhead protection areas, Class A and Class B waters) should provide pretreatment and spill control capabilities to the extent practicable.

3. Discharges to Class A waters, Zone 1 wellhead pr otection areas, and the sanitary radius to supply wells should be avoided to the extent feasible.

D. Program Evaluation

1. The permittee must annually evaluate the complian ce of the storm water management program with the conditions of this permit.

2. The permittee must evaluate the appropriateness of the selected Best Management Practices in efforts towards achieving the defined Measurable Goals. The SWMP may be changed in accordance with the following provisions:

(a.) Changes adding (but not subtracting or replaci ng) components, controls or requirements to the SWMP may be made at any time upon written notification to EPA and MADEP.
(b.) Changes replacing an ineffective or unfeasib le BMP specifically identified in the SWMP with an alternative BMP may be requested in writing to EPA and MA DEP at any time. Unless denied, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented 60 days from submittal of the request. If the request is denied, EPA or MA DEP, as applicable, will send a written explanation of the denial.
(c.) Modification requests, must include the following information:
i. an analysis of why the BMP is ineffec tive or infeasible (including cost prohibitive)
ii. expectations on the effectiveness of the replacement BMP, and
iii. an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.
iv. Change requests or notifications must be in writing and signed in accordance with the signatory requirements of Part VI.

3. EPA or MADEP/NHDES may require changes to the SWMP as needed to:

(a.) Address impacts on receiving water quality cau sed or contributed to by discharges from the MS4;
(b.) To include more stringent requirements nece ssary to comply with a new Federal statutory or regulatory requirement; or
(c.) To include such other conditions deemed necessary to comply with the goals and requirements of the CWA.
(d.) Any changes requested by EPA or MADEP/NHDES will be in writing and will set forth the time schedule for the permittee to develop the changes and offer the opportunity to propose alternative program changes to meet the objective of the requested modification

E. Record Keeping

1. All records required by this permit must be kept for a period of at least five years. Records include information used in the development of the storm water management program, any monitoring, copies of reports, and all data used in the development of the notice of intent.

2. Records need to be submitted only when specifically requested by the permitting authority.

3. The permittee should make the records relating to this permit available to the public, including the storm water management program. The public may view the records during normal business hours. The permittee may charge a reasonable fee for copying requests.

F. Reporting

1. The permittee must submit an annual report. The in itial report is due one year from the effective date of this permit and annually thereafter. The reports s hould contain information regarding activities of the previous calendar year. Reports should be submitted to EPA. At the following address:
United States Environmental Protection Agency
Water Technical Unit
P.O. Box 8127
Boston, MA 02114

Massachusetts transportation MS4s must also submit reports to:

Department of Environmental Protection
Division of Watershed Management
627 Main Street
Worcester, Massachusetts 01608

New Hampshire transportation MS4s must also submit reports to:

New Hampshire Department of Environmental Services
Water Division
Wastewater Engineering Bureau
P.O. Box 95
Concord, NH 03302-0095

2. The following information must be contained in the annual report:

(a) A self assessment review of compliance with the permit conditions.

(b) An assessment of the appropriateness of the selected BMPs.

(c) An assessment of the progress towards achieving the measurable goals.

(d) A summary of results of any information that has been collected and analyzed. This includes any type of data.

(e) A discussion of activities for the next reporting cycle.

(f) A discussion of any changes in identified BMPs or measurable goals.

(g) Reference any reliance on another entity for achieving any measurable goal.

G. Massachusetts State Permit Conditions

This permit is issued jointly by the U.S. Envi ronmental Protection Agency and the Massachusetts Department of Environmental Protection under federal and state law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Commissioner of the MA DEP pursuant to M.G.L. Chap. 21, §43 and under regulations found at 314 CMR 3.00. Regulations found at 314 CMR 3.19 (Standard Pe rmit Conditions) are incorporated into this permit by reference.

To the extent allowable by their respective laws a nd regulations, each agency shall have the independent right to enforce the terms and conditions of this permit. Any modification, suspension or revocation of this permit shall be effective only with respect to the agen cy taking such action, and shall not affect the validity or status of this permit as issued by the other agen cy, unless and until each agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this permit is declared invalid, illegal or otherwise issued in violation of the state law such permit shall remain in force and effect under federal law as a NPDES permit issued by the U.S. Environmental Protection Agency. In the event this permit is declared invalid, illegal or otherwise i ssued in violation of federal law, this permit shall remain in full force and effect under state law as a permit issued by the Commonwealth of Massachusetts. Refer to Part IX for 401 Certification Requirements.

PART VI - STANDARD PERMIT CONDITIONS

H. Duty to Comply

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and is gr ounds for enforcement action; for permit termination, revocation and reissuance or modification or for denial of a permit application.

2. Penalties for Violations of Permit Conditions

The Director will adjust the civil and administra tive penalties listed below in accordance with Civil Monetary Penalty Inflation Adjustment Rule (Federal Register: December 31, 1996, Volume 61, Number 252, pages 69359-69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. Th e Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specialized formula. The civil and administrative penalties liste d below were adjusted for inflation starting in 1996

(a) Criminal

i. Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation or by imprisonment for not more than 1 year or both.

ii. Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $ 5,000 not more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

iii. Knowing Endangerment. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000 or by imprisonment for not more than 15 years, or both.

iv. False statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any a pplication, record, report, plan or other document filed or required to be maintained under the Ac t or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine or not more than $10,000 or by imprisonment for not more that two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment sha ll be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both.

b. Civil penalties- The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 306, 307, 318 or 405 of the Act is subject to a civil penalty not to exceed $ 27,500 per day for each violation.

c. Administrative Penalties

The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

i. Class I penalty. Not to exceed $11,000 per violation nor shall the maximum amount exceed $ 27,500.

ii. Class II penalty. Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

B. Continuation of the Expired General Permit

If this permit is not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee as long as the permittee submits a new Notice of Intent two (2) months prior to the expiration of this permit. However, once this permit expires, EPA cannot provide written notification of coverage under this general permit to any permittee who submits a Notice of Intent to EPA after the permit's expiration date. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

(1) Reissuance of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
(2) The permittee's submittal of a Notice of Termination; or
(3) Issuance of an individual permit for the permittee's discharges; or
(4) A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an altern ative general permit or an individual permit.

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

F. Duty to Provide Information

The permittee must furnish to the Director or an aut horized representative of the Director any information which is requested to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

G. Signatory Requirement

i. All applications, reports, or information submitte d to the Director shall be signed and certified. (See 40 CFR 122.22)

ii. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation or both.

H. Oil and Hazardous Substance Liability

Nothing in this permit shall be constructed to precl ude the institution of any legal action or relieve the permittee from any responsibilities, liab ilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

I. Property Rights

The issuance of this permit does not convey any propert y rights of any sort, nor any exclusive privileges nor does it authorize any injury to private property nor a ny invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

J. Severability

The provisions of this permit are severable, and if a ny provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to the circumstances, and the remainder of this permit shall not be affected thereby.

K. Requiring an Individual Permit or an Alternative General Permit

i. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this para graph. Where the Director requires the permittee to apply for an individual NPDES permit, the Director will notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the permittee to file the application, and a statement that on the effectiv e date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically termin ate. Applications must be submitted to the Regional Office. The Director may grant additional time to submit the application upon request of the applicant. If the permittee fails to submit in a timely manner an individual NPDES permit application as required by the Director under this pa ragraph, then the applicability of this permit to the permittee is automatically terminated at th e end of the day specified by the Director for application submittal.

ii. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee must submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the following address: Office of Ecosystem Protection, United States Environmental Prot ection Agency, One Congress Street- Suite 1100, Boston, Massachusetts 02114. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons c ited by the permittee are adequate to support the request.

iii. When an individual NPDES permit is issued to a di scharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authori zation of coverage under the alternative general permit, whichever the case may be. When an i ndividual NPDES permit is denied to an operator otherwise subject to this permit, or the operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

L. State/Tribal Environmental Laws

i. Nothing in this permit shall be construed to pr eclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation unde r authority preserved by section 510 of the Act.

ii. No condition of this permit releases the pe rmittee from any responsibility or requirements under other environmental statutes or regulations.

M. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installe d or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls

and appropriate quality assurance procedures. Pr oper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

N. Inspection and Entry

The permittee must allow the Director or an authori zed representative of EPA or the State/Tribe, upon the presentation of credentials and other doc uments as may be required by law, to:

i Enter the permittee premises where a regulated fac ility or activity is located or conducted or where records must be kept under the conditions of this permit;

ii Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

iii Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

PART VII - DEFINITIONS

Best Management Practices (BMPs) - means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operati ng procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

Commencement of Construction means the initial disturbance of soils associated with clearing, grading or excavating activities or other construction activities.

Control Measure as used in this permit, refers to any BMP or ot her method, used to prevent or reduce the discharge of pollutants to waters of the United States.
CWA means the Clean Water Act, or the Fede ral Water Pollution Control Act, 33 U.S.C 1251 *et seq.*

Director means the Regional Administrator of the Environmenta l Protection Agency or an authorized representative.

Discharge when used without qualification means the "discharge of a pollutant."

Discharge of Storm Water Associated with Construction Activity as used in this permit, refers to a discharge of pollutants in storm water runoff from areas where soil dist urbing activities (e.g. clearing, grading, or excavation), construction materials or equipment storage or maintenan ce (e.g. fill piles, borrow areas, concrete truck washout, fueling) or other industrial storm water directly rela ted to the construction process are located. (See 40 CFR 122.26(b)(14)(x) and 40 CFR 122.26(b)(15) for the two re gulatory definition of storm water associated with construction sites).

Discharge of Storm Water Associated with Industrial Activity is defined at 40 CFR 122.26(b)(14).

EPA means the United States Environmental Protection Agency

Facility or Activity means any NPDES "point source" or any ot her facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

General Permit means an NPDES permit issued under §122.28 authorizing a category of discharges under the CWA within a geographical area.

Indian Country, as defined in 18 U.S.C. 1151, means : (a) All lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwith standing the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities with the borders of the United States whether within the original or subsequently acquired territo ry thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

Industrial Activity as used in this permit refers to the eleven categories of industrial activities included in the definition of discharges of storm water associated with industrial activity.

Industrial Storm Water as used in this permit refers to storm water runoff associated with the definition of discharges of storm water associated with industrial activity.

Large municipal separate storm sewer system means all municipal separate storm sewer systems that are either: (i) Located in an incorporated place with a populati on of 250,000 or mor as determined by the 1990 Decennial Census by the Bureau of the Census; or (ii.) Located in counties listed in Appendix H of 40 CFR 122, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or (iii.) Owned or operated by a municipality othe r than those described in paragraph (b)(4)(i) or (of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from

municipal separate storm sewers desc ribed under paragraph (b)(4)(i) or (ii) of this section.(Complete definition found at 40 CFR 122.26(b)(4) and incorporated here by reference).

MADEP means Massachusetts Department of Environmental Protection.

Municipality means a city, town, borough, county, parish, distri ct, association, or other public body created by or under State law and having jurisdiction over disposal of sewage , industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA.

Medium Municipal Separate Storm Sewer System means all municipal separate storm sewers that are either: (i) Located in an incorporated place with a population of 100, 000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G of this part); or (ii.) Located in the counties listed in Appendix I, except municipal separate storm sewers th at are located in the inco rporated places, townships or towns within such counties; or (iii.) Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) or (ii) of this section.(Complete definition found at 40 CFR 122.26(b)(7) and incorporated here by reference).

Municipal Separate Storm Sewer System means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, cat ch basins, curbs, gutters, ditches, man- made channels, or storm drains); (i.) Owned or operated by a State, city, town, borough, county, parish, district, association or other public body (created by or pursuant to State law) having jurisdiction over dispos al of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood c ontrol district, or drainage district, or similar entity or an Indian tribe or an authorized tribal organization or a designated and approved management agency under section 208 of the CWA that discharges to wa ters of the United States; (ii) Designated or used for collecting or conveying storm water; (iii) Which is not a co mbined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enfo rcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318 and 405 of th e CWA. The term includes an "approved program."

NHDES means New Hampshire Department of Environmental Services.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Point Source means any discernible, confined, and discrete c onveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete, fissure, containe r, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irriga ted agriculture or agricultural storm water runoff.

Pollutant is defined at 40 CFR 122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

Runoff Coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

State means any of the 50 States, the District of Columb ia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northe rn Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe meeting the requirements of 40 CFR 123.31.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity refers to storm water, that if allowed to discharge, would constitute a "discharge of storm water associated with industrial ac tivity" as defined at 40 CFR 122.26(b)(14) and incorporated here by reference.

Waters of the United States means:

1. All waters which are currently used, were used in the past or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
2. All interstate waters, including interstate wetlands;
3. All other waters such as interstate lakes, rive rs, streams, (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet m eadows, playa lakes or natural ponds the use, designation or destruction of which would affect or could affect interstate or foreign commerce including any such waters;
    a. Which are or could be used by interstate or foreign travelers for recreational or other purposes.
    b. From which fish or shell fish are or could be taken and sold in interstate or foreign or;
    c. Which are used or could be used for indus trial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters th at are themselves wetlands) identified in paragraphs 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds as defined in 40 CF R 423.11(m) which also meet the criteria of this definition) are not waters of the United States. Th is exclusion applies only to manmade bodies of water which neither were originally created in waters of th e United States (such as disposal areas in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determina tion of an area's status as prior converted cropland by other federal agency for the purposes of the Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturate d by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands genera lly include swamps, marshes, bogs, and similar areas.

PART VIII - REOPENER

If there is evidence indicating that the storm water discha rges authorized by this permit cause, have the reasonable potential to cause, or contribute to a violation of a wate r quality standard, the permittee may be required to obtain an individual permit or an alternative general permit in accordan ce with Part VI.K of this permit, or the permit may be modified to include different limitations and/or requirements.

Permit modification or revocation will be conducte d according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

PART IX - 401 WATER QUALITY CERTIFICATION REQUIREMENTS

Massachusetts:

The Massachusetts Department of Environmental Protec tion in accordance with the provisions of MGL Ch. 21. s. 26-53. 314 CMR 4.00, 314. CMR 3.00, 314 CMR 9.00 and Sec tion 401 of the Federal Clean Water Act (Public Law 92-500 as amended) issues this Section 401 Water Quality Certification for the *General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems* in Massachusetts. The Department has determined that compliance with the conditions of this permit will re sult in compliance with applicable water quality standards, as required by the Massachusetts Surface Water Quality Standards regulations (314 CMR 4.00) and with 314 CMR 9.04 and that the permittee will be in compliance with Sections 301, 302, 303, 306 and 307 of the Federal Clean Water Act. The Department issues this Water Quality Ce rtification subject to the following conditions, which are to be added to the final permit as state water quality certif ication requirements. The conditions outlined below will be presented in the following order:

A. state statutes and regulations relating to water quality and surface water discharges;
B. adherence to the Massachusetts St orm Water Management Policy, March 1997;
C. other state laws, regulations, and policies
D. environmental priority resource areas designated for protection;
E. other Department Directives, and
F. permit compliance

A. State Water Quality Statutes, Regulations and Policies :

1. The permittee shall comply with the Massac husetts Clean Waters Act (Ch. 21 s. 26-53).

2. The permittee shall comply with the conditions in 314 CMR 4.00- Surface Water Quality Standards.

3. The permittee shall comply with the conditions in 314 CMR 3.00- Surface Water Discharge Permit Program.

4. The permittee shall comply with the Wetlands Protec tion Act, Ch. 131 s. 40 and its regulations, 310 CMR 10.00 and any Order of Conditions issued by a Conservation Co mmission or Superseding Order of Conditions issued by the Massachusetts Department of Environmental Protection.

B. Department of Environmental Protection Storm Water Management Policy:

1. The permittee shall comply with the Massachusetts Storm Water Management Policy, March 1997 and applicable Storm Water Performance Standards, as prescribed by st ate regulations promulgated under the authority of the Massachusetts Clean Waters Act, MGL c. 21, ss 23- 56 and the Wetlands Protection Act, MGL c. 131 s. 40.

C. Other State Environmental Laws, Regulations, Policies:

1. The permittee shall comply with the Massachuse tts Endangered Species Act (MESA)(MGL c. 131A and regulations at 321 CMR 10.00) and any actions undertaken to comply with this storm water permit, shall not result in non-compliance with the MESA.

2. The permittee shall not conduct activities under this permit that will interfere with implementation of mosquito control work conducted in accordance with Chapter 252 including, s. 5A thereunder and DEP Guideline Number BRP G01-02, West Nile Virus Application of Pesticides to Wetland Resource Areas and Buffer Zones, and Public Water Systems.

D. ***Resource Areas Required for priority consid eration in Storm Water Management Program***

1. The permittee shall identify discharges to the following resource areas as a priority and indicate in their storm water management program how storm water controls w ill be implemented. Identified priority areas include:

a. public water supplies

b. public swimming beaches
c. Outstanding Resource Waters (as designated in 314 CMR 4.00)
d. shell fishing areas (open versus closed areas)
e. rivers, ponds, lakes and coastal waters which are on the Department's 303d list of impaired waters
f. cold water fishery river segments as identified in 314 CMR 4.00

E. Other Department Directives:

1. The Department may require the permittee to perfo rm water quality monitoring during the permit term if monitoring is necessary for the protection of public health or the environment as designated under the authority at 314 CMR 3.00.

2. The Department may require one or more permittees covered under this general permit to provide measurable verification of the effectiveness of BMPs and other c ontrol measures in the permittee's management program, including water quality monitoring.

3. The Department has determined that compliance with this permit does not protect the permittee from enforcement actions deemed necessary by the Department under its associat ed regulations to address an imminent threat to the public health, or a significant adverse environmental impact which results in a violation of the Massachusetts Clean Waters Act. Ch. 21 ss 26-53.

4. The Department reserves the right to modify this 401 Water Quality Certification if any changes, modifications or deletions are made to the general permit. In addition, the De partment reserves the right to add and/or alter the terms and conditions of its Section 401 Water Quality Certification to carry out its responsibilities during the term of this permit with respect to water quality.

F. Permit Compliance:

1. Should any violation of the Massachusetts Surface Wa ter Quality Standards (314 CMR 4.00) or the conditions of this certification occur, the Department will direct the pe rmittee to correct the violation(s). The Department has the right to take any action as authorized by the General La ws of the Commonwealth to address the violation of this permit or the MA Clean Waters Act and the regulations promulgated thereunder. Substantial civil and criminal penalties are authorized under MGL Ch. 21, Section 42 for di scharging into Massachusetts's waters in violation of an order or permit issued by this Department. This certif ication does not relieve the permittee of the duty to comply with other applicable Massachusetts statues and regulations.

New Hampshire
No additional conditions added.

Addendum A-
Endangered Species Guidance

A. Background

In order to meet its obligations under the Clean Wa ter Act and the Endangered Species Act (ESA), and to promote the goals of those Acts, the Environmental Prot ection Agency (EPA) is seeking to ensure the activities regulated by this small MS4 general permit do not adversel y affect endangered and threatened species and critical habitat. Small MS4 operators applying for permit coverage must assess the impacts of their storm water discharges, allowable non-storm water discharges, and discharge-rela ted activities on Federally listed endangered and threatened species ("listed species") and designated critical habitat ("critical habitat"), to ensure that those goals are met. Prior to obtaining general permit coverage, applicants must m eet the ESA eligibility provisions of this permit. EPA strongly recommends that applicants follow the guidance in this addendum at the earliest possible stage to ensure that measures to protect listed species and critical hab itat are incorporated early in the storm water management program development.

Applicants also have an independent ESA obligation to ensure that their activities do not result in any prohibited "takes" of listed species [1]. Many of the measures required in this general permit and in these instructions to protect species may also assist in ensuring that the applicants activities do not result in a prohibited take of species in violation of section 9 of the ESA. If the MS4 opera tor has plans or activities in areas where endangered and threatened species are located, they ma y wish to ensure that they are protected from potential takings liability under ESA section 9 by obtaining an ESA section 10 permit or by requesting formal consultation under ESA section 7. Applicants that are unsure whether to pursue a section 10 permit or a section 7 consultation for takings protection, should confer with the appropriate U.S. Fish and Wildlife Service (FWS) [2] office or the National Marine Fisheries Service (NMFS).

The FWS and NMFS have identified two species of c oncern, the short nosed sturgeon and the dwarf wedge mussel. These species are found in the Merrimack River a nd the Connecticut River. Specifically, the sturgeon is in the Connecticut River (main stem) down stream of Turners Fa lls, Massachusetts. It is in the Merrimack River (main stem) below the Lawrence Dam.

The dwarf wedge mussel is located in the following areas:

1. The Connecticut River, North from Nothumberland, NH south to Dalton, NH
2. Historic location in North Thetford, NH
3. Connecticut River, south and Black River: 16 - 18 miles along the CT river form North Hartland, NH to Aschutney, VT as well as 1 mile along the Black River, from the river mouth to Springfield, VT
4. Ashuelt River form below Surry Mt. Dam, 6 -7 miles south to Keane, NH
5. South Branch of Ashuelot River, 0.5 miles in East Swanzey, NH
6. Mill River; approximately 5 miles in Whatley, MA and Hatfield, MA as well as 1-2 miles along Mill River Diversion in Northampton, MA
7. Farmington River, Muddy Brook, Philo Brook and Podunk River; Philo Brook and Muddy Brook in Suffield, CT; Farmington River in North Bloomfiel d, CT and the Podunk River in South Windsor, CT

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[1] Section 9 of the ESA prohibits any person fro m "taking" a listed species (e.g., harassing or harming it) unless: (1) the taking is authorized through a "incidental take statement" as part of completion of formal consultation according to ESA section 7; (2) where an incidental take permit is obtained under ESA section 10 (which requires the development of a ha bitat conservation plan); or (3) where otherwise authorized or exempted under the ESA. This pr ohibition applies to all entities including private individuals, businesses, and governments.

[2] Discharges to marine waters may require cons ultation with the National Marine Fisheries Service instead.

Any small MS4 which discharges to these rivers must consult with the Services. EPA may designate the applicants as non-Federal representatives for the small MS4 general permit for the purpose of carrying out informal consultation with NMFS and FWS. By terms of this MS 4 permit, EPA has automatically designated operators as non-Federal representatives for the purpose of conducting informal consultations. (See 50 CFR §402.08 and §402.13 and Part I.B.2.(e) of the permit) Permit coverage is only available if the applicant contacts the Services to determine that discharges are not likely to adversely affect listed species or critical habitat and informal consultation with the Services has been concluded and results in a written concurrence by the Services that the discharge is not likely to adversely affect an endangered or threatened species.

B. The ESA Eligibility Process

Before submitting a notice of intent (NOI) for coverage by this permit, applicants must determine whether they meet the ESA eligibility criteria by following the steps in Section "D" of this Addendum. Applicants that cannot meet any of the eligibility criteria, must apply for an individual permit.

C. The ESA Eligibility Criteria

The ESA eligibility requirements of this permit, may be satisfied by documenting that one or more of the following criteria has been met. Upon notification, EPA may direct an applicant to pursue eligibility under Criterion B.

Criterion A: No endangered or threatened species or critical habitat are in proximity to the MS4 or the points where authorized discharges reach the receiving waters.

Criterion B: In the course of a separate federal action involving the MS4, formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service under Section 7 of the ESA has been concluded and that consultation
- Addressed the effects of the MS4 storm water discharges, allowable non-storm water discharges and discharge related activities on listed species and critical habitat; and
The consultation resulted in either a no jeopardy opinion or a written concurrence by FWS and/or NMFS on a finding that the storm water discharges, allowable non-storm water discharges, and discharge related activities are not likely to adversely affect listed species or critical habitat.

Criterion C: The activities are authorized under Section 10 of the ESA and that authorization addresses the effects of the storm water discharges, allowable non-storm water discharges, and discharge related activities on listed species and critical habitat. (Eligibility under this criterion is not likely. This criterion involves an MS4s activities being authorized through the issuance of a permit under section 10 of the ESA and that authorization addresses the effect of the MS4's storm water discharges and discharge related activities on listed species and designated critical habitat. MS4s must follow FWS and/or NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR §17.22(b)(1) for FWS and §222.22 for NMFS). Application instructions for section 10 permits can be obtained by assessing the appropriate websites (www.fws.gov and www.nmfs.noaa.gov) or by contacting the appropriate regional office.)

Criterion D: Using the best scientific and commercial data available, the effects of the storm water discharges, allowable non-storm water discharges, and discharge related activities on listed species and critical habitat have been evaluated. Based on those evaluations, a determination is made by the permittee and affirmed after review by EPA that the storm water discharges, allowable non-storm water discharges, and discharge related activity will not affect any federally threatened or endangered species or designated critical habitat.

Criterion E: The storm water discharges, allowable non-storm water discharges, and discharge related

activities where already addressed in another operator's certification of eligibility which includes the MS4 activities.

D. The Steps To Determine if th e ESA Eligibility Criteria Can Be Met

To determine eligibility, you must assess (or have prev iously assessed) the potential effects of your known storm water discharges, allowable non-storm water discharg es and discharge-related activities on listed species and critical habitat, PRIOR to completing and submitting a Noti ce of Intent (NOI). You must follow the steps outlined below and document the results of your eligibility determination.

Step1. Determine if You Can Meet Eligibility Criterion "A"

Criterion A. You can certify eligibility, according to Criterion A, for coverage by this permit if you can answer "No" to all of the following questions:

- Are there any Endangered Species in your county? Are there any Critical Habitats in your county?

- Are there any Endangered Species or Critical Ha bitat in proximity to your MS4 or discharge locations?

Use the guidance below to answer these questions, and to: " *Check for Listed Endangered Species in Your County,*" "*Check for Critical Habitat in Your County,* " and "*Check for Proximity to Your MS4 or MS4 Discharge Locations*."

If you answered "No" to the questions above, you ha ve met ESA eligibility Criterion A. Skip to Step 4.

If you answered "Yes" to either of the questions above, Go to Step 2.

Check for Listed Endangered Species in Your County.

Look at the latest county species list to see if any listed species are found in your county. If you are located close to the border of a county or your MS4 is located in one county and your discharge points are located in another, you must look under both counties. Since species are listed and de-listed periodically, you will need the most current list at the time you are conducting your endangered species assessment.

Check for Critical Habitat in Your County.

Some (but not all) listed species have designated critical habitat. Exact locations of such habitat is provided in the endangered species regulations at 50 CFR part 17 and part 226. To determine if MS4 or discharge locations are within designated critical habitat, you should either:

- Review those regulations (50 CFR Parts 17 and 226) that specific critical habitat. These regulations can be found in many larger libraries or via the Government Printing Office website, www.access.gpo.gov ; or

- Contact the nearest Fish and Wildlife Service (F WS) office or National Marine Fisheries Service (NMFS) office. A list of FWS and NMFS offices for the areas of permit coverage is found in sections "F" and "G", respectively, of this Addendum; or

- Contact the Natural Heritage Program for your state. Heritage programs gather, manage, and distribute detailed information about the biological diversity found within their jurisdictions. They frequently have the most current information on listed species and critical habitat. Contact information for the Heritage program is provided in section "H" of this Addendum.

Check for Proximity to Your MS4 or MS4 Discharge Locations.

You must determine whether listed species or critical habitat are in proximity to your MS4 storm water discharges or allowable non-storm water discharges. Listed species and critical habitat are in proximity when they are:

- Located in the path or immediate area through which or over which point source storm water or allowable non-storm water flows to the point of di scharge into the receiving water. This may also include areas where storm water from your MS4 en ters groundwater that has a direct hydrological connection to a receiving water (e.g., groundwater infiltrates at your MS4 and re-emerges to enter a surface waterbody within a short period of time.)

- Located in the immediate vicinity of, or near by, the point of discharge into receiving waters.

- Located in the area of an MS4 where storm wate r BMPs are planned or are to be constructed.

The area in proximity to be searched/surveyed for listed species will vary with the size of the MS4, the nature and quantity of the storm water discharges, and the type of receiving waters. You should use the method(s) which allow you to determine, to the be st of your knowledge, whether listed species are in proximity to your particular MS4. These methods may include:

- Conducting visual inspections. This method may be particularly suitable for MS4s that are smaller in size or MS4s located in non-natural se ttings such as highly urbanized areas where there is little or no natural habitat. For other MS4s, a vi sual survey may not be sufficient to determine whether listed species are in proximity.

- Contacting the nearest State Wildlife Agency or U.S. FWS offices. Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies.

- Contacting local/regional conservation groups such as natural heritage programs (see section H below). These groups inventory species and their locations and maintain lists of sightings and habitats.

- Conducting a formal biological survey. MS4s with extensive storm water discharges may choose to conduct biological surveys as the most e ffective way to assess whether listed species are located in proximity and whether there are likely adverse effects.

Step 2. Determine If You Can Meet Eligibility Criteria "B", "C", or "E"

Criterion B. You can certify eligibility, according to Criterion B, for coverage by this permit if you can answer "Yes" to all of the following questions:

- Has consultation, under ESA Section 7, alrea dy been completed for discharges from your MS4[3]?

- Did the previously completed ESA Section 7 c onsultation consider all currently listed species and critical habitat and address your storm wate r, allowable non-storm water, and discharge-related activities?

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[3] A formal or informal ESA Section 7 consultati on on this or another fe deral action (e.g., New source review under NEPA, application for a dredge and fill permit under CWA Sec. 404, application for an individual NPDES permit, etc.) addressed the effects of your MS4 discharges and discharge-related activities on listed species and critical habitat. (See 50 CFR 402.13).

- Did the ESA Section 7 consultation result in either a "no jeopardy" opinion by the Service (for formal consultations) or a concurrence by the Service that your activities would be "unlikely to adversely affect" listed species or critical habitat?

- Do you agree to implement all measures upon which the consultation was conditioned?

If you answered "Yes" to all four que stions above, you have met ESA eligibility Criteria B. Skip to Step 4.

If you answered "No" to any of the four questions above, check to see if you can meet Criteria C or E. or Go to Step 3.

Criterion C. You can certify eligibility, according to Criterion C, for coverage by this permit if you can answer "Yes" to all of the following questions:

- Has an ESA Section 10 permit already been issued for discharges from your MS4 [4]?

- Does your ESA Section 10 Permit consider all curren tly listed species and critical habitat, and address your storm water, allowable non-storm water, and di scharge related activities, for discharges from your MS4?

If you answered "Yes" to the two questions above, you have met ESA eligibility Criterion

C. Skip to Step 4.

If you answered "No" to either of the two questions above, check to see if you can meet Criterion E. or Go to Step 3.

Criterion E. You can certify eligibility, according to Criterion E, for coverage by this permit if you can answer "Yes" to all of the following questions:

- Did another MS4 operator previously certify ESA eligibility for your MS4 area [5]?

- Did the other operator's certification of eligibility consider all currently listed species and critical habitat and address your storm water, allowable non-storm water, and discharge related activities?

- Do you agree to implement all measures upon which the other operator's certification was based?

Before you rely on another operator's certification, you should carefully review that certification along with any supporting information. You also need to confirm that no additional species have been listed or critical habitat designated in the area of your MS4 since the other operator's endangered species assessment was done. If you do not believe that the other operator's certification provides adequate coverage for your MS4, you should provide your own independent endangered species assessment and certification.

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[4] You have a permit under section 10 of the ESA a nd that authorization addresses the effects of your storm water discharges and discharge-related activities on listed species and critical habitat. You must follow FWS procedures when applying for an ESA section 10 permit (see 50 CFR 17.22(b)(1)).

[5] In order to meet the permit eligibility requireme nts by relying on another operator's certification of eligibility, the other operator's certification must apply to the location of your MS4 and must address the effects from your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat.

If you answered "Yes" to all three questions above, you have met ESA eligibility Criteria

E. Skip to Step 4.

If you answered "No" to any of the three questions above, Go to Step 3.

Step 3. Determine If You Can Meet Eligibility Criterion "D"

Criterion D. You can certify eligibility, according to Criterion D, for coverage by this permit if you can answer "Yes" to all of the following questions:

- Have you determined that your MS4's storm water discharges, allowable non-storm water discharges, and discharge-related activities are "not likely to adversely affect" listed species or critical habitat, and/or have you reached agreement with the U.S. FWS or NMFS on measures to avoid, eliminate, or minimize adverse affects?

- Do you agree to implement all measures upon which the determination was conditioned?

Use the guidance below to understand adverse effect determinations, and to answer these questions.

If you answered "Yes" to the both questions above, you have met ESA eligibility Criterion D. Go to Step 4.

If you answered "No" to either of the questions above you are not eligible for coverage by this permit. You must submit an individual application for your discharges to EPA. (See 40 CFR 122.33(b)(2))

If you are unable to certify eligibility under Criterion A, B, C, or E, you must assess whether your storm water discharges, allowable non-storm water discharges, and discharge-related activities are likely to adversely affect listed species or critical habitat. "Storm water discharge-related activities" include: activities which cause, contribute to, or result in point source storm water pollutant discharges; and measures to control storm water discharges and allowable non-storm water discharges including the siting, construction, operation of best management practices (BMPs) to control, reduce or prevent water pollution. Please be aware that no protection from incidental takings liability is provided under this criterion.

The scope of effects to consider will vary with each MS4. If you are having difficulty in determining whether your MS4 is likely to cause adverse effects to a listed species or critical habitat, you should contact the appropriate office of the FWS, NMFS, or Natural Heritage Program for assistance. In order to complete the determination of effects it may be necessary to follow the consultation procedures in section 7 of the ESA. (See Criterion B information above, and section 7 consultation web link in section F below).

Upon completion of your assessment, document the results of your effects determination. If adverse effects are not likely, you are eligible under criterion "D" - proceed to Step 4 of this Addendum. Your determination may be based on measures that you implement to avoid, eliminate, or minimize adverse affects.

If the determination is "May Adversely Affect." You must contact the FWS and/or NMFS to discuss your findings and measures you could implement to avoid, eliminate, or minimize adverse affects. If you and the Service(s) reach agreement on measures to avoid adverse effects, you are eligible under criteria "D". Any terms and/or conditions to protect listed species and critical habitat that you relied on in order to complete an adverse effects determination, must be incorporated into your Storm Water Management Program (required by the permit) and implemented in order to maintain permit eligibility.

If endangered species issues cannot be resolved. If you cannot reach agreement with the Services on measures to avoid, eliminate, or reduce adverse effects, and the likely adverse effects cannot be otherwise addressed through meeting the other criteria, then you are not eligible for coverage under this general permit. You must seek coverage under an individual permit.

Effects from storm water discharges, allowable non- storm water discharges, and discharge-related activities which could pose an adverse effect include:

- *Hydrological*. Storm water discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.

- *Habitat*. Excavation, site development, gradi ng, and other surface disturbance activities, including the installation or placement of storm wa ter ponds or BMPs, may adversely affect listed species or their habitat. Storm water associat ed with MS4 operation may drain or inundate listed species habitat.

- *Toxicity*. In some cases, pollutants in storm water may have toxic effects on listed species.

Step 4. Submit Notice of Intent and Docume nt Results of the Eligibility Determination.

Once the ESA eligibility requirements have been met, and you have determined NHPA eligibility (see Addendum B), you may submit the Notice of Intent (NO I). Signature and submittal of the NOI constitutes your certification, under penalty of law, of your eligibility for permit coverage.

You must include documentation of ESA eligibility in the storm water management program required for the MS4. Documentation required for the various ESA eligibility criteria are as follows:

Criterion A: A copy of the most current county species lis t pages for the county(ies) where your MS4 and discharges are located. You must also include a st atement on how you determined that no listed species or critical habitat are in proximity to your MS4 or MS4 discharge locations.

Criterion B: A copy of the Service's biological opinion or concurrence on a finding of "unlikely to adversely effect" regarding the ESA Section 7 consultation.

Criterion C: A copy of the Service's letter transmitting the ESA Section 10 authorization.

Criterion D: Documentation on how you determined adverse effects on listed species and critical habitat were unlikely.

Criterion E: A copy of the documents originally used by the other operator of your MS4 (or area including your MS4) to satisfy the documentati on requirement of Criteria A, B, C or D.

E. Duty To Implement Terms and Conditi ons Upon Which Eligibility Was Determined

You must comply with any terms and conditions imposed under the ESA eligibility requirements to ensure that your storm water discharges, allowable non-storm water discharges, and discharge-related activities do not pose adverse effects or jeopardy to listed species and/or critical habitat. You must incorporate such terms and conditions into your MS4's Storm Water Management Program as requi red by the permit. If the ESA eligibility requirements of Part I.E cannot be met, then you may not receive covera ge under this permit, and must apply for an individual permit.

F. U.S. Fish and Wildlife Service Offices

National Websites For Endangered Species Information.
Endangered Species Home page: http://endangered.fws.gov/
ESA Section 7 Consultations: http://enda ngered.fws.gov/consultations/index.html

U.S. FWS Region 5
Division Chief, Endangered Species
U.S. Fish and Wildlife Service
ARD Ecological Services
300 Westgate Center Drive
Hadley, MA 01035-9589

Regional, State, Field and Project Offices
Project Leader, USFWS
Rhode Island Field Office
Shoreline Plaza, Rt 1A
P.O. Box 307
Charlestown, RI 02813

Project Leader, USFWS
Maine Field Office
1033 South Main Street
Old Town, ME 04468

Project Leader, USFWS
New England Field Office
22 Bridge Street, Unit #1
Concord, NH 03301-4986

Project Leader, USFWS
Vermont Field Office
11 Lincoln Street
Winston Prouty Federal Building
Essex Junction, VT 05452

G. National Marine Fisheries Services

Website: http://www.nmfs.gov

Regional Office
Protected Resource Program
National Marine Fisheries Service
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

Field Offices
Milford Field Office
National Marine Fisheries Service
212 Rogers Avenue
Milford, CT 06460

Protected Species Branch
NMFS
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543

H. Natural Heritage Network

The Natural Heritage Network comprises 75 independent her itage program organizations located in all 50 states, 10 Canadian provinces, and 12 countries and territories lo cated throughout Latin America and the Caribbean. These programs gather, manage, and distribute detailed informa tion about the biological diversity found within their jurisdictions. Developers, businesses, and public agenci es use natural heritage information to comply with environmental laws and to improve the environmenta l sensitivity of economic development projects. Local governments use the information to aid in land use planning.

The Natural Heritage Network is overseen by NatureServe, the Network's parent organization, and is accessable on-line at: http://www.natureserve.org/nhp/us_programs.htm, which provides website and other access to a large number of specific biodiversity centers.

Connecticut Natural Diversity Database
Natural Resources Center
Department of Environmental Protection

79 Elm Street, Store Level
Hartford, CT 06106

Maine Natural Areas Program
Department of Conservation
93 State House Station
Augusta, ME 04333
http://www.state.me.us/doc/mnap/home.htm

Massachusetts Natural Heritage & Endangered Species Program
Division of Fisheries and Wildlife
Route 135
Westborough, MA 01581
508/792-7270

New Hampshire Natural Heritage Inventory
Department of Resources & Economic Development
172 Pembroke Street, P.O. Box 30370
Concord, NH 03302
603/271-3623

Rhode Island Natural Heritage Program
Department of Environmental Management
Division of Planning & Development
83 Park Street
Providence, RI 02903
401/277-2776

Vermont Non-game & Natural Heritage Program
Vermont Fish & Wildlife Department
103 South Main Street, 10 South
Waterbury, VT 05671-0501
802/241-3700

Addendum B
Historic Properties Guidance

Applicants must determine whether their MS4's storm water discharges, allowable non-storm water discharges, or construction of best management practices (B MPs) to control such discharges, has potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places.

For existing dischargers who do not need to construct BMPs for permit coverage, a simple visual inspection may be sufficient to determine whether historic propertie s are affected. However, for MS4s which are new storm water dischargers and for existing MS4s which are planning to construct BMPs for permit eligibility, applicants should conduct further inquiry to determine whether historic properties may be affected by the storm water discharge or BMPs to control the discharge. In such instances, app licants should first determine whether there are any historic properties or places listed on the National Register or if a ny are eligible for listing on the register (e.g., they are "eligible for listing").

EPA suggests that applicants first access the "National Register of Historic Places" information listed on the National Park Service's web page: http://www.cr.nps.gov/nr. The addresses for State Historic Preservation Officers are listed in Part II of this addendum. Applicants may also contact city, county or other local historical societies for assistance, especially when determining if a place or property is eligible for listing on the register.

The following three scenarios describe how applicants can meet the permit eligibility criteria for protection

of historic properties under this permit:

(1) If historic properties are not identified in the pa th of an MS4's storm water and allowable non-storm water discharges or where construction activities are pl anned to install BMPs to control such discharges (e.g., diversion channels or retention ponds), then th e applicant has met the NHPA eligibility criteria of this permit.

(2) If historic properties are identified but it is determin ed that they will not be affected by the discharges or construction of BMPs to control the discharge, the applicant has met the NHPA eligibility criteria of this permit.

(3) If historic properties are identified in the path of an MS4's storm water and/or allowable non-storm water discharges or where construction activities are pl anned to install BMPs to control such discharges, and it is determined that there is the potential to a dversely affect the property, the applicant can still meet the NHPA eligibility criteria under of this permit, if he/she obtains and complies with a written agreement with the appropriate State or Tribal Historic Preser vation Officer which outlines measures the applicant will follow to mitigate or prevent those adverse effects. The contents of such a written agreement must be included in the MS4's Storm Water Management Program.
In situations where an agreement cannot be reach ed between an applicant and the State Historic Preservation Officer, applicants should contact the A dvisory Council on Historic Preservation listed in Part III of this Addendum for assistance.

The term "adverse effects" includes but is not limited to damage, deterioration, alteration or destruction of the historic property or place. EPA encourages applicants to contact the appropriate State or Tribal Historic Preservation Officer as soon as possible in the event of a potential adverse effect to a historic property. Applicants are reminded that they must comply with a pplicable State, Tribal and local laws concerning the protection of historic properties and places.

A. Internet Information on the National Register of Historic Places

The National Register of Historic Places is the Na tion's official list of cultural resources worthy of preservation. Authorized under the National Historic Preser vation Act of 1966, the National Register is part of a national program to coordinate and support public and privat e efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Regist er include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, e ngineering, and culture. The National Register is administered by the National Park Service, wh ich is part of the U.S. Department of the Interior.

An electronic listing of the ``National Register of Historic Places," as maintained by the National Park Service, can be accessed on the Internet at: http://www.cr.nps.gov/nr

B. State Historic Preservation Officers (SHPO)

Connecticut Historical Commission
59 South Prospect Street
Hartford, CT 06106
860/566-3005

Maine Historic Preservation Commission
55 Capital Street, Station 65
Augusta, ME 04333
207/287-2132

Massachusetts Historical Commission
220 Morrissey Boulevard

Boston, MA 02125
617/727-8470
TTD: 1-800-392-6090

New Hampshire Division of Historic Resources
P.O. Box 2043
Concord, NH 03302-2043
603/271-6435
TDD: 1-800-735-2964
Rhode Island Historic Preservation & Heritage Commission
Old State House
150 Benefit Street
Providence, RI 02903
401/222-2678

Vermont Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620-0501
802/828-3211

C. Advisory Council on Historic Preservation

The Advisory Council on Historic Preservation (ACHP) is an independent Federal agency that promotes the preservation, enhancement, and productive use of our Nati on's historic resources, and advises the President and Congress on national historic preservation policy.

The goal of the National Historic Preservation Act (NHPA), which established ACHP in 1966, is to have Federal agencies act as responsible stewards of our Nation' s resources when their actions affect historic properties. ACHP is the only entity with the legal responsibility to enc ourage Federal agencies to factor historic preservation into Federal project requirements.

As directed by NHPA, ACHP serves as the primary Federal policy advisor to the President and Congress; recommends administrative and legislative improvements for protecting our Nation's heritage; advocates full consideration of historic values in Federal decision ma king; and reviews Federal programs and policies to promote effectiveness, coordination, and consiste ncy with national preservation policies.

Main Office

Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004
Phone: (202) 606-8503
Fax: (202) 606-8647/8672
E-mail: achp@achp.gov
Internet: http://www.achp.gov/

Response to Comments

Environmental Protection Agency-New England (EPA) received many comments on the draft small municipal separate storm sewer system (MS4) permit from communities, transportation agencies, watershed associations, and private citizens. In accordance with 40 CFR 124.17, EPA must respond to significant comments raised during the public comment period. This Response to Comments document follows the subject order of the draft permit. The comments on a similar topic have been grouped together. When appropriate, lengthy comments have been paraphrased. Otherwise, the comments presented in the document are actual quotations. Comments requesting clarifications to the general permit or fact sheet are addressed in this document. Comments requesting changes to the fact sheet are not part of this document. The fact sheet is a document used to describe the basis of development of the draft permit. Since the basis used in the development of the draft permit has not changed, there are no changes to the fact sheet. Any changes between the draft general permit and the final general permit are described in this document.

Comment:
Some comments expressed confusion over who is the permitting authority.

Response:
For the State of New Hampshire and Indian Country in the States of Connecticut, Massachusetts, and Rhode Island, and federal facilities in Vermont, EPA is the permitting authority. The State of New Hampshire may choose, but is not required by EPA, to adopt this permit as a state permit under its permitting authorities.

In Massachusetts, EPA is issuing the permit under authority of the Federal Clean Water Act (CWA) and the Commonwealth of Massachusetts is issuing the permit under authority of the state's Clean Waters Act. The federal general permit and the state general permit are identical, however each agency may act independently regarding enforcement of its permit. This issue is addressed in more detail below.

Comment:
One comment letter raised the following legal questions/concerns:

- With respect to the permit issued for the Commonwealth of Massachusetts, please identify the enabling legislation (federal and state) which provides for the issuance of a joint permit with the Massachusetts Department of Environmental Protection. Massachusetts is not a delegated state.

- The provisions of the draft permit provide for both equal and separate administration of the NPDES permit by the state agency. The Clean Water Act (33 USC§§ 1251 et seq) does not delegate this permit authority to the Commonwealth.

- Creation by federal regulation of a new, separate, stand-alone permit administered independently by the state agency circumvents the legislative process of the Commonwealth.

- In addition, we do not believe that Massachusetts General Law and regulations cited further in the draft permit apply to this program. Under purpose and authority (314 CMR 3.01), it states "The provisions of 314 CMR 3.00 not only reflect the requirements of the Massachusetts Clean Waters Act, M. G. L. c. 21, ss 26-53 but also implement those provisions of 33 USC 1251 et seq. and regulations adopted thereunder necessary for the Department to assume delegation from EPA to implement the NPDES permit program within the Commonwealth." Since EPA has not gone through the public process necessary to delegate the NPDES program to the Commonwealth, creation of a new state permit through the draft federal permit is not appropriate. In addition, this

circumvents the Commonwealth's procedures for legislative and public review of any new state permit process.

Response:
This jointly issued small MS4 General Permit is not predicated on EPA delegating its NPDES permit authority to MA DEP. Under the CWA, EPA does not "delegate" authority, but rather EPA grants approval to a state to assume authority for the NPDES program under state law. As provided in the section G entitled "State Permit Conditions" in Parts II., IV., and V., the small MS4 General Permit is issued jointly by EPA and MA DEP pursuant to each agencies' respective federal and state law and regulations. The enabling legislation for EPA is the federal Clean Water Act, 33 USC §§ 1251 et seq., and the NPDES regulations promulgated thereunder at 40 CFR Part 122. The enabling legislation for the MADEP is the Massachusetts Clean Waters Act, M.G. L. c. 21, s.26-53 (including the specific authority to issue discharge permits at s.43) and DEP's Surface Water Discharge Permit regulations at 314 CMR 3.00.

The small MS4 General Permit is an NPDES permit issued by EPA and it is also a surface water discharge permit issued by the MA DEP pursuant to its separate and independent authority under the MA Clean Waters Act and 314 CMR 3.00. The joint issuance of the small MS4 General Permit does not constitute a "delegation" its NPDES permit authority to the MA DEP. Instead, EPA is issuing an NPDES permit and the MA DEP is issuing a state surface water discharge permit in a single, combined permit document. The MA DEP has its own independent statutory and regulatory authority to require and to issue a discharge permit to any proposed or existing discharge of pollutants to waters of the Commonwealth, including a general permit regulating small MS4s. Since the 1970s, it has been standard practice for MA DEP and EPA to jointly issue a single combined federal and state discharge permit, following joint public notices and joint public hearings (if held).

As the language, from 314 CMR 3.01 highlighted in the comment above indicates, the MA DEP has promulgated surface water discharge permit regulations pursuant to its independent authority under the MA Clean Waters Act that contain provisions that the MA DEP believes would allow it to assume authority to run the NPDES permit program in Massachusetts if MA DEP applies for program approval at some point in the future. To date the MADEP has chosen not to seek assumption of the NPDES permit program from EPA.

Endangered Species

Several comments were received concerning the requirement that permit applicants certify that discharges from the small MS4 are not likely to adversely affect endangered species. Specific comments on this topic are presented below. In an effort to address many of the comments received, an addendum has been added to the final permit. The addendum provides information regarding EPA's obligations under the Endangered Species Act (ESA) it also provides step by step guidance to aid in determination of permit eligibility as it applies to ESA.

Comment:
One community expressed its objection to ESA certification requirements. The objection is that this requirement was never discussed in educational materials provided by EPA.

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

part 402 and 40 CFR 122.49(c)). The issuance of an NPDES permit by EPA is an action which is subject to ESA. EPA received letters from FWS and NMFS with regard to the draft permit. The Services concurred with the criterion options presented in the draft permit. In order to be eligible for this general permit, a permittee must certify that none of its storm water discharges, allowable non-storm water discharges, or discharge related activities is likely to impact a threatened or endangered species. A permittee must certify eligibility under one or more of the five criteria described in the permit.

During the public comment period, EPA held four public meetings and one public hearing. The purpose of the meetings were to provide the regulated community information about the conditions in the draft permit, including the conditions related to endangered species. The purpose of the public hearing was to allow interested parties an opportunity to submit comments for the official record. Inclusion of conditions relating to ESA are standard components of NPDES permits. Additionally, in May 2002, EPA-HQ posted a model small MS4 general permit on its website. This model general permit contained language concerning endangered species. The language in the draft general permit was very similar to the language in the model. EPA believes that information about this requirement has been available.

The certification requirement remains part of the permit.

Comment:
One community asked how it will know if there are any endangered or threatened species in its municipality. The community requested additional resources be provided.

Response:
As stated in the introduction to this topic, Addendum A has been added to the final permit. It provides guidance and sources of information regarding endangered species.

Comment:
One comment letter stated a belief that if a discharge already exists, there is no need to check the impact of that discharge on endangered species. The comment also expressed the belief that the endangered species requirement should only relate to new discharges covered under EPA's construction general permit (CGP).

Response:
EPA disagrees with this comment. Because a discharge already exists, does not mean that it has no impact. As stated previously, the provisions of the ESA apply to federal actions. In this instance, the federal action is the issuance of the general permit which authorizes storm water discharges from small MS4s. Storm water discharges from small MS4s have not been previously authorized, therefore these discharges, as part of the federal action authorizing them, must be evaluated for compliance with the endangered species requirements of the permit. Discharges from a construction project subject to EPA's CGP must meet the ESA requirements in that permit. The requirement to evaluate existing discharges remains in the permit.

Comment:
Does the permittee evaluate ESA requirements under this permit ?

Response:
Yes, the permittee should follow the guidance in Addendum A of the final general permit.

Comment:
One comment letter expressed a belief that the ESA requirements only apply to new development and redevelopment, and to storm water discharges from industrial activities and construction.

Response:
The provisions of the ESA apply when EPA undertakes an action. See previous response regarding when the terms and conditions of the ESA apply.

Comment:
One community felt compliance with the ESA certification requirements prior to March 10, 2003 is difficult.

Response:
Certification with regard to ESA should be based on the permittee's knowledge at the time of submission of the Notice of Intent (NOI). MS4 operators should make determinations based on current information. As a permittee implements its storm water management program, new information regarding locations of outfalls may become available. As the new information becomes available, the permittee may need to reevaluate the ESA certification criterion to ensure that permit eligibility with regards to ESA is maintained.

Essential Fish Habitat

Comment:
One comment stated the belief that EPA's Federal Register notice is sufficient to satisfy the federal requirement with regard essential fish habitat and no further work from the applicant is required.

Response:
The belief stated in the comment is correct, unless specifically notified, no further action regarding Essential Fish Habitat (EFH) is required by the applicant. Under the Magnuson-Stevens Fishery Conservation and Management Act, the issuance of a federal permit is a federal action that may require EPA to consult with the National Marine Fisheries Service if EPA determines that the action may adversely affect an EFH. The consultation process is described in 50 CFR §600.920. EPA believes that the conditions contained in the general permit are protective of EFH . If information is received which indicates a discharge may adversely affect an EFH, the NMFS may make recommendations regarding the discharge. If an activity does not adversely affect an EFH, a consultation is not necessary.

National Historic Preservation

Several comments were received concerning the requirement to certify that discharges from the small MS4 do not impact historic places as described under the National Historic Preservation Act (NHPA). Most comments requested information about how to meet the requirement.

An addendum, B, has been added to the final permit. The purpose is to provide guidance to municipalities with regard to compliance with this condition.

Comment:
A community expressed its objection to the NHPA certification requirements. The community's objection is that this requirement was never discussed in educational materials provided by EPA.

Response:
The National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of federal undertakings on historic places. This includes places that are either listed or eligible for listing on the national Register of Historic Places. The term "federal undertaking" is defined in the existing NHPA regulations to include any project, activity, or program under the direct or indirect jurisdiction of a federal agency that can result in changes in the character or use of historic properties (see 36 CFR part 800). The issuance of a general permit by EPA is considered a "federal undertaking". To be eligible for coverage under this permit, the permittee must certify that storm water discharges do not impact historic properties.

This certification provision of the general permit meets EPA's obligation under NHPA.

During the public comment period, EPA held four public meetings and one public hearing. The purpose of the meetings were to provide the regulated community information about the conditions in the draft permit, including the conditions related to historic places. The purpose of the public hearing was to allow interested parties an opportunity to submit comments for the official record. Inclusion of conditions relating to NHPA are standard components of NPDES permits. Additionally, in May 2002, EPA-HQ posted a model small MS4 general permit on its website. This model general permit contained language concerning historic places. The language in the draft general permit was very similar to the language in the model. EPA believes that information about this requirement has been available.

The certification requirement remains in the permit.

Comment:
One commenter believes that it is unnecessary to cross-check every discharge point with the National and State Registers of Historic Places because existing discharges are not defined as causing impact under section 106 of HPA. This provision should only relate to new discharges.

Response:
Because a discharge already exists does not mean that there is no impact to historic properties. The provision applies to discharges and implementation of best management practices of the storm water management program.

Comment :
One community stated that compliance with the NHPA certification requirements by March 10, 2003 is difficult. The community felt that the draft permit was not clear about whether there is a five year window for completion of this requirement.

Response:
Permit applicants should submit the NOI based on the best information available at the time of submission. As the program develops, new information may become available. As the new information becomes available, the permittee may need to reevaluate the NHPA certification criterion to ensure that permit eligibility with regards to NHPA is maintained.

Discharges to Water Quality Impaired Waters

Comment:
The five month compliance period with Part I. C. of the permit is unreasonable.

Response:
Part I.C. of the permit has two parts. The first part requires permittees to determine whether any waterbody which receives a discharge from the municipality is included on the CWA Section 303(d) list of impaired waterbodies.

The §303 (d) list, developed by each state and approved by EPA, is a readily available list of water bodies which are impaired due to particular pollutant or pollutants. The permit directs the MS4 to determine if any of these waters are in the community and if there is a discharge from the municipality to that water or waters. If there are no waters listed or no discharges to those waters, then Part 1.C. requirements have been met.

If there is an impaired water, the pollutant causing the impairment is usually listed. If the permittee discharges the pollutant which causes the impairment, the storm water management program must include best management practices (BMPs) designed to address such pollutant. In situations where a specific pollutant isn't listed, but rather an effect such as "low DO", is listed, the permittee should attempt to determine the secondary cause which produces the effect listed as the impairment. The permittee should attempt to address the secondary cause in the storm water management program, if possible.

The permit does not require compliance with the second part of Part 1.C. in a five month period. In the development of its storm water management program, the permittee must include BMPs which address the pollutants listed as causing the impairment. The permit allows municipalities the full permit term to implement their storm water management program. It is expected that compliance with this part of the permit will occur over time as the BMPs are developed, implemented and potentially modified, if necessary.

EPA does not believe this permit provision is unreasonable. It remains a condition of the permit.

Comment:
The requirements of Part I.C. 2 should apply to all storm water discharges not just those discharging to impaired waters.

Response:
EPA disagrees with this comment. Part I.C.2 is intended to address the situation where waters have been identified as being impaired by a pollutant which the MS4 will discharge. In such situations, more aggressive storm water strategies would likely be necessary than in the situation where the waters are not impaired. Application of the requirements in Part I.C.2. is not appropriate in situations where impairment had not been identified.

Comment: A comment noted that the requirements of Part I.C. do not require the permittee to submit the plans for review and approval. The comment also requested that additional conditions be included for discharges to the Assabet River and its tributaries. The additional conditions suggest specific deadlines. The following list are the suggested additional conditions:

- No later than one year after permit issuance, each MS4 shall submit a storm water management program to EPA and DEP for review and comment. The plan shall contain a proposed monitoring/assessment program to help prioritize the selection and geographic placement of BMPs to control phosphorus and other pollutants.

- Within two years of permit issuance, each MS4 shall implement a monitoring/assessment program to help prioritize the selection and geographic placement of BMPs to control phosphorus and other pollutants.

- Within five years or life of the permit, each MS4 shall its revise plan based on the Assabet River nutrient TMDL, USGS Assabet Basin regional MODFLOW application and other relevant information and submit to EPA and DEP for review.

Response:
The additional conditions have not been added to the permit. Until the evaluation of the storm water program described in 40 CFR 122.37 has occurred, EPA recommends that no additional requirements beyond the minimum control measures be imposted on regulated small MS4s without the agreement of the affected MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality. EPA and MA DEP do not have sufficient

information to include watershed specific conditions at this time and therefore have determined that watershed specific requirements are not being included in the first round of permitting. Once permittees have had an opportunity to actually implement their programs, future evaluations may indicate that additional measures, including watershed specific requirements, may be necessary. Additional measures will be considered at that time.

Total Maximum Daily Load (TMDL)

Comment:
Many comments were received regarding the permit's requirements related to compliance with TMDLs. Some objected to the draft permit requirements as being unreasonable. Others felt that permittees should be allowed to appeal a discharge limit established pursuant to a TMDL. Some comments just requested clarification on TMDLs in general.

Specific comments received:

- The TMDL language implies a reference to quantitative water quality issues and not simply qualitative issues. The time frame is objectionable as it is not reasonable to determine pollutant levels adequate for a certification to be signed. No existing guidance or resources from the state or federal level are available.

- Part I.B.2(1): Because of lack of reliable data that identify specific sources of contaminants, this provision is subjective. This provision should include a process so that the permittee has the ability to appeal, based on reasonable scientific evidence, a TMDL wasteload allocation. An exemption from this requirement should be allowed based on demonstration of insignificant environmental benefit based on the cost.

- Permittees are required to address how they will control the discharge of pollutants identified as the cause of impairment absent a TMDL. One comment stated that controlling the discharge of pollutants identified should be on ongoing effort as TMDL reports are approved.

- Part I.D.3: This section requires the permittee to make a subjective assessment. An appeal process should be included.

- It is counter productive to determine the efficacy of WLA (Waste load allocation) attainment by gauging the response of the receiving water. It is the goal to have the water quality of the receiving water meet water quality standards and not to show water quality controls are functioning because the may be inadequate to meet limits established in the TMDL.

- There is no mention of when the assessment is to be completed. There is no discussion on the extent of ongoing monitoring that will be required of the permittee to ensure that control measures are achieving the reduction of pollutants called for in the TMDL.

- Recommended that permittees who want to discharge into waters with approved TMDLs also address opportunities to improve instream flow. Since the permittee must assess the current control measures, they would have the occasion to assess if current measures adequately address recharge and instream flow protection.

Response:
A TMDL defines for a particular water body an acceptable "load" of a particular pollutant which has been identified as causing an impairment. This "load" is the total amount of pollutant which can be discharged

to the water body without contributing to the existing impairment. This allowable load is divided among the sources which contribute the pollutant. Sometimes a specific waste load allocation (WLA) is assigned to identifiable sources such as an industry or a waste water treatment plant. Other times allocations are made to a category of sources. Storm water discharges are typically not singled out individually, but rather are given a collective WLA.

The permit does not specify any specific time frames with regard to compliance with TMDLs. Nor does the permit require that a municipality submit a certification pertaining to pollutant loadings which are discharged from the MS4.

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

The municipality must include specific management practices in the implementation of the minimum control measures required by the permit designed to address the control of the pollutant for which the TMDL is established. The municipality must properly install and maintain all BMPs . The permit states that documentation demonstrating that the BMPs are functioning as designed will be used to assess whether the terms of the TMDL are being met.

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

Part I.B.2(l) of the permit describes discharges not authorized by the permit. A discharge not consistent with an approved TMDL is not an authorized discharge. The TMDL development processes has opportunities for a public participation and appeals. The only process for an appeal of a TMDL is to bring an action in state court challenging the state's TMDL of in federal court challenging EPA's approval of the TMDL. Also, federal law does not provide an exemption from TMDL based on cost. However, we anticipate the cost effective BMPs will, in most cases, but sufficient to satisfy requirements of TMDLs.

Part I.D.3 of the permit requires a permittee to assess whether there are existing storm water controls for the discharges which address the TMDL. It is unclear how this determination is subjective, either there are controls on the storm water or there are not. It is also unclear what in this determination should be subject to appeals. As mentioned previously, the only process for appealing a TMDL is either in state court, to challenge the state's TMDL, or in federal court, to challenge EPA's approval of the TMDL.

The permit requires all permittees, not just those who discharge to a water body with an approved TMDL, to evaluate opportunities, when appropriate, for recharge.

On November 22, 2002, EPA/HQ Offices of Wetlands, Oceans, and Watersheds and Wastewater Management issued a memorandum entitled "Establishing Total Maximum Daily Load Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on those WLAs. Based on current regulations, the memo describes the following requirements regarding TMDLs and storm water discharges.

- NPDES - regulated storm water discharges must be addressed by the waste load allocation (WLA) component of a TMDL, they may not be addressed by the load allocation (LA) component of a TMDL.

- It may be reasonable to express allocations for NPDES - related storm water discharges from multiple point sources as a single categorical WLA when data is insufficient to assign each source or outfall an individual WLA.

- NPDES permit conditions must be consistent with the assumptions and requirement of available WLAs. Water quality based effluent limitations for NPDES regulated storm water discharges which implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs).

The permit as written is consistent with EPA's regulations and the November 22 memorandum since it requires permittees to develop and implement BMPs consistent with approved TMDLS.

Obtaining Coverage/Notice of Intent

Comment:
A community objected to a compliance deadline of March 10, 2003.

Response:
The March 10, 2003 deadline applies only to submission of a Notice of Intent. The permit allows the full five year permit term for implementation of the storm water management program.

Comment:
A few comments raised questions about the fees associated with submission of the NOI to MADEP and another state agency opposed being assessed fees.

Response:
Municipalities in Massachusetts seeking coverage under the general permit also must submit a written Notice of Intent to the MA DEP. Municipalities must use DEP's forms for the Notice of Intent for Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), permit code BRP WM 08A, which can be obtained at DEP's website, http://www.state.ma.us/dep/brp/stormwtr/strmfms.htm or by contacting,

Massachusetts Department of Environmental Protection
Office of Watershed Management
627 Main Street, 2nd Floor
Worcester, MA 01608
508-792-7470

The MADEP application fee for BRP WM 08A is $60. The fee applies to the Commonwealth and any agencies or authorities of the Commonwealth. (See the definition of "Person" under the MA DEP fee regulations at 310 CMR 4.02) However, cities, towns, counties, and districts of the Commonwealth are exempt from paying the above application fee. All information regarding submittal to DEP of NOI forms and

fee (if applicable), is described in the BRP WM 08A Notice of Intent application package.

Comment :
The permit requires communities in Massachusetts to pay a fee. Furthermore, under the federal requirements of minimal cost, shouldn't the municipalities be exempt?

Response:
The above referenced MA DEP application fee is not a federal requirement. However, as stated above, municipalities are exempt paying the fee.

Comment:
A standard form for NOI submission would be helpful.

Response:
Both MADEP and NHDES have developed forms. EPA will accept NOIs submitted on these forms. EPA does require an original signature. The forms are available at the following websites:
Massachusetts: http://www.state.ma.us/dep/brp/stormwtr/strmfms.htm
New Hampshire: http://www.state.nh.us/des

Comment:
The local Conservation Commission and regional Massachusetts DEP offices should receive copies of the Notice of Intent.

Response:
A municipality may want to share the contents of the NOI with its conservation commission, but that has not been made a permit requirement. Similarly, MA DEP may choose to share NOIs with the regional offices, but that has not been made a permit requirement.

Comment:
Municipalities in Massachusetts must use the form designated by MA DEP. EPA is requiring that we utilize a form that has not been included in the draft and which is not available for comments by municipalities.

Response:
Massachusetts requires the use of form BRP WM 08A (see previous response). EPA does not require the use of a particular form. EPA will accept information submitted on either the Massachusetts form BRP WM 08A and New Hampshire Notice of Intent Form. All signatures must be originals.

Comment:
A comment suggested that a storm water system conveyance map should be included as part of the NOI submission.

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

The control measure requires a permittee to develop a map with the locations of all outfalls and receiving waters. It does not require a complete map of the community's storm water system. EPA has not changed the NOI requirements to require submittal of a complete storm water conveyance map. Such a requirement is beyond the scope of the NOI requirements at 40 CFR 122.34(b)(3)(ii)(A).

Comment:
Request that NOIs be placed on public notice from the day after receipt for a period of 60 days.

Response:
All NOIs submitted are considered public information unless claims of confidentiality have been made in accordance with 40 CFR 122.7. If a person or organization wishes to review a specific NOI, a request to EPA can be made. Arrangements to view the specific NOI will be made.

Allowable Non-Storm Water Discharges

Comment:
Regarding the dewatering of utility catch basins, is there a presumption that this discharge is uncontaminated, a separate provision or regulation that addresses this type of dewatering activity, or is it potentially an unauthorized non-storm water discharge? This should be clarified.

Response:
The dewatering of utility catch basins is an unauthorized non-storm water discharge. The list of allowable non-storm water discharges included in the permit presents types of discharges which EPA believes typically are not expected to be significant contributors of pollutants to a municipality's system. Utility catch basin dewatering, in contrast, typically does contain significant, often unknown, pollutants and would need to be addressed by the illicit discharge detection and elimination minimum control measure.

Comment:
Nutrients from landscape fertilizers have been identified as a leading source of pollution of streams, brooks & rivers. Since landscape irrigation is a significant source of nutrient pollution, it should not be exempted under this permit.

Response:
Landscape irrigation has been retained as an allowable non-storm water discharge. However, this and the other listed non-storm water discharges are authorized only if the permittee has determined that the discharge is not a significant contributor of pollutants to its system. If a municipality determines landscape irrigation discharges are contribute pollutants to its municipal storm sewer system, then they are considered illicit discharges and must be addressed under the illicit discharge detection and elimination minimum control measure.

Comment:
Given the probability of nonpoint source pollutants in road wash water, having street wash water as an allowable discharge is not keeping with intent to reduce the pollutant loads reaching waterways. This non-storm water discharge should not occur unless there are controls to mitigate the pollutant load of the road wash water.

Response:
EPA is not aware of communities that wash streets to the extent that a significant discharge of pollutants are likely to occur. Typical street washing involves spraying a mist on the street followed by some type of sweeping or vacuuming. The volume of water used is usually not sufficient to cause a discharge. Street wash water remains as an allowable non-storm water discharge. However, similar to the response above, this and the other listed non-storm water discharges are authorized only if the permittee has determined

that the discharge is not a significant contributor of pollutants to its system. It is a significant contributor of pollutants, then it is considered to be an illicit discharge and must be addressed under the illicit discharge detection and elimination minimum control measure.

Part II - Massachusetts

Comment:
One community was in favor of keeping with the federal NPDES Phase II intent for the six minimum control measures. The city is opposed to the certification requirement listed in Part II. Additionally, the city is opposed to any requirement outside of the six minimum controls that would require storm water monitoring.

Response:
The current permit does not require any monitoring. The certifications contained in the permit are regarding the accuracy of the information which is submitted on the NOI. EPA believes that such certifications are appropriate. The comment did not specify what certification requirement was objectionable, therefore EPA is not able to respond.

Storm Water Management Program (Part II. A.)

Comment:
One comment requested clarification on the provision which details when the MS4 may rely on another entity for implementation of one or more of the minimum control measures. Specifically, the concern is that the language in the draft permit could be restrictively interpreted to preclude partnership in the actual implementation of a control measure.

Response:
The permit condition is intended to implement 40 CFR 122.35. This section deals with relying on another entity. EPA is not trying to discourage cooperation and partnership. This permit condition applies when the other entity has agreed to implement a minimum control measure for the permittee not with the permittee. The language has been changed to provide greater clarity.

Comment:
What is the specific expiration date of the permit?

Response:
The permit will expire five years from the effective date. The effective date will be determined based on the date the permit is published in the Federal Register.

Comment:
A comment requested that the language in Part II. A.1. of the draft permit be amended to include a requirement that all minimum control measures be implemented by the permittee.

Response:
The permit has not been changed to contain the language requested. The regulations clearly allow for other entities to implement measures for a municipality. EPA, however, does expect municipalities to have a clear understanding as to how their storm water management programs are being implemented. EPA also expects that when another entity does implement a measure for a municipality, the municipality will have full knowledge of the actions being undertaken by the other entity.

Comment:

A watershed association requested language that describes how the permittee will be monitored as having implemented "all elements" of a storm water management plan by the expiration date of this permit.

Response:
EPA, NHDES and MADEP will review annual reports and assess progress based on completion of tasks described in the NOI submission. EPA has not provided language which specifies when a municipality has implemented "all elements". EPA believes that the storm water management program should change and grow with the community. Aspects such as mapping all outfalls and identification and removal of illicit connections, may have a tangible end point, but other aspects such as education may need to change over time.

Comment:
Many comments received concerned the identification of specific watersheds in the draft permit.

- Why are only communities within certain river basins being required to adopt local ordinances pertaining to ground water recharge?
- The reason for singling out the Charles, Ipswich and Aberjona River basins is not explained.
- Request that all watersheds be subject to recharge requirements not just the Charles, Ipswich and Aberjona River basins.
- Request change in Part II, Section A. 4(c) to apply to any MS4 municipality that discharges to a river basin and/or sub basin with "High" or "Medium" stress as determined by one of the two methods described in the Massachusetts Water Resource Commission's Stressed Basin Report.
- Request that Part II. Section A.4. (c) should also apply to communities in the Assabet River Basin.
- It seems inappropriate to single out only certain watersheds for recharge measures. as all watersheds throughout the Commonwealth should be aware of and respond to water quantity challenges.
- The application of standard 3 of the Massachusetts Storm Water Policy should not be limited to the three referenced basins. (Charles, Ipswich, Aberjona).
- Disagree with the decision to set the Charles, Ipswich and Aberjona apart from all basins within the Commonwealth.

Response:
After evaluating available information, MA DEP determined that the available information does not at this time support the inclusion of watershed specific requirements as described in the draft permit. It is possible that future permits will be refined and may include additional requirements specific to individual watersheds. However, Part II.B.8 of the final permit requires all small MS4s to evaluate physical conditions, site design, and BMPs to promote groundwater recharge and infiltration where feasible in the implementation of the minimum control measures. In addition, Part II.B.8 has been revised (this revision is discussed later in this document) to require all small MS4s that discharge within "high" or "medium" stressed basins to minimize the loss of recharge from new development and redevelopment consistent with Standard 3 of DEP's Storm Water Management Policy in areas within and outside of the jurisdiction of the Wetland's Protection Act.

Comment:
A comment requested clarification as to why standards 5 and 6 of the Massachusetts storm water policy not included as part of a Qualifying Local Program.

A comment recommended that the storm water policy be an explicit minimum requirement for any storm water management plan developed in Massachusetts.

Response:
The regulations allow EPA to refer to an existing state or local requirement if it is at least as stringent as the corresponding federal requirement. In the Massachusetts storm water policy, standard 5 requires to storm water discharges from areas with higher potential pollutant loads to use specific BMP's.

Standards 6 applies to discharges to critical areas and requires the use of specific BMP's approved for

critical areas. EPA evaluated the requirements for each minimum measure, and compared it to the standards of the storm water policy. EPA does not believe that either standard 5 or standard 6 are comparable to any of the requirements of the minimum control measures. Therefore, the standards were not referenced in the permit.

The state's storm water policy is applicable only in areas under jurisdiction of the Wetlands Protection Act. Therefore, the permit does not require communities to adopt a policy in areas not subject to the jurisdiction of the Wetlands Protection Act.

Comment:
Part II. A. 5. - Clarification was requested on whether municipalities must list all possible BMP's for a specific measure, or should they list the BMPs they are planning to use.

Response:
Municipalities should list only the BMPs they intend to implement in their individual communities during the permit term.

Part II. B - Minimum Control Measures

Public Education and Outreach

Comment:
Educational material should be distributed to the entire community. If educational materials are included as "bill stuffers" then it is possible that renters and some business owners would not receive information.

Response:
EPA agrees with this comment. The required public education program must be implemented in the urbanized area, and an education program that reaches the entire community, rather than just homeowners, will be the most effective. In addition, in situations where a community is only partially in an urbanized area, EPA encourages communities to prioritize distribution of materials and if possible include the entire community rather than just the urbanized area. The permit does not require specific public education approaches, but leaves it to each small MS4 to define who is in its community and develop educational materials accordingly. EPA has developed some educational materials and will make them available.

Comment:
Request that the general permit specify that regulated MS4s must commit to at least one activity each year for public education and outreach, and public involvement.

Response:
The permit does not specify specific activities or the frequency of activities. It leaves the permittee the task of developing the materials or activities for the education and outreach control measure. The objective of the public education measure is to both provide information about the impact on water quality from storm water and to provide information regarding what steps the public can take to reduce pollutants in storm water. EPA does not believe that one activity over the course of a five year permit will meet the objective of the minimum control measure.

Public Involvement & Participation

Comment:
Public involvement should be encouraged enthusiastically. The formation of a storm water management committee is a great step toward more involvement. Caution is given that if a committee is formed, any interested individual should be welcome to participate. The committee should not be limited to people who

might be selected by community officials or department heads.

Response:
EPA agrees. Public involvement should include opportunities for all in the community who wish to participate to be able to do so. Part II. B. 2(b) of the draft permit provides examples of public involvement. This section has been clarified to express that intent.

Additionally, Parts III, IV, and V which have similar language, have also been clarified.

Comment:
The language should clearly state that a wide range of public participation activities are encouraged. The language of the draft permit could be restrictively interpreted to mean that public participation encompasses only those two activities.

Response:
EPA agrees. The language has been clarified to encourage a wide range of activities.

Illicit Discharge Detection and Elimination

Comment:
Enforcement procedures available to a town are limited by state law. Enforcement powers of a town are even more limited against a state agency. There is no effective mechanism available to a community to enforce violations. Some enforcement authority should be incorporated into this permit to assist communities in such circumstances.

Response:
A storm water advisory committee assisting MADEP has been developing model bylaws for use by small MS4s, including a specific bylaw prohibiting illicit discharges (i.e. discharges that are not composed entirely of storm water) to a small MS4. It is MA DEP's expectation that the model bylaws will be available for use by communities in the Spring of 2003.

Consistent with a municipality's authority under M.G.L.c. 40, the bylaw may provide for the assessment of penalties of up to $300 for each offense under s.21 and/or the use of non-criminal disposition provisions in s.21D (the so-called "ticketing" statute). While a state agency may be immune from a municipal regulation that would prevent or interfere with the performance of an "essential governmental function" of that agency, a bylaw that prohibits a state agency from making illicit discharges to a small MS4 is not a substantial barrier to a state agency's ability to carry out its essential governmental function. Instead, the bylaw is intended to ensure that the state agency carry out its governmental function in this context (i.e. when it results in a discharge to the small MS4) in a manner that complies with federal and state statutes and regulations. The issue of state immunity from municipal regulation is more relevant in cases where a local bylaw (e.g. a zoning bylaw) prohibits a state agency or state authority from siting a facility, the operation of which is directly related to an essential governmental function identified in the enabling legislation of the state agency or state authority. That said, there may be circumstances where a small MS4s authority is constrained in some fashion by state law. The permit has been changed to be clear that development regulatory mechanics and enforcement of requirements must be met to the extent allowable under state law.

Comment:
Part II. B. 3(a). This requirement is contradictory. The permittee is required to develop a storm sewer map but the mapping is to be based on existing information. Requiring a map relying only on existing information would produce an incomplete map.

Response:
The mapping requirement is to map all outfalls. A permittee should START with existing information. Existing information may needed to be verified and supplemented with field surveys. The language regarding mapping has been clarified.

Comment:
The term sewer system should be clarified in Part II. B.3 (c) (iv).

Response:
This section refers to the separate storm water system. The language has been clarified.

Construction Site Storm Water Runoff Control

Comment:
Is it possible to augment the definition to include any activity resulting in land disturbance and not limit it to construction activities?

Response:
The regulatory language regarding this minimum control measure states " ... to reduce pollutants in any storm runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre.." Although the regulations limit this control measure to land disturbance due to construction related activities, a municipality may choose to include other types of land disturbance activities for regulations within its storm water management program.

Comment:
Toxic controls, such as provisions for refueling, storage of fertilizers, solvents etc. should also be required at construction sites.

Response:
The regulations (40CFR 122.34(b)(4)(ii)(c)) describe minimum measures to be included in the storm water management program. A small MS4 may require additional controls at construction sites if it wishes to do so.

Post Construction Storm Water Management

Comment:
Is the program to address storm water runoff restricted to only that runoff entering a municipal storm water system, or does it apply to storm water runoff directed to a water body?

Response:
The small MS4 storm water program deals with runoff into the municipal system. However a small MS4 could supplement its program with specific requirements that could serve to reduce storm water runoff going directly into a water body. For example, the municipality could require redevelopment and new development to minimize impervious surfaces or maximize open space.

Comment:
Part II. B.5(a); this requirement could be more proactive by requesting that communities adopt an ordinance or other regulatory mechanism that would prohibit any increase in post construction runoff volumes or rates.

Response:
EPA has not made that a permit requirement. The permit reflects the regulations, which provide a great

deal of flexibility for small MS4s to develop a storm water management program that best suits their needs. While permittees are free to adopt such regulations if they wish, EPA does not believe it is advisable to require all permittees to take this approach.

Good Housekeeping and Pollution Prevention in Municipal Operations

Comment:
Part II B.6(b); Recreational areas such as municipal golf courses and school playing fields should be added to the list with parks and open space.

Response:
These examples have been added to the list of areas to consider in evaluating municipal operations.

Comment:
Part II. B. 7 - Efforts to foster cooperation should be expanded to include any entity regulated under Phase II.

Response:
Cooperation is encouraged. EPA has not mandated cooperation between regulated entities.

Comment:
A watershed association suggested language in the permit that supports cooperation with other entities. Also, the association also requested language that directs the permittee to seek work sharing opportunities with other entities.

Response:
The permit contains a recommendation for communities to cooperate. EPA cannot "require" communities to work with other entities within the limitations of this permit. The requested language has not been added to the permit.

Comment:
The following comments were received regarding Part II. B. 8

- Efforts to recharge and infiltrate storm water are sound policies and the inclusion of the provisions is applauded.
- Massachusetts section requires the permittee to consider opportunities for ground water recharge and infiltration in the implementation of the control measures. Is this stated wrong? It is our understanding that the storm water program was a water quality program not a water quantity program. This requirement places a financial burden on communities, which we do not believe is allowed by federal law.
- A comment letter recommend that the wording be changed to reflect the fact that the standard for examining and implementing the measures should be based on the suitability of the area for recharge. The letter also requested that a permittee be required to explain fully and specifically its reasons for not implementing recharge and infiltration control measures.

Response:
The language in Part II. B. 8. has been modified to more clearly express expectations. Similar modifications were made to Part IV. B. 9, and Part V. B. 9. One comment stated that the storm water program is not a water quantity program. On the surface this statement is true, however EPA believes that when the quantity of water is insufficient in a watershed to support aquatic life, it becomes a water quality issue. Infiltration, when appropriate is one method which can contribute to water quality improvements.

The comment regarding financial burden did not provide sufficient information for EPA to respond to the

assertion that evaluation of infiltration opportunities creates a financial burden.

Program Evaluation Part II. C.

(Please note that Program Evaluation is now in Part II.D of the final permit. Similarly, it is now in Part III.D, Part IV.D and Part V.D)

Comment:

Part C. 1. The provision to evaluate compliance of the storm water management program is not developed. Does this evaluation get submitted to EPA and DEP or is it an internal check on progress that may or may not produce a written evaluation? Are there opportunities for public involvement and comment on the process and final evaluation? Does a community have to establish criteria and a ranking system to use to assess and evaluate compliance and progress?

Response:

The permittee must evaluate its program and assess how it meets the conditions in the permit. The assessment is submitted as part of the annual report. Permittees must provide opportunities for public involvement in both the development and implementation of the storm water management program. Permittees may wish to make their annual reports available to the public prior to submission. A community does not have to establish a criteria and ranking system. They should evaluate their progress based on information submitted as part of the NOI and efforts towards meeting defined measurable goals.

Comment:

Part II. C. 2(c)(i) - Will EPA or DEP provide guidance on what it means to be cost prohibitive? Will the benefits gained by the implementation of a BMP be weighed as well as the costs of a BMP?

Response:

EPA does not have a specific formula for determining when an item is cost prohibitive. Permittees must make every effort to comply with the terms and conditions of the permit. If a permittee implements a BMP which is not effective to ensure compliance, the permittee must evaluate other options. In the course of evaluation, if a permittee believes that the cost to implement a different BMP is beyond the means of the community, the community should submit to EPA and the state agency a cost benefit analysis. The community should provide evidence which supports an assertion that a BMP is prohibitive. EPA will review the evaluation and respond.

Record Keeping

Comment: The types and details of the records required by the permit should be specified.

Response: The permittee should keep records detailing the development of its storm water management program, all information used to complete its notice of intent, any monitoring data and any inspections reports.

Reporting

Comment:

A standard reporting form should be developed.

Response:

At this time, there is no standard form. However one may be developed in the future in cooperation with MADEP and NHDES.

State Permit Conditions

Comment:
Part II. G. Suspensions and revocations should be across the board and not on a per agency basis.

Response:
The general permit is being issued in the Commonwealth of Massachusetts as both a federal permit and a state permit under separate authorities. Please refer to previous comments. Each agency may act independently to suspend, revoke and enforce the provisions of the permit.

Comment:
A comment recommended that language contained in Part II. A. be included in Parts IV.A and VA.

Response:
The requirement of Part II. A refers to a municipality's ability to use the authorities of the Wetlands Protection Act to implement parts of its storm water management program. The non-traditional municipalities such as universities and the transportation sector do not have the legal authorities to implement the Massachusetts Wetlands Protection Act. Therefore, the condition was not added to those portions of the permit.

Comment:
A comment recommended that the language of Part II. B. 8 be included in Parts IV. B and V.B.

Response:
Language similar to Part II. B. 8 has been included in Parts IV and V.

Comment:
A comment recommend that mapping requirements for permittees covered under Part V, transportation, be extended from just the outfalls to the entire storm water conveyance system including catch basins, drainage ditches and curbing.

Response:
The mapping requirement is based on 40CFR 122.34(b) (3)(ii)(a) which requires identification of all outfalls and receiving waters. A requirement to submit a map of the entire storm sewer conveyance system is beyond the scope of the regulations.

Comment:
The transportation agency should expedite a storm sewer system map with available information and then prioritize the mapping of sensitive areas.

Response:
Additional examples of areas to be considered as priorities have been added to Part IV B. 8 and Part V B.8.

Comment:
Part V. B. 4 (f) This requirement could be strengthened to include making an effort to notify the public early in the planning stages.

Response:
All municipalities are encouraged to include many opportunities for public participation.
Some transportation agencies also have public notice obligations for their own agency activities. When an agency has public participation activities as part of standard agency procedures, those public participation activities can be used as part of the public participation requirements of the general permit.

Comment:

Part V. B.6(b) There should be maintenance activities associated with roadways and drainage systems added to this requirement.

Response:
Roadway drainage systems has been added to the areas subject to good housekeeping.

Part VI - Standard Conditions

Comment:
Part VI. F - Duty to provide information. It would be helpful if the local authority also had the power to require the permittee to provide relevant information required to determine compliance with the permit.

Response:
The conditions contained in Part VI are based on the conditions contained in 40 CFR § 122.41 - conditions applicable to all permits. The language has not been changed. The duty to provide information refers to a permittee's responsibility to provide information, within a reasonable time, to EPA when information is requested. The information is used by EPA to determine among other things compliance with the permit. It is not a local authority's responsibility to determine if a permittee is in compliance with EPA's permit. The ability of local authorities to require information to be provided would depend on state and local law.

Part VII - Definitions

Comment:
Request the addition of definitions for "New Storm Water Discharge and "Notice of Intent". Request revisions of the definitions for "runoff coefficient" and "wetlands".

Response:
The definition of runoff coefficient contained in the permit is the same as the one found at 40 CFR 122.26(b)(ii). No change has been made.

The definition of wetlands contained in the permit is the same as the one found at 40 CFR 122.2. No change has been made.

Definitions for large municipal separate storm sewer system, medium municipal storm sewer system, and municipal storm sewer system have been added to the permit.

The description of a Notice of Intent is in Part I.E. of the permit. A definition has not been added.

The term New Storm water discharge is not used in the permit in a manner such that it requires a definition.

Part VIII - Reopener

Comment:
This section should also include some language pertaining to the process by which a permit can be modified should it be found that a permitted discharge has the reasonable potential to cause or contribute to a violation of a water quality standard. In many cases, it will likely be the local Conservation Commission which will spot such problems. It would be helpful if the procedure to report a potential violation were included in the permit documentation.

Response:
This section describes when EPA may require a municipality to apply for an individual permit or an alternative general permit. A general permit is not modified if one permittee is in violation of a permit condition. The permittee may be required to get an individual permit, or may be subject to some type of enforcement order. Situations of non-compliance should be reported to EPA's Water Technical Unit. The Water Technical Unit is located in the Office of Environmental Stewardship, One Congress Street-Suite 1100 (SEW), Boston, MA 02114.

General Comments

Comment:
There are significant differences between the requirements established for Massachusetts and New Hampshire (the permit application fee is one example). It is not clear why there is such a disparity between states as to the level of environmental permitting process, especially given the fact that the NPDES program is Federal, and both New Hampshire and Massachusetts are "non-delegated" states. The explanation for this disparity should be included in the NPDES General Permit.

Response:
Massachusetts and New Hampshire have different state laws, and therefore each state requested certain unique conditions in order to satisfy their respective laws. In no case was the permit for each state made less stringent than would otherwise be required by federal law.

Comment:
The Storm Water Program as presented does not provide clear goals and objectives. Municipalities are unable to know what is expected and what EPA is looking for. As a result a considerable amount of time and resources will be utilized in trying to figure out, on their own, what the EPA regulation means and what is an appropriate response to the rule. The time spent and resources used would be better spent implementing a structured program.

The program as outlined in the draft permit leaves municipalities vulnerable to enforcement measures if they guess wrong in developing and implementing a program that does not meet unspecified EPA or DEP expectations. It is unfair that a municipality should be penalized for the lack of clear direction regarding what is required.

The program presented does not provide an equal playing field for municipalities. An example of this is that two adjacent communities, who have similar populations, commercial basis, road miles, etc., can submit different programs. The programs submitted can vary greatly in terms of cost and approach.

The program as presented limits the ability of Highway Associations and other organizations to instruct their members using consistent principles and regulatory expectations.

Response:
The Phase II storm water program is designed to be flexible. Municipalities are expected to examine where they are as far as storm water management is concerned. They need to assess what is being done and what needs to be done. The permit reflects the various minimum requirements outlined in the regulations at 40 CFR 122.34. EPA does not expect MS4s to "guess" what BMPs or measurable goals they will be achieving. EPA expects communities will develop their programs based on the characteristics of the community, the severity of pollution problems, the level of storm water management already in place, and so forth through a thoughtful evaluations and decision making process..

Two similar communities can submit two different programs. However, they both must contain the minimum measures described in the permit, and explain how they will implemented.

Highway Associations and other organizations are free to provide guidance to their membership. EPA strongly recommends that the following guidance be used in development of storm water management program:

1. EPA's menu of BMPs - Available at :
   http://www.epa.gov/npdes/stormwater/menuofbmps/memu.htm
2. EPA's measurable guidance - Available at :
   http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm
3. EPA's Manual - Storm Water Phase II Compliance Guide (EPA/833-R-00-002, March

2002) - Available at http://www.epa.gov/npdes/pubs/comguide.pdf

Comment:
The permit presented has specifics contained in the draft permit that eliminate the requirement for communities to develop a program that is best suited for their needs. This results in a contradiction of what has been explained and what is stated in the law.

Response:
It is unclear which specifics contained in the permit limit a community's ability to develop a program best suited for it. EPA has not identified specific BMPs or measurable goals in the permit. EPA has laid out minimum expectations and provided guidance as to where a community should focus efforts.

Comment:
Extend the program to private colleges and universities.

Response:
Private colleges and universities are subject to the storm water program if they have a construction project greater than an acre or operate an industrial activity defined at 40 CFR 122.26 (b)(14). The Phase II storm water program by regulation applied only to "municipalities" as that term is defined in the regulations and therefore cannot be extended to private entities. On a case by case basis, EPA could determine that storm water controls may be necessary for a non-municipal entity if it is deemed to be significant contributor of pollutants to waters of the U.S.

Comment:
Require posting of all outfalls that are contaminated with Public Health Warning signs until tests show they are clean.

Response:
The permit does not contain any monitoring requirements. The suggested condition implies that a monitoring program exists at a municipality. Since the permit does not require a monitoring program, the permit has not been changed to require this type of posting.

Comment:
Recommend that all outfalls be posted with a unique identifier.

Response:
The permit has not be changed to require this. However, identification of outfalls is informative and would be beneficial to a municipality. The public could encourage their communities to incorporate such a practice into their storm water management programs.

Comment:
Comments were submitted on the Massachusetts storm water policy.

Response:
The comments on the storm water policy were noted by the MA DEP. They, however, are not really relevant to the small MS4 general permit. Comments raised on the Massachusetts policy will be addressed separately by MA DEP to the entity which made the comments.

Comment:
One comment requested clarification in identifying what municipal activities are industrial activities subject to storm water permitting.

Response:
Industrial activities defined at 40 CFR 122.26(b)(14) that are owned or operated by a municipality are subject to permitting under 40 CFR 122.26(c), but are not covered by the small MS4 general permit.

Information concerning permitting requirements for storm water discharges from industrial activities that are owned by a municipality is available on Region 1's website.

Response to Comments

Part IX - Massachusetts 401 Water Quality Certification Requirements
Prepared by Massachusetts Department of Environmental Protection

Comment:
The introductory paragraph to this section includes a listing of the order in which conditions added to a permit are to be presented. It, however, fails to include any conditions which may be added as a result of permits issued under local regulations and ordinances which are required to be adopted as part of the Phase II program as outlined in Part II, Section A.4.c of the draft permit.

Some towns obtain their municipal water supply from wells and not surface water.
Do the public water supplies referenced in this section include all public water supplies or just surface water supplies?

Response:
MADEP would urge a community to evaluate all priority resources which could be affected by storm water runoff including ground water recharge areas as well as tributaries to surface water supplies.

Comment:
The 401 certification should contain language on infiltration of storm water for recharging ground water. Part B. of the certification should require compliance with the Massachusetts storm water policy town-wide.

Response:
The final permit has specific language regarding recharge and infiltration. The permit does not go so far as to require adoption of the storm water policy town wide, however a municipality has the ability to develop local by-laws to make the storm water policy apply throughout the municipality.

Comment:
A requirement that measurable goals be established for reducing the effective impervious area discharging to the MS4 should be included in the § 401 Certification. Permittees should be required to estimate the current effective impervious area discharging to the MS4 and to establish quantifiable goals for reducing the area's effective imperviousness.

The permittee should also be required to evaluate alternatives for infiltrating storm water runoff entering the MS4 from all sources and to develop incentives and/or requirements for achieving reductions in the current effective impervious area discharging to the MS4.

Response:
The permit requires a municipality to consider opportunities for recharge when implementing the minimum measures. The focus on recharge could lead a municipality to establish a measurable goal concerning impervious area. A specific requirement to include impervious area as part of a measurable goal has not been added to the 401 certification requirements.