

**Response to Comments
Draft General Permit
Rhode Island Pollutant Discharge Elimination System
Storm Water Discharge from Small Municipal Separate Storm Sewer Systems
and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s**

From February 11, 2003 to March 14, 2003, the Rhode Island Department of Environmental Management (DEM) solicited public comments on the draft Rhode Island Pollutant Discharge Elimination System (RIPDES) General Permit for Storm Water Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s (General Permit). A Public Hearing was held on March 13, 2003 at the DEM, 235 Promenade Street, Providence Rhode Island. In response to the Public Comments received during the February 11, 2003 to March 14, 2003 comment period and the March 13, 2003 public hearing, DEM prepared selected changes to the original draft General Permit. DEM held a public workshop on July 24th, 2003 to discuss milestones and measurable goals included in the permit as part of the six minimum control measures requirements and to solicit feedback on the proposed changes to Parts IV.B.1 through 6. The informal workshop focused only on the previous comments received on measurable goals, interim milestones and the six minimum measures (Parts IV.B.1 through 6). The DEM informed participants in the workshop that any significant comments or issues discussed during the workshop that were not already formally submitted during the previous comment period or hearing should be formally submitted during the subsequent public comment period and hearing. DEM public noticed a Summary of Selected Changes to the Draft General Permit and solicited public comments from August 21, 2003 to September 23, 2003. A Public Hearing was scheduled for September 22, 2003 at the DEM, 235 Promenade Street, Providence Rhode Island upon request. No requests for a public hearing were received. No comments were received during the August 21, 2003 to September 23, 2003, comment period.

The following is a synopsis of the comments received and the DEM's responses to those comments. Written comments were received from representatives from Cranston, East Greenwich, Lincoln, Middletown, Bristol, Warwick, Coventry, Narragansett, North Providence, Woonsocket, Pawtucket, Jamestown, South Kingstown, Rhode Island League of Cities and Towns, the Rhode Island Department of Transportation, Southern Rhode Island Conservation District, the Conservation Law Foundation and Fuss & O'Neill Inc. consultants, during the February 11, 2003 to March 14, 2003 comment period.

Comment(s) 1:

East Greenwich, Lincoln and Middletown

Section I.2.a. (page 4)

"A completed NOI and of copy of the SWMP must be submitted by the effective date of the permit for storm water discharges from small MS4s if designated under the RIPDES Rule 31; and for all storm water discharges associated with Industrial Activity that are eligible for this permit.

The regulatory deadline for DEM to issue the Final General Permit for Small MS4s was December 8, 2002. In order to meet this deadline, DEM should have published the Draft

General Permit in September of 2002. DEM did not publish the Draft General Permit until February 11, 2003 (five months late). The Draft General Permit contains numerous specific requirements that are going to be challenged by the regulated community because they go above and beyond requirements established by EPA. Therefore, this Draft Permit may undergo revisions. It is not feasible to require submittal of a SWMP until after the towns have had time to review and react to the FINAL Permit.

It was EPA's intent for the States to have a Final Permit in place 90 days after the Final Permit is in place.

It is noted that some of the new requirements have deadlines 6 months to a year beyond the submittal of the SWMPP. The town would prefer to develop one comprehensive SWMPP and obtain town council approval for that plan, then to submit a partial SWMPP on the permit effective date and a second revised plan 6 months later. Considerable amounts of time and effort go into revising, producing and copying a SWMPP. The grant and subsequent agreements with consultants was to develop a single plan, go through the public notice process and then submit the plan to DEM. Additional deliverables will require additional resources. These resources would be better spent implementing the plan than providing DEM with numerous different versions of a SWMPP. Therefore, the Town of East Greenwich recommends the submittal of one SWMPP that meets the requirements of the Final Permit be required 90 days after the Final Permit becomes effective."

Response 1:

The DEM agrees that the intent of the federal rule was to provide applicants with 90 days for the submission of the NOI and SWMPP. In accordance with Rule 46(b), the General Permit will become effective thirty (30) days after the DEM makes a final permit decision. The DEM signed the final general permit on November 14, 2003, therefore the general permit becomes effective December 19, 2003. Given the delay in developing and issuing a final RIPDES general permit, the general permit was not available on March 10, 2003 established by EPA Rules. The DEM could not amend the RIPDES Regulations to extend the application deadline beyond that required by EPA as the DEM Rules are required to be at least as stringent as the Federal Rules. Therefore, DEM will use enforcement discretion and recognizes that not all permittees will have a fully complete plan due to the delay in the availability of the final general permit and will be required to seek approval of the final plan at the local level. The final general permit gives applicants ninety (90) days or until March 18, 2004 to submit the NOIs and SWPPPs to the Department. The language in Part I.C.2 a and b of the permit has been changed as follows:

I.C.2 Deadlines for Requesting Authorization

- a. A completed NOI and a copy of the SWMPP must be submitted ~~by within ninety (90) days of~~ the effective date of this permit for storm water discharges from small MS4s if designated under RIPDES Rule 31(a)(5)(i)(A), (B), (C), and (D); and for all storm water discharges associated with Industrial Activity that are eligible for this permit.
- b. A completed NOI and a copy of a SWMPP, must be submitted ~~by June 10, 2003~~ within one hundred and eighty (180) days of the date of ~~written~~ notice ~~from the RIPDES Program, whichever comes later,~~ if the MS4 is partially or completely

located outside of a regulated area and is designated under RIPDES Rule 31(a)(5)(i)(E), (F), (H), (I) or (J).

*The final general permit establishes specific requirements for the development and implementation of a SWMPP including required measurable goals to ensure development and implementation of the program. Unless specified, the municipality has five years to fully develop and implement the SWMPP. DEM recognizes that the BMPs and measurable goals selected should be tailored to meet the specific needs of the local community. However, in some instances DEM has included specific measurable goals for the development of strategies or procedures within each of the minimum measures that are more specific than the RIPDES Regulations Rule 31 and the NPS SWMPP Grant guidance to minimize the number of changes or additions that the municipalities must make to complete the planning process and submit a completed SWMPP by the application deadline. If the above-mentioned strategies or procedures are not already in the SWMPP at the time of submittal, the applicant must include the appropriate measurable goals and is given additional time to develop and submit amendments to the SWMPP to DEM in accordance with the establish interim milestones and measurable goals. However, if the applicant wishes to complete the planning process and submit one comprehensive SWMPP, the operator of the MS4 has the option of submitting a SWMPP that addresses **all** the requirements of the general permit by the application deadline.*

Comment(s) 2:

a. Town of Middletown

"It appears that there are more than thirty items in the general permit that must be addressed in the Town's Phase II SWMPP that were not included in the scope of work required by RIDEM in the grant agreement entered into with the Town last August. That scope of work was the basis for contracting with our consultant and guiding the work of the steering committee and the consultant in preparing our draft SWMPP, which was submitted to RIDEM last month. These additional items were therefore not discussed as part of the public process that was undertaken in drafting the plan. I have attached to a partial list of the additional items identified by our consultant.

Including these items in the general permit as requirements so late in the process will likely require an additional round of public meetings and significant amendments to our draft plan, resulting in additional expense to the Town and delays in completing the final SWMPP. It appears that these additional requirements, added costs, and delays may require amendments to the grant agreements and the consultant contracts that the towns and RIDEM have been operating under. RIDEM should consider revising the general permit to make these additional items recommendations rather than requirements, particularly those items that are not required by USEPA.

Many of the requirements in the general permit that were not included in the grant scope of work (discussed above) will require substantial town resources to implement, with much of the work required in the first or second year of the plan. These items include the drafting of ordinances, regulations, and procedures, and the implementation of these new regulations through application processes and inspections. As with many towns, Middletown has limited staff and resources with which to accomplish these tasks, particularly within the deadlines imposed by the general permit. RIDEM should consider revising the general permit to make these additional items recommendations rather than

requirements, particularly those items that are not required by USEPA. At the very least, consideration should be give to relaxing the timelines for implementation."

b. City of Cranston

The city is currently performing many of the minimum control measures, but its programs are not formalized. This permit does not provide the flexibility specified in the regulations and guidance materials. The City is not in a position to control to a minimum frequency of activities without a full understanding of the system. It is unclear what environmental benefit RIDEM expects or actually will be derived from increased activities and costs.

Response 2:

Although a variety of BMPs found in EPA's menu of BMPs are provided as options to meet the requirements of the RIPDES Phase II regulations, DEM felt it was necessary to include a limited number of interim milestones and measurable goals in the final general permit. DEM feels that in order to accomplish full implementation of the Phase II program by the end of the first permit term (five years) a number of interim milestones and measurable goals have to be met along the way. Some of the interim milestones selected will be the basis for the development of a particular minimum measure and will facilitate the implementation of other measurable goals in the program. Therefore, DEM did not remove all interim milestones and measurable goals from the final general permit. However, based on comments received as discussed below, the DEM did amend certain selected measurable goals and relax the timeframes of certain interim milestones to allow more time for development and implementation.

Comment(s) 3:

Bristol, South Kingstown and Warwick

"Regarding Deadlines for Requesting Authorization: The draft indicates that a completed NOI and a copy of the SWMPP must be submitted by the effective date of this permit for storm water discharges from small MS4's. What is the effective date? Is it the date the final permit is issued or some time after that issuance? If it is the date the final permit is issued there would be no time to respond to changes between the draft and final rule.

The draft goes on to say, "A completed NOI and a copy of the SWMPP, must be submitted by June 10, 2003 or within one hundred and eighty days of the date of notice, whichever comes later, if the MS4 is partially or completely located outside of a regulated area. Does this mean that a municipality that is not totally urbanized per the 2000 census is afforded this grace period? Please clarify."

Response 3:

Please see response #1 for explanation on the effective date of the permit and the date by which an application is required.

Communities that are partially located within a regulated area need to submit a permit application within ninety (90) days of the effective date of the permit for coverage of their storm water discharges within the regulated areas. For discharges outside of regulated areas DEM

requires that when a TMDL is completed or when the discharge is designated as significant contributor the operator of the discharge has to submit to the Department a complete permit application within one hundred and eighty (180) days of notice from the Department.

Comment(s) 4:

Bristol, South Kingstown and Warwick

"Permit Period: Given the fact that we have passed several deadlines with respect to the issuance of a draft and final permit as established in the law, how does this effect the permit period and the timeline operators will have to comply with items that have specific timelines associates with them? Please define the permit period and relate it to the timeline you have established for certain items to be completed by i.e., first year, second year, etc. "

Response 4:

The permit period is defined as the time from the effective date to the expiration date of the general permit. The general permit becomes effective thirty (30) days from the date of signature and is issued for a five year permit term. Therefore the permit expires on December 19, 2008. The timelines associated with the interim milestones and required measurable goals have been established relative to the effective date of the permit.

For those operators with discharges outside of regulated areas the timelines would be established relative to the date the operator was notified in writing that the discharges require a permit.

Comment(s) 5:

a. Bristol, South Kingstown and Warwick

Strategies for Minimum Measures 1 and 2:

The draft permit requires that municipalities who do not have a documented strategy in place for Minimum Measures 1 and 2, must include the development of such a strategy as a measurable goal within the first six months of the program.

The six-month timeline is inadequate given the breadth of the efforts identified in the draft permit to develop such a strategy. In the interest of ensuring that the public is served through the education process and their participation in these important undertakings, a minimum of one year is recommended to develop comprehensive strategies regarding these minimum measures. The six month timeline will be particularly difficult for smaller operators with limited staffing capabilities who have to rely on volunteer help to address these issues"

b. City of Cranston

This is a manageable task, however, the city has not had time to fully determine strategies other than general programs and general targeted audiences.

The City and its consultant have spent a significant amount of time already to develop the SWMPP. We request this language reflect the fact that most plans are developed at this time and it may not be practical to involve the public in all aspects of the development of the plan. We concur that the public should have the opportunity to comment on the plan upon submission to RIDEM. We also agree that the public should be encouraged to participate the implementation and annual evaluation of the plan.

Response 5:

The public involvement requirement is meant to be a continuous process. To ensure that the public is served adequately through the education process and their participation in these important undertakings, the Department has agreed to extend the deadline to develop strategies from within the first six months to within the first year. The language in Part IV.B.1.b and 2.b has been modified as follows:

1. Public education and outreach

* * *

- b. Decision Process/Milestones. The operator must document the decision process for the development of a storm water public education and outreach program. The rationale statement must address both the overall public education program and the individual BMPs, measurable goals and responsible persons for the program. If documented strategies are not in place to meet the requirements of Part IV.B.1.b. 2 and 4 of this permit at the time the SWMPP is required to be submitted, the operator must include development of the strategiesy within the first six months-year of the program as a measurable goal. Any changes to the SWMPP to include the strategies must be submitted in writing in accordance with Part IV.E.2 of this permit. The rationale statement must include the following information, at a minimum:

* * *

2. Public Involvement/Participation.

* * *

- b. Decision Process/Milestones. The operator must document the decision process for the development of a storm water public involvement/participation program. The rationale statement must address both the overall public involvement/participation program and the individual BMPs, measurable goals and responsible persons for the program. If documented strategies are not in place to meet the requirements of Part IV.B.2.b.2 of this permit at the time the SWMPP is required to be submitted, the operator must include development of the strategiesy within the first six months-year of the program as a measurable goal. Any changes to the SWMPP to include the strategies must be submitted in writing in accordance with Part IV.E.2 of this permit. The rationale statement must include the following information, at a minimum:

Comment(s) 6: (Note: same as comment #17 under Post Construction Comments**)**

Bristol, South Kingstown and Warwick

**Post Construction Storm Water Management Strategies Concerns on deadlines
Strategies Regarding Decision Process/Milestones:**

The draft permit requires that operators develop strategies regarding Part IV.B.5.b.3, 5,6, 10 and 12 during year 1 of the permit period. These items address pre-application processes, coordination with existing state programs, new discharges, post construction inspection of BMP's and the long term O&M of existing structural BMP's.

It is recommended that these actions be moved to the end of year two which is consistent with the timeline operators will be required to review all construction plans which disturb greater than one acre of land area. The additional time will also be needed to determine internal assignment of these items within the operator's structure."

Response 6:

To be consistent with the timeline to fully implement the Construction and Post-Construction Minimum Measures by the end of year two, the DEM has changed the timelines to develop procedures and strategies accordingly. Since this comment also affects similar requirements under Part IV.B.4.b (Construction Site Storm Water Runoff Control Minimum Measure), the language in Parts IV.B.4.b and IV.B.5.b have been modified to allow for the requested extension as follows:

4. Construction Site Storm Water Runoff Control

* * *

- b. Decision Process/Milestones. *The operator must document the decision process for the development of a construction site storm water control program. The rationale statement must address both the overall construction site storm water control program and the individual BMPs, measurable goals and responsible persons for the program. If documented strategies and procedures are not in place to meet the requirements of Part IV. B.4.b.2, 5 and 8 of this permit at the time the SWMPP is required to be submitted, the operator must include development of the strategies and procedures within the ~~first~~ second year of the program as a measurable goal. Any changes to the SWMPP to include the strategies must be submitted in writing in accordance with Part IV.E.2 of this permit. The rationale statement must include the following information, at a minimum*

5. Post Construction Storm Water Management in New Development and Redevelopment

* * *

- b. Decision Process/Milestones. *The operator must document the decision process for the development of a post-construction storm water management program. The rationale statement must address both the overall post-construction storm water management program and the individual BMPs, measurable goals and responsible persons for the program. If documented strategies and procedures*

are not in place to meet the requirements of Part IV.B.5.b. **2**, 3, 5, 6, 10 and 12 of this permit at the time the SWMPP is required to be submitted, the operator must include development of the strategies and procedures within the **first second** year of the program as a measurable goal. Any changes to the SWMPP to include the strategies must be submitted in writing in accordance with Part IV.E.2 of this permit. The rationale statement must include the following information, at a minimum:

Comment(s) 7:

Bristol, South Kingstown and Warwick

Ordinances:

“In several locations within the general permit it is indicated that operators are required to develop and then adopt ordinances regarding items such as illicit discharge prohibition ordinances within a two year period.

It is not possible for municipalities to guarantee that such an ordinance will be passed by a local council or Town Meeting. Regarding the need for enabling legislation, the same applies as to the operator’s ability to ensure that such legislation will be passed by the legislature.”

Response 7:

The final general permit requires the development of ordinances such as those required under Minimum Measures (illicit discharge detection and elimination, construction, and post-construction) to the extent allowed under State or local law. DEM has determined that the interim milestone of developing and adopting the ordinances within two years is necessary and reasonable. The DEM included the interim milestone to ensure municipalities take timely steps to develop and adopt the necessary ordinances. It is the DEM’s position that Rhode Island’s regulated communities already have sufficient authority to adopt the required ordinances such as the ordinance required for Illicit Discharge Detection and Elimination that meet the requirements of Section IV.B.3.a of the general permit. The operator should include a schedule in the SWMPP that indicates appropriate steps will be taken to ensure that the ordinance will be adopted by the milestone. The steps should include any informational workshops and meetings necessary to educate the local authorities and include adequate time for review and modification of proposed language. If enabling legislation is required or for reasons beyond the operator’s control the interim milestone is not met, the DEM will evaluate the level of effort put forth by the operator in trying to achieve this measurable goal when considering the necessity and scope of an appropriate enforcement action.

Comment(s) 8:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O’Neill

"Cooperation with Interconnected MS4s IV.C: Interconnections will likely not be entirely known until the system mapping is completed, it may be unknown where there are

interconnections with other MS4s. This deadline should be extended to coincide with the schedule to complete mapping of the system."

Response 8:

The DEM agrees with the commentor that interconnections may not be known until the entire system is mapped. The final general permit does not contain a deadline to map the entire system. Therefore, the language in Part IV.C of the permit was changed as follows:

IV.C. Cooperation with Interconnected MS4s. ~~The operator must identify all physical interconnections with other MS4s by the third year within the first year of the program. If additional physical interconnections are identified in subsequent years they must be reported in an annual basis in accordance to Part IV.G of this permit.~~ The operator must attempt to work cooperatively with other interconnected MS4s, ~~whose discharge is determined to be a significant contributor of pollutants, to reduce the impact of the discharges.~~

In general, operators should be aware where there is likelihood for interconnections and identify these areas in the SWMPPs. Operators of interconnected systems should work together and coordinate efforts to reduce the impacts of the discharges. The operators who own the outfall and are responsible for the discharge have the incentive to identify all physical interconnections. The owner of the outfall may petition the DEM, to designate discharges from the upstream interconnected system as a significant contributor of pollutants. If such a determination is made the upstream operator will be notified and will be required to obtain permit coverage or may be required to amend an existing SWMPP to address the interconnected system and the pollutants of concern.

COMMENTS REGARDING SIX MINIMUM MEASURES

IDDE COMMENTS

Comment 9:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Illicit Discharge Detection and Elimination IV.B.3.b.2: While it is prudent to uniquely identify each outfall, there are other methods or systems (GIS technology/mapping) in place that can achieve identification of an outfall without the need to physically tag each one. We do not believe that there is a significant benefit to physically tagging these outfalls and then maintaining the tags beyond what mapping could provide. Some of these outfalls are also not readily accessible. Lastly, it is unclear if this requirement applies to any size outfall or only major ones (i.e. >24" diameter)."

Response 9:

Tagging provides ease of identification, public awareness, and accuracy of reporting for water quality studies and investigations. The general permit language has been changed to explain that tagging will not be required when the outfall is inaccessible with submission of proper documentation to DEM. In addition, the general permit language has been changed to explain

that tagging of outfalls is optional if the operator of the MS4 develops GIS maps that are of sufficient accuracy to allow identification of individual pipes when revisiting their locations. The permit requirements apply to all outfall pipes regardless of size. Language in Part IV.B.3.b.2 of the permit was changed as follows:

IV.B.3.b.

2. Procedures for tagging of outfall pipes. The operator should implement a tagging program to identify and number outfall pipes. If and when an outfall is deemed inaccessible this requirement may be waived, however, the operator of the MS4 must submit to the Department documentation that demonstrates why the outfall was not tagged. Tags are recommended to contain the following information: name of the municipality or facility that operates the discharge and discharge serial number for the particular outfall. Tags should be legible, located as near to the outfall as possible, made of durable material such as metal, maintained on a regular basis, such as cleaned and inspected to ensure tag is properly attached. The operator should develop a system assigning unique serial numbers associated with each outfall. Tagging of outfalls is optional if the operator of the MS4 develops GIS maps showing the location of outfalls and the information used to create these maps is of sufficient accuracy to allow the identification of individual pipes when revisiting their locations.

Comment(s) 10:

Bristol, South Kingstown and Warwick

" Mapping of Storm Water Outfalls: On page 12 of the draft permit under item b.1. indicated that the operator must map all outfalls by the third year.

There is not mention of minimum size, nor does it say whether this mapping effort is limited to the urbanized areas only? Is there a minimum size for mapping and is mapping limited to the urbanized areas only?"

Response 10:

The associated RIPDES Rules and the general permit apply only to regulated areas (e.g. Urbanized Areas, Densely Populated Areas or any subsequently designated areas). RIPDES Rule 3 defines outfall as "a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State". Rule 3 defines point source as "any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture". Therefore mapping of outfalls is applicable to all outfalls, regardless of its size, located in Urbanized Areas and Densely Populated Areas for municipalities.

Comment(s) 11: Related to use of GPS technology.

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Illicit Discharge Detection and Elimination IV.B.3.b.4: Using GPS units exclusively may not necessarily achieve the goal of locating each outfall. A signal is not always guaranteed. Conventional survey or other techniques such as pulling coordinates from a map could also be employed, with the same results. The requirement could instead read "The coordinates of each outfall must be obtained in the RI State Plane Coordinate System, NAD83." The method of determining these coordinates should be left to the community. Is RIDEM also expecting that the same requirements for locating outfalls apply to the other elements of the system? Is it necessary to bring the plat maps into the same coordinate system?"

Bristol and Warwick

"GPS of Outfalls: The draft indicates that on page 13 that operators must determine the location of outfalls using GPS technology.

This is an unnecessary financial burden on communities who should have the option to choose this technology. There are issues with cost, security and accuracy associated with this requirement and it should be eliminated."

Response 11:

DEM does not agree that conventional survey or other techniques such as pulling coordinates from a map could also be employed, with the same results. Determining the location of outfalls using USGS maps would not be as accurate as using GPS to determine the coordinates and may not be accurate enough to allow revisiting the locations. The present GPS technology offers a high degree of accuracy at a relatively low cost. In addition, the time required to get an accurate reading using GPS units would be much less than the time required using conventional survey techniques. However, the language in the permit was changed to allow for the use of advanced surveying technology.

DEM has clearly stated in the final general permit that requirements for locating outfalls do not apply to the other elements of the system. It is recommended that operators use a similar process but it is not required. At a minimum, the operator must implement a process that facilitates future investigations (see response to comment no. 12).

The language in the permit was changed as follows:

IV.B.3.a.

1. *If not already existing, the operator must develop an storm sewer system outfall map. The map must show the location of all outfalls and the names of all waters that receive discharges from those outfalls. At a minimum recording of additional elements, such as, location of catch basins, manholes, pipes within the system, must be completed for those portions of the system that are associated with the investigation and tracing of illicit discharges detected from the dry weather survey of outfalls, identification of physical interconnections with other regulated MS4s, municipal construction activity projects, and catch basin inspections.*

IV.B.3.b.

1. ~~Procedures for identification of the location of outfalls. Description of how an storm sewer-outfall map will be developed. Outfall locations must be determined using Global Positioning System (GPS) units, operators may substitute using GPS units with advance surveying technology to generate latitude-longitude coordinates of sufficient accuracy to allow for the identification of individual pipes when revisiting their locations. A description of the sources of information used for the maps, and procedures to verify the outfall locations with field surveys. If already developed described how the map was developed. The operator must include a measurable goal to develop an storm sewer-outfall map showing the location of all outfalls and names and locations of all receiving waters completed by the third year of the program. If already developed, describe how the map was developed and a description of the sources of information used for the maps, and procedures to verify the outfall locations with field surveys~~ The RIDOT must meet this requirement for all outfalls from the MS4 within the urbanized and densely populated areas but may propose an alternate measurable goal to complete mapping of outfalls from the MS4 serving divided highways outside the urbanized and densely populated areas by the fifth year of the program.

* * *

3. ~~Procedures for updating the map recording of additional elements on an on-going basis, showing~~ Recording of additional elements, such as, location of catch basins, manholes and pipes within the system, will be coordinated with the investigation and tracing of illicit discharges detected during dry weather survey of outfalls, identification of physical interconnection with other regulated MS4s, new MS4 construction projects, and inspections of catch basins required under the good housekeeping/pollution prevention minimum measure. Recording of additional elements must be done with sufficient accuracy to allow for the revisiting of the location of these elements. At a minimum field notes must be made on municipal plat maps to plot the location of additional elements and to ensure a minimum level of accuracy.
4. ~~Procedures for identification of the location of outfalls and additional elements of the system. Outfall locations must be determined using Global Positioning System units. Mapping of outfalls and additional elements must be done with sufficient accuracy to allow for the revisiting of the location of these elements. At a minimum municipal plat maps should be used to plot the location of additional elements to ensure a minimum level of accuracy.~~

Comment(s) 12:

Bristol, South Kingstown and Warwick

"Mapping of Catch Basins, Man Holes and Pipes: Under Minimum Measure number 3, Illicit Discharge Detection and Elimination item a.1, it indicates that the operator must "At a minimum mapping of additional elements, such as, location of catch basins, manholes, pipes within the system, must be completed for those portions of the system that are associated with the investigation and tracing of illicit discharges detected from the dry weather survey..."

This should not be mandated. It should be left up to the operator whether they choose to expend their funds to undertake such effort. The law requires that operators map outfalls only. Municipalities should be given the flexibility as to how they choose to locate the sources of illicit discharges. This is an unnecessary financial burden being imposed on operators."

Response 12:

DEM made several changes to the Draft general permit in response to this comment. Part IV.3.a.1. was amended to clarify that the operator must develop an outfall map and the word "mapping" was changed to "recording" when referring to additional elements of the system. Similar changes were made to Parts IV.3.b.1, 3, & 4. Please refer to Response #11 for the final general permit language.

These amendments were made to clarify that if portions of the system are investigated to determine the source of a dry weather discharge (e.g. by lifting catch basin grates/manhole covers to determine direction of flow and pipes), the portion of the system investigated must be recorded on maps in such a manner that the particular elements in question that may need further investigation can be re-visited. The portions of the system (all elements except for outfalls) that do not necessarily have to be mapped using GPS/GIS may be done by transferring field notes upon returning to the office to Plat/Lot Maps or by other mapping means provided that the maps provide sufficient accuracy to allow re-visiting of the particular elements investigated. There is no deadline or minimum level of effort mandated to this measurable goal. This minimum level of mapping will result in an overall cost savings to the operator by making future investigations or mapping more efficient.

Comment 13:

Bristol, South Kingstown and Warwick

"Elimination of Illicit Discharges: On page 12 the draft at item a.5 indicates that "The illicit discharge plan must contain procedures to identify and initially target priority areas, locate illicit discharges, locate the source of the discharge, remove illicit discharges..."

***South Kingstown only: "First and foremost, tracing illicit discharges may be a difficult, if not impossible task to accomplish. Significant upstream testing will most likely be required to determine the source of pollutants from a given outfall. In the case of coliform bacteria, the source of contamination may never be determined due to surface and groundwater movement that may carry coliform bacteria into the Town's storm water drainage system"**

"If the intent of the draft is to locate and eliminate all illicit discharges within the MS4 during the first permit period this requirement can impose a severe financial burden upon the community. It is recommended that the first permit period be used to develop the strategy to address illicit discharges, particularly since mapping does not have to be completed until year 3."

Response 13:

It is not the intent of the permit to require that operators “locate and eliminate all illicit discharges within the first permit term. DEM agrees that the elimination of illicit discharges will be an on-going process that will be initiated during this permit term and not necessarily completed within the first permit term. Part IV.3.b.1. requires that the operator document in the SWMPP the strategies and procedures utilized for the development of a storm water illicit discharge detection and elimination program. This section also specifies the required elements that the program must contain and some interim milestones for the development of the appropriate ordinances and procedures. The operator is required to identify additional best management practices and measurable goals where the permit does not specify. In summary, if not specified the operator must develop BMPs and measurable goals for the development of the program over the five year permit term. The permit does not specify a measurable goal for the identification and elimination of illicit sources. The operator may develop their own goals on a case by case basis as illicit discharges are identified and prioritized. The operator will be required to re-assess these priorities and goals on an annual basis.

Comment(s) 14: Regarding Outfalls Surveys

Bristol and Warwick

"Two Surveys of Outfalls: The draft indicates that two surveys of all outfalls be accomplished by year four.

If the outfall is clean, why are we being required to visit the outfall within such a short timeframe? It is recommended that one survey is enough instead of twice within this permit period. This could result in outfalls being inspected twice within a two year period depending on when an operator gets out to conduct the first survey."

South Kingstown

"The draft General Permit indicates that two surveys of all outfalls be accomplished by year four. This requirement appears onerous if the outfall is void of contaminants or flow. It is recommended that one survey be sufficient during the permit period."

Response 14:

The requirement of two outfall inspections during two different times of the year was designed to capture discharges that manifest exclusively during high or low groundwater table or due to potential different users or dischargers to the system during different times of the year. The language in the permit was changed as follows to address concerns about areas served by ISDS:

IV.B.3.b.5.

* * *

- vii. *Procedures for dry weather surveys including field screening for non-storm water flows and field tests of selected parameters and bacteria. The operator must include a*

measurable goal of performing a minimum of two surveys, one to be conducted between January 1st - April 30th and one between July 1st - October 31st by the fourth year of the program. Dry weather surveys must be conducted no less than 72 hours after the last rain fall of 0.10 inches or more. At a minimum, all dry weather flows from outfalls must be collected and analyzed for temperature, conductivity, pH, and bacteria. For areas served by sanitary sewers bacteria sampling is only required for the dry weather survey conducted between July 1st - October 31st. Bacteria sampling may be waived upon approval, for any outfall that is already identified as an illicit discharge of bacteria and is identified in the plan for further investigation and/or elimination or the permittee identifies existing recent applicable dry weather bacteria sampling data (e.g. DEM Shellfish Shoreline Survey data, TMDL data, etc). It is recommended that flow measurements be conducted. In addition, visual observations must include but not be limited to the following: odors, sheen, stressed vegetation, coloration/staining, algae growth, sedimentation and/or scouring in the vicinity of the outfalls. If visual observations indicate the presence of illicit discharges additional sampling and analysis for any other parameters that may be useful in the identification of the illicit discharge must be performed as warranted. Dry weather survey results must be summarized in a table and include at a minimum, the following information: location (latitude/longitude), size and type of outfall (e.g. 15" diameter concrete pipe), flow (indicate if flowing or not, include flow rate if determined), samples collected (indicate what type of sample), sample results, results of other parameters if measured (e.g. temperature, conductivity, and pH), and sample analysis method (e.g. Standard Methods for the Examination of Water and Wastewater). ~~The operator must include a measurable goal of performing a minimum of two surveys, one to be conducted between January 1st and April 30th and one between July 1st - October 31st by the fourth year of the program.~~ It is recommended that this effort be coordinated with the outfall mapping required in this part of the permit. The RIDOT must meet this requirement for all outfalls from the MS4 within the urbanized and densely populated areas but may propose an alternate program and schedule for outfalls from the MS4 serving divided highways outside the urbanized and densely populated areas.

Comment 15:

Bristol, South Kingstown and Warwick

"Inspection of all catch basins: The draft at item 6.vi. requires the operator to include a measurable goal of inspecting all catch basins and manholes for illicit discharges at least once by the fourth year of the program.

We are required to inspect all outfalls for illicit discharges. To require this additional inspection effort is a financial burden on the municipality, particularly given the timing requirements associated with dry weather sampling. Communities are not prepared to address the additional cost associated with such an effort and it is not clear that this would accomplish more than the inspection program for outfalls already required. This requirement should be removed from the permit requirements."

Response 15:

Experiences from Phase I communities and communities in Rhode Island that have developed procedures for IDDE indicate that both outfall inspections and catch-basin inspections are a

necessary component of a comprehensive IDDE Program. In many cases, direct illicit connections are made to system at the catch basin or manhole. A visual inspection of the structure can easily identify these illicit connections. Outfall inspections alone may not identify some connections as they may not be discharging at the time of inspection of the outfall or there may be detention in the system. In addition, Part IV.B.6.b.1.iii of the permit (Pollution Prevention and Good Housekeeping for Municipal Operations) also requires inspection of catch basins to make a determination on the frequency of catch basin cleaning for the proper functioning of the system and to minimize the discharges of sediments from the MS4. To minimize the additional costs of performing inspections of these structures for IDDE, the DEM recommends that the operator combine these efforts so that both can be accomplished in the same inspection.

Comment(s) 16:

a. East Greenwich, Lincoln and Middletown

"Section IV.B.3.b.6.vii (page 14): At a minimum, all dry weather flows from outfalls must be collected and analyzed for temperature, conductivity, pH and bacteria.

This requirement to sample and analyze dry-weather flow for temperature, conductivity, pH and bacteria, the town believes it is more appropriate to first conduct inspections of the outfalls and observe for any signs of potential illicit discharges. These inspections will include observation for: odors, suds, sheens, turbidity, solids, stressed vegetation excess algae growth, coloration/staining, sedimentation and/or scouring in the vicinity of the discharge point. If there are any signs of a potential illicit discharges, then the town will sample the discharge and select specific parameters to analyze to assist in identifying the source of the illicit discharge.

Fecal coliform samples cost approximately \$25/sample and equipment to measure temperature, pH and conductivity costs approximately \$150/week to rent. These costs are in addition to staff time and transportation of the samples to the laboratory.

The costs to sample all storm drains that may discharge during dry weather is onerous. It should be noted that the existence of an outfall that flows between storm events does not necessarily indicate the presence of an illicit connection. The discharge may be due to groundwater infiltration through pipe joints, under drains, culverted streams, footing drains, etc. The targeting or screening these dry weather flows for the presence of illicit connection does make sense. The town recommends relying on visual inspections as a preliminary screener. The parameters DEM selected are narrow and in fact may not provide any insight as to the presence of illicit connections."

b. Narragansett

"Page 14, Paragraph IV.B.3.b.6.vii: The Town of Narragansett recognizes that visual observations at outfalls are important; however, requiring specific dry weather surveys that include sampling, listing, and analytical analysis is an unfunded mandate. For example, the Town of Narragansett has forty-one (41) outfalls – sampling and testing each twice a year by the fourth year of the program will cost many thousands of dollars."

Response 16:

DEM agrees that visual inspections are an effective screening method of identifying potential illicit discharges. Part IV.B.3.b.5.vii of the permit requires:

IV.B.3.b.5.

* * *

- vii. Procedures for dry weather surveys including field screening for non-storm water flows and field tests of selected parameters and bacteria. The operator must include a measurable goal of performing a minimum of two surveys, one to be conducted between January 1st - April 30th and one between July 1st - October 31st by the fourth year of the program. Dry weather surveys must be conducted no less than 72 hours after the last rain fall of 0.10 inches or more. At a minimum, all dry weather flows from outfalls must be collected and analyzed for temperature, conductivity, pH, and bacteria. For areas served by sanitary sewers bacteria sampling is only required for the dry weather survey conducted between July 1st - October 31st. Bacteria sampling may be waived upon approval, for any outfall that is already identified as an illicit discharge of bacteria and is identified in the plan for further investigation and/or elimination or the permittee identifies existing recent applicable dry weather bacteria sampling data (e.g. DEM Shellfish Shoreline Survey data, TMDL data, etc). It is recommended that flow measurements be conducted. In addition, visual observations must include but not be limited to the following: odors, sheen, stressed vegetation, coloration/staining, algae growth, sedimentation and/or scouring in the vicinity of the outfalls. If visual observations indicate the presence of illicit discharges additional sampling and analysis for any other parameters that may be useful in the identification of the illicit discharge must be performed as warranted. Dry weather survey results must be summarized in a table and include at a minimum, the following information: location (latitude/longitude), size and type of outfall (e.g. 15" diameter concrete pipe), flow (indicate if flowing or not, include flow rate if determined), samples collected (indicate what type of sample), sample results, results of other parameters if measured (e.g. temperature, conductivity, and pH), and sample analysis method (e.g. Standard Methods for the Examination of Water and Wastewater). The operator must include a measurable goal of performing a minimum of two surveys, one to be conducted between January 1st and April 30th and one between July 1st - October 31st by the fourth year of the program. It is recommended that this effort be coordinated with the outfall mapping required in this part of the permit. The RIDOT must meet this requirement for all outfalls from the MS4 within the urbanized and densely populated areas but may propose an alternate program and schedule for outfalls from the MS4 serving divided highways outside the urbanized and densely populated areas.

If the visual inspection indicates an illicit discharge, additional sampling and analysis may be warranted. In almost all cases, a suite of analyses is most suitable for effective identification of illicit discharges. However, although a sophisticated suite of analyses may yield much useful information, the analyses may be difficult to conduct and laboratory costs may be significant and thus may be suitable only for special situations. However, not all illicit discharges may be identified through visual observations. As such, DEM primarily selected additional screening parameters that can be easily measured or observed directly in the field with the exception of bacteria. If the operator feels that the selected parameters are too narrow in scope, the operator may choose additional parameters (e.g. surfactants, florescence, ammonia, fluoride, hardness change etc.) that may help identify potential illicit discharges. DEM had concluded that relying on visual screening alone is not sufficient. Not all outfalls will require sampling. Sampling is

limited to those outfalls that are flowing under dry weather conditions. Part IV.3.b.5.vii of the permit was amended as shown above to reduce or eliminate redundant or unnecessary bacteria sampling by eliminating the high groundwater bacteria sampling for areas served by sewers, eliminating re-sampling outfalls already under investigation, and allowing the operator to utilize existing sampling data to meet the requirement.

CONSTRUCTION and POST-CONSTRUCTION COMMENTS

Comment(s) 17: (Note: same as comment #6 for deadline info**)**

Bristol, South Kingstown and Warwick

"Post Construction Storm Water Management Strategies Regarding Decision Process/Milestones. The draft permit requires that operators develop strategies regarding Part IV.B.5.b.3, 5,6, 10 and 12 during year 1 of the permit period. These items address pre-application processes, coordination with existing state programs, new discharges, post construction inspection of BMP's and the long term O&M of existing structural BMP's.

It is recommended that these actions be moved to the end of year two which is consistent with the timeline operators will be required to review all construction plans which disturb greater than one acre of land area. The additional time will also be needed to determine internal assignment of these items within the operator's structure."

Response 17:

DEM agrees and has amended the permit as shown under response 6 to give the permittee additional time for development of strategies and procedures for the post-construction and construction programs.

Comment(s) 18:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Post-Construction Storm Water Management in New Development and Redevelopment IV.B.5.a.2: This is a manageable task, however, the timing should be extended to allow for due consideration of existing conditions, and the workload to consider modifying existing ordinances or drafting new language. This also should allow time for public involvement in the development of the modification, and public information meetings."

Response 18:

It is necessary to require that ordinances mandated under the RIPDES Storm Water Phase II program be fully adopted by the end of the second year to allow for the full development and implementation of other portions of the program by the end of the first permit term. Two years should be sufficient time for public education and involvement. It is recommended that operators establish measurable goals to initiate this process early in the implementation of the SWMPP and coordinate the development of the required ordinances with Minimum Measure No.1: Public

Outreach and Education. As stated in Responses 6 and 17 changes have been made to the permit to give the permittee flexibility in the development of construction and post-construction associated strategies and procedures.

Comment(s) 19:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Post-Construction Storm Water Management in New Development and Redevelopment IV.B.5.b.2.: We request the timing of this be extended considering that RIDEM is in the process of finalizing their BMP guidance, which communities would use to determine if the program is consistent with State guidance."

Response 19:

DEM agrees and has amended the language in the permit to coordinate this measurable goal with other post-construction measurable goals to be completed by the end of the second year of the program. Please refer to response 6 for changes in the permit language.

Comment(s) 20:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Post-Construction Storm Water Management in New Development and Redevelopment IV.B.5.b.6.: This requirement appears to place a legal responsibility on the municipality that they ensure that an applicant secures all proper permits instead of the burden being placed solely on the applicant. No other state or federal regulatory authority has accepted this level of responsibility in the past."

Response 20:

This requirement does not place a legal responsibility on the municipality that they ensure that an applicant secures all proper permits. This requirement was incorporated into the permit as an effort to coordinate State and local programs. It is clearly DEM's responsibility to permit discharges of storm water associated with industrial activity in accordance with the RIPDES regulations. The permit only requires that the operator develop procedures that will assist the DEM in identifying new facilities that require RIPDES permits. As new industrial facilities are constructed they will be required to apply for approval from the municipality. This is an opportunity to inform the facilities of the RIPDES Phase I permitting requirements, refer them to DEM for additional information or simply notify the DEM that the facility may potentially require a RIPDES permit. This coordinated effort will be used by DEM to ensure that these industries have the appropriate storm water controls and discharges of pollutants to the MS4 are minimized. The intent of this requirement is not to place the legal responsibility for compliance on the operator of the MS4. Facilities with storm water discharges associated with industrial activity will continue to be responsible for seeking the appropriate permits.

Comment(s) 21:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Post-Construction Storm Water Management in New Development and Redevelopment IV.B.5.b.8.: This suggests that the MS4 develop a BMP manual. Is that its intent? Is the intent to list all of the BMP's that would be allowed by the MS4?"

Response 21:

The permit requires that operators develop, implement and enforce a program to address storm water runoff from new development and redevelopment. The Program must ensure that controls are in place to prevent or minimize water quality impacts. The SWMPP must include the non-structural and structural BMPs that the operator selects that will effectively implement the Program. Part IV.B.5.b.2 of the permit requires that the SWMPP contain a description of how the operator's Program is consistent with the Rhode Island Storm Water Design Manual (RISWDM) and how the Program was specifically tailored for the local community or facility. The DEM is in the process of updated the existing RISWDM to be used as guidance for developing tailored BMPs best suited to meet the needs and objectives of the local program. The intent of this requirement and the requirement under Part IV.B.5.b.7 that refers to non-structural BMPs is to serve as guidance to developers as to what is allowed or what is preferred either as a structural BMP or non-structural BMP in a particular community or at a particular facility.

Comment(s) 22:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Post-Construction Storm Water Management in New Development and Redevelopment IV.B.5.b.10.: Demonstration that the BMPs have been completed in accordance with the approved plans can be conducted by a number of mechanisms other than site visits. These could include submittal of as-built drawings stamped by a professional engineer. We suggest that flexibility is provided to allow the MS4 to determine compliance instead of placing the entire burden on the MS4."

Response 22:

DEM agrees, the permit language as drafted offers the flexibility to allow for the submission of as-built drawings stamped by a professional engineer or other mechanisms that demonstrate that the BMPs have been completed in accordance with the approved plans.

Comment(s) 23:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Post-Construction Storm Water Management in New Development and Redevelopment IV.B.5.b.12.: Requiring long-term operation and maintenance (O&M) of privately owned

BMPs that were previously approved will be problematic. Many of these BMPs have been in operation for decades. We doubt that a municipality will be able to reopen a previous approval to start mandating O&M of these structures. Moreover, it will be problematic for communities to locate and identify existing BMPs on private property, let alone ascertaining the operation and maintenance program for them."

Response 23:

The permit requires that the operator "Develop a program to identify existing storm water structural BMPs discharging to the MS4 with a goal of ensuring long term O&M of the BMPs". DEM acknowledges that the process of locating and identifying all existing BMPs may be difficult and on-going. However, the operator should make every attempt to locate these existing BMPs and if an enforceable agreement is in place, take steps to ensure that proper O&M is being conducted. There is sufficient guidance available that outlines appropriate O&M procedures for certain structural BMPs. DEM will make this guidance available to operators to assist them in ascertaining the appropriate O&M program. The operator is expected to utilize its existing authorities to the best of its abilities to ensure that proper O&M is being performed. Lacking the proper authorities or ability to modify an existing agreement, it may be necessary in some cases for the operator to assume the O&M responsibility to minimize or eliminate the discharge of pollutants to the MS4 from failing BMPs that are contributing to pollutant loadings from the MS4 that are adversely impacting the receiving waters.

Comment(s) 24:

East Greenwich, Lincoln and Middletown

"Section IV.B.5.b.7.iii (page 21): Education programs for developers and the public about project designs that minimize water quality impacts.

Since this is a requirement being imposed on all the regulated towns, it would be more cost effective for DEM to create one comprehensive education program for developers instead requiring 30 towns to develop their own programs. A single program would be developed and targeted to potential developers. This being a small state, developers in Rhode Island do not exclusively conduct business in one or two cities/towns."

Response 24:

DEM will make every effort to assist municipalities in the development and implementation of public education and municipal training necessary to successfully develop and implement the local Programs. DEM is currently exploring the possibility of developing State-wide training of municipal officials and developers to coordinate with the completion of the Rhode Island Storm Water Design Manual. There is also an ongoing effort by DEM to educate developers that is incorporated into the development of the Rhode Island Urban Design Manual. A number of organizations and entities may be available to co-sponsor training sessions for developers and municipal officials. Since municipalities' construction and post-construction programs may differ from one another it is important that municipalities play a leading role in the development of the required education and training programs. The DEM will continue to explore the coordination of with other State Agencies such as RIDOT and non-profit organizations such as Audubon to develop State-wide programs where possible.

POLLUTION PREVENTION AND GOOD HOUSEKEEPING

Comment(s) 25: Inspection and cleaning of catch basins

a. Bristol and Warwick

"Pollution Prevention and Good Housekeeping/Catch Basin Cleaning and Inspection: The draft requires operators to clean and inspect each catch basin annually unless a lesser frequency can be justified.

To require operators to clean and inspect all of its catch basins in one year, particularly those with extensive urbanized area is cost prohibitive. A typical community generally inspects approximately a third of its structures annually. It should be left up to the operator to have the flexibility to create and implement a program to clean catch basins that one; requires cleaning a percentage of their system on an annual basis as required and two; to give the operator the option to clean catch basins more frequently that accumulate sediment and have the greater potential to impact sensitive receptors."

b. Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Pollution Prevention and Good Housekeeping in Municipal Operations IV.B.6.b.1.iii.: This requirement provides no flexibility to prioritize maintenance activities, and that resources could be wasted in areas with little or no benefit over the next two years. Prior to establishing a formal storm drainage inspection and cleaning program, we have recommended to several clients that they conduct a pilot program where several catch basins in various parts of the City, representing different land uses, will be selected. These basins should be inspected periodically after cleaning for one year to determine how rapidly sediment accumulates in them. This pilot program should provide a basis to determine appropriate regularly scheduled cleaning."

c. South Kingstown

"Section 6, b, iii of the General permit requires operators to clean each catch basin "as necessary" (1st sentence), but also states that annual cleaning would not be required if inspections reaffirmed less frequent cleaning (second sentence). As such, it appears there is conflict in the draft General Permit with regard to the frequency of catch basin cleaning.

Assuming the intent of the General Permit is to require annual catch basin cleaning, this requirement would have significant financial impact on the community. South Kingstown generally cleans and inspects approximately one half of its estimated 2,700 catch basin/manhole structures annually with a vac truck and two (2) equipment operators.

In order to inspect and clean each structure on an annual basis, the Town would be required to procure a second vac truck and two (2) additional equipment operators at an annual cost of \$190,000 and \$97,000, respectively.

It is the Town's opinion that the frequency of catch basin cleaning and inspections should be up to the discretion of the operator, giving the Town the flexibility to create and implement a program to clean catch basins on an as needed basis."

Response 25:

In response to the comments received, the Part IV.B.6.b.1.iii was amended as follows:

IV.B.6.b.1.

* * *

- iii. *Procedures for implementation of a regular catch basin inspection and cleaning program to inspect all catch basins ~~and manholes~~ annually commencing by the third year of the program, document the results of the inspection, and clean structures as necessary. The operator ~~is required to inspect each catch basin annually unless~~ may request approval for a lesser frequency of inspection ~~can be justified~~ based on at least two consecutive years of ~~inspection-operational~~ data indicating the ~~structure-system~~ does not require annual cleaning. Documentation supporting a different frequency of catch basin cleaning may be based on observations made on sediment accumulation in catch basins, sediment accumulation at outfalls or observed flooding problems. The operator must submit this documentation and supporting rationale to the Department with the Annual Report required in this permit. The program must also include procedures to increase the inspections and cleaning based on field investigations, complaints and areas that are prone to sediment accumulation. Changes to the frequency of catch basin cleaning must be made when field observations reveal that the chosen frequency is not being effective. The program must also include the inspection and cleaning of other elements in the system, such as manholes, when catch basins in the system are found to be overfilled or failing. Describe coordination of inspection of catch basins for maintenance and inspection for illicit discharge detection and when ~~mapping-recording~~ additional elements of the MS4. The RIDOT must apply this program to the MS4 within the urbanized and densely populated areas but may propose an alternate program for the MS4 that serves divided highways outside the urbanized and densely populated areas or if the divided highway is inside the urbanized or densely populated area, the RIDOT can provide justification that road sanding is the only potential significant source of sediment accumulation and the MS4 is not physically-interconnected with another MS4 or receive discharges from other properties. ~~The operator must include a measurable goal of inspecting all catch basins annually by the third year of the program.~~*

The permit requires annual inspections and cleaning as necessary (a frequency of cleaning is not mandated in the permit). Therefore, the permit has the flexibility to allow operators to clean catch basins as required and the option to clean catch basins more frequently that accumulate sediment and have the greater potential to impact sensitive receptors. The operator has three years to fully implement this requirement. During that time the amended language clearly gives the operator time to conduct a pilot program to determine how rapidly sediment accumulates and provide a basis to determine appropriate regularly scheduled cleaning. Additionally in that three years, the operator has the opportunity to compile inspection and cleaning records that demonstrate the necessary inspection and cleaning frequencies. Therefore, the permit gives the operator the flexibility to create and implement a program to clean catch basins on an as needed basis. In response to comments that typically manholes are not designed to accumulate sediment, the requirement to inspect them annually was deleted. Instead the operator must

include the inspection and cleaning of other elements of the system, such as manholes, when catch basins are found to be overfilled or failing.

Comment(s) 26: Street Sweeping comments

- a. Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

"Pollution Prevention and Good Housekeeping in Municipal Operations IV.B.6.b.1.iv.: The permit has specified a minimum measure of sweeping twice a year which will be a significant increase of street sweeping for many of our clients. As with catch basin cleaning, an exemption should be allowed if the effectiveness of conducting less sweeping can be documented."

- b. Bristol and Warwick

Street Sweeping

The draft calls for all streets to be swept twice annually. There is no distinction between urbanized areas and non-urbanized areas or curbed or non-curbed roadways.

The operator should be required to sweep all streets annually as soon as possible after snow melt irrespective of their location and be given the flexibility to develop and implement a program to sweep streets on a more frequent basis depending on their location. Their potential to accumulate sediment and impact on sensitive receptors.

- c. East Greenwich, Lincoln and Middletown

Section IV.B.6.b.1.vi. (page 24)

Procedures for development and implementation of a regular street and road sweeping program that includes sweeping of all streets and roads within the regulated area twice annually to be conducted in late spring and fall of each year.

The Town of East Greenwich sweeps all streets at least once during the year in late spring. The downtown section, consisting of Main Street from Division Street to First Avenue and one block east and one block west of Main Street are swept weekly from March to November. There are additional areas in town that would qualify as regulated areas (population density > 1,000 people per square mile). The Town is already targeting its commercial district and does not feel that any additional street sweeping in other areas is necessary and undue cost and burden would be placed on the town without improving water quality. Towns should be given discretion to assess the need for additional sweeping prior to mandating the requirement.

- c. Town of Jamestown

In addition to these comments, I would like to emphasize the financial impact that would be imposed on the Town regarding the draft regulations concerning street sweeping twice per year without any regards to the actual necessity for this operation. The Town of Jamestown currently sweeps every year in the areas that it is required. Not all areas require sweeping every year. The Town has been conservative in the application of road sand and salt throughout the years and has a policy of only spot sanding for winter

operations. There are many areas that require no sanding during the winter. The requirement to sweep twice per year will result in the Town having to purchase additional sweeping equipment at an estimated expense of \$100K and hire 2 additional staff at a cost of @ \$95K for salary and benefits. This additional expense without any measurable benefit should be modified or deleted from the proposed regulations.

d. Narragansett

Page 24, Paragraph IV.B.6.6.1.vi

The Town of Narragansett **strongly** opposes the requirement to sweep all streets and roads twice annually, with one (1) such event to be conducted in the fall of each year. This imposes an unreasonable financial burden on municipalities, with no obvious benefit. Narragansett, like many communities, begins its street sweeping operations in the spring of each year, once the threat of freezing has ended. For our 120 (\pm) miles of roads, this process involves two (2) sweepers, two (2) dump trucks for hauling, two (2) truck drivers, and two (2) equipment operators. This commitment of four (4) employees represents almost one-half of our full-time road crew of nine (9). The sweeping operation may take several months to complete. Other crew members patch roads, clean catch basins, maintain swales, pipes, manholes, and catch basins, maintain street signs and traffic point, cut brush, etc.

Given as there is no product (i.e. sand/salt) applied after the last late winter/early spring storm event, the fall sweeping is completely unnecessary. If the intent is to pick up leaves that might restrict the flow in and around catch basins, street sweeping is the wrong technique. Leaves around basins are generally picked up with a small bucket loader; on a spot basis. We cannot see any benefit with a small bucket loader; on a spot basis. We cannot see any benefit whatsoever to the unfunded mandate of a separate fall sweeping requirement.

e. RIDOT

The Department is concerned that the draft permit requires the Department of Transportation (RIDOT) to sweep all State maintained streets and roads during the late spring and fall of each year. RIDOT with its existing personnel and budget are able to sweep all streets and roads the RIDOT is responsible for once during each year. The requirement to perform sweeping twice a year would obviously double the need for staff and budget requirements. The draft permit also requires that areas be identified that require more frequent sweeping based upon such things as complaints received, historical records or high potential for sediment accumulation. This identification process could certainly be useful in identifying which areas need additional sweeping beyond the present yearly activity, as a means of establishing which areas that the Department could focus on with the availability of additional time once the first round of sweeping is completed. Also, the requirement that the program be fully implemented within three (3) years of a five (5) year program is somewhat ambitious, given the State current fiscal condition. We will attempt to meet the five (5) year goal, however, this will depend on receiving funding for equipment and personnel.

To require that we sweep all areas twice will add, at a minimum, double the effort and cost to accomplish this sweeping. I cannot disagree that sweeping when necessary is appropriate, that we feel that a base program of once yearly sweeping and then focusing

in the documented priority areas for any follow-ups sweeping is a more appropriate goal of the program.

f. South Kingstown

“The draft General Permit requires all municipal streets be swept twice annually. First and foremost, there is no distinction between urbanized areas and non-urbanized areas or curbed or non-curbed roadways. In addition, the Town questions the need to sweep roads a second time, once sand and contaminants from winter sanding operations are removed during initial sweeping operations.

Although the Town currently employs a street sweeper, dump truck and two (2) equipment operators for its current municipal sweeping operation, the Town would be required to procure a second street sweeper and two (2) additional equipment operators at a cost of \$1400,000 and \$97,000 (respectively) to comply with the draft General Permit.

It is the Town’s position that an annual street sweeping program is sufficient to capture roadway contaminants associated with post-winter street sweeping activities.”

g. Southern Rhode Island Conservation District

“Under the “Pollution Prevention and Good Housekeeping in Municipal Operations,” the General Permit requires (in IV.B.6.b.1.) that street sweeping occur twice annually in “late spring and fall of each year.” This requirement runs counter to both common sense and to EPA comments about street cleaning in their menu of BMPs. Rather than devoting effort to adding a sweeping in the fall, it would make better sense to devote resources to getting streets swept more quickly in the spring season. This way sand and grit can be removed from roadways as early as possible, before washing into catch basins and nearby waters.”

Response 26:

Part IV.B.6.b.1.vi clearly limits the scope of the required sweeping program to all streets and roads within the “regulated areas”. These are defined in the RIPDES Regulations as “Urbanized Areas” (UAs) and Densely Populated Areas (DPAs). The permit intentionally does not make a distinction between curbed or non-curbed roadways. The DEM agrees with the many comments that questioned the benefit of the second sweeping in the fall and that devoting resources to getting roads swept more quickly in the spring season to capture roadway contamination associated with winter sanding operations before they are washed into the collection system and receiving waters is a better use of limited resources. The draft language was amended to require street sweeping once annually unless a lesser frequency can be justified. Municipalities shall increase frequency of sweeping as deemed necessary. Based on the comments received on street sweeping the language in Part IV.B.6.b.1.vi of the permit was changed to be performance based as follows:

IV.B.6.b.1.

- vi. *Procedures for the development and implementation of a regular street and road sweeping program that includes sweeping of all streets and roads within the regulated area ~~twice annually~~ to be fully implemented by the third year of the program to be conducted late spring and fall each year. This program must include identification of*

~~areas that require more frequent sweeping. The operator is required to sweep all streets and roads within the regulated area annually. The operator is required to sweep all streets and roads within the regulated area annually unless a lesser frequency can be justified based on at least two consecutive years of data indicating the street or road does not require annual sweeping. The selected frequency of sweeping must be based on complaints received, historical records, high potential for sediment accumulation in the catch basins and at outfalls and observed flooding problems, the results of catch basin inspection and cleaning. The program must also include procedures to increase the frequency of sweeping. Any changes to the sweeping program and all documentation and supporting rationale including increasing the frequency should be reported in the Annual Report as required in this permit and include the rationale. The RIDOT must apply this program to the MS4 within the urbanized and densely populated areas but may propose an alternate program or frequency for divided highways outside the urbanized or densely populated areas. The operator must include a measurable goal of fully implementing the sweeping program by the third year of the program.~~

Comment(s) 27:

a. Bristol, South Kingstown and Warwick

Controls to Reduce Floatables and other Pollutants

On page 25 of the draft permit in item vii., the draft indicates that within the first year of the permit the operator, must provide a “description of maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants...” Please be more specific as to the intent of this requirement?

b. RIDOT

The draft permit also includes a number of controls for floatable litter, such as storm grate retrofits, litter receptacles, trash netting and other technologies. We feel that storm grate retrofits to capture floatable materials would have a serious impact on the operation and efficiency of our storm drain system. This collected material could easily clog the drains causing surface flooding, which could impact safety for the driving motorists. Also, the implementation of litter receptacles and the use of trash netting and other technologies are not feasible utilizing RIDOT manpower alone. The use of these technologies will require a collaboration with regulatory agencies, such as RIDEM and EPA, as well as watershed groups that may be able to assist in developing a management program for these types of technologies. We appreciate your efforts to implement the RIPDES program, but we cannot agree to additional responsibilities that require commitments of funding and personnel without working through the Department budget process.

Response 27:

The language in the permit offers flexibility for compliance with this requirement (i.e. no particular BMP is mandated). The program can evaluate the effectiveness of existing programs such as street sweeping, posting and enforcement of anti-littering ordinances or laws, sponsoring roadside, beach or river clean-ups, etc. to determine if these programs are sufficient

or if additional measures may be required. The operator of the MS4 should then identify priority areas based on complaints, rate of accumulation, and implement additional measures in these areas as necessary. The DEM agrees that this effort will require a collaboration with regulatory agencies, such as DEM and EPA, as well as watershed groups that may be able to assist in developing a management program. The intent of this requirement is reduce litter and waste that if neglected may ultimately enter storm sewer systems causing flooding resulting in scouring of streambanks or be discharged to the receiving waters and potentially harm wildlife and habitat.

Comment(s) 28:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

Reference: Pollution Prevention and Good Housekeeping in Municipal Operations IV.B.6.b.1.v.

Remediation of outfalls causing scouring will require RIDEM wetlands permitting and could require a fairly significant investment for what would not typically be a significant source of sediment loading. We suggest that some waiver be provided for wetlands permitting to minimize costs and that some definition be provided such that any outfall that causes scouring (most do to some degree) is not included in the program.

Response 28:

DEM has revised the permit language to require operators to identify and report annually all outfalls that cause scouring including any planned steps to remediate outfalls. DEM has also amended the permit language to require operators to identify and report annually all outfalls with sedimentation including any planned steps to remediate outfalls. Rather than placing the responsibility on the MS4 operator to determine which outfalls are considered to cause significant scouring or have significant sedimentation, DEM will assist the operator by making the determination for all outfalls reported by the operator as well as those petitioned by the public or identified by DEM. DEM realizes that in some situations, problems may be corrected through proper maintenance of the system upstream of the outfall (such as street sweeping and catch basin cleaning). Normal maintenance and cleaning of drainage structures such as pipes, culverts, catch basins, and manholes are considered exempt activities, providing that all of the conditions of the Freshwater Wetlands Act Rules 6.01 and 6.03D are satisfied (See Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act). However, some situations may warrant replacement of or repair to the drainage structure. Replacement or repair of functional drainage structures is also an exempt activity that can be completed without a wetlands permit under certain conditions (See Rule 6.03B). For example, if erosion problems continue despite maintenance of structure, a rip rap pad that is no greater than 10 feet in length may be placed at the culvert outlet, as long as this will not prevent fish and wildlife passage without a wetlands permit. Measures to replace or repair drainage structures that discharge to waters that are under the jurisdiction of the Coastal Resource Management Council (CRMC) however do require a CRMC permit.

The permit language was amended as follows:

IV.B.6.b.1.

* * *

- v. Procedures to identify and report annually as part of the annual report submitted to the Department in accordance with Part IV.G.2.e. known discharges causing scouring at outfall pipes or outfalls with excessive sedimentation for the Department to determine on a case-by-case basis if the scouring or sedimentation is a significant and continuous source of sediments. The operator of the MS4 must include procedures to remediate scouring or sedimentation upon written notification by the Department. Some recommended methods of remediation may include the repositioning or extension of outfalls and the addition of rip rap

Comment(s) 29:

Bristol, South Kingstown and Warwick

Minimize Erosion on Road Shoulders and Roadside Ditches

The draft permit on page 24 indicates that in year one of the permit the operator must develop procedures to minimize erosion of road shoulders and roadside ditches by requiring stabilization of those areas. Please clarify what the intent is with respect to this item. What do you envision the procedures to entail?

Response 29:

The intent of this requirement is to prevent sediments from entering the MS4 or being discharged to the receiving waters from excessive erosion of road shoulders and roadside ditches. The procedures to minimize erosion of road shoulders and roadside ditches should be developed as part of the routine maintenance of the MS4 infrastructure. This requirement must consist of identification of priority areas where excessive erosion is occurring through routine inspections or responding to complaints. The permit lists examples of control measures for the remediation of the priority areas with the intent of reducing or eliminating sediments from entering the system.

Comment(s) 30:

Bristol, South Kingstown and Warwick

1. Facilities Not Covered by Industrial Permits

The draft on page 25 item 4, indicates that facilities owned by the operator that have a point source discharge but are not industrial per the Phase II permit program must be described with strategies to reduce runoff with selected BMP's

It is our opinion that the RIDEM is seeking to include facilities that are clearly not covered by the Phase II program and this provision should be struck.

Response 30:

Neither the RIPDES Regulations or the general permit expand the NPDES storm water Phase II requirements. The language included for this minimum measure in the Federal Regulations and

the RIPDES Regulations Rule 31(e)(3)(ii)(F) is identical and requires the operator of the small MS4 to address the discharges from municipal operations to prevent or reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. The language in the general permit only defines municipal operations. Therefore, the RIPDES Regulations and the general permit are consistent with the Federal Regulations and the permit was not amended to remove this requirement.

Comment(s) 31:

Town of East Greenwich

Section IV.B.6.b.2. (page 25)

The operator must specifically list the operations, including activities and facilities, that have the potential to introduce pollutants into storm water runoff and are covered by this O&M program. Describe such activities at public schools, municipal offices, and fire and police departments, parks and open space, owned or operated by the municipality.

This requirement is not legally feasible for entities within the town government that are wholly independent. Therefore, the town is unable to have such control under a single NOI application. RIDEM would need to target these as separate permittees.

The Fire Department in East Greenwich is a completely separate entity from the town with its own ability to assess taxes. The town has no ability to regulate these facilities. School Department in East Greenwich is a separate entity from the town. The town does not have the ability to regulate school facilities (add additional language explaining the relationship b/w Town and School Department). If necessary, the School Department should obtain its own RIPDES permit.

Response 31:

The language in the permit was changed to clarify that this provision only applies to operations that are under the operator's legal control. The language in part IV.B.6.b.2 of the permit was changed as follows:

IV.B.6.b.

* * *

2. *The operator must specifically list the operations under the operator's legal control, including activities and facilities, that have the potential to introduce pollutants into storm water runoff and are covered by this O&M program. Describe all activities such as pesticide/ herbicide/ fertilizer application, chemical and waste handling and storage, vehicle fueling, vehicle washing, vehicle maintenance, sand/salt storage and snow disposal and facilities such as public works facilities with maintenance and storage yards, waste transfer stations, municipal wastewater and water treatment facilities, municipal parking lots and parking areas at, public schools, municipal offices, and fire and police departments, parks and open space, owned or operated by the municipality.*

Comment(s) 32:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

Pollution Prevention and Good Housekeeping in Municipal Operations IV.B.6.b.4 and 5.

We request the timing of this be extended. The inclusion of the preparation of a Storm Water Pollution Prevention Plan (SWPPP) with the SWMP is a surprise to many municipalities and some additional time will be required to develop the SWPPP. We request the extension be at least in line with the proposed industrial general permit. This permit condition does not seem to allow for a No Exposure Waiver. Most importantly, communities will need clarification as to what constitutes a “storm water discharge associated with industrial activity”.

Response 32:

The Phase II Regulations changed the deadline established by the Intermodal Surface Transportation and Efficiency Act (ISTEA) moratorium for storm water discharges associated with industrial activity that are owned or operated by municipalities serving populations less than 100,000 people (except for airports, power plants, and uncontrolled sanitary landfills). Under the Phase II Regulations previously exempted industrial facilities owned or operated by small municipal MS4s were required to submit permit applications by March 10, 2003. The DEM informed municipalities of this requirement during their extensive outreach efforts prior to the public notice of the draft MS4 general permit. The federal Phase II program allows the permitting authorities to incorporate the permit requirements for municipally owned or operated industrial storm water discharges in a single permit for all MS4 storm water discharges. DEM chose to issue a single "combination" permit that contains the minimum measures and other necessary requirements of an MS4 permit, and the SWPPP inspection and reporting requirements for "eligible industrial facilities". Part I.B.4.d of the permit contains a list of industrial facilities not eligible for authorization under this permit. In accordance with the RIPDES Regulations industrial facilities are eligible to claim an exemption from permitting requirements through a "no exposure" waiver. DEM did not intend to exclude municipally owned and operated facilities from this waiver. Therefore, Part IV.B.6.b.3 of the permit language was amended as follows:

IV.B.6.b.

* * *

3. *The operator must also include a list of industrial facilities owned and operated by the municipality, which have storm water discharges associated with industrial activity that ultimately discharge to an MS4 or to a waters of the State. The operator must indicate if seeking coverage under this permit (subject to limitations in Part I.B.3) or seeking permit coverage under an individual RIPDES permit or the General Permit for Storm Water Discharges Associated with Industrial Activity. Discharges composed entirely of storm water are not considered storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities provided these are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff, and the discharges satisfies the conditions of RIPDES Rule 31(h)(1) through (h)(4). A RIPDES "no exposure" certification must be submitted to the Department if the operator*

of the Storm Water Discharges Associated with Industrial Activity is seeking conditional exclusion from permit authorization.

The DEM will provide additional guidance to MS4 operators to clarify what constitutes a storm water discharge associated with industrial activity and which facilities require a SWPPP.

TMDL and Impaired Waters

Comment(s) 33:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

Permit Conditions II.C.2: This condition requires that the operator determine whether its storm water discharges are the cause of an impairment or contributes pollutants-of-concern. Without a significant water quality investigation, as is commonly conducted during the development of a TMDL, it will not be possible for an operator to accurately respond to this requirement.

Response 33:

Part II.C.2 of the permit states “The operator must determine whether storm water discharges from any part of the MS4 or a facility owned or operated by the MS4 operator discharges the pollutant(s) identified as causing the impairment or contributes the pollutant of concern, either directly or indirectly, to the impairment of a 303(d) listed water body and whether the TMDL has been completed.

The permit does not require the operator to make a determination whether its storm water discharges are the cause of an impairment without a significant water quality investigation. The permit only requires that the operator identify if they have a discharge to an impaired water body and if the discharge contains the pollutants that the water body is listed as impaired for. In the absence of outfall-specific monitoring data, the operator should consider pollutants typically found in storm water runoff such as BOD, sediment, pathogens, Oil & Grease, metals, etc.

Comment(s) 34:

Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill

Permit conditions II.C.7.: This condition requires that municipalities reevaluate Storm Water Management Programs (SWMPs) based on changes to the state’s 303(d) list. Most municipalities do not track these changes and thus could be in non-compliance based on a lack of knowledge. Will RIDEM notify municipalities when the 303(d) list changes?

Response 34:

When changes are made to the 303(d) list the DEM follows typical Public Notice procedures which include advertisement in the newspaper and mailings to each municipality. In addition to

this information being made available to the public through the public notice process, DEM will notify the person(s) listed as contact(s) for the regulated small MS4s when changes are made.

**Comment(s) 35:
TMDL's**

a. Bristol, South Kingstown and Warwick

On page five of the draft, item C3 refers to Part IV.D of the permit. At item 3c., the draft indicates that, "A description of any BMP(s) that have been implemented or will be implemented to address the provisions and pollutant(s) of concern identified by the Department.

What is the intent of the Department with respect to BMP implementation? Are you assuming that both structural and non-structural BMP's will be required of municipalities to address TMDL's in connection with the Phase II permit?

c. Narragansett

Page 30, Paragraph IV.D. (all sub-sections)

The potential ability for the State to order any community to implement structural BMP's raises serious financial concerns. For example, Narragansett has forty-one (41) outfalls. We are currently constructing a BMP at one (1) outfall, at a cost of several hundred thousand dollars. Competition for capital improvement funding is great every year, as public safety, education, and other essential public services all place a high demand on the available tax revenue. Any implementation schedule that is ultimately adopted by the State must include the identification of a funding source that is acceptable to the community in question.

Response 35:

The NPDES storm water Phase II Regulations and Rule 31(a)(5)(v) of the RIPDES Regulations require the operator of the MS4 to comply with any more stringent effluent limitations of the permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved TMDL or equivalent analysis. The Director may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

Part IV.D.3.c clearly states that the operator shall assess the six minimum control measure BMPs (which are non-structural, source reduction, pollution prevention BMPs) and other controls currently being implemented or that will be implemented (which may be structural controls) and describe the rationale for the selection of controls. If the operator can demonstrate to the satisfaction of DEM, that the six minimum control measures, or the combination of the six minimum control measures plus other controls will satisfy the provisions of the TMDL or Water Quality Determination, than additional controls (including structural controls) are not necessary.

*However, if the operator **cannot** clearly demonstrate that the selected controls will satisfy the provisions of the TMDL or Water Quality Determination, **or**, if a TMDL or Water Quality Determination specifically states that structural controls are necessary, than the operator must also submit a scope of work (SOW) that satisfies Part IV.D.4. The SOW must describe the*

process or rationale that will be used to select BMPs and measurable goals to ensure that the TMDL or Water Quality Determination provisions will be met. The SOW must document additional information such as discharges within the contributing area, drainage or sub-catchment area(s), and interconnections. The SOW must also identify any structural BMPs that address the pollutant of concern, areas to site potential BMPs, permitting requirements or restrictions, potential costs, funding sources, and preliminary and final engineering requirements, or at a minimum, describe the process to determine this information if it is not known.

The operator must then provide measurable goals for the development and/or implementation of the six minimum measures and additional structural and non-structural BMPs. The operator must implement any amendments made to the six minimum control measures at the time of submittal of the NOI/SWMPP or revised SWMPP. However, as indicated in Part IV.D.7. of the permit, development and implementation of storm water control measures that are additional to the six minimum control measures must be started upon receipt of written approval from DEM based on a review of the SOW and implementation schedule. Once the SOW is approved by DEM, the SOW will be considered a part of the SWMPP and is subject to the program evaluation, record keeping, reporting, and all other applicable requirements of the permit.

Although the Department does not have a dedicated funding source allocated specifically for the purpose of funding TMDL implementation, the Department will continue to utilize Nonpoint Source Program 319 funding and the State Revolving Fund (SRF) to assist municipalities with TMDL implementation, storm water abatement projects, and infrastructure improvements, and will continue to seek other appropriate funding sources. Additionally, the Department expects municipalities to seek appropriate funding sources.

INFORMATION REQUIRED AT THE TIME OF APPLICATION

Comment(s) 36:

- a. **Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill**

Notice of Intent Requirements III.A.5.

Listing all surface waters within the regulated areas does not provide new information to RIDEM, those surface waters are shown on existing maps. However, not listing a single surface water could be interpreted as a lack of coverage for any discharge to that water. We suggest that this requirement be deleted.

- b. **Cranston, Coventry, North Providence, Woonsocket, Pawtucket, Jamestown and Fuss & O'Neill**

SWMP Plan Requirements IV.A.7.

Identifying all known receiving waters that receive a discharge from the MS4 as well as the number of outfalls to each water body will not be possible for almost any system. Most waters that drain through a regulated area would be expected to have a storm water discharge. The actual number of outfalls would be a guess for most municipalities before they complete their mapping. This seems to require that they report this guess. Also,

does this provision extend beyond regulated areas? We suggest that this requirement be moved to the illicit discharge detection and elimination requirements and implemented after outfall mapping is completed such that an accurate representation can be provided.

c. City of Cranston

RIDEM is requiring information about impaired waters which may not exist at the time of application. We do not understand RIDEM's intent of this requirement. This seems to be asking for legal determinations which a community may not be able to answer. Moreover, it is asking for environmental determinations to be made with insufficient information. As an example a community may not be able to identify that its illicit discharge detection program may reduce pathogens to a receiving water during dry weather, but may not address wet weather discharges. Once a community commit to an activity, what level of responsibility does the community have to RIDEM for pollutant reduction?

Response 36:

DEM agrees that listing all surface waters within the regulated areas does not provide new information to DEM. DEM already has developed GIS coverages that identify the Phase II regulated areas and all surface waters are shown on existing maps. The RIPDES Program will make this information available to the public on its Phase II Stormwater website. Therefore, the requirement to list all surface waters within the regulated area in the NOI has been removed from the permit. However, it is recommended that this information be incorporated into the SWMPP. This information is critical in the development of the SWMPP to demonstrate that the SWMPP and associated BMPs have been tailored to meet the local needs and addresses the surface waters within the operator's regulated area.

DEM agrees that at the time the NOI is required to be submitted by the operator, identifying all known receiving waters that receive a discharge from the MS4 as well as the number of outfalls to each water body may not be known before the mapping requirement in Part IV.B.3.b.1 illicit discharge detection and elimination is completed. This Part of the permit requires mapping of all outfalls and the receiving waters to be completed and submitted by the third year of the permit. However, operators must submit the information on receiving water bodies and outfalls based on the best information available to the operator at the time of submission. As the program requirements get implemented such as the outfall and receiving water mapping and illicit discharge identification and new information becomes available, DEM requires the submission of new information to be included in the annual reports.

GENERAL COMMENTS

Comment(s) 37:

Conservation Law Foundation

We support the Department's determination that MS4s are not authorized to discharge until the Department has reviewed and approved its Notice of Intent (NOI) (I.C.1.d).

Response 37:

This statement is incorrect. DEM/RIPDES is granting automatic authorization for the storm water discharges from the small MS4 upon DEM's receipt of a complete NOI, a copy of the SWMPP and a copy of the SWPPP for each eligible industrial facility.

Comment(s) 38:

Conservation Law Foundation

Adequate Public Notice.

As an initial matter, we wanted to assure that you are aware of the recent Ninth Circuit decision with respect to the federal NPDES Phase II Stormwater Program (the "Phase II Rule"). In *Environmental Defense Center, Inc. v. U.S. E.P.A.*, No. 00-70014 (9th Cir). Jan. 14, 2003), the Ninth Circuit recently held that the Environmental Protection Department's ("EPA") failure under the Phase II Rule to require review of notices of intent ("NOIs"), which the court found to be the functional equivalents of permits under the Phase II General Permit option, and its failure to make NOIs available to the public or subject to public hearings violate the Clean Water Act ("CWA"). The court remanded these aspects of the Phase II Rule to give EPA an opportunity to correct these deficiencies.

Given the similarities between the EPA Phase II Rule and the Rhode Island Department of Environmental Management's (the "Department" or "RIDEM") draft MS4 general permit, we believe that Rhode Island's draft permit for MS4s is similarly flawed for the following reasons. Each permittee must submit an NOI and a Stormwater Management Program Plan ("SWMPP") that contain specific information regarding the utilization of the six minimum control measures. Because these documents contain the substantive information about how the operator of a MS4 will reduce discharges to the maximum extent practicable, these documents are the functional equivalent of a permit application. This, as the Ninth Circuit held in the *Environmental Defense Center* litigation, if prior to authorization, the RIDEM does not make these documents available to the public and does not provide for public hearings on these specific documents, then the MS4 general permit in Rhode Island violates the CWA.

In order to comply with the CWA, RIDEM should consider adopting the following measures: (1) provide adequate notice by sending a notice of MS4s applying for coverage to the usual RIPDES notice list, and post similar notices on the RIDEM website; and (2) provide the public with a meaningful opportunity to review and comment on NOIs and SWMPPs.

Response 38:

DEM is aware that the Ninth Circuit recently remanded certain aspects of the Small MS4 General Permit so that EPA could take appropriate action to address the deficiencies identified. At this point it is not clear what actions may be necessary to address the ninth circuit decision. The Ninth circuit court decision states that "As noted above, under the Phase II Rule, it is the NOIs and not the general permits, that contain information about how the operator of a small MS4 will reduce discharges to the maximum extent practicable." Please note that when compared to the EPA general permit the RIPDES general permit contains additional language regarding acceptable measurable goals for the six minimum control measures. As such, substantive information about how the operator of a MS4 will reduce discharges to the

maximum extent practicable that EPA only requires in the NOI, DEM included in the RIPDES general permit which was public noticed. The RIPDES general permit also requires that the MS4 seek public input during the development of the SWMPP. In addition DEM will place list receipt of NOIs in the Watershed Actions Database on DEM's website:

http://zog.doa.state.ri.us/cgi-bin/dbman_Watershed_Actions/db.cgi.

The reviewer may notify DEM of any conditions that the reviewer feels are not being met by the applicant upon review of the NOI and SWMPP. DEM has the authority under Part III.D of the permit to revoke permit coverage under the general permit and required coverage under an individual permit if the SWMPP is not modified to comply with the permit. DEM believes that the actions summarized above address the two options presented by CLF.

Comment(s) 39:

Conservation Law Foundation

Rationale for Issuing the Permit.

In order to maximize the effectiveness of this permitting program, it is important for the Department to clearly articulate the rationale for promulgating this general permit. While the introductory section of the fact sheet includes information on the regulatory background for the issuance of the permit, there is nothing in the permit or in the fact sheet that spells out the environmental and economic reasons for controlling these types of discharges.

The permit should include specific findings explaining how the discharge of urban stormwater reduces water quality and results in other environmental degradation.

Although the draft permit itself requires the use of public education and outreach regarding stormwater impacts, we believe that the text of the permit provides an additional opportunity to communicate the importance of this program to operators of MS4s and the public.

Response 39:

DEM already included information related to the impacts of storm water on receiving waters in the fact sheet for the general permit. In addition, the recipients of the permit have received information about storm water Phase II through mailings or during workshops held by the DEM. Also, an extensive amount of information is posted on the department's website. DEM believes that the public education and outreach programs from municipalities will communicate to a greater audience and be able to educate the communities in a much more efficient manner. We would also welcome any public education and outreach efforts that CLF could provide.

Comment(s) 40:

Conservation Law Foundation

Discharges To Waters Known To Support Populations Of Threatened OR Endangered Species Should Not Receive Coverage Under Any General Permit.

General permits should not be used under any circumstance to authorize discharges to waters known to support populations of threatened or endangered species. Individual permits should be applied for and considered where a discharge is into a waterbody that supports protected species.

Part I.B.4.g and Part IV.A.7 of the draft general permit only prohibits discharges that may adversely effect a listed, or a proposed to be listed, endangered or threatened species or its critical habitat..." We do not know what "may adversely effect" means, but we do know this condition is insufficient to protect Rhode Island's rare and protected species. We maintain that no stormwater discharges, industrial or otherwise, should be authorized under a general permit to waters known to support threatened or endangered species.

Under state anti-degradation policy" Any existing in-stream and level of surface of water quality necessary to protect those existing uses, shall be maintained and protected." (RIDEM Water Quality Regulations, Rule 18(B), see also (C)(D) and (E).)

When a discharger applies for coverage under a general permit, no meaningful anti-degradation analysis is ever conducted on the potential impact to these "existing uses." Since no meaningful or detailed assessment is ever conducted, there is a real risk that stormwater discharges will adversely affect threatened or endangered species. This would be particularly true for populations of shellfish, freshwater mussels, and other vertebrate and invertebrate species whose habitat could be buried beneath sediment and silt transported from MS4 discharges.

The following changes should be adopted for Part I.B.4.g:

4. Limitations on Coverage. The following storm water discharges are not authorized by this permit:
 - g. *Discharges or discharge related activities that may adversely effect a listed, or a proposed to be listed, endangered or threatened species or its critical habitat (See Part IV.A.7 of this permit) to waters known to support State or Federally listed endangered or threatened species or designated critical habitat are not covered under this general permit. Any such discharge requires an individual permit.*

Other states have taken this approach. The State of Illinois' anti-degradation policy prohibits new discharges to be authorized under a general permit if the discharge is to a waterbody identified as supporting threatened or endangered species or exhibiting exceptional biodiversity (35 Ill. Adm. Code 302.105(d)(6)).

Response 40:

Under the RIPDES MS4 general permit the entire regulated MS4 is granted automatic authorization for its storm water discharges upon DEM's receipt of a complete NOI, a copy of the SWMPP and a copy of the SWPPP for each eligible industrial facility. DEM chose to issue a general permit to grant authorization for storm water discharges from regulated small MS4s and for all storm water discharges associated with industrial activity from eligible industrial facilities for two basic reasons. The use of a general permit is the most timely method that can be

employed to require implementation of measures necessary to comply with the RIPDES Storm Water Phase II Regulations.

Storm water discharges to the habitat of these protected species don't necessarily result in adverse impacts to the protected species or its critical habitat. The general permit contains conditions that require that the NOI and annual reports identify outfalls that discharge to the critical habitat of protected species so that DEM can evaluate the potential for impacts. It is DEM's position that it is preferable for the Department to evaluate potential effects to a listed, or a proposed to be listed, endangered or threatened species or its critical habitat than to require the operator to make an independent determination. After submittal of this information DEM's Natural Heritage Program will determine whether any discharges authorized under this permit have an adverse impact on waters known to support State or Federal listed endangered or threatened species or designated critical habitat. In the event of adverse effects by the discharge Part IV.A.7 of the General Permit requires coverage under an individual permit. As noted below, the language first proposed in Part IV.A.7 of the permit was changed to clarify that if subsequent to submission of the NOI, information becomes available (the general permit requires mapping, illicit discharge detection and dry weather surveys identification of outfalls or illicit discharges to outfalls), the operator must report whether the outfalls discharge to a critical habitat. These changes were included in the **Summary of Selected Changes to the Draft General Permit** that DEM solicited public comments on from August 21, 2003 to September 23, 2003 and additional comments were not received.

IV.A.

* * *

7. To the extent the information exists and is available at the time of application, the SWMPP must identify the names of all known receiving waters that receive a discharge from the regulated MS4, as well as the number of outfalls to each water body. The operator of the MS4 must identify in the SWMPP all discharges to a critical habitat of a listed or a proposed to be listed endangered or threatened species (this information can be found on DEM's web-site at MAPS under Environmental Resource Maps, Natural Heritage Areas). Upon completion of mapping of additional outfalls required in Part IV.B.3.b.1 of this permit or impacts are identified during dry weather surveys or illicit discharge detection and elimination required in Part IV.B.3.b.6 of this permit, the operator must determine if the illicit discharges or newly identified outfalls discharge to a critical habitat of a listed or a proposed to be listed endangered or threatened species and submit the additional information to the Department with the subsequent Annual Report required in Part IV.G of this permit. ~~Within sixty (60) days of identification of illicit discharges or completion of dry weather inspection of outfalls indicating that the discharge has the potential to adversely impact the receiving waters the operator of the MS4 must notify the Department in writing with the location of the outfalls and the description of the discharge and the potential impact. If the Department makes a determination that the discharge may adversely effect a critical habitat of a listed or a proposed to be listed endangered or threatened species, the discharge cannot be authorized under this permit and the operator must submit an application for an individual RIPDES permit that would require appropriate storm water controls or the operator must eliminate the discharge.~~

Comment(s) 41:

Conservation Law Foundation

Discharges to Waters Must Include an Affirmative Demonstration by the Permittee.

The general permit states that: "The following storm water discharges are not authorized by this permit...if the SWMPP is not consistent with the requirements of a TMDL, fails to ensure that future discharges will not cause or contribute to a violation of a water quality standard...Discharges not in compliance with the state's anti-degradation policy for water quality standards" Part I.B.4.j.k. The general permit fails to adequately address exactly how and by what means the permittee will comply with a TMDL, water quality standards, and the anti-degradation policy. Currently, the permit merely requires the operator to make determinations pertaining to impaired water bodies and the pollutants of concern. How will a discharger make this determination? No criteria or numerical goals are established in the permit for the discharger to make such a determination. The Department, who developed the water quality standards, authored as 303(d) impaired waterbody list, and has primary responsibility for implementing the anti-degradation policy, is the only party that has the data and information necessary to make such a determination.

The Department will review the discharger's determination at the time of NOI submittal, but it is unclear how the Department will review a determination by the discharger. The Department cannot review actual or estimated pollutant loadings because this information will not be submitted to the Department. The Department will not be able to review water quality models or soil loss models, because this information is not required for submittal.

The general permit should describe in detail how a discharger can affirmatively demonstrate that its discharges will not violate water quality standards, TMDL, and the anti-degradation policy.

RIPDES Permit Cannot Be Issued Without an Affirmative Demonstration by the Permittee, and/or Determination by the Department.

The Department cannot issue any RIPDES permit (general or individual) that fails to ensure the attainment of water quality standards. All discharge permits issued pursuant to state and/or federal law must be based on a determination that the Rhode Island Water Quality Standards will be attained. (RIDEM Water Quality Regulations, Rule 9; 40 CFR § 122.44(d)(5)).

Compliance with water quality standards also extends to a prohibition on new and existing discharges that would cause or contribute to violations of water quality standards. RIPDES permits cannot be issued to existing discharges, "When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." (40 CFR 122.4(d). For new discharges, no permit may be issued, "To a new source or a new discharge, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards." (40 CFR 122.4(l))

This is not to say that all existing discharges must halt immediately and that no new discharges may be allowed. To resolve the above mentioned concerns, the proposed general permit must require an affirmative demonstration by the permittee that they will

not cause or contribute to a violation of water quality standards (e.g. by showing reductions of their stormwater pollutant loading). For new or expanding discharges into already impaired waters, the permittee must be able to make an affirmative demonstration that they will not cause or contribute to these existing violations (e.g. by demonstrating no increase in pollutant loading to the receiving waters, and that the discharge will not contribute impairing pollutants).

Response 41:

DEM believes that the development, implementation and enforcement of the requirements described under the six minimum measures, will reduce the discharge of pollutants from regulated small MS4s to a Maximum Extent Practicable, protect water quality and satisfy the requirements of the Clean Water Act.

If a TMDL has not been completed, it is DEM's position that proper implementation of the six minimum measures tailored to address the pollutants of concern will be sufficient to meet water quality standards and this in itself will constitute an affirmative demonstration by the MS4 operator that the discharges do not cause a violation of a water quality standard. As described in Part II.C.1-7 of the general permit the operator must use the 303(d) list and best available information to determine if the pollutants that are the cause of the impairment are pollutants typically found in storm water runoff. In the absence of a TMDL, the general permit requires that BMPs within the six minimum measures be tailored to address the pollutant(s) of concern. As required in Part II.D of the general permit if a small MS4 operator implements the six minimum control measures, in accordance to Part IV of the MS4 General Permit and the discharges are determined to cause or contribute to non-attainment of applicable water quality standard, the operator needs to expand or better tailor its BMPs within the scope of the six minimum control measures. The operator of the MS4 must modify the storm water management program if and when available information indicates that water quality considerations warrant greater attention or prescriptiveness in specific components of the SWMPP. The language in the general permit for discharges to water quality impaired waters reads as follows:

II. Permit Conditions

C. Discharges to Water Quality Impaired Waters:

- 1. To the extent the information is available at the time of application, the operator must determine whether any portion of the MS4 or any facility owned or operated by the MS4 operator, discharges storm water either directly or indirectly into a water body on the current 303(d) list.*
- 2. The operator must determine whether storm water discharges from any part of the MS4 or a facility owned or operated by the MS4 operator discharges the pollutant(s) identified as causing the impairment or contributes the pollutant of concern, either directly or indirectly, to the impairment of a 303(d) listed water body and whether the TMDL has been completed.*
- 3. If a TMDL has been approved for any water body into which storm water discharges from the MS4 or facility contribute directly or indirectly the pollutant(s) of concern, the operator's SWMPP must address the TMDL provisions or other provisions for storm water discharges from the MS4 or the facility, in accordance with Part IV.D of this permit.*

4. *If a TMDL has not been approved, the SWMPP must include a description of the BMPs that will be used to control the pollutant(s) of concern, to the maximum extent practicable. BMPs that will collectively control the discharge of the pollutants of concern from existing and new sources, must be specifically identified.*
 5. *In order to remain eligible for this permit, the operator must incorporate into the SWMPP any limitations, conditions and requirements applicable to discharges authorized by this permit, necessary to implement the recommendations in an approved TMDL. This may include monitoring and reporting. Dischargers not eligible for this permit, must apply for an individual or alternative RIPDES general permit.*
 6. *Upon completion of outfall mapping required in Part IV.B.3 of this permit, the operator must re-evaluate compliance with Parts 1-3 of this section and submit the information to the Department with the subsequent Annual Report and a request to modify the SWMPP as necessary.*
 7. *Within ninety (90) days from the effective date of a revised/updated 303(d) list, the operator must determine whether any portion of the MS4 discharges storm water either directly or indirectly into a water body on the current 303(d) list and if so comply with part 3 of this section, and submit the information to the Department with the subsequent Annual Report and a request to change the SWMPP as necessary.*
- D. *Where a discharge is already authorized under this permit and is later determined to cause or contribute or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, or to be a significant contributor of pollutants, the Director will notify the operator and may take enforcement actions for any violations. In order to remain eligible for this permit the operator must revise the SWPPP to eliminate the cause or reasonable potential to cause or contribute to a violation of an applicable water quality standard and to reduce any sources identified as significant contributors of pollutants. The Director may require corrective action and coverage under this permit may be terminated and an alternative general permit or individual permit may be issued if an MS4 is determined to cause an instream exceedance of water quality standards or if violations remain or re-occur.*

A DEM determination that additional or more specific measures are necessary to protect water quality, will most likely be the result of an assessment based on a TMDL or equivalent analysis that determines sources and allocations of pollutant(s) of concern. When through the completion of a TMDL it is determined that the program is inadequate to protect water quality standards, then the permit will need to be modified to include any more stringent limitations necessary to protect water quality. DEM will also incorporate in the permit the allocations of pollutant loads established by a TMDL and the timing requirements for the implementation of a TMDL.

Comment(s) 42:

Conservation Law Foundation.

Required Monitoring

The Draft Permit contains no mandatory monitoring requirements (particularly for impaired waterbodies) and as such, is in violation of federal law. Federal law requires monitoring and testing parameters in the terms of the permit. See 40 C.F.R. § 122.48.(b) (required in *all* permits) and § 122.44.(l). These regulations have not been amended or rejected in the Phase II permitting rules. The importance of the monitoring requirements was readily recognized in *the District of Columbia Municipal Separate Storm Sewer System, NPDES Permit No. DC0000221*, NPDES Appeal Nos. 00-14 and 01-09, pp. 25-27 (Env., App. Div. USEPA, Feb. 20, 2002). The Appeals Board found the permit deficient in that, even though it did provide for monitoring (similar to the Draft Permit here), it did not specify the location, type, interval, or frequency, leaving that to be determined at a later date. The Appeals Board cited to the above regulations and the permit-writers manual and noted that monitoring is critical to producing valid compliance data. The Appeals Board found that adding the monitoring detail later was unacceptable, because then it was treated as a minor permit amendment, depriving the public of notice and comment. The Appeals Board remanded the permit to either add the missing precision regarding monitoring or to do so later, but only upon full, formal notice and comment for permit modification. *District of Columbia Permit No. 0000221*, at pp. 32-33.

The draft general permit does not require permittees to monitor their discharges. In order to assure that the objectives of the permit are met, we believe that the general permit must require a monitoring program, especially for discharges to impaired waterways. Part II.C.5. of the general permit provides "In order to remain eligible for this permit, the operator must incorporate into the SWMPP any limitations, conditions and requirements applicable to discharges authorized by this permit, necessary to implement the recommendations in an approved TMDL. This may include monitoring and reporting." Therefore, in the absence of an approved TMDL, monitoring is not mandatory. Mandatory monitoring not only identified the discharge of impairing pollutants, but it will allow the operator to assess the quality and quantity of pollutants being discharged. This information will also help RIDEM develop a TMDL, and once a TMDL is implemented, this information will help operator's meet TMDL compliance requirements. We believe that the permit should require permittees to implement this mandatory monitoring program immediately upon gaining coverage under the permit.

In addition, we recommend the mandatory monitoring program to include the following requirements.

- In addition to the parameters listed in Part VI.B.3, permittees should be required to monitor for metals, including lead, tin, and zinc.
- Permittees should be required to submit monitoring results on a monthly basis, and samples should be taken during a significant wet weather event.
- Permittees should be required to maintain records of monitoring activity for at least five years (in addition to the requirements in IV.F.).

By requiring permittees to monitor their discharges, the Department and the public will be in a better position to assess compliance with the permit.

Response 42:

40 C.F.R. Sections § 122.48.(b) and § 122.44.(l) refer to all permits with **numeric** water quality effluent limitations. Monitoring is required in all permits that include numeric water quality effluent limitations to ensure compliance with these permit limitations. Due to the nature of storm water discharges and the typical lack of information on which to base numeric water quality based effluent limitations (expressed as concentration and mass), the Phase II program was designed to use an interim permitting approach that uses BMPs for the attainment of water quality standards. In cases where adequate information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations are to be incorporated into storm water permits, as necessary and appropriate. This interim permitting approach is not intended to affect those storm water permits that already include appropriately derived numeric water quality based effluent limitations. Since the interim permitting approach only addresses water quality based effluent limitations, it also does not affect technology based effluent limitations, such as those based on effluent limitations guidelines or developed using best professional judgement, that are incorporated into storm water permits. This interim permitting approach provides time where necessary, to more fully assess the range of issues and possible options for the control of storm water discharges for the protection of water quality.

The MS4 general permit requires operators of MS4s to evaluate the appropriateness of their identified BMPs and progress toward achieving their identified measurable goals. The purpose of this evaluation is to determine whether or not the MS4 is meeting the requirements of the minimum control measures. The Phase II program was not designed to support "end-of-pipe" monitoring for regulated small MS4s unless a water quality analysis indicates there is a need and basis for deriving numeric water quality based effluent limitations. It is also expected that the necessity for monitoring and its extent may change from permit cycle to permit cycle.

In addition, as recommended by EPA, DEM incorporated in the permit a combination of physical and biological monitoring to aid in the identification of problems in the MS4. The inclusion of these requirements accomplishes two goals, the first to serve as an indicator of achievement of measurable goals in the IDDE program and the second to serve as a tool for assessment of water quality improvements.

Comment(s) 43:

Conservation Law Foundation

Program Assessment.

In addition to the reporting record keeping requirements detailed in Part IV.F,G, the Department should publish on an annual basis a detailed description of each instance of non-compliance, including, but not limited to the location of the violation, the identity of the owner and operator, the nature and extent of the non-compliance, the actions taken to resolve the non-compliance, the results of those actions, and a statement as to whether the non-compliance has stopped or is continuing (and, if continuing, the reasons therefore and the permittee's plan to achieve compliance).

Response 43:

As part of the public involvement/participation requirements, the operator of the MS4 must public notice the draft annual report, provide opportunity to comment and hold public hearings if

necessary. As described in Part IV.G of the MS4 general permit the operator of the MS4 is required to report in this document the following indicators of compliance with permit requirements: self assessment of compliance with the permit conditions, assessment of their progress towards meeting the selected measurable goals (non-compliance with measurable goals and milestones), summary of information that has been collected and analyzed, discussion of any proposed changes in the identified BMPs or measurable goals and assessment of the progress towards meeting the requirements for the control of storm water identified in an approved TMDL.

In addition, the information submitted to DEM in the annual report will be available to the public for review.

Comment(s) 44:

Southern Rhode Island Conservation District

Though the NPDES and RIDPES program has standardized the use of “MS4s” as a way to refer to municipalities who operate storm systems, the term “Municipal Separate Storm Sewer Systems” reinforces the idea that storm systems are sewers.

In the interest of enlightening public understanding and reducing and eliminating illicit discharges, awareness of language is critical. It would be far better to avoid any use of the word “sewer” with regard to storm water, and instead refer to the “storm drain system” or storm system.” This revised language should also be integrated into all Phase II plans throughout the state.

Response 44:

DEM understands that there may be confusion that the system is designed to handle sewer discharges, this terminology has been used from the start of the NPDES Storm Water Program. DEM's outreach efforts for the past three years, the RIPDES Storm Water Regulations, EPA's and DEM's Storm Water Phase II guidance and outreach materials all refer to the municipal storm water drain systems as municipal separate storm sewer systems. DEM's outreach contains many links to the national program as well as other States' programs, to change the term would create unnecessary confusion for the regulated community. In addition, an important component of the public education and outreach program is to inform the public that waters of the State directly receive the discharges from these systems without any treatment. It is under these programs that the RIPDES Storm Water terms should be clearly defined.

Comment(s) 45:

Southern Rhode Island Conservation District

Section IV of the General Permit entitled, “Program Plan Requirements, “ was confusing to those of us working within the format and terms of Appendix G from the contacts that municipalities made with RIDEM in the Fall of 2002.

As it appears now, two entire sections of Appendix G (Storm Water Abatement Opportunities” and “Storm Water Source Reduction and Advanced Management”) seem

to have been dropped from the General Permit. Rather, the General Permit under Section IV, seems to have added two new program plan requirements (IV.C. "Cooperation with Interconnected MS4s and IV.D. "Total Maximum Daily Load or Other Water Quality Determination"). These two new additions could be better advanced if explained in terms of Appendix G. "Cooperation with Interconnected MS4s" seems to fit well under "Storm Water Source Reduction and Advanced Management," and "Total Maximum Daily Load or Other Water Quality Determination" seems to fit well under "Storm Water Abatement Opportunities." Consistency between Appendix G and the General Permit would avoid confusion and provide great clarity.

Response 45:

The original grant agreement guidelines were developed by the RIDEM Nonpoint Source (NPS) Program prior to the development of the General Permit. The grant agreement document states that municipalities must have or develop a storm water management plan for compliance with Phase II Storm Water Regulations and it additionally requests items that are not specific Phase II requirements. Appendix G of the grant agreement lists items G. "Storm Water Abatement Opportunities" and H. "Recommendations for Storm Water Source Reduction and Advanced Management" that were requested by the NPS Program to help identify potential projects that they may be able to fund in the future. However, when developing the RIDEM Small MS4 General Permit, these items were not specifically included on the premise that if a municipality lists additional storm water abatement projects or planning in their storm water management program plan, these will be interpreted as goals that the municipality has set and thus become part of the permit requirements. RIDEM did not intend for these items to be part of the permit requirements and thus asked for these items to be submitted as an appendix to the plan or in a separate document. Thus, the Department is hesitant to change the format of the General Permit and does not want to expand the scope of Parts C. "Cooperation with Interconnected MS4s" and Part D. "Total Maximum Daily Load (TMDL), or other Water Quality Determination" beyond the intent of the Federal Regulations. The General Permit format most closely follows that of the Environmental Protection Agency (EPA) Federal Small MS4 General Permit model.

FISCAL NOTE

Comment(s) 46:

a. South Kingstown

The Town has a serious concern that RIDEM simply used EPA's fiscal note rather than developing a specific and detailed fiscal note for each community in Rhode Island. Each community has their own unique issues, and as such, the generic fiscal note developed by EPA is not an accurate representation of the financial impact on communities in the State.

Given the significant inconsistencies between the RIDEM fiscal note and the estimated fiscal impact on the Town, I would respectfully request that the comment period be extended for an additional sixty-(60) days. This would give the Town additional time to better quantify the financial, administrative and operational impacts of the proposed draft General Permit on the community.

First and foremost, RIDEM simply used the US Environmental Protection Agency's (USEPA) estimated fiscal impact cost of \$9.16 to \$9.08 per household. This figure is

delineated on page 2 of RIDEM's August 5, 2002 draft fiscal note and page 1 of RIDEM's August 1, 2001 draft fiscal note. This per household fiscal impact has been seriously underestimated for the Town of South Kingstown.

The estimated start-up costs to implement the General Permit as drafted for South Kingstown as follow:

	Program Costs Including Initial Capital and O & M (2003 dollars)	Program Costs for O & M Only (2003 dollars)
Street Sweeper	140,000	10,000
Street Sweeping Labor	97,000	97,000
Vac Truck	190,000	15,000
Vac Truck Labor	97,000	97,000
Admin. Staff	51,000	51,000
Analytical Testing	15,000	15,000
ISDS Inspection Program	75,000	75,000
Total Annual Cost	\$665,000	\$360,000
Number of Households	12,277	12,277
Cost per Household	\$54.17	\$29.32

More importantly, the above figures do not include the Town's current street sweeping and catch basin cleaning program, which requires an annual operational expenditure of approximately \$220,000.

Further, it has been difficult for the Town to accurately quantify the financial impact on the community until recently, while preparing our draft Storm Water Management Program Plan (SWMPP). The Town's consulting engineer has identified additional tasks that the Town would have to accomplish and fund in order to comply with the General Permit, if promulgated as drafted.

b. Rhode Island League of Cities and Towns

DEM identified nine (9) towns in its August 2, 2001 Fiscal Note as the only communities with a potential significant adverse impact caused by said regulations. Identification of only nine communities in the fiscal note may have directly caused officials in the twenty (20) other communities adversely impacted by these regulations to falsely assume that the regulations had little or no impact on their communities.

DEM must offer some explanation of how it defines the term "significant adverse economic impact". If based on a dollar cost determination, at what point does a community's costs to comply with the regulations cross some point where a "non-significant adverse economic impact" becomes a "significant adverse economic impact"? Is it a threshold of \$10,000; \$50,000; or \$1 million plus? Are compliance costs weighted somehow with a community's budget or ability to pay in order for DEM to identify what costs may be adverse in one community versus what costs may not be considered adverse in another community? Some explanation must be provided in order to demonstrate that the Fiscal Note was accurate and complete.

Several communities have identified numerous other components of the regulations other than those identified within the Fiscal Note as having an adverse economic impact on their community. DEM only identified the cost of obtaining a permit, and planning, development, implementation, engineering and infrastructure improvements having a fiscal impact on certain communities. Did DEM identify other costs associated with implementation and compliance but determine that the impact of implementing same was non-significant in terms of fiscal costs? If so, what were they?

The Fiscal Note's estimate of average household costs to pay for the adverse economic impact costs associated with only that which DEM has identified as significant components of implementation were \$9.16 to \$9.28 per household. How many Rhode Island communities responded to the survey? Where are the 35 Phase I MS4s located that USEPA used to review actual expenditures reported and which DEM based its annual cost projections on?

Each of the eight communities identified in the fiscal note believe that the proposed regulations are more stringent, and thus more costly to implement, than those currently mandated by USEPA. DEM must delineate which sections or components of its proposed regulations are not mandated by USEPA. It then must identify total estimated implementation costs for both "categories" of the regulations; those costs required by USEPA and then those costs required only by DEM.

Response 46:

The fiscal notes were prepared pursuant to and in compliance with the requirements of Section 42-35-2 and Section 22-12 of the Rhode Island General Laws (RIGL). DEM provided the required opportunity for consultation with the Department of Administration (DOA) and Rhode Island League of Cities and Towns (RILCT) in accordance with Section 22-12-1.4 of the RIGL. As part of the rule making process, the RIPDES Program issued a public notice of the proposed regulation amendments and included a draft fiscal note as part of the Administrative record for public comment. The public notice also advertised a public workshop that was held during the comment period. The public notice specifically requested that the public submit comments on proposals as to how the proposed regulations can be changed so that the adverse economic impacts can be minimized or eliminated. The fiscal note was also posted in DEM's website. For both amendments the DEM forwarded the draft fiscal notes to the RILCT and DOA for review and requested assistance in finalizing the document. After soliciting input from both offices, the RIPDES program held a public hearing. The transcript and Administrative record of these proceedings are available for public review. During this process, the RIPDES Program received no comments on the fiscal notes. The time to comment on the fiscal note was during the public comment periods or the associated Public Hearings during the promulgation of the Phase II Regulations not during the issuance of the RIPDES permit. DEM did not receive any comments and the regulations and the fiscal notes became effective. Although not obligated to respond to comments regarding the fiscal notes as part of the public process for the general permit, DEM has still offered a response to address the comments received as follows:

DEM has determined that the fiscal notes met the intent of RIGL 22-12-2. Both of the fiscal notes clearly named each of the impacted cities and towns and cited the effect in dollar amounts as an annual cost of program implementation. The RIPDES Regulation amendments were made only to incorporate EPA Phase II Regulations which DEM was mandated by Federal Regulations to adopt. The amendments were not more broad or stringent than the EPA

Regulations and therefore do not go beyond the Federal Regulations. The fiscal note was prepared using EPA's fiscal analysis entitled Economic Analysis of the Final Phase II Rule which was based on two methodologies for the calculations of the cost per household. The first methodology estimated incremental cost estimates for Phase II municipalities based on a survey of the Phase II communities (EPA surveyed 1600 jurisdictions and 121 surveys were returned). The second methodology involved EPA's review of actual expenditures reported from 35 Phase I MS4s. Therefore, it is the DEM's position that the fiscal note met the intent of RIGL 22-12-2 by providing annual costs for each municipality.

The permit allows the operator of the MS4 to choose the measurable goals that will be used to meet the requirements under the six minimum control measures. However, in some limited circumstances, DEM included measurable goals and milestones for certain required elements that needed to be implemented to ensure the timely development and implementation of other elements of the SWMPP programs or that were necessary to minimize the pollutant loading from MS4s. The measurable goals included were mostly chosen from EPA's menu of BMPs (which has been adopted by DEM) or developed following the guidance provided by EPA's Storm Water Phase II Rule preamble. Lastly, under RIPDES Rule 15.01(g)(4) DEM has the authority to include BMPs in the general permit when the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the State and Federal Acts.

In response to these comments from RILCT and the Town of South Kingstown, the RIPDES Program held a public workshop on July 24, 2003. The workshop was open to the public and the RIPDES Program sent notification to all stakeholders including those that received public notice of the draft small MS4 General Permit and to all those that have been working in stakeholder groups with our staff over the past several years. The scope of the meeting was limited to a discussion of comments the Department received during the public comment period of the draft small MS4 General Permit that are related to the "Required Measurable Goals and Interim Milestones". The RIPDES Program discussed the proposed responses and solicited additional input prior to amending the draft general permit and advertising the amendments for additional public comments. The workshop provided valuable feedback, especially from the municipalities. In response to that feedback, the RIPDES Program was able to make the appropriate amendments to the draft general permit to address the concerns or requests for clarification identified by the municipalities. The RIPDES Program issued a Public Notice and accepted public comments on the proposed amendments. No additional comments were received and no Public Hearing was requested.

BUDGET/EXPENDITURE CONCERNS

Comment(s) 47:

a. City of Woonsocket

The City of Woonsocket understands the requirements; however, compliance with the timeframe of the permit conditions and the workforce necessary to implement this Plan may be difficult.

b. Town of North Providence

This letter is being submitted to reinforce the Town's concerns and also to emphasize that while the Town of North Providence applauds the efforts of DEM to establish guidelines, it is important to note that an element of flexibility needs to be incorporated into the permit process, as each community's ability to comply will be based upon budget constraints, staffing and resources.

c. City of Cranston

While it is the intent of the City to comply with all aspects of the General Permit, our ability to do so is subject to available funding and resources.

d. Southern Rhode Island Conservation District

To execute the proposed program plans under RIPDES Phase II, municipalities will need assistance in covering costs. The storm water utility tax does not make sense for many communities, as evidenced by the response of the two with whom SRICD has been working closely. We will no elaborate this point since we're sure you'll here much more from the municipalities

Although the Department does not have a dedicated funding source allocated specifically for the purpose for funding Phase II implementation, the Department will continue to utilize Nonpoint Source Program 319 funding to the extent allowed under EPA guidance, and the State Revolving Fund (SRF) to assist municipalities with storm water abatement projects and infrastructure improvements, and will continue to seek other appropriate funding sources. DEM will also seek available resources, such as educational and public involvement BMPs, model ordinance development, training, and workshops to assist municipalities.