



2016 NYC Municipal Separate Storm Sewer Permit Progress Report: Public Comments and Responses

SPDES Permit No. NY-0287890

Effective Date of Permit: August 1, 2015

November 25, 2016

Background:

On August 1, 2015, the Department of Environmental Conservation (DEC) issued a new comprehensive permit to the City. The permit includes robust requirements that significantly expand the City's obligations to reduce pollutants discharging to the Municipal Separate Storm Sewer System (MS4). There are 14 City agencies with substantial obligations under the new MS4 permit, and the Department of Environmental Protection (DEP) is responsible for coordinating the efforts of those agencies with respect to all matters relating to the permit's requirements. The City's MS4 permit requires the development by August 1, 2018 of a Stormwater Management Program (SWMP) Plan, the goal of which will be to reduce pollution that reaches waterbodies through the MS4.

As required by the MS4 permit, the 2016 Progress Report on the development of the SWMP was presented to the public on June 22, 2016. This meeting included various stakeholders and everyone was informed that the Progress Report would be posted on the City's [MS4 webpage](#) in July. The 2016 Progress Report was open for comments through August 26, 2016. The comments received on each Progress Report presented and published will be used to inform development of the SWMP Plan. The following comments were received and responses were provided by the City.

City Responses to Comments on the MS4 Progress Report submitted August 24, 2016 by Riverkeeper representing comments from multiple organizations

Comment 1: Is the DEP including in its review of agency authorities and obligations any of the work (completed or ongoing) by the Department of City Planning that pertains to pollution sources and vulnerabilities in MS4 areas, for example the reports on Industrial Resilience or Open Industrial Uses?

Response 1: Yes

Comment 2: Does the DEP believe, at this stage, that any new legislation will be required to implement the MS4 permit? If so, can the DEP share these plans with the public? Can the DEP also share the review of existing legal authority to control discharges into and from the MS4 and its proposed schedule for the adoption of comprehensive legal authority which was submitted to the DEC?

Response 2: The MS4 legislation was transmitted by the Mayor to the City Council on November 16, 2016 and is available on the Council's website.

<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2884636&GUID=C605C2B3-29BA-4D7A-83D8-392CD45C7093&Options=ID|Text|&Search=ms4>

Comment 3: Can the DEP share the interagency MOUs with the public (by distributing to the MS4 public mailing list and by posting online)?

Response 3: MOUs between agencies are currently being drafted and progress will be shared publicly as they are finalized.

Comment 4: What interaction has the DEP had so far with New York City Council, and what will be the Council's role in overseeing DEP's actions under this permit?

Response 4: The Council's role is solely as the legislature, in adopting legislation. Preliminary outreach about proposed legislation has occurred. DEP will be hosting webinars on November 29th and November 30th from 3-5 pm to walk stakeholders and public through the proposed legislation.

Comment 5: Does the DEP believe that new offices, programs, branches (or similar substructures) will need to be established in any of the MS4 Permit-covered agencies? If so, what programs, and for which agencies?

Response 5: All operating agencies will have resources to implement and track their efforts in Mapping, Illicit Discharge Detection and Elimination (IDDE), and Pollution Prevention and Good Housekeeping (PP/GH). Those with existing related Public Education/Outreach programs will incorporate MS4 messaging where appropriate.

Some of the programs will be implemented or coordinated by DEP. DEP is in the process of establishing several new programs such as the Construction and Post-Construction program, which includes Stormwater Pollution Prevention Plan reviews, inspections and enforcement; and the Industrial/Commercial program, which includes inspections and enforcement. In addition, DEP is coordinating the PP/GH program among the city agencies. Other existing DEP programs will be enhanced to comply with MS4 requirements including IDDE and Monitoring.

Comment 6: Will the DEP release the “inventory” of existing programs referenced in the Progress Report? Similarly, will the DEP release its target list of citywide events where the agency plans to deploy public education and outreach assets in the coming 6-12 months?

Response 6: Information on existing Public Education and Outreach programs is currently available to the public on NYC agency websites. Additional information is available in DEP's Annual Report on Best Management Practices required by SPDES Permits for the City's 14 Wastewater Treatment Plants. A list of current programs will be provided in the Stormwater Management Program (SWMP). Examples of existing programs include and are not limited to:

- **DEP Art and Poetry Contest**
- **DEP Resources and Training for Educators**
- **DEP Adopt-a-Bluebelt**
- **DPR Natural Classroom and Urban Park Ranger Programs**
- **DOT Adopt-a-Highway/Greenway**
- **DSNY Adopt-a-Basket**
- **DSNY SAFE Disposal Program**

Sponsorship of and participation at citywide events is dependent on the availability of staff and resources and is subject to change. Example events include but are not limited to SAFE Disposal Events, the DEC Annual Hudson River Fact Finding Day, and Summer Streets.

Comment 7: While we appreciate the DEP's presence at conferences and festivals, table-side materials are not the only way – nor indeed the best way – to reach the average New Yorker. What is the DEP's plan for reaching families, businesses, industries, and tourists throughout the MS4 area?

Response 7: The City intends to use a variety of tools and strategies to reach New Yorkers. While full details on public outreach will be presented in the Stormwater Management Program (SWMP) Plan, example outreach activities may include meetings and workshops on specific permit provisions with the affected stakeholders, mailings to businesses, outreach to schools and educators, and paid advertisements.

Comment 8: At the public meeting for this annual permit update, it was suggested by a member of the public that the DEP should hold meetings individually tailored to each permit program area. As an example, even a discussion on something as discrete as the DEP's plans for fulfilling its mapping requirement can take well over an hour. Will the DEP consider this level of transparency?

Response 8: In response to the Public Meeting held June 22, 2016, DEP established a Stormwater Advisory Group (SAG) for the City and members of the public to convene quarterly throughout Stormwater Management Program (SWMP) development. The intent of the SAG meetings is for the City to share more detailed information on each permit provision and receive feedback and questions from the public.

The first SAG meeting held on September 27, 2016 covered portions of the Pollution Prevention/Good Housekeeping Program (PP/GH) for Municipal Operations and Facilities. The next SAG meeting on December 13, 2016 will focus on the Construction and Post-

Construction Program development and initial results of the Lot Size Threshold Study. The public is notified of SAG meetings in advance via email. If you are interested in attending future SAG meetings, please email the MS4 Team at ms4@dep.nyc.gov.

Additional outreach with relevant stakeholders will occur for some subjects. For example, webinars on November 29th and 30th from 3-5 pm will inform two separate stakeholder groups about proposed legislation.

Comment 9: On the issue of technology, a proposal was made at the same public meeting that the DEP should explore ways to have citizens, businesses, and communities help the DEP with enforcement through technology. Does the DEP plan on generating any 21st Century solutions to the problem of enforcing a permit that covers thousands of facilities, even more outfalls, and incalculable direct-discharge spots across New York City?

Response 9: The City's 311 system is the most streamlined and effective method for the public to report Illicit Discharge Detection and Elimination (IDDE) issues, as it is centrally collected and tracked to meet multiple reporting needs. Currently, residents are encouraged to report all issues affecting City waterways by calling 311 or by visiting www1.nyc.gov/311. The request for technology that facilitates public reporting of stormwater issues has been noted and will be considered as program development progresses.

Comment 10: The DEP has previously mentioned that it plans to expand “311” support for MS4-type issues. Does this plan include expansion of the 311 phone app? If so, how? Does the DEP have information it can share on the reports already coming in to the 311 system about MS4-related issues, and examples of how the DEP generates solutions now?

Response 10: The 311 system already accommodates complaints that are relevant to the MS4 permit. This includes complaints of general water quality issues in City waterways, illegal dumping into catch basins, illicit discharges of sewage or industrial waste, dry weather discharges, leaking fire hydrants, and other sources of pollution leaking onto streets or sidewalks. All 311 service requests since 2010 are available to the public through NYC Open Data.

Comment 11: At what point, and in what form, will the DEP release the Permit-required map? For example, will the drainage map only become available with the final SWMP, will the DEP release GIS files of the map, and/or will the agency include in the map detailed information of all City-agency owned and controlled outfalls or simply pinpoint the location of unidentified outfalls?

Response 11: The map will be released in accordance with the content and schedule required by the permit. Currently, DEP is coordinating with other agencies to determine the appropriate format and level of detail to share publicly for the preliminary and final maps, the feasibility of various formats and public accessibility/interactivity, and whether any portions can be shared in advance of the Stormwater Management Program (SMWP) Plan submission.

Comment 12: We are significantly concerned with private connections into the MS4 system. We understand the DEP as having concluded it is not responsible for mapping these connections unless there is evidence of a dry weather discharge that can be tracked to a specific location. Is this the case? If this is not precisely accurate, how would, in your own words, the DEP describe action it will be taking with respect to mapping and monitoring past, present, and future private connections to MS4 systems?

Response 12: Dry weather discharges are the best indication of an illicit connection to the MS4. Once they are identified they will be abated, and the number detected and eliminated will be included in each annual report, so there is no need to maintain a map of these sites. Individual private connections are not mapped, but are reviewed and inspected through the existing sewer connection permit process.

Comment 13: Are all New York City owned and operated MS4 outfalls being pinpointed by the DEP under this permit, or just the outfalls from the specific “covered” agencies?

Response 13: As required by the MS4 permit, only outfalls owned and operated by agencies with obligations under the permit will be mapped.

Comment 14: Are street-ends and other known/discrete direct drainage, discharge, or conveyance points (i.e., not piped outfalls) that are owned or operated by City agencies being mapped as well? For example, waterfront stretches of City parks, DOT-controlled street-ends, or DEP wastewater treatment facility docks?

Response 14: Properties owned or operated by City agencies that drain via overland flow rather than through a piped outfall are being mapped as overland flow areas.

Comment 15: Most importantly, how does the DEP plan to discover and stop illicit discharges that are not occurring during dry weather? Certainly, sites with illicit or illegal connections, during storms, will have polluted runoff entering the City’s MS4 system that may be entirely untreated and uncontrolled. We call for a plan to address these illicit and illegal connections in all weather conditions.

Response 15: The permit defines an illicit discharge as set forth in 40 CFR 122.26(b)(2): any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities per. As such, normal stormwater discharge is not considered an illicit discharge. It is important to note that dry weather provides the appropriate conditions to detect illicit discharges that can be diluted and difficult to track down during wet weather. Accordingly, DEP has been implementing a comprehensive Sentinel Monitoring Program to identify illicit discharges in conjunction with the Shoreline Survey Program. Wet weather monitoring as required by the MS4 permit will complement the dry weather sampling performed in the Illicit Discharge Detection and Elimination (IDDE) program. In addition, the City continues to rely on public reporting of illicit discharges at all times, to enhance the regular monitoring programs.

Comment 16: Does the DEP have any plans to expand the role of the public in IDDE enforcement work? As with the comment above relating to technology’s role in public involvement, use here for enforcement would seem to be a logical place to start. Beyond 311-type interactions with the public for IDDE purposes, does the DEP have a plan to streamline how it receives tips (about issues like dry weather discharges) from the public, and, perhaps most importantly, responds to those tips?

Response 16: Please refer to the responses to comments 9 and 10 regarding 311 and the efforts toward enhanced reporting.

Additionally, the DEP Emergency Response Unit responds to reports of illicit discharges that enter the sewer system. Plans to engage the public will be detailed in the Stormwater Management Program (SWMP) Plan.

DSNY responds to 311 complaints and citizen tips regarding illegal dumping on public and private property. DSNY also issues violations for illegal dumping through its own investigations.

Comment 17: Does the DEP plan on sharing the records and procedures of the IDDE program with the public during the SWMP development (e.g., outcomes of recent enforcement actions, information on internal processes for handling reports of dry weather discharges, etc.)? This would allow much more informed comments when the 2017 progress report is issued, and would go far toward educating the public as to how the DEP's IDDE program works, and how it could be improved.

Response 17: The current Illicit Discharge Detection and Elimination (IDDE) program manages citywide issues of illicit discharge. The program is based on the SPDES permits for the fourteen NYC wastewater treatment plants which include, among other requirements, records requirements and dry weather discharge procedures, which DEP is implementing.

Comment 18: Regarding inspection and enforcement, what new staff does the DEP, specifically, require over the coming years (either filled since the permit issuance or planned to be filled)?

Response 18: DEP is currently developing the review, inspection, and enforcement aspects of new programs, which includes assessing personnel needs and developing a staffing plan.

Comment 19: Does the DEP plan to work with other City agencies to help alleviate the inspection and enforcement burden? If so, which agencies, and has the DEP secured such collaboration for the duration of the permit's lifespan? What is the proposed annual workload (sites visited, for example) for each proposed enforcement agent?

Response 19: The review, inspection and enforcement will not be a shared responsibility with other Agencies. DEP is undertaking the responsibility to manage two new programs: review, inspection and enforcement aspects of Construction/Post-Construction, and inspection and enforcement aspects of Industrial/Commercial stormwater management. As noted in the response to comment 18, DEP is currently developing these new programs, which includes assessing personnel needs, developing a staffing plan, and coordinating with other agencies on the process.

Comment 20: Does the DEP foresee any budget or legislative work with the City Council to help it fulfill this aspect of the MS4 permit?

Response 20: As noted in the February 1, 2016 submission, DEP is currently working with the New York City Law Department to pursue legislation in connection with certain elements of the permit. Reference the response to comment 4 regarding City Council's involvement.

Comment 21: Is the DEP's lot size study examining only MS4 areas, or does it include CSO areas? Also, is DEP's lot size study examining what stormwater performance standard should be applied to properties smaller than one acre (which are not subject to DEC's Construction General Permit)?

Response 21: DEP's threshold study quantitative water quality modeling is focusing on MS4 areas consistent with the permit. However, DEP also included citywide DOB permit data in the initial lot analysis to assess the approximate number of sites that could be affected citywide. The threshold study is assessing the criteria and requirements for stormwater management practices to be applied to sites that create less than one acre of soil

disturbance, such as the water quality volume to be managed and the specific types of practices allowed.

Comment 22: Does the DEP plan to make its final list of municipal facilities and operations in MS4 areas publicly available in the final SWMP? If not, why not?

Response 22: The list of MS4 municipal facilities and operations will be provided, except for those omitted for security concerns.

Comment 23: The DEP mentions that it plans to prioritize facilities into “High, Medium, and Low” grades based on their potential to impact water quality; can you be more specific? Does the DEP plan to look at potential impact to only those water quality characteristics for which a receiving waterbody (from each individual facility or operation) is impaired, or will the DEP take into consideration any potential impact – present and future – into consideration?

Response 23: Presentations describing the prioritization process were provided both at the Stormwater Infrastructure Matters (SWIM) Coalition Meeting on September 13th and September 27th Stormwater Advisory Group (SAG) meeting. The presentation is available at DEP's MS4 website: http://www.nyc.gov/html/dep/pdf/water_sewer/stormwater-advisory-group-092716.pdf

All potential discharges of Pollutants of Concern (POCs) will be taken into account for the prioritization/ranking. Sites with POCs for which the receiving water body is impaired will carry a higher-weighted risk (i.e., may rank higher) than sites for which the surface water impairments are different from the on-site POCs. The potential risk to water quality is assessed using several criteria such as discharges of POCs to impaired waters, pollutant sources on site, proximity to a waterbody and history of problems that would impact water quality of the facility.

Comment 24: Will toxics, wastes, oils, sediments, and hazardous substances be included in the DEP's setting of facility and operation classifications? What about plastics, pharmaceuticals, and personal care products?

Response 24: Facilities and operations will be prioritized in accordance with the prioritization protocol (see response to comment 23). The permit defines Pollutants of Concern (POCs) as a pollutant that might reasonably be expected to be present in stormwater in quantities that may cause or contribute to a water quality violation in waters of the State. All potential discharges of POCs will be taken into account for the prioritization/ranking.

Comment 25: The DEP's progress report notes that protocols and procedures have been established for this listing process, as well as training systems; can you share that information with the public? It should be made available for public comment.

Response 25: These protocols, procedures, and associated training are currently under development. DEP intends to provide a presentation summarizing these documents at the Stormwater Advisory Group (SAG) meetings to gather early feedback during Stormwater Management Program (SWMP) development. Final documents will be included in the SWMP Plan, for additional public review and comment.

Comment 26: The DEP states that it will be requiring these facilities and operations to “reduce or prevent” discharge of pollutants. How does the DEP plan on determining which facilities will only be required to reduce (not prevent) discharges? Why does the DEP not intend to set a goal of pollution prevention for these citywide facilities and operations?

Response 26: Stormwater Control Measures (SCMs) will be developed and implemented for operations conducted at facilities and off-site locations. These are pollution prevention measures that are intended to control impacts to stormwater runoff to the maximum extent practicable. The overall aim is to prevent, but in certain cases reduction may be the only achievable goal. The self-assessment program will help determine the effectiveness of the SCMs, and may result in revisions or development of new SCMs.

Comment 27: Facilities and operations, under the DEP’s plan, will be conducting periodic self reporting; less often for “low” priority facilities and operations, more frequent for the “high” priority facilities and operations. What are these timetables, and does the DEP reserve the right to require more frequent self-assessments in the event of any external (e.g., water quality standard changes) or internal (e.g., facility leadership changes or repeated violations) factors?

Response 27: The facility self-assessments are a permit requirement applicable to all agencies affected by the permit, and each agency is responsible for its own compliance. The schedule and prioritization will be established in the Citywide Stormwater Management Program (SWMP). High ranking facilities will be assessed more frequently than lower ranking facilities. However, each time a scheduled self-assessment is conducted, the facility/operation ranking will be re-evaluated to account for any changed conditions at the site (e.g., if the site now has different uses or operations, or has implemented Stormwater Control Measures (SCMs) to prevent or reduce Pollutants of Concern (POC) discharges). The prioritization criteria and protocol will be consistent among all sites and instances of evaluation.

Comment 28: For facility and operation self-assessments, what level of oversight does the DEP plan on establishing? Will the DEP demand approval authority over self-assessment procedures for each agency, facility, or operation? Will the DEP be investigating, auditing, or inspecting these facilities on a random basis, and, if so, what percentage of these facilities and operations does the City plan to audit or inspect each calendar year?

Response 28: The facility self-assessments are a permit requirement applicable to all agencies affected by the permit, and each agency is responsible for its own compliance. In accordance with permit requirements (Permit Part IV.G.1.d), the Pollution Prevention and Good Housekeeping (PP/GH) program shall provide recommendations and time frames for modification when PP/GH practices are determined to be inadequate, and include provisions for follow-up to ensure recommendations are implemented within the specified time frames.

Comment 29: Will the DEP be allowing other “covered” agencies to conduct these self-assessments on a citywide basis, or require such assessments be tailored and conducted at each individual facility or operation? We recommend the latter.

Response 29: Each agency provided a self-prioritized list of operations and facilities, which served to estimate the quantity and types of facilities requiring assessment. To ensure consistency across all involved municipal facilities and operations, a third-party contractor

is developing prioritization and self-assessment protocols, and performing the preliminary prioritization. A separate third-party contractor will perform on-site assessments to confirm, revise and add to the information used in the preliminary prioritization for the initial self-assessment. This contractor will also provide training to the municipal staff responsible for conducting self-assessments thereafter. Each agency will then be responsible for conducting and reporting on future self-assessments.

Comment 30: What records will be made available to the public of these self-assessments? Will there be recordkeeping requirements, and, if so, for how long will the DEP require city agencies maintain records of these internal assessments? Will these assessments be sent to the State for review on an annual basis?

Response 30: Summary of the self-assessments for high priority facilities will be included as part of the Stormwater Management Program (SWMP) Plan. Each agency is required to maintain the records and documentation that are necessary to the aspects of permit implementation and compliance for which they are responsible. In accordance with the permit requirements, records must be kept for at least 5 years after they are generated.

Comment 31: This initial inventory of facilities and operations, as we understand it, has been reported to DEP by the “covered” agencies. What measures has the DEP taken to determine if this is a full and complete list?

Response 31: Existing data and information from multiple sources was used to identify City-owned properties and compared with agency-provided lists. Ongoing coordination among agencies will increase comprehensiveness and accuracy. Additionally, DEP is in the process of executing MOUs with each affected agency to memorialize mutually understood divisions of responsibility. Obligations of other agencies include providing DEP with all support and information necessary to develop the Stormwater Management Program (SWMP). Agencies are responsible for ensuring the data submitted is complete and accurate for permit compliance.

Comment 32: The permit also includes a requirement to “Consider and if feasible and cost-effective incorporate, runoff reduction techniques and green infrastructure during planned municipal upgrades including municipal rights of way.” The annual report should explain the City’s actions to date to implement this requirement across all city agencies, as well as next steps to further advance implementation

Response 32: DEP is currently working with the other affected agencies to gather information about the types of projects best suited for this type of work, and the associated funding sources. The Stormwater Management Program (SWMP) will include the procedures/criteria regarding the types of upgrades or work that qualify, and how feasibility and cost-effectiveness will be evaluated.

Comment 33: First, once the DEP has created its inventory of industrial and commercial sites, will it make that inventory publicly accessible? If not, why not?

Response 33: NY State DEC maintains the inventory of permitted industrial and commercial sites. Multi-Sector General Permits (MSGPs) are available to the public by a link at DEC's website (bottom of web page): <http://www.dec.ny.gov/chemical/41392.html>

Other aspects of creating and maintaining an inventory are still in development, and will be coordinated with DEC.

Comment 34: In developing this inventory of sites, the DEP notes that “facilities which are possible sources of pollution to the MS4” will be included for City oversight. What are the specifics of the DEP’s system of review for determining whether a facility is a possible source of pollution to an MS4? Are these investigations tabletop exercises, or is the DEP investigating sites in person?

Response 34: The initial inventory of facilities was compiled from multiple data sources that include the particular Standard Industrial Classification (SIC) code a site is registered under. However, these SIC code registrations alone do not indicate whether the site is subject to SPDES Multi-Sector General Permit (MSGP). DEP is conducting a web-based screening of the inventory to eliminate those that don't pose a risk to stormwater. For example, a limousine service owner using their home as their office headquarters may be registered under a 'transportation' SIC code, yet the owner might simply be parking a vehicle in their driveway. This is not an industrial site/activity that poses a risk to stormwater, and as such this business would be removed from the inventory or classified as "no further analysis". Businesses requiring further analysis will remain on the list to be inspected physically for permit applicability.

Comment 35: For sites on the inventory, the DEP states that it has developed an inspection plan to determine if a site needs a SPDES permit. What is this plan, and when will the public be provided an opportunity to comment on the plan?

Response 35: The progress report states that the City will develop an inspection plan as part of this program. The inspection protocol for unpermitted facilities is still in development. The protocol will determine if the site requires coverage under the MSGP, needs to apply for no-stormwater exposure certification, or is not subject to SPDES. DEP intends to provide a comprehensive overview of the Industrial and Commercial Stormwater Sources section of the Stormwater Management Program (SWMP) at a Stormwater Advisory Group (SAG) meeting to gather feedback from public. The final plan will be made available as part of the SWMP Plan for additional public review and input.

Comment 36: According to our understanding of the State SPDES databases, there are many sites in the City’s MS4 area which had permits in the past, but no longer have coverage. We suggest that the DEP take a hard look at these facilities in the first year after it has been transferred enforcement jurisdiction.

Response 36: Comment noted.

Comment 37: The DEP progress report states that it plans to conduct inspections and enforcement at MSGP facilities (“to ensure they’re complying with their SWPPPs”). Does this mean the DEP will not be inspecting sites that need a SPDES permit but do not have one? If so, why? We suggest clarifying this language to state that any sites in violation of the stormwater sections of the Clean Water Act and applicable State law will be subject to DEP jurisdiction for enforcement purposes.

Response 37: As required by the permit, unpermitted facilities will be inspected and assessed to determine if they generate significant contributions of Pollutants of Concern (POCs) to impaired waters, and if so, will be referred to DEC for permitting.

Comment 38: We notice reference in the DEP progress report to “no further action” sites. Can you please give more detail about such sites; for example, whether this is an enforcement-related designation, whether findings that sites require “no further action” will be posted as final agency actions and available to the public, and what these sites will be exempted from?

Response 38: Please see response to comment 34 regarding inventory analyses.

Comment 39: You stated that surveys were conducted with peer cities. Can you please share the results and responses to those surveys?

Response 39: Once the surveys are complete and we compile the information, we will make it available.

Comment 40: According to the 2016 progress report, the DEP is “evaluating the effectiveness of current control practices.” With as much detail and specificity as possible, can the DEP provide the public with a list of those current practices?

Response 40: Detailed information on current control practices and their effectiveness was presented to the public at the Trash Free NYC Waters meeting on September 27, 2016. This presentation is available on the DEP website. Additional information is available to the public in the Annual Report on Best Management Practices required by SPDES Permits for the City’s 14 Wastewater Treatment Plants. The Stormwater Management Program (SWMP) Plan will include a description of these programs, and will be provided to the public for review in advance of submission to the State.

Comment 41: The DEP is planning to develop a list of best available control technologies and systems. How will the DEP be defining “best available” for the SWMP? We are concerned that the high variability of NYC stormwater issues requires more than the best one-size-fits-all approach, city-wide, to debris and trash collection. Moreover, there can be many best approaches, depending on program aspects (e.g., there are best available ways to target educational facilities, different approaches for events and large event venues, and different best ideas for sidewalk garbage bins and street cleaning; no one approach is better than the others).

Response 41: The MS4 Permit stipulates that the program to control floatable and settleable trash and debris included in the Stormwater Management Program (SWMP) Plan be designed to identify technological advancements and best available technologies employed in other municipalities and assess their applicability to New York City. The City plans to accomplish this through a study. Referred to as the 'work plan' in the MS4 Permit, this study will determine the loading rate of floatable and settleable trash and debris from the MS4 to waterbodies listed as impaired for floatables. The results of this study will inform decisions about best controls for different areas within the MS4.

Comment 42: Where do street-ends (and the management of debris and garbage that accumulates there) factor into this permit provision and progress report?

Response 42: The City is currently developing a methodology to determine the loading rate of floatable and settleable trash and debris from the MS4, including land-based sources, as required by the Permit. If the public has information on street ends where garbage and debris accumulation is noted, the City can consider that information as it continues to develop a Floatables Control Program for the MS4.

Comment 43: What work does DEP anticipate conducting with the Departments of Transportation and Sanitation? Specifically, how will the management of garbage on streets and at the curb be changed in NYC? Will any solutions generated here (e.g., better trash bin designs, street-end cleanups, etc.) be applied citywide? If not, why not?

Response 43: The MS4 Permit is issued to the City and requires implementation by affected agencies including the Departments of Transportation and Sanitation. Coordination with these agencies is already underway. As the work plan and studies are not yet complete, the City cannot at this time identify what controls will be implemented where, though both structural and nonstructural controls will be considered.

Comment 44: Will any of the programs developed here as “best available” plans for debris, trash, and floatable pollution prevention be applied by any other agencies or authorities that are not covered by this permit? Has the DEP asked the Mayor’s Office whether it can negotiate with any such agencies (e.g., NYC Housing Authority, Port Authority, state and federal highways, etc.) to try and improve floatables control on parcels they control?

Response 44: The City welcomes agencies and authorities without obligations to this permit to adopt best management practices to reduce their contribution to floatable and settleable trash and debris, including those that will be developed under the MS4 permit. To date there have been no formal discussions on this topic, and the MS4 Permit does not require these agencies/authorities to implement the Stormwater Management Program (SWMP). These entities are subject to their own MS4 obligations, separate from the City’s MS4 Permit.

Comment 45: We notice reference of initiating a pilot “Adopt-a-Catch-Basin” program. Can DEP share the extent and results or status of this pilot program? Does DEP plan to implement a broader Adopt-a-Catch-Basin program? Why or why not?

Response 45: The Adopt-a-Catch Basin program launched in April 2016. A joint effort between DEP and Brooklyn Borough President, this pilot program formed partnerships with block associations, business improvement districts, and other community-based organizations to remove debris that blocks storm drains. The effort is intended to curb localized flooding after heavy rainstorms and help prevent floatables such as bottles and other debris from entering into waterways. DEP provides training, gloves and garbage bags to participating organizations that agree to maintain storm drains in their neighborhoods. DEP also enrolls participants in an early alert system to inform them of upcoming weather events that may cause flooding. The pilot phase included sections of Brooklyn, and DEP would consider expanding the program to include other boroughs.

Comment 46: We ask that the DEP include a monitoring plan and protocol for discharges from street ends, and include a system for public reporting of both discharges and clean-up need. With this MS4 permit, accumulated trash at a street end represents just as real of a potential water pollution risk as a waste oil leak or a combined sewer outfall. Discharges from street-ends should be monitored, reported annually, and, individually, assessed on an annual basis.

Response 46: Refer to the response to comment 42 regarding trash at street ends. 311 is currently the appropriate means for public reporting of discharges and clean-up needs.

Comment 47: The DEP notes the presence of a series of “initial MS4 outfalls” for monitoring. For these, does the agency plan to monitor the outfalls and their drainage areas (to assess more specifically where the sources of pollution are coming from, rather than just the presence or absence of pollution), or just the outfalls? If just the outfalls, why?

Response 47: DEP is still developing a multi-purpose monitoring and assessment program and intends to share the details in a Stormwater Advisory Group (SAG) meeting to receive feedback.

Comment 48: We fully support DEP's efforts to include worker safety in MS4 permit protocols and procedures. That said, "safety of sampling crew" is listed as a measure for determining sample sites – what did the DEP look at for this metric? How does DEP think this decision (to exclude otherwise appropriate sampling sites because of worker safety) will affect monitoring and assessment program effectiveness? Were any solutions developed or discussed for this concern (e.g., sampling at the MS4 outfall instead of within the manhole for any identified site) that might minimize worker safety concerns in order to develop a more appropriate set of monitoring sites? Will the DEP share information on the sites that would have been selected but for the safety concerns? If not, why not?

Response 48: The selected set of MS4 sampling locations will achieve all MS4 monitoring program objectives required by Permit Part IV.J.2. The Monitoring and Assessment Plan will describe why the location is selected, frequency of sampling, parameters to be sampled and description of sampling equipment. The City's Environmental Health and Safety (EHS) rules will be taken into account for an additional consideration to not pose a threat to worker safety.

Comment 49: The DEP cites "sister-city" data on monitoring and assessment plans. Can the DEP share that information with the public? If not, why not?

Response 49: DEP is collecting information on other peer municipalities' MS4 Programs including Monitoring and Assessment. We will do an analysis of information learned and publish a report on the findings.

Comment 50: Please ensure that the "Deliverables Schedule and Status" list includes all obligations under the permit. For example, the requirement to complete a lot size study is not listed under the post-construction section.

Response 50: The deliverables schedule and status list matches Table 2 in the MS4 permit. The Lot Size Soil Disturbance Threshold Study is not a deliverable, but will inform the Stormwater Management Program (SWMP). In accordance with permit requirements, the study recommendations on the appropriate threshold will be submitted as part of the SWMP.

Comment 51: Does the DEP plan to make the initial MS4 sampling stations permanent? If not, what will be the level of permanence of any future-designated sampling stations? Surely, as work progresses on green and grey solutions to stormwater pollution, the representative monitoring sites may need to be amended. What is DEP's process for any such necessary amendments? Has the DEP considered building infrastructure into MS4 drainage areas for ease of regular testing (like, for example, drinking water testing sites or leachate wells)?

Response 51: DEP is still developing a multi-purpose monitoring and assessment program and intends to share the details in a Stormwater Advisory Group (SAG) meeting to receive feedback.

Comment 52: Clearly we're commenting on an annual report already submitted to the State. We expect responses to these comments will be included (to the extent our suggestions or concerns shape the next year's report) in 2017's annual report. We are concerned that this will mean that our comments on the

next (2nd) annual report will be reviewed after that report's submission, again, and be too late to shape the final SWMP to be submitted in 2018. Will the DEP provide the public with an opportunity before final submission to the State in 2017?

Response 52: DEP's Stormwater Management Program (SWMP) development schedule includes a lengthy, multi-stakeholder review process to allow sufficient time to receive, respond to, and incorporate comments on the SWMP Plan prior to submitting to the State by August 1, 2018. Public meetings such as the quarterly Stormwater Advisory Group (SAG) and other targeted stakeholder meetings will provide more detailed information on each SWMP component throughout program development, to receive comments in advance of issuing the full SWMP Plan for public review.

Comment 53: Does the DEP have in its possession the state's 2016 list of impaired waterways, such that it can site to those waterways in responses to comments? If so, please make that available to the public. If not, when does the DEP expect to see a final 2016 impaired waterways list?

Response 53: DEC will publish the final list when it is ready.

Comment 54: According to this progress report, the DEP is required to consider further cost-effective and feasible stormwater control measures, including green infrastructure (GI), structural retrofits, and non-structural controls in the drainage areas for these Priority MS4 Waterbodies. How will the City involve the public in determining where, and to what extent, such control measures are required?

Response 54: The Stormwater Management Program (SWMP) will include procedures/criteria for determining feasibility and cost-effectiveness for consistency in evaluation. DEP will continue to present updates and seek feedback on program development through public meetings.

Comment 55: Prioritization of waterbodies, as described by the DEP, happens only when a waterbody has a DEP-completed Long Term Control Plan (LTCP) for Combined Sewer System pollution control and the MS4 pollution in such an LTCP is a "significant contributor of impairment." Will the DEP consider working to identify priority waterbodies for this MS4 program outside of and independent of the LTCP program? If not, why not?

Response 55: Not all impaired waterways can be designated as a Priority MS4 Waterbody, which is a permit-defined term. Please refer to the response to comment 56 (definition provided in Permit Part VLB). The MS4 Stormwater Management Program (SWMP) will comprehensively apply to all MS4 areas, and additional measures will be taken in MS4 areas draining to Priority MS4 Waterbodies.

Comment 56: In the case of future LTCPs, the DEP here states that new priority waterbodies will be developed "as LTCPs are approved by [the state]." Why is the DEP waiting for state approval of LTCPs before listing new prioritized MS4 areas? Neither currently considered priority areas (Coney Island Creek and Bronx River) has an LTCP which has been approved by the state, yet they apparently qualify as prioritization-acceptable. Why is the DEP raising the bar for future MS4 problem areas?

Response 56: The permit defines Priority MS4 Waterbodies as those water bodies for which an approved Combined Sewer Overflows Long-Term Control Plan (CSO LTCP) does not predict compliance with applicable water quality standards and where stormwater contributions from the MS4 are expected to be a significant contributor of the impairment

identified in the CSO LTCP. The designation of Coney Island Creek and Bronx River is preliminary, taking into account the information in the submitted LTCPs.

Comment 57: How will nitrogen and nutrient pollution concerns in the East River and Long Island Sound affect the impaired-waters work this MS4 permit will require?

Response 57: As required by the permit:

For impaired waters without Total Maximum Daily Loads (TMDLs), in addition to the minimum control measures described in Parts IV.A through IV.J, the Stormwater Management Program (SWMP) will include procedures/control measures for no net increase in the Pollutants of Concern (POC) causing an impairment.

For Priority MS4 Waterbodies, the City will identify additional or customized non-structural BMPs for each control measure described in Parts IV.A through IV.I to address the POCs causing the Combined Sewer Overflows Long-Term Control Plan (CSO LTCP)-identified impairment.

We are currently developing our approach to these requirements.

Comment 58: How would the required actions in this MS4 permit change were the waters of NYC subject to water quality standards based on the 2012 EPA Recreational Water Quality Criteria?

Response 58: The Stormwater Management Program (SWMP) is being developed in accordance with the requirements of the MS4 permit. If water quality standards or permit requirements change in the future, the SWMP would be revised to address those changes.

Comment 59: Why have Flushing Creek and Westchester Creek not been considered as priority waterbodies under this permit?

Response 59: Please refer to the responses to comments 55 and 56.

Comment 60: Most of Staten Island is an MS4 watershed, and the waterways around it are impaired for a variety of criteria. Yet, because Staten Island will not have its own LTCP, it appears as if it will be procedurally barred from consideration for Priority Waterbody status. Is this the case? If not, why not? Will the DEP consider listing the Kills around Staten Island as priorities?

Response 60: Please refer to the responses to comments 55 and 56.

Comment 61: Does the answer [to the question, “Will the City address industrial sites that send polluted stormwater into waterways by overland flow?”], where the DEP states the City is “only responsible for industrial and commercial sites that have the potential to discharge polluted stormwater to the MS4,” mean that no existing (as opposed to potential) connections to the MS4 will be under the City’s authority?

Response 61: Multi-Sector General Permit (MSGP)-permitted sites that have existing connections to the MS4 will be subject to the inspection and enforcement program developed under the Stormwater Management Program (SWMP). Additional industrial/commercial sites as described in Permit Part IV.H.1 that have existing connections to the MS4 will be subject to the unpermitted facility inspection program described under Permit Part IV.H.2.

Comment 62: For industrial and commercial sites that are connected to the MS4 system, if there is a violation that is the result of a discharge “directly to waterways ... by overland flow,” will the DEP have enforcement authority, or the State??

Response 62: Enforcement authority would likely rest with the state, but DEP may report the violation if discovered during the course of their inspection or the Illicit Discharge Detection and Elimination (IDDE) program.

Comment 63: The DEP focused its response [to the question, “Will there be a comprehensive plan to implement Green Infrastructure citywide?”] on the GI programs in place in CSO areas. There were only vague references to GI plans for priority waterbodies and other MS4 areas. Can the DEP be more specific about its plans for GI in the city-wide MS4 areas? What, if anything, does the agency plan for GI in non-priority MS4 waterbodies?

Response 63: There are two GI requirements in the MS4 Permit. One is in the Pollution Prevention and Good Housekeeping (PP/GH) section (Permit Part IV.G.2), applicable to planned municipal upgrades in MS4 areas. The other is in the special conditions for impaired waters (Permit Part II.B.2.a.iv), applicable to MS4 areas draining to Priority MS4 Waterbodies. We are currently developing our approach to these requirements and will continue to present updates and seek feedback on program development through public/stakeholder meetings.

Comment 64: Request that DEP work to make DSNY & DOT available for a floatables public meeting where the agencies can provide updates and take feedback on trash and debris control strategies.

Response 64: Coordination with DSNY and DOT on the issue of floatable and settleable trash and debris is already underway. Both agencies were present at the MS4 Annual Progress Meeting and participated in the breakout session regarding the control of floatable and settleable trash and debris. Agencies with obligations under the permit are encouraged to attend relevant public meetings, including Stormwater Advisory Group (SAG) and Trash Free NYC Waters meetings, in addition to the annual progress meetings.

City Responses to Comments on the MS4 Progress Report submitted August 26, 2016 by Bronx Council for Environmental Quality (BCEQ)

Comment 65: The Mapping Task described in the Progress Report missed the point of the Clean Water Act in that there should be no direct discharge into the Waters of the United States. Not only does this include much of the coastal areas of the city, but it also includes areas that are not draining to a CSO or a Publicly Owned Treatment Works (POTW) – which includes most, large parks. Neither of these areas are among the first steps; why?

Response 65: The MS4 permit authorizes discharge of stormwater from the MS4 system. As part of its requirements, the City must develop a GIS-based map of its MS4 drainage areas and MS4 outfalls. The GIS map will include all detected MS4 drainage areas and outfalls owned by the City. The City's MS4, which includes some City-owned park lands, does not drain to a CSO or a Publicly Owned Treatment Works (POTW), and will be subject to the control measures defined in the MS4 Stormwater Management Program (SWMP). Privately owned sites that drain stormwater runoff directly to open waters are not subject to the MS4 because they are not connected to City-owned storm sewers, but may require their own discharge permits.

The first steps in the MS4 mapping effort focus on mapping MS4 areas for which data is readily available, such as tributary areas to the DEP storm sewer system. Drainage system data for other City-owned or operated sites first needs to be identified, collected, compiled, digitized, and/or created, and will be refined for greater accuracy throughout SWMP development and implementation.

Comment 66: What exactly were the Mapping Requirements presented to the Stormwater Controls Working Group? Which three waterbodies are being delineated to test the tool and QA accuracy? If these were part of the previous SPDES permit, why do you need to test the QA accuracy?"

Response 66: The MS4 map requirements were additionally presented by DEP at the Interagency Mapping Sub-Team meeting, held in May 2016. This presentation described agencies' responsibility to map agency owned/operated MS4 outfalls, agency owned direct drainage areas, agency operated facilities/operations in direct drainage areas (termed "overland flow" areas), and agency owned infrastructure that connects to DEP's storm sewer system.

The Quality Assurance (QA) protocol applies to DEP's process for mapping its own MS4 outfalls and drainage areas. Different QA protocols were employed for previous SPDES mapping of combined sewer outfall tributary areas. The first three MS4 areas DEP mapped were the Coney Island, Bowery Bay, and Hunts Point wastewater treatment plant drainage areas. The QA protocol was first applied to the mapping of these three areas and the accuracy of the protocol was assessed.

Comment 67: The 2016 Progress Report explains that the MS4 program does not include mapping the City or Private Direct Drainage Areas. The chart states that these areas will continue direct drainage to waterways, despite the City's own admission in 2014 that "flowing directly into surrounding waterways through the City's MS4." This is confusing and clearly does not meet the requirements of the CWA. Can you explain this flaw?

Response 67: The 2016 NYC MS4 Progress Report explains that the MS4 program includes mapping of City-owned drainage areas, including City direct drainage areas (see page 7). The Progress Report also states that the MS4 program does not include mapping of private direct drainage areas, since these areas are not regulated by NYC's MS4 permit.

Comment 68: Riverside (west of HHP) private sewer areas and Fieldston (east of HHP) private sewer area are mostly single family homes that have severe flooding and could be used as GI sites.

Response 68: Other than City-owned direct drainage areas along the waterfront, these areas are in DEP's combined sewer area, and are not subject to the MS4 permit, but could apply for Green Infrastructure (GI) grants under DEP's Combined Sewer Overflow (CSO) program.

To augment its current efforts in stormwater management on private property, DEP is developing a new private property GI retrofit initiative. DEP released a Request for Information in October 2016 to receive feedback from public and interested stakeholders in formulation of the new GI Private Incentive program that is scalable.

Comment 69: Is the area along the edge of the Hudson River from Edsall Ave to W 263rd Street and along the edge of the Harlem River from Bailey to Edsall Ave in the CSO area?

Response 69: The shoreline areas directly along the Hudson or Harlem Rivers are not included in our current map of the combined sewer area, and will be included in the MS4 mapping effort if they are city owned or operated. However, most areas further inland from the shoreline or not directly adjacent to the Hudson or Harlem Rivers are shown as part of the combined sewer area in our current map.

Comment 70: The abandoned CSX and proposed parkland south of Van Cortlandt Park and all of VCP except by the weir are not in the combined system, and just like the Bronx River, it should have been on the MS4 map.

Response 70: Mapping of City-owned or operated sites (such as Parks) will be refined to increase accuracy as part of the MS4 mapping effort.

Comment 71: Private properties that are part of the City's MS4 will be subject to the Construction/Post-Construction and Industrial/Commercial requirements of the MS4 permit. Will you require a Stormwater Management Program (SWMP) to meet the MS4 requirements for private properties?

Response 71: The MS4 Permit requires the City to submit a Stormwater Management Program (SWMP) Plan to DEC for approval. Private properties in the MS4 area that are subject to the Construction and Post-Construction portions of the SWMP will be required to prepare, implement, and maintain a Stormwater Pollution Prevention Plan (SWPPP) on site as described in the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, and submit the SWPPP for DEP review and acceptance prior to commencing construction. Industrial properties in the MS4 area covered by the NYSDEC SPDES Multi-Sector General Permit (MSGP) and inspected under the Industrial/Commercial portion of the SWMP will be required to create, implement, and maintain a SWPPP on site as described in the MSGP.