

**State of Wisconsin
Department of Natural Resources**

**Responses to Comments
Wisconsin Pollutant Discharge Elimination System (WPDES)
Municipal Separate Storm Sewer System Proposed General Permits:
General Permit No. WI-S050075-2 and General Permit No. WI-S050181-1**

April 29, 2014

On February 7, 2014, the Wisconsin Department of Natural Resources (Department) issued a public notice on proposed WPDES Municipal Separate Storm Sewer System (MS4) General Permit No. WI-S050075-2 and General Permit No. WI-S050181-1 (“general permits”). The public comment period for the proposed general permits ended March 14, 2014. The Department received several written comments on the proposed general permits. Written comments were submitted by the entities listed below. This document represents the Department’s response to the written comments on the general permits. To facilitate the responses, the Department may have paraphrased, rephrased, condensed, or consolidated comments. The abbreviations below used in this document have the meaning indicated:

B & C	Brown and Caldwell
Fitchburg	City of Fitchburg
Green Bay	City of Green Bay
Madison	City of Madison
NEWSC	Northeast Wisconsin Stormwater Consortium
Stoughton	City of Stoughton
Strand	Strand Associates, Inc.
USEPA	United States Environmental Protection Agency
Waukesha Co.	Waukesha County

Since the general permits contain some identical language, some comments directed to only one of the proposed general permits may be applicable to both. Therefore, where appropriate, a comment may have been rephrased if it is applicable to both general permits and the response written accordingly.

COMMENTS BY the USEPA

In its review letters for Permit No. WI-S050075-2 and Permit No. WI-S050181-1, the USEPA indicated that it did not intend to object to the issuance of the general permits, but requested that the Department consider and address the USEPA’s comments and suggestions.

USEPA Comment 1: In sections 1.5.4.1.2 and 1.5.4.1.3 of Permit No. WI-S050181-1, the USEPA recommends a shorter time frame than 48 months from the start date of permit coverage to allow the Department more time to review submittals before the general permit needs to be reissued.

Response: The Department believes that it is important to give MS4s covered under this general permit sufficient time to comply with what may be a significant planning effort, which is why 48 months is given. Additionally, since the Department does not currently know the exact start date that permit coverage will begin for every MS4 permittee that will be covered under Permit No. WI-S050181-1, the compliance date and completion of the Department’s review may unavoidably extend beyond the expiration date of the general permit. The 48 month period is associated with the start date, which could be several months or years after the permit effective date. Consequently, given the nature of WPDES general permits and that compliance dates are typically tied to the start date of permit coverage, no changes to sections 1.5.4.1.2 and 1.5.4.1.3 have been made in response to this comment.

USEPA Comment 2: The USEPA recommends that the phrase “cross-connections and” be added to section 2.3.3.5 of General Permit No. WI-S050075-2 to read “Detecting and eliminating cross-connections and leakage from sanitary conveyance systems into the MS4.”

Response: This change has been made to section 2.3.3.5 of General Permit No. WI-S050075-2 and section 2.3.4.5 of Permit No. WI-S050181-1.

USEPA Comment 3: The USEPA recommends that the word “of” be added at the end of the sentence in section 2.3.5 of Permit No. WI-S050075-2 to read “In the case of interconnected MS4s, the permittee shall notify the appropriate municipality of the following within one working day of:”

Response: The sentence in section 2.3.5 of Permit No. WI-S050075-2 and section 2.3.6 of Permit No. WI-S050181-1 has been amended to read: “In the case of interconnected MS4s, the permittee shall notify the appropriate municipality within one working day of either of the following:”

USEPA Comment 4: The USEPA recommends that a provision be added similar to the following: “Oversight of Homeowner Associations and other entities managing storm water detention ponds that drain to the MS4, to ensure routine inspection and maintenance of the ponds to maintain their pollutant removal operating efficiency.” The USEPA recommended that perhaps this language could be added to Pollution Prevention under section 2.6.2.

Response: The Pollution Prevention provisions under section 2.6 as applicable to municipal pollution prevention activities and municipally owned and operated facilities, not private activities and facilities. To address this comment, the underlined language below has been added to section 2.5.1.6 of the general permits: “2.5.1.6 Long-term maintenance requirements for landowners and other persons responsible for long-term maintenance of post-construction storm water control measures, including requirements for routine inspection and maintenance of privately owned post-construction storm water control measures that discharge to the MS4 to maintain their pollutant removal operating efficiency.”

USEPA Comment 5: The USEPA recommends that language similar to the following be added: “As the storm water management program is evaluated and the annual report is prepared, if it is identified that program revisions or improvements are needed, for example progress is not being made toward a measureable goal(s), the permittee shall strengthen its program components carried out pursuant to section 2 of this permit to improve their effectiveness.” The USEPA recommended that perhaps this language could be added for the Annual Report section 2.9 of the general permits.

Response: The underlined language below has been added to section 2.9.5 of the general permits: “2.9.5 An evaluation of program compliance, the appropriateness of identified best management practices, and progress towards achieving identified measurable goals. Any program changes made as a result of this evaluation shall be identified and described in the annual report. For any identified deficiencies towards achieving the requirements under section 2 of this permit or lack of progress towards meeting a measureable goal, the permittee shall initiate program changes to improve their effectiveness.”

USEPA Comment 6: The USEPA recommends that the words “or a previous MS4 general” be added to the definition at section 4.23 of Permit No. WI-S050075-2 so that it reads: “**4.23 Start Date** is the initial date of permit coverage, which is specified in the Department letter authorizing coverage under this or a previous MS4 general permit.”

Response: The Department believes that the intent of this recommended change is already captured in section 1.4.2.2 of Permit No. WI-S050075-2, which states: “**1.4.2.2** “Original start date of coverage under an MS4 permit” means the permittee’s Start Date of coverage under the first MS4 permit under which it received coverage.”

USEPA Comment 7: The USEPA recommends that the following provisions be added to the General Conditions of the general permits:

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

Planned changes. The permittee shall give notice to the Department as soon as possible of: (1) Any planned physical alterations or additions to the MS4 drainage area or storm water management measures that could significantly increase the quantity of pollutants discharged; (2) Any planned changes to the MS4 drainage area or storm water management measures that could result in noncompliance with permit requirements.

Response: The following provision has been added as section 3.21 in Permit No. WI-S050075-2 and as section 4.21 in Permit No. WI-S050181-1 (This language is consistent with s. NR 205.07(1)(o), Wis. Adm. Code.):

Need to Halt or Reduce Activity not a Defense: It is not a defense for a permittee in an enforcement action to claim that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

The underlined language below has been added to section 3.13 of Permit No. WI-S050075-2 and section 4.13 of Permit No. WI-S050181-1 (This language is consistent with s. NR 205.07(1)(L), Wis. Adm. Code.):

Duty to Provide Information: The permittee shall furnish the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, terminating, suspending, revoking or reissuing the permit or to determine compliance with the permit. The permittee shall give advance notice to the Department of any planned changes to the storm water management program which may result in noncompliance with permit requirements. The permittee shall also furnish the Department, upon request, copies of records required to be kept by the permittee.

USEPA Comment 8: The USEPA recommends that the General Condition on records retention in the general permits be expanded to encompass maintenance of key records related to implementation of the storm water management program. For example: “**Records Retention:** The permittee shall retain records of all monitoring information, copies of all reports required by the permit, and records of all data used to complete the notice of intent for a period of at least 5 years from the date of the sample, measurement, report or application. The permittee shall retain key records documenting implementation of the minimum control measures set out in section 2 of this permit for a minimum of 5 years from the date the record was generated.”

Response: [Please note: The first sentence in the USEPA’s example above is already contained in the general permits for Records Retention. The USEPA is proposing adding language similar to the second sentence in the example above.] The following has been added as the second sentence in section 3.16 of Permit No. WI-S050075-2 and to section 4.16 in Permit No. WI-S050181-1: “The permittee shall retain records documenting implementation of the minimum control measures in sections 2.1 through 2.6 of this permit for a period of at least 5 years from the date the record was generated.”

PUBLIC COMMENTS

Comments by B & C

Comment 1: In section 1.4.2.1 of the general permits, the term “surface water” must be defined. It is not clear if a new MS4 discharge would be allowed to an open conveyance system upstream from an ORW or ERW.

Response: “Surface waters” are understood to include waters of the state except groundwater. For section 1.4.2.1, it may be helpful to have an understanding of other terms used in the general permits. The term “discharge” has the meaning given in s. 283.01(4), stats.:

“Discharge” when used without qualification includes a discharge of any pollutant.

The phrases “discharge of pollutant” or “discharge of pollutants” has the meaning given in s. 283.01(5), stats.:

“Discharge of pollutant” or “discharge of pollutants” means any addition of any pollutant to the waters of this state from any point source.

It is important to understand that a new MS4 discharge to an ORW or ERW will typically be due to an area of new development. Construction sites for new development with more than one acre of land disturbance are regulated under the Department’s WPDES construction site storm water runoff general permit, which requires that erosion control and storm water management plans be designed to prevent the discharge of sediment and other pollutants to any ORW or ERW in excess of the background level within the waterbody if it is an ORW or ERW. This is expected to be accomplished by meeting the performance standards in ch. NR 151, Wis. Adm. Code.

Since determining an MS4 discharge to an ORW or ERW is situational and may be complex, it is important for the Department to have the flexibility to determine the applicability of section 1.4.2.1. on a case-by-case basis. No changes have been made to the general permits in response to this comment.

Comment 2: The language in section 1.5.2 of the general permits needs clarification. This section refers to “with the goal of eliminating the discharge pollutants of concern”. The TMDL requirements do not include the elimination of a pollutant, only the reduction to meet a Waste Load Allocation and water quality criteria. The goal of pollutant elimination is not technically feasible under any circumstances.

Response: The Department understands the technical challenges of eliminating an MS4 discharge of a pollutant of concern prior to an approved TMDL. It is important to consider additional parts of this section: “...to reduce, with the goal of eliminating the discharge of pollutants of concern that contribute to the impairment of the receiving water body.” This section does not require complete elimination of a pollutant of concern, but rather, the goal to reduce the pollutant discharge to a level that does not impair the receiving water. However, without an approved TMDL, it is unclear what numeric reduction is needed. While this language will remain in the general permits, during the term of the general permits the Department will consider compliance with the requirements of ch. NR 151, Wis. Adm. Code, as compliance with section 1.5.2. The Department believes that this is a reasonable approach until a TMDL is developed and approved.

Comment 3: In section 1.5.3 of the general permits, the term “surface water” must be defined. It is not clear if a new MS4 discharge would be allowed to an open conveyance system upstream from an impaired waterbody.

Response: The term “surface water” is not used in this section of the general permits. However, section 1.5.3 does use the phrase “new MS4 discharge of a pollutant” and specifies that it has the meaning under section 1.4.2.1 where “surface water” is used. Similarly to the response to B & C Comment 1 above, an MS4 discharge to an impaired waterbody is situational and may be complex, and therefore, it is important for the Department to have the flexibility to determine the applicability of section 1.5.3 on a case-by-case basis. No changes have been made to the general permits in response to this comment.

Comment 4: There are many MS4s in Wisconsin that are not under an approved TMDL. Does section 1.5.3 of the general permits mean an MS4 (not under a TMDL) cannot install a new outfall to an impaired waterbody even if that discharge is meeting NR 151 requirements?

Response: Since the purpose of subch. III of ch. NR 151, Wis. Adm. Code, is to establish performance standards with the intention of achieving water quality standards (see s. NR 151.10), during the term of the general permits the Department will consider compliance with the requirements of ch. NR 151 as compliance with the section 1.5.3. The Department believes that this is a reasonable approach until a TMDL is developed and approved.

Comment 5: Depending upon the actual date of the issuance of Permit No. WI-S050075-2, the budget cycle of many MS4s would not allow for the requirements of 1.5.4.1.1 to be met by March 31, 2015.

Response: The compliance date in section 1.5.4.1.1 of Permit No. WI-S050075-2 has been changed to March 31, 2016. Please note that the compliance dates in sections 1.5.4.1.2 and 1.5.4.1.3 of Permit No. WI-S050075-2 have not been changed.

Comment 6: In sections 1.5.4.1.1 and 1.5.4.2.1 of Permit No. WI-S050075-2, is there a reason for the difference in time allowance for the identified submittals? That is, MS4s under an existing TMDL will have less than 1 year to comply and other MS4s will have 2 years to comply from the TMDL approval date.

Response: The compliance date in section 1.5.4.1.1 of Permit No. WI-S050075-2 is a holdover from an earlier draft and reflects the anticipation of an earlier date of reissuance of the general permit. The compliance date in section 1.5.4.1.1 of Permit No. WI-S050075-2 has been changed to March 31, 2016. Please note that the compliance dates in sections 1.5.4.1.2 and 1.5.4.1.3 of Permit No. WI-S050075-2 have not been changed.

Comment 7: In sections 2.5.1.3 and 2.5.1.4 of the general permits, language should specifically state that the state standards are minimum levels and can be exceeded for purposes of flood control and/or TMDL compliance.

Response: WPDES MS4 storm water permits are not for the purpose of storm water quantity or flood control, so it is not appropriate for the general permits to address the manner in which a municipality may approach these issues, nor is it necessary for the general permits to address matters outside their scope. A municipality is free to utilize whatever authority it may have to address storm water quantity or flooding. For TMDL compliance, the following sentence has been added to the end of section 2.5.1.3 of the general permits: "Post-construction performance standards for new development and infill may be more restrictive than those required in this section 2.5.1.3 if necessary to comply with federally approved TMDL requirements." For section 2.5.1.4, the general permits already state in this section that post-construction performance standards in an ordinance may be more restrictive for redevelopment. Section 281.33(6)(b), stats., allows the permittee's ordinance for redevelopment to be more restrictive regardless of whether it is to comply with a federally approved TMDL.

Comment 8: Section 2.6.7 of the general permits should allow for reduced reporting requirements for low-risk "municipal facilities" similar to those described in s. NR 216.21 (3) for the "conditional no exposure exclusion".

Response: The Department agrees that there may be situations where this is appropriate. Therefore, the underlined language below has been added to section 2.6.7 of the general permits (Please note that the language in brackets and in bold text below denotes differences between the general permits for the due date of the information requested):

2.6.7 Storm water pollution prevention planning for municipal garages, storage areas and other sources of storm water pollution from municipal facilities. Information on storm water pollution prevention activities for municipal garages, storage areas and other sources of storm water pollution from municipal facilities shall be submitted with the annual report required under section 2.9 of this permit beginning with the [Permit No. WI-S050075-2: **annual report due by March 31, 2016**; Permit No. WI-S050181-1: **first annual report due after the implementation compliance date specified in section 3.7 of this permit**] and annually thereafter and include the

information in sections 2.6.7.1 through 2.6.7.7. The Department may waive the requirements of this section on a case-by-case basis for a municipal facility provided the permittee certifies that the facility qualifies for a conditional no exposure exclusion pursuant to s. NR 216.21(3), Wis. Adm. Code and with the Department's written concurrence.

Note: The conditional no exposure exclusion provisions of s. NR 216.21(3), Wis. Adm. Code and the related certification request form (Form 3400-188) are intended for industrial facilities regulated under subch. II of NR 216. However, if a permittee believes that materials and activities at a municipal facility are not exposed to storm water, s. NR 216.21(3) provides an appropriate means for the permittee to evaluate the facility and request a waiver from the requirements of this section. The No Exposure Certification Form, Form 3400-1288, is available on the Department's Internet site at: <http://dnr.wi.gov/topic/stormwater/industrial/forms.html>

Information on storm water pollution prevention activities shall include:

Comment 9: Meeting the March 31 annual report deadline should be contingent upon the Department's issuance of the Annual Report Form by January 1 of that year.

Response: Use of the annual report form is voluntary and provided to MS4 general permittees as a matter of convenience. Therefore, the due date of the annual report will not be tied to the release of the form. However, the Department realizes that MS4 general permittees rely on the annual report form to comply with reporting requirements and need time to complete the report and route it through the local review and approval process. Therefore, the Department will make every attempt to post the annual report form on its website and notify MS4 general permittees of its availability by December 31 of each year.

Comment 10: In section 4.6 of Permit No. WI-S050075-2 and section 5.7 of Permit No. S050181-1, the definition for "impaired water" states "...in whole or in part ...". Does this mean that, if for example, only a 1 mile stretch of the Rock River is identified as impaired, the entire Rock River is considered to be impaired?

Response: This language means the specific segment of a waterbody listed as impaired by the Department. However, please be aware that a discharge upstream of a segment specifically listed as an impaired waterbody may be contributing a pollutant of concern to that impaired waterbody.

Comments by Fitchburg

(Fitchburg also concurred with Madison Comment 1.)

Comment 1: (Stoughton also concurred with this comment.) Section 1.5.4.1.1 of Permit No. WI-S050075-2 gives a deadline of March 31, 2015 for MS4 general permittees to complete and submit the items required in Section 1.5.4.3. Fitchburg suggests that the deadline stated in Section 1.5.4.1.1 be revised to match the annual report deadline of March 31, 2016 or March 31, 2017.

Response: The compliance date in section 1.5.4.1.1 of Permit No. WI-S050075-2 has been changed to March 31, 2016. Please note that the compliance dates in sections 1.5.4.1.2 and 1.5.4.1.3 of Permit No. WI-S050075-2 have not been changed.

Comments by Green Bay

Comment 1: For section 1.5.4.1.1 of Permit No. WI-S050075-2, the City understands the intent of the proposed due date, but it is the City's opinion that it is inconsistent with those communities that will see a TMDL approved after the permit is approved which is 24 months. The deadline that you are proposing will be less than 12 months once this permit is formally issued. Please consider modifying the due date to 24 months, or to March 31, 2016, such that it is consistent with Section 1.5.4.2.1.

Response: The compliance date in section 1.5.4.1.1 of Permit No. WI-S050075-2 has been changed to March 31, 2016. Please note that the compliance dates in sections 1.5.4.1.2 and 1.5.4.1.3 of Permit No. WI-S050075-2 have not been changed.

Comment 2: For section 1.5.4.4 of Permit No. WI-S050075-2, please consider modifying the permit and compliance schedule to include a date by which the WDNR will provide each MS4 with a letter clarifying the MS4's percent reduction goals for each TMDL reach shed. We anticipate the WDNR will use the information submitted by the MS4 as part of Section 1.5.4.3 requirements to remedy the reach shed discrepancies (i.e. TMDL reach sheds versus actual MS4 drainage boundaries). The MS4 will need this information from the DNR in order to prepare the tabular summary associated with Section 1.5.4.4 and the written plan associated with Section 1.5.4.5. Ideally, the DNR will provide this letter to the MS4 by March 31, 2016 so the MS4 has two years to prepare the tabular summary and written plan.

Response: The Department is currently in the process of refining the guidance mentioned in the note immediately after section 1.5.4.5.3 ("TMDL Guidance for MS4 Permits: Planning, Implementation, and Modeling Guidance"). As stated in the proposed guidance "The usage of a percent reduction framework for implementation allows both the MS4 and Department the ability to implement the reductions without having to reallocate and track WLAs across reachsheds, MS4s, and other land uses. This will minimize the need to continually update the TMDL as municipal boundaries evolve and ease reporting requirements. In some rare cases allocations may need to be adjusted." (page 4, 2nd paragraph). In addition to providing permitted MS4s with information to facilitate TMDL implementation, the purpose of section 1.5.4.3 is to assist the Department in determining those rare cases where allocations and/or percent reductions may need to be adjusted. However as stated in the proposed guidance, this is anticipated to be rare and would only be done on an as needed basis. A permitted MS4 may use the guidance after it is finalized to calculate the appropriate MS4's percent reduction(s). For the Rock River and Lower Fox TMDLs, there will be addendums to the guidance which identify the MS4 percent reductions from the no-control condition by reach. Consequently, the Department does not feel it is necessary to adjust dates in the general permits in response to this comment. However, the first sentence of the note immediately after section 1.5.4.5.3 in the general permits has been amended to read: "The Department has developed the guidance document 'TMDL Guidance for MS4 Permits: Planning, Implementation, and Modeling Guidance' and will make it available on the Department's Internet site to assist a permittee with complying with the requirements of sections 1.5.4.3 through 1.5.4.5."

Comment 3: The last sentence in section 2.3.1.2 of the general permits states "However, the occurrence of a discharge listed above may be considered an illicit discharge on a case-by-case basis if the permittee or the Department identifies it as a significant contributor of a pollutant to waters of the state." The City feels that the "significant" could be interpreted by many people to have varying meanings and therefore should be more clearly defined.

Response: This language was added to address the concern raised by the USEPA about specific situations where a discharge listed in section 2.3.1.2 that is typically not considered illicit could be a significant source of a pollutant to waters of the state. Since such discharges are situational and need to be handled on a case-by-case basis, it is necessary for the permittee and the Department to have some discretion to use professional judgment on the significance of a discharge in those situations. Therefore, a definition of "significant" has not been added to the general permits. However, in the last sentence in section 2.3.1.2 of the general permits, and in the last sentence in section 4.5 of Permit No. WI-S050075-2 and section 5.6 of Permit No. S050181-1, the word "contributor" has been changed to "source".

Comment 4: In section 2.4.1.3 of Permit No. WI-S050075-2, please consider modifying to read "Construction site performance standards equivalent to those in ss. NR 151.11(6m) and 151.23(4m), Wis. Admin. Code, or more stringent construction site performance standards if working toward TMDL compliance or implementing water quality trading or watershed adaptive management pursuant to NR 217." MS4s need flexibility in order to cost-effectively work toward water quality compliance, including

potential regulation of construction sites with less than 1 acre of land disturbance. A significant number of construction sites are less than 1 acre in size.

Response: In s. 281.33(6)(a), stats., the exception to enacting an ordinance with stricter standards for storm water management than those established by the Department provides that they may be stricter if necessary specifically to control storm water quantity or control flooding, or to comply with federally approved TMDL requirements. At this time, it is not clear to the Department how more stringent construction site performance standards would be a quantifiable factor in TMDL compliance. Given that, the general permits have not been amended in response to this comment.

Comment 5: In section 2.5.1.3 of Permit No. WI-S050075-2, please consider modifying to read “For new development and infill, post construction performance standards equivalent to those in ss. NR 151.122 through NR 151.126 and 151.242 through 151.246, Wis. Admin. Code, or more stringent post-construction performance standards if providing flood control, working toward TMDL compliance, or implementing water quality trading or watershed adaptive management pursuant to NR 217.” MS4s need flexibility in order to cost-effectively work toward water quality compliance and to cost-effectively manage flooding risks for the general public’s benefit.

Response: This comment is similar to B & C Comment 7. See the Department’s response to B & C Comment 7 above. Also, water quality trading and adaptive management are tools that an MS4 general permittee may consider as part of a plan developed under section 1.5.4.5 of the proposed general permits for TMDL implementation and compliance. An MS4 general permittee may choose whether or not it participates in one of these efforts. Therefore, the Department does not believe that it is necessary to put language about water quality trading and adaptive management in the general permits other than in the note under section 1.5.4.5.

Comment 6: In section 2.5.1.4 of Permit No. WI-S050075-2, please consider modifying to read “For redevelopment, post-construction performance standards equivalent to those in ss. NR 151.122 through NR 151.126 and 151.242 through 151.246, Wis. Admin. Code, or more stringent post-construction performance standards if providing flood control, working toward TMDL compliance, or implementing water quality trading or watershed adaptive management pursuant to NR 217.” MS4s need flexibility in order to cost-effectively work toward water quality compliance and to cost-effectively manage flooding risks for the general public’s benefit.

Response: This comment is similar to B & C Comment 7. See the Department’s response to B & C Comment 7 above. Also, water quality trading and adaptive management are tools that an MS4 general permittee may consider as part of a plan developed under section 1.5.4.5 of the proposed general permits for TMDL implementation and compliance. An MS4 general permittee may choose whether or not it participates in one of these efforts. Therefore, the Department does not believe that it is necessary to put language about water quality trading and adaptive management in the general permits other than in the note under section 1.5.4.5.

Comment 7: As a general comment about section 2.6.5 of Permit No. WI-S050075-2, the information being requested is supposed to be submitted within the Annual Report due March 31st of each year. That means the WDNR will not get a winters worth of information but two partial winter seasons within one calendar year. The City has no objection to providing the information on an annual basis as written but would like the WDNR to acknowledge that.

Response: Department staff discussed this issue while drafting the proposed general permits and agreed that it would be preferable to have this data for a winter season rather than an annual basis. However, since the annual report due by March 31 of each year is to report on the previous calendar year and permittees are in the midst of preparing the annual report during a portion of the winter season, the Department could not devise a reasonable way to request that the data be reported seasonally.

Comment 8: In section 2.6.5.3 of the general permits, please consider changing to “The amount of deicing product used per month and/or year.”

Response: The Department believes that reporting the monthly amounts is more useful data to assess trends. No changes have been made to the general permits in response to this comment.

Comment 9: In section 2.6.7 of the general permits, please consider modifying to allow a “no exposure” and low risk classification such that detailed planning, inspections, and mapping are not required for these lower risk municipal facilities and sites. Some municipal facilities are lower risk (e.g. City Hall, water tower, etc.) and some municipal facilities are higher risk (i.e. vehicle maintenance, compost site, etc.).

Response: This comment is similar to B & C Comment 8. See the Department’s response to B & C Comment 8 above.

Comments by Madison

Comment 1: (Fitchburg, Stoughton, and Strand also concurred with this comment.) In section 1.5.4.5 of the proposed general permits, we recommend inserting the following text: “The written plan may include the use of water quality trading or adaptive management. If the adaptive management plan is designed to address phosphorus reduction or total suspended solids reduction, the plan may be filed in conjunction with or independent of a traditional point source discharger under S. NR 217.18 Wisconsin Administrative Code.” We would then recommend that the note at the end of section 1.5.4.5 be removed as it has now been “codified”.

Response: As indicated in the note under section 1.5.4.5 of the proposed general permits, water quality trading and adaptive management are tools that an MS4 general permittee may consider as part of a plan developed under section 1.5.4.5 of the proposed general permits for TMDL implementation and compliance. An MS4 general permittee may choose whether or not it participates in one of these efforts. Therefore, the Department does not believe that it is necessary to put language about water quality trading and adaptive management in the general permits other than in the note under section 1.5.4.5.

Comments by NEWSC

Comment 1: In section 1.5.4.4 of Permit No. WI-S050075-2, please consider modifying the permit and compliance schedule to include a date by which the DNR will provide each MS4 with a letter clarifying the MS4’s percent reduction goals for each TMDL reachshed. We anticipate the DNR will use the information submitted by the MS4 as part of Section 1.5.4.3 requirements to remedy the reachshed discrepancies (i.e. TMDL reachsheds versus actual MS4 drainage boundaries). The MS4 will need this information from DNR in order to prepare the tabular summary associated with Section 1.5.4.4 and the written plan associated with Section 1.5.4.5. Ideally, the DNR will provide this letter to the MS4 by March 31, 2016 so the MS4 has two years to prepare the tabular summary and written plan.

Response: This comment is identical to Green Bay Comment 2. See the Department’s response to Green Bay Comment 2 above.

Comment 2: In section 2.4.1.3 of Permit No. WI-S050075-2, please consider modifying to read “Construction site performance standards equivalent to those in ss. NR 151.11(6m) and 151.23(4m), Wis. Admin. Code, or more stringent construction site performance standards if working toward TMDL compliance or implementing water quality trading or watershed adaptive management pursuant to NR 217.” MS4s need flexibility in order to cost-effectively work toward water quality compliance, including potential regulation of construction sites with less than 1 acre of land disturbance. A significant number of construction sites are less than 1 acre in size.

Response: This comment is identical to Green Bay Comment 4. See the Department’s response to Green Bay Comment 4 above.

Comment 3: In section 2.5.1.3 of Permit No. WI-S050075-2, please consider modifying to read “For new development and infill, post construction performance standards equivalent to those in ss. NR 151.122 through NR 151.126 and 151.242 through 151.246, Wis. Admin. Code, or more stringent

post-construction performance standards if providing flood control, working toward TMDL compliance, or implementing water quality trading or watershed adaptive management pursuant to NR 217.” MS4s need flexibility in order to cost-effectively work toward water quality compliance and to cost-effectively manage flooding risks for the general public’s benefit.

Response: This comment is identical to Green Bay Comment 5 and similar to B & C Comment 7. See the Department’s response to Green Bay Comment 5 and B & C Comment 7 above.

Comment 4: In section 2.5.1.4 of Permit No. WI-S050075-2, please consider modifying to read “For redevelopment, post-construction performance standards equivalent to those in ss. NR 151.122 through NR 151.126 and 151.242 through 151.246, Wis. Admin. Code, or more stringent post-construction performance standards if providing flood control, working toward TMDL compliance, or implementing water quality trading or watershed adaptive management pursuant to NR 217.” MS4s need flexibility in order to cost-effectively work toward water quality compliance and to cost-effectively manage flooding risks for the general public’s benefit.

Response: This comment is identical to Green Bay Comment 6 and similar to B & C Comment 7. See the Department’s response to Green Bay Comment 6 and B & C Comment 7 above.

Comment 5 In section 2.6.5.3 of the general permits, please consider changing to “The amount of deicing product used per year.”

Response: The Department believes that reporting the monthly amounts is more useful data to assess trends. No changes have been made to the general permits in response to this comment.

Comment 6: Please consider deleting section 2.6.5.7 of the general permits. Many municipalities do not have a route map for ice management vehicles, but rather perform deicing based on public safety, weather conditions, and high priority areas. A route map for snow management vehicles is more likely available by a municipality. However, a snow plowing route map does not appear relevant to deicing and water quality.

Response: This language in section 2.6.5.7 of the general permits has been deleted and the section re-enumerated accordingly.

Comment 7: In section 2.6.7 of the general permits, please consider modifying to allow a “no exposure” and low risk classification such that detailed planning, inspections, and mapping are not required for these lower risk municipal facilities and sites. Some municipal facilities are lower risk (e.g. City Hall, water tower, etc.) and some municipal facilities are higher risk (i.e. vehicle maintenance, compost site, etc.).

Response: This comment is identical to Green Bay Comment 9 and similar to B & C Comment 8. See the Department’s response to B & C Comment 8 above.

Comment 8: For section 2.9 of Permit No. WI-S050075-2, please consider modifying to read “The permittee shall submit an annual report for each calendar year to the Department by March 31st of the following year or 90 calendar days after the Department releases the updated Annual Report Form to permittees, whichever is later.”

Response: This comment is similar to B & C Comment 9. See the Department’s response to B & C Comment 9 above.

Comments by Stoughton

(Stoughton also concurred with Fitchburg Comment 1 and Madison Comment 1.)

Comment 1: In section 1.9, General Stormwater Discharge Limitations, several terms in this section are ambiguous and undefined such as “unreasonable”, “objectionable”, “unnatural”, “conductive”, etc. Since this section does not establish standards it may not be relevant, but these terms are subjective and may not be quantifiable.

Response: This language was included in the previous version of the MS4 general permit (Permit No. WI-S050075-1) and was negotiated with the USEPA to comport with the USEPA's expectations and the general requirements for surface waters under s. NR 102.04(1), Wis. Adm. Code. No changes have been made to the general permits in response to this comment.

Comments by Strand

(Strand also concurred with Madison Comment 1.)

Comment 1: In section 1.5.2 of the general permits, concerning the phrase "with the goal of eliminating", the TMDL doesn't require eliminating a pollutant of concern. Why should the goal be eliminating? We suggest changing eliminating to "reducing to limits of TMDL language". Eliminating isn't realistic or feasible.

Response: This comment is similar to B & C Comment 2. See the Department's response to B & C Comment 2 above.

Comment 2: In the note under section 1.5.4.5 of the general permits, water quality trading and watershed adaptive management should be allowed for compliance with TMDL. Watershed adaptive management should be allowed for both TSS and TP and can be independent of or in conjunction with a traditional point source discharger.

Response: Water quality trading and adaptive management are tools that an MS4 general permittee may consider as part of a plan developed under section 1.5.4.5 of the proposed general permits. The MS4 general permits are not the place to establish policy for water quality trading and adaptive management, which are both programs still undergoing development.

Comment 3: At the end of section 1.9.5 of the general permits, add "or as otherwise allowed by TMDL".

Response: This section was included in the previous version of the MS4 general permit (Permit No. WI-S050075-1) and was negotiated with the USEPA to comport with the USEPA's expectations and the general requirements for surface waters under s. NR 102.04(1), Wis. Adm. Code. No changes have been made to the general permits in response to this comment.

Comments by Waukesha Co.

Waukesha Co. Comment 1: In section 3.8 of Permit No. WI-S050075-2 concerning bypass, it says "The permittee may temporarily bypass a storm water treatment facility if necessary for human safety or maintenance to assure efficient operation." Consistent with the Department's technical standard for infiltration basins (No. 1003), Waukesha Co. suggest adding "The permittee may temporarily bypass a storm water treatment facility, in accordance with adopted BMP technical standards, to address issues such vegetation establishment, damage prevention, human safety, or maintenance ", or alternatively, "Infiltration-type best management practices may be temporarily bypassed during the period immediately following construction in order to establish vegetation and prevent clogging. Infiltration BMPs may be drawn down during winter months to prevent damage due to chlorides."

Response: During drafting the proposed general permits, the USEPA raised concerns about the bypass language that was in the previous version of the general permit (Permit No. WI-S050075-1). The bypass provisions in the proposed general permits represent mutually agreed upon language between the Department and the USEPA to address those concerns. Therefore, no changes have been made to the general permits in response to this comment. However, the Department does not consider good faith efforts to construct and establish functioning storm water treatment facilities in accordance with the Department's approved post-construction technical standards as examples of a prohibited bypass.

CHANGES INITIATED BY THE DEPARTMENT OF NATURAL RESOURCES

1. During its review of comments received from the USEPA and public on the proposed general permits and the development of responses, the Department became aware of an oversight in section 1.5.4 concerning TMDL implementation in the general permits. In some TMDLs approved by the Department and the USEPA, wasteload allocations were not separated out for certain permitted MS4s (such as a county, WisDOT transportation facilities, or University of Wisconsin campus) from the city or village in which they are physically located. The Lower Fox River and Rock River TMDLs are examples of this situation. However, as MS4 permittees, these entities must comply with the same TMDL implementation requirements as the city or village in which they are physically located. To address this, section 1.5.4 of the general permits have been amended to read as follows:

1.5.4 For the purposes of implementing an approved TMDL, a permittee shall comply with sections 1.5.4.3, 1.5.4.4, and 1.5.4.5 in accordance with the applicable compliance schedule of either section 1.5.4.1 or 1.5.4.2. An MS4 covered under this permit, which is not specifically identified as having a wasteload allocation in a TMDL approved by the Department and the USEPA, shall comply with this section by using the same percent reduction for a pollutant of concern as the city or village in which it is physically located.

Note: Some approved TMDLs do not assign a wasteload allocation to certain permitted MS4s such as a county, WisDOT transportation facilities, or University of Wisconsin campus. These MS4s and their wasteload allocations were not separated out from the city or village in which they are physically located.

1.5.4.1 If prior to the effective date of this permit the Department and the USEPA have approved a TMDL to which the permittee's MS4 discharges a pollutant of concern and the TMDL assigns MS4 wasteload allocations, the permittee shall submit the information requested in accordance with the following compliance schedule:...

1.5.4.2 If after the effective date of this permit the Department and the USEPA have approved a TMDL to which the permittee's MS4 discharges a pollutant of concern and the TMDL assigns MS4 wasteload allocations, the permittee shall submit the information requested in accordance with the following compliance schedule:...

2. For consistency, where used in the general permits, the terms "water body" and "water bodies" have been changed to "waterbody" and "waterbodies".

This document was prepared by Jim Bertolacini, Runoff Management Section, Wisconsin Department of Natural Resources