

**West Virginia Environmental Quality Board  
Charleston, West Virginia**

**RECEIVED**

**NOV 12 2025**

**BERKELEY COUNTY PUBLIC SERVICE  
STORM WATER DISTRICT and BERKELEY  
COUNTY COMMISSION**

**Environmental Quality  
Board**

**Appellants,**

**v.**

**Appeal No.**

**25-09-EPB**

**DIRECTOR, DIVISION OF WATER  
AND WASTE MANAGEMENT,  
WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

**Appellee.**

**NOTICE OF APPEAL**

Now Comes Berkeley County Public Service Storm Water District (“Storm Water District”) and the Berkeley County Commission<sup>1</sup> (“Commission”) (collectively the “Appellants”), by counsel, Richard L. Lewis, Marissa G. Nortz, the law firm of Steptoe & Johnson PLLC, Anthony J. Delligatti, Esq., and Jeffrey T. Mauzy, Esq., and respectfully represents that it is aggrieved by the West Virginia Department of Environmental Protection Division of Water and Waste Management’s (“Appellee” or “WVDEP”) issuance of certain terms and conditions within Appellants’ individual Municipal Separate Storm Sewer System Water Pollution Control Permit No. WV0117994 (“Permit” or “Individual MS4 Permit”). Appellants received this Permit via electronic mail on October 14, 2025.

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<sup>1</sup> Note that the Berkeley County Commission was previously known as the Berkeley County Council throughout the history of this matter and some of the actions discussed herein. Reference to the “Commission” throughout this Notice of Appeal shall also include any prior actions of the formerly known “Council.”

Pursuant to West Virginia Code § 22-11-21, Appellants timely file this Notice of Appeal with the West Virginia Environmental Quality Board (“Board”) and further pray that this matter be reviewed and that this Board grant the following relief:

**1. Revision of the Permit as described in *Attachment A* to this Notice of Appeal**

The facts alleged relevant to this Appeal and the particular grounds on which this Appeal is based, including questions of fact and law to be determined by this Board, are set forth in detail in numbered paragraphs and attached hereto as *Attachment A*. Amendment of this Notice of Appeal may be had only by leave of this Board for good cause shown.

Dated this 12<sup>th</sup> day of November 2025.

**Respectfully submitted,**

**Berkeley County Public Service Storm Water  
District**

**By Counsel:**



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# Attachment

A

## **ATTACHMENT A**

### **I. Factual Background**

In 2004, the Berkeley County Commission submitted its Notice of Intent to obtain coverage under WVDEP's municipal separate storm sewer system general permit ("MS4 General Permit"). In 2006, the Commission enlarged the responsibilities of the Berkeley County Public Service Sewer District ("Sewer District") to include stormwater management. In 2011, the MS4 General Permit responsibilities were transferred to the Sewer District by the Commission. From 2011-2018, the Sewer District was the Berkeley County governmental entity charged with execution of the County's stormwater responsibilities, including compliance with the MS4 General Permit.

On July 26, 2018, the Commission created the Berkeley County Public Service Storm Water District, thus transferring the County's stormwater responsibilities from the Sewer District to the Storm Water District. Because of the creation of the Storm Water District and the delegation of the County's stormwater responsibilities to the Storm Water District, the Storm Water District needed to formally transfer the County's registration under the MS4 General Permit from the Sewer District to fully comply with its responsibilities. Unfortunately, at the time this transfer process began, WVDEP's MS4 General Permit was under an administrative extension while WVDEP worked to renew the MS4 General Permit. Because the MS4 General Permit was administratively extended, and thus in EPA's view expired, the MS4 General Permit could not be formally transferred from the Sewer District to the Storm Water District. Further, because the MS4 General Permit was administratively extended, the Storm Water District was also prohibited from simply applying for a new registration for coverage under the MS4 General Permit. Thus, the only remaining option for obtaining permit coverage was to apply for an Individual MS4 Permit to ensure coverage and compliance of Berkeley County's municipal stormwater discharges.



On June 25, 2020, (and supplemented on February 11 and 18, 2021) the Storm Water District submitted its first Individual MS4 Permit application to WVDEP. In response to the Storm Water District's application request, in 2021, WVDEP issued a draft Individual MS4 Permit to the Storm Water District. During the public comment period for the draft Individual MS4 Permit, the United States Environmental Protection Agency ("EPA") provided comments, which generally asserted EPA's concerns that the draft Individual MS4 Permit failed to meet the "maximum extent practicable" standard for MS4s because EPA did not believe the Storm Water District had the necessary legal or organizational authority to carry out the requirements of the draft Individual MS4 Permit. While the Storm Water District believed that it provided the requisite information to alleviate EPA's concerns, the District elected to rescind the 2021 Individual MS4 Permit application on October 21, 2021, to address the concerns of EPA and submit a revised permit application.

After the District withdrew its 2021 Individual MS4 Permit application, the Storm Water District worked with the Commission to develop a joint Individual MS4 Permit application. The Commission exercises ultimate authority over any ordinance, rules, standards, or minimum control measure requirements imposed to fulfill obligations under the Individual MS4 permit, and by electing to pursue a joint-permittee Individual MS4 Permit application, the Commission and Storm Water District maintain full authority to implement all requirements of the MS4 permitting program, the West Virginia Water Pollution Control Act, and the federal Clean Water Act. This Joint Application was filed through WVDEP's Electronic Submission System on August 30, 2023.

On November 25, 2024, Appellants filed Appeal No. 24-13-EQB challenging WVDEP's failure to timely act upon its complete Individual MS4 Permit Application. On February 24, 2025, this Board entered an Agreed Order in Appeal No. 24-13-EQB requiring the parties to:

*1. Within thirty (30) days of receiving a response from Appellants to the Appellee's December 13, 2024, request for additional information, Appellee WVDEP shall either: (1) issue a draft permit to Appellants; or (2) deny Appellants' Individual MS4 Permit application which shall be subject to a thirty (30) day appeal period before this Board.*

*2. Upon issuance of the draft permit, Appellee will provide for the requisite public comment period in accordance with W. Va. Code R. § 47-10-12.*

*3. Within thirty (30) days of the conclusion of the regulatory public comment period, WVDEP shall either: (1) deny Appellants' Individual MS4 Permit application which shall be subject to a thirty (30) day appeal period before this Board; or (2) WVDEP shall issue a final Individual MS4 Permit to Appellants which shall be subject to a thirty (30) day appeal period before this Board.*

See Agreed Order in Appeal No. 24-13-EQB (February 2025). Appellants submitted their response to Appellee's information request on or about February 27, 2025. According to the Board's final Agreed Order, WVDEP was required to issue the draft Individual MS4 Permit by March 28, 2025. On June 9, 2025, WVDEP finally issued Appellants' draft Individual MS4 Permit for public comment. The public comment period concluded on or about July 9, 2025, and thus WVDEP was required to either issue the Individual MS4 Permit to Appellants or deny Appellants' Individual MS4 Permit by August 8, 2025.

WVDEP failed to act on Appellants' final Individual MS4 Permit after the close of the public comment period, and thus on September 11, 2025, Appellants filed a Motion to Enforce Agreed Order with this Board. On September 25, 2025, this Board heard oral arguments on Appellants' Motion to Enforce Agreed Order in Appeal No. 24-13-EQB. To date, this Board has not issued a final Order regarding that Motion. On September 26, 2025, Appellants submitted a pre-suit notice of its intent to file a Writ of Mandamus with the Circuit Court of Kanawha County to further enforce the final Agreed Order entered in Appeal No. 24-13-EQB.

On October 14, 2025, WVDEP issued Appellants' final Individual MS4 Permit, attached hereto as ***Attachment B***, which forms the basis for this Notice of Appeal.

## II. Questions of Fact and Law

### 1. As a matter of fact and law, did WVDEP act appropriately in imposing Chesapeake Bay Pollution Reduction Plan requirements in Appellants' Permit?

Appellants' Permit contains requirements for the development and implementation of a Pollution Reduction Plan ("PRP") for the Chesapeake Bay Total Maximum Daily Load ("TMDL") requirements:

*West Virginia's plan for the Chesapeake Bay TMDL is to **reduce or maintain pollutant levels** in stormwater discharges from MS4s.*

*I. Notwithstanding Parts V.A and V.B., Permittees with stormwater discharges in the Chesapeake Bay drainage area must develop and submit a TMDL Pollution Reduction Plan (PRP) as a separate document from the [stormwater management plan ("SWMP")]. However, as appropriate, the PRP may incorporate by reference sections of the SWMP. The Permittee's PRP must be updated and be consistent with this Part V. within twelve (12) months of the initial submittal of the SWMP. The PRP shall identify BMPs the Permittees will implement to minimize pollutant discharges to the [maximum extent practicable ("MEP")], consistent with the following provisions:*

*Attachment A* at Part V.G.1 (pg. 32) (emphasis added). WVDEP's inclusion of a specific Chesapeake Bay PRP in Appellants' final Permit is inappropriate and must be removed.

#### **A. Appellants' Permit imposes requirements in excess of requirements imposed on other West Virginia MS4s discharging within the Chesapeake Bay watershed.**

Appellants' Permit imposes significant requirements relative to its stormwater discharges within the Chesapeake Bay and is held to a more stringent compliance metric than other West Virginia MS4s discharging within the same watershed, including the West Virginia Division of Highways and the City of Martinsburg which are physically interconnected to Appellants. WVDEP's MS4 General Permit, which was renewed in 2025 and became effective on October 8, 2025, fails to include the same or similar PRP requirements for those MS4s that discharge within

the Chesapeake Bay. Instead of requiring a PRP like the one imposed on Appellants, WVDEP's General Permit simply states:

D. Local Sediment, Metals, and Nutrients TMDLs

The Permittee shall reduce the loads associated with local sediment (including TSS and biological impairments caused by sediment), metal (including, without limitation, iron, aluminum, manganese, lead, and selenium) and nutrient (including phosphorus and nitrogen) TMDLs through implementation of one or more of the practices listed below.

1. One or more BMPs approved by the Chesapeake Bay Program. Pollutant load reductions generated by annual practices, such as street and storm drain cleaning, shall only be applied to the compliance year in which the annual practice was implemented.

See *Attachment C*, General Water Pollution Control Permit No. WV0116025 ("MS4 General Permit) for Stormwater Discharges from Municipal Separate Storm Sewer Systems at Part V.D (pg. 32).

The requirements of the MS4 General Permit for discharges to the Chesapeake Bay are vastly different than the requirements imposed for Appellants' discharges to the Chesapeake Bay. It is unclear to Appellants how its stormwater discharges to the Bay are different from other regulated MS4 discharges to the Bay, including discharges from regulated MS4s that are interconnected with Appellants, such as to require a robust PRP and inclusion of almost all the recommended BMPs for the Bay watershed. WVDEP has provided no justification as to why Appellants' stormwater discharges warrant such increased regulation in comparison to other similarly situated MS4s, especially as those MS4s are physically interconnected to Appellants.

Further, in the draft publication of WVDEP's MS4 General Permit, WVDEP did seek to impose the same PRP requirements on Bay discharges under the MS4 General Permit as those included in Appellants final Permit. See *Attachment D* at Part V.G (Pg. 37). Yet, when the MS4 General Permit was published as final, it removed these PRP requirements in favor of the provision

noted above. *See Attachment C.* In its Responsive Summary and Fact Sheet that accompanied the final MS4 General Permit, WVDEP provided no explanation or reasoning for the sudden removal of this requirement. *See Attachment E.*

WVDEP can provide no explanation as to why Appellants' stormwater discharges are subject to the increased Chesapeake Bay PRP requirements when other MS4s discharging the same stormwater pollutants across the Bay watershed are not. WVDEP's actions are arbitrary and capricious, and this provision must be removed from Appellants' Permit.

**B. WVDEP's Chesapeake Bay PRP requirements impose an impermissible end-result requirement on Appellants.**

Appellants' final Permit requires them to "reduce or maintain pollutant levels in stormwater discharges from MS4s" in accordance with West Virginia's Chesapeake Bay TMDL, but fails to provide a wasteload allocation for total phosphorus, total nitrogen, and total suspended solids (the "Bay pollutants") for Appellants upon which to measure compliance. Appellants Permit requires Appellants to implement BMPs that are designed to reduce the discharge of Bay pollutants, but, without a compliance metric, there is no way to show that compliance with and implementation of the required BMPs will reduce or maintain pollutant levels in the Bay, thus exposing Appellants to Agency and third-party challenges. Appellants' Permit mandates them to reduce or maintain Bay pollutant levels but gives no direction on how to achieve such mandate, as compliance with the stated terms of the Permit provides no guarantee that Appellants will reduce or maintain Bay pollutants. This is an impermissible end-result requirement.

In *City and County of San Francisco, California v. Environmental Protection Agency*, 145 S. Ct. 704 (2025), The Supreme Court of the United States opined that "end-result" requirements are contrary to the requirements of the federal Clean Water Act. The Court described an end-result requirement as:

[T]his case involves provisions that do not spell out what a permittee must do or refrain from doing; rather, they make a permittee responsible for the quality of the water in the body of waters into which the permittee discharges pollutants. When a permit contains such requirements, a permittee that punctiliously follows every specific requirement in its permit may nevertheless face crushing penalties if the quality of the receiving water falls below the applicable standards. For convenience, we will call such provisions “end-result requirements.”

*San Francisco*, 104 S.Ct. at 710. Thus, an end-result requirement is a requirement that a permittee achieve a desired result without providing the permittee with specific action/direction to achieve that result. Here, the impermissible end-result requirement is the requirement that Appellants “reduce or maintain pollutant levels” without providing the pollution levels that need to be reduced or maintained. Even if Appellants were to comply with the requirements of the PRP to the letter, there is no guarantee that such compliance will result in maintaining or reducing Bay pollutants, thus subjecting Appellants to enforcement. Should the Agency or a third-party elect to monitor Appellants’ stormwater discharges and develop their own baseline numeric pollutant level, a demonstration that Appellants failed to reduce or maintain Bay pollutants levels could be possible despite Appellants’ full compliance with all other terms and conditions of the Permit. Such end-result requirements are prohibited under the Clean Water Act:

In sum, we hold that § 1311(b)(1)(C) does not authorize the EPA to include “end-result” provisions in NPDES permits. Determining what steps a permittee must take to ensure that water quality standards are met is the EPA’s responsibility, and Congress has given it the tools needed to make that determination. If the EPA does what the CWA demands, water quality will not suffer.

*Id.* at 720.

The Chesapeake Bay TMDL expresses its Bay pollutant reduction goals in terms of numeric wasteload and load allocations. West Virginia’s stormwater wasteload allocation for the Potomac River basin, the watershed within which Appellants discharge, is provided as an aggregate wasteload allocation for all applicable permits. *See* Chesapeake Bay Total Maximum

Daily Load for Nitrogen, Phosphorus and Sediment, Appendix Q-1, Detailed Annual Chesapeake Bay TMDL WLAs and LA (Dec. 2010).<sup>2</sup> Thus, the Chesapeake Bay TMDL provides specific, numeric pollutant reduction goals that must be achieved to comply with the Bay TMDL. Appellants' Permit fails to provide a specific numeric wasteload allocation that would provide a compliance point by which Appellants could measure whether their BMPs are reducing or maintaining allocated levels, and instead simply requires that Appellants reduce or maintain pollutant levels and conditions compliance on the receiving water quality. This is an end-result requirement prohibited under the Clean Water Act.

While WVDEP is permitted to evaluate Bay compliance using stormwater best management practices, the language used in Appellants' Permit is not permitted. Unless WVDEP wishes to modify Appellants, and, frankly, every stormwater permit issued within the Bay watershed, to include a numeric wasteload allocation to measure compliance, the first sentence of Part V.G of Appellants' Permit must be modified as follows:

*Permittees must implement a Pollution Reduction Plan with best management practices designed to minimize pollutant levels to the maximum extent practicable. Implementation of an approved Pollution Reduction Plan shall satisfy West Virginia's plan for the Chesapeake Bay TMDL by reducing or maintaining pollutant levels in Permittees' stormwater discharges.*

This revision provides a clear, measurable goal for compliance, which is full implementation of the approved PRP. Additionally, this proposed revision is similar to the language included within the MS4 General Permit which is applicable to other regulated MS4s within the Bay watershed, including MS4s that are interconnected with Appellants.

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<sup>2</sup> The Chesapeake Bay TMDL can be viewed here: <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-appendices> , with applicable appendices provided here: <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-appendices>

**C. Appellants' Permit imposes unreasonable limitations on future construction and development within Berkeley County.**

Appellants' Permit significantly restricts its ability to welcome and promote new development and redevelopment within the County's MS4 boundaries, which significantly hinders the economic future of Appellants. Within the Permit's Chesapeake Bay PRP requirements, two provisions are significant:

b. The PRP must address the reduction of impervious surfaces. Whether approving construction plans or replacing parking lots owned by the municipality, the Permittees must require non-pervious surfaces and/or stormwater management systems that minimize the discharge of sediment from all development or redevelopment activity as described in part III.2.E.d.iv.

j. The PRP shall include a long-term plan for routing or regulating stormwater from developing and redeveloping areas without increasing pollutant loading.

*Attachment B* at Part V.G.1.b and V.G.1.j These requirements directly limit if not prohibit new development/redevelopment within Appellants' MS4 boundaries, as provision "j" essentially serves to require new development/redevelopment to have 100% capture or to provide stormwater treatment before discharge so as not to increase pollutant loadings. Such requirements are extremely onerous and serve to deter new development/redevelopment from locating in Berkeley County, which has become a significant economic hub within this State. Such restrictions will greatly impact the Commission's ability to attract new sources of business/jobs for its residents and significantly restrict the ability to collect taxes and other fees from these new entities. The Commission utilizes these fees to fund its operations, including operations of the Storm Water District. Such an economic impact is not warranted given WVDEP's inability to ensure that these measures will maintain or reduce Bay pollutants and are made even more egregious given that other regulated MS4s that are interconnected to Appellants and within the Bay watershed are not subject to these requirements.



## **D. Relief Requested**

Appellants request that the Chesapeake Bay PRP requirements of their final Individual MS4 Permit be modified as follows:

- 1) Modify the Chesapeake Bay PRP requirements to conform to those TMDL requirements applicable to other regulated MS4s discharging within the Bay watershed;
- 2) Modify the Chesapeake Bay PRP requirements to exclude unlawful end-result requirements;
- 3) Modify the Chesapeake Bay PRP requirements to exclude provisions that inappropriately restrict new development and redevelopment within Berkeley County

### **2. As a matter of fact and law, did WVDEP act appropriately in imposing stormwater monitoring requirements in Appellants' Permit?**

Appellants' Permit contains stormwater monitoring requirements that are in excess of federal and state law and are unduly burdensome. *See Attachment B* at Part VI.C (pages 38-39). These stormwater monitoring requirements are only applicable to Appellants, and no other regulated MS4 within this State are held to such requirements. Instead, WVDEP's MS4 General Permit only imposes the following requirements relative to stormwater monitoring:

#### **1. Monitoring Generally**

Discharge monitoring is not required for compliance purposes by this general permit. If the permittee chooses to monitor stormwater discharges for informational or screening purposes, they may do so. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

*See Attachment C* at Part VI.C.1 (pg. 38). WVDEP has provided no reason as to why Appellants are being held to a stricter standard than other similarly situated regulated MS4s, including MS4s that are interconnected with Appellants. Further, when WVDEP published the draft MS4 General Permit for public review and comment, the same stormwater monitoring requirements that are

imposed in Appellants' current Individual MS4 Permit were included. *Attachment D* at Part VI.C. When published as final, the MS4 General Permit removed these monitoring provisions with no explanation provided by WVDEP within its responsive summary or fact sheet. See *Attachment E*.

Appellants request that the requirements of Part VI.C of their Individual MS4 Permit be removed and modified to conform to state and federal law.

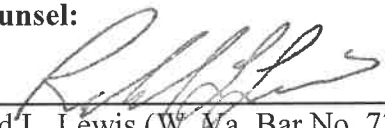
### **3. Relief Requested**

**WHEREFORE**, for the reasons set forth more thoroughly above, Appellants Berkeley County Public Service Storm Water District and Berkeley County Commission respectfully request that this Board ORDER Appellee West Virginia Department of Environmental Protection to modify its Individual MS4 Permit as set forth herein.

**Respectfully submitted,**

**Berkeley County Public Service Storm Water District**

**By Counsel:**



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**BERKELEY COUNTY PUBLIC SERVICE  
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**Appellants,**

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**Appeal No.** 25-09 EQB

**DIRECTOR, DIVISION OF WATER  
AND WASTE MANAGEMENT,  
WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

**Appellee.**


**CERTIFICATE OF SERVICE**

I, Richard L. Lewis, counsel for Appellants Berkeley County Public Service Storm Water District and Berkeley County Commission, do hereby certify that I have filed the foregoing "Notice of Appeal" with the West Virginia Environmental Quality Board and have served true and exact copies of the same upon all counsel of record via electronic mail, U.S. Mail, postage prepaid, and hand delivery, on this 12<sup>th</sup> day of November, 2025.

Kenna M. DeRaimo, Clerk  
West Virginia Environmental Quality Board  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

Office of Legal Services  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

Jeremy Bandy, Director  
Division of Water and Waste Management  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

  
\_\_\_\_\_  
Richard L. Lewis (W. Va. Bar No. 7331)

# Attachment

B

**STATE OF WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT  
601 57th STREET SE  
CHARLESTON, WV 25304-2345  
WATER POLLUTION CONTROL PERMIT**

Permit No. **WVV0117994**

Issue Date: October 14, 2025  
Effective Date: November 13, 2025  
Expiration Date: November 13, 2030

Subject: Stormwater Discharges from Municipal Separate Storm Water Systems - Berkeley County  
Public Service Storm Water District and Berkeley County Commission

To Whom It May Concern:

This is to certify that Berkeley County Public Service Storm Water District and Berkeley County Commission operate and maintain the small municipal separate storm sewer system located in Berkeley County West Virginia to discharge stormwater into waters of the State.

Berkeley County Public Service Storm Water District (Herein after "District") and Berkeley County Commission (Herein after "Commission") are required to submit the following within 15 days of the effective date of this permit:

1. Provide a map showing all outfalls/discharge points. This permit becomes effective only after the Director has received, reviewed and approved the above, 30 days from the approval date of the permit.

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## **PART I. COVERAGE UNDER INDIVIDUAL PERMIT NO. WV0117994**

### **A. Authorization to Discharge**

Berkeley County Public Service Stormwater District and Berkeley County Commission, hereafter to be referred to as the permittees are authorized to discharge stormwater and certain authorized non-stormwater described in described Part I.D from the regulated Small MS4 to surface waters of the State of West Virginia provided that:

1. The Permittees submits any permit fees required by the Department;
2. The Permittees complies with the requirements of this individual permit; and
3. This permit does not relieve entities that cause illicit discharges, including spills, of oil or hazardous substances, from responsibilities and liabilities under State and Federal law and regulations pertaining to those discharges.

### **B. Water Quality Requirements**

Compliance with this individual permit constitutes compliance with the standard expressed in 33 USC § 1342(p)(3)(B)(iii) of reducing pollutants to the Maximum Extent Practicable (MEP); demonstrates adequate progress in meeting water quality standards; and satisfies the appropriate water quality requirements of the Clean Water Act, West Virginia Code, and their attendant regulations (including any applicable wasteload allocations in a Total Maximum Daily Load (TMDL)).

1. This permit does not authorize a violation of West Virginia State Water Quality Standards (Title 47 CSR Series 2) and West Virginia Ground Water Quality Standards (Title 47 CSR Series 58).
2. MEP is an ongoing process of improvement. The IP applicant is required to:
  - a. Implement a stormwater management program using effective control measures;
  - b. Implement Evaluate the program's effectiveness over time;
  - c. Revise the program by adopting new or improved practices as they become available.
3. Key principles of MEP:
  - a. Best Management Practices (BMPs): MEP involves implementing a variety of BMPs, which are structural, vegetated, or managerial practices designed to reduce stormwater pollution;
  - b. Technologically available: Control measures must be technologically and economically achievable based on "best industry practice";
  - c. Consideration of local factors: Because MS4s differ widely, MEP is determined on a case-by-case basis. Factors such as the size of the MS4,



climate, specific local concerns, and the condition of local receiving waters are taken into account;

- d. Adequate funding: An MS4 is expected to have a reliable funding source to manage its stormwater program in order to truly reduce pollutants to the MEP.

### **C. MS4 Service Area**

This individual permit regulates activities within the Permittee's MS4 Service Area that may affect discharges from the regulated MS4. The MS4 Service Area is the drainage area served by the Permittee's defined MS4 permit boundary and may include drainage areas outside of the MS4 boundary. This permit prohibits any discharge from outside of the permittee's defined MS4 boundary.

Areas draining to a combined sewer system are not within the Permittee's MS4 Service Area

### **D. Authorized Non-Stormwater Discharges**

Unless identified by the Department or Permittees as a significant source of pollutants to waters of the State, the non-stormwater discharge categories listed in Appendix C are allowed to enter into and discharge from the MS4.

## **PART II. STORMWATER MANAGEMENT PLAN**

### **A. General Requirements**

The Permittees shall develop, implement, and enforce a Stormwater Management Plan (SWMP) designed to reduce the discharge of pollutants from the regulated MS4 to the Maximum Extent Practicable (MEP) in accordance with this permit, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, West Virginia Code, and their attendant regulations.

The SWMP shall include, at a minimum, the following written components:

1. The roles and responsibilities of each of the Permittee's divisions and departments in the implementation of the requirements of the permit tasked with ensuring that the permit requirements are met;
2. If the Permittees utilizes another entity to implement portions of the MS4 program, including MS4 operators submitting a joint NOI and sharing responsibility for implementing the SWMP, a copy of all written agreements. The description of each party's roles and responsibilities, including any written agreements with third parties, shall be updated as necessary;
3. A list of all waters that receive a discharge from the MS4 owned or operated by the Permittees, including the following information for each such receiving water:
  - a. The names of the receiving surface waters;

- b. Identification of any impairments in the West Virginia Combined 2018/2020/2022 305(b)/303(d) Integrated Water Quality Monitoring and Assessment Report; and
  - c. Identification of any TMDLs.
- 4. For each Minimum Control Measure (MCM) in Part III, the following information shall be included:
  - a. Each SWMP requirement stated in Part III;
  - b. A description of the BMPs or strategies that the Permittees anticipates will be implemented to demonstrate compliance with the permit conditions in Part III;
  - c. The standard operating procedures or policies necessary to implement the BMPs;
  - d. The measurable goal by which each BMP or strategy will be evaluated (by reference to the goals stated in the reporting and evaluation sections of Part III); and
  - e. The persons, positions, departments, and/or co-permittees responsible for implementing each BMP or strategy.
- 5. A list of documents incorporated by reference, including the version and date of the document being incorporated; and
- 6. A copy of any Pollution Reduction Plans developed in accordance with Part V.

#### **B. Preparation of New or Revised SWMP**

The following conditions shall govern the preparation of revised SWMPs by the Permittees.

- 1. The Permittees covered by Individual Permit No. WV0117994 as of the effective date of this individual permit must update its SWMP to meet the requirements of this individual permit. The updated SWMP shall be submitted to the Department no later than 180 days after the effective date of this permit. Requirements of this permit that are to be satisfied after these 180 days shall require the Permittee to submit a modified SWMP to the Department within 12 months of initial SWMP submittal to ensure incorporation thereof in the SWMP. The Department may, in its discretion, provide comments and recommendations within 60 days of receipt of the updated SWMP. Until such time that the SWMP is updated in accordance with this subsection, the Permittees shall continue to implement the SWMP in effect as of the effective date of this individual permit.
- 2. The Permittees shall post the most up-to-date version of the SWMP on the Permittee's website.

#### **C. Sharing Responsibility**

In accordance with 40 CFR § 122.35, two or more Permittees may rely on one another to satisfy one or more permit obligations, provided the SWMP contains a clear description of the parties' agreement (as stated in Part II.A.2). However, each Permittee remains responsible for compliance with all terms of the individual permit.

Each party must confirm the terms of the agreement(s) in writing and retain copies of the agreement(s) for the duration of this individual permit, including any automatic extensions of the permit term.

#### **D. Subsequent Review and Revision of the SWMP**

Revisions to the SWMP are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality to the MEP. As such, revisions made in accordance with this individual permit as a result of the iterative process do not require modification of this permit. The Permittees shall summarize revisions to SWMP as part of the Annual Report as described in Part IV.B.

#### **E. Legal Authority to Implement the SWMP**

The Permittees shall utilize the legal authority provided by the laws and regulations of the State of West Virginia to control discharges to and from the MS4 as required by this individual permit and described in the SWMP. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order, or interjurisdictional agreements.

### **PART III. MINIMUM CONTROL MEASURES**

The Permittees shall implement each of the six Minimum Control Measures (MCMs) as described in this Part III within its MS4 Service Area. Permittees are encouraged to work with other MS4 operators to implement these MCMs when appropriate.

#### **A. MCM 1: Public Education and Outreach**

##### **1. Objectives**

The Permittees shall implement a public education and outreach program designed to:

- a. Increase the public's knowledge of how to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;
- b. Increase the public's knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and
- c. Implement a diverse program with strategies that are targeted toward individuals or groups most likely to have significant stormwater impacts.

##### **2. Implementation**

To comply with this MCM, the Permittees shall complete each of the following actions:

- a. Define High-Priority Stormwater Issues. The Permittees shall identify no fewer than three high-priority stormwater issues to meet the goal of educating the public in accordance with the objectives stated in Part III.A.1. High-priority issues may include, but are not limited to,

the following examples: Chesapeake Bay nutrients, pet wastes, local receiving water impairments, TMDLs, high-quality receiving waters, litter control, BMP maintenance, anti-icing and deicing agent bulk storage, planned green infrastructure redevelopment, and illicit discharges from commercial sites. For each high-priority stormwater issue, the SWMP shall document the following:

- i. The rationale for selection of each high-priority stormwater issue and an explanation of how each education or outreach strategy is intended to have a positive impact on stormwater discharges;
  - ii. The target audience to receive each high-priority stormwater message;
  - iii. The strategies from Table 1 that will be used to communicate each high-priority stormwater message; and
  - iv. The anticipated time periods the messages will be communicated or made available to the public.
- b. Implement Education and Outreach Strategies. The Permittees shall use four or more of the strategies listed in Table 1 per year to communicate to the target audience the high-priority stormwater issues identified in accordance with Part III.A.2.a, including how to reduce stormwater pollution.

<b>Table 1</b> <b>Strategies for Public Education and Outreach</b>	
<b>Strategies</b>	<b>Examples<sup>1</sup></b>
Traditional written materials	Informational brochures, newsletters, fact sheets, utility bill inserts, or recreational guides for targeted groups of citizens
Alternative materials	Bumper stickers, refrigerator magnets, t-shirts, or drink koozies
Educational Materials	Educational materials provided from the EPA or WVDEP, or made by other MS4's public interest, or environmental organizations.
Signage	Temporary or permanent signage in public places or facilities, vehicle signage, billboards, or storm drain stenciling
Media materials	Information disseminated through electronic media, radio, televisions, movie theater, newspaper, or GIS story maps
Speaking engagements	Presentations to school, church, industry, trade, special interest, or community groups
Curriculum materials	Materials developed for school-aged children, students at local colleges or universities, or extension classes offered to local citizens
Training materials	Materials developed to disseminate during workshops offered to local citizens, trade organization, or industrial officials
Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education or curriculum requirements, or watershed walks, and ways in which the public can become involved in conservation efforts.
Public meetings	Public meetings on proposed community stormwater management retrofits, green

	infrastructure redevelopment, ecosystem restoration projects, TMDL development, voluntary residential low impact development, or other stormwater issues
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1. *Examples provided for illustrative purposes; not meant to be all-inclusive or limiting.*

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittees have successfully implemented the enforceable, measurable goals set forth in this individual permit for MCM 1, the Annual Report shall include the following information for the reporting year:

- a. The high-priority stormwater issues the Permittees addressed in the public education and outreach program;
- b. A summary of the public education and outreach activities conducted for the report year.. This summary shall also include numeric tracking where applicable, of outreach strategies. For example only: number of people who attended meetings or other outreach activities, the number of flyers sent out, the number of surveys completed;
- c. A description of any changes in high-priority stormwater issues for the upcoming year, including strategies used to communicate high-priority stormwater issues or target audiences for the public education and outreach plan. The Permittees shall provide a rationale for any of these changes.

## **B. MCM 2: Public Involvement and Participation**

### **1. Objectives**

The Permittees shall implement a public involvement and participation program designed to:

- a. Ensure that information about the MS4 program activities is readily available to the public;
- b. Allow the public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding land disturbing activities, or other potential stormwater pollution concerns; and
- b. Provide opportunities for the public to provide comments on the Permittee's SWMP.

### **2. Implementation**

To comply with this MCM, the Permittees shall complete each of the following actions:

- a. Ensure MS4 Program Information Is Readily Available to the Public. The Permittees shall ensure that information about the MS4 program is readily available to the public by maintaining a dedicated website. If the Permittees determines that the posting the information online would not be the most effective way to reach its target audience, the Permittees may also keep publicly available copies of the information in an easily accessible location including, but not limited to, a public library, community center, or local government building, during normal business hours. The SWMP shall include a list of the information

made publicly available and the rationale for the selected method of dissemination. Copies of the following will be made available to the public in accordance with this subsection:

- i. This individual permit and the Permittee's coverage letter;
  - ii. The most current SWMP;
  - iii. The Annual Report submitted to the Department for each year of the term covered by this individual permit;
  - iv. Documentation of the methods available to the public to provide comments, suggestions, recommendations, or other input on the SWMP and Annual Report, which methods may be consolidated with the complaint and reporting methods referenced in the next subsection (Part III.B.2.a.v); and
  - v. Documentation of the methods available to the public to report potential illicit discharges, improper disposal, spills to the MS4, land-disturbing activity complaints, other potential stormwater pollution concerns in accordance with the respective public participation requirements of MCM 3 (Part III.C.2.b.v), MCM 4 (Part III.D.2.f); and MCM 5 (Part III.E.2.i). The Permittees may provide (1) separate public reporting and complaint methods for MCMs 3, 4, and 5, or (2) a single, comprehensive method through which all public reports and complaints may be submitted to the Permittees.
- b. Provide Public Involvement Opportunities. The Permittees shall implement no fewer than three activities per year from three or more of the categories listed in Table 2 to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects. The SWMP shall describe the public involvement opportunities to be implemented by the Permittees, the anticipated time period the activities will occur, and the water quality benefits expected to be obtained by each activity.

<b>Table 2</b> <b>Public Involvement Opportunities</b>	
<b>Strategies</b>	<b>Examples<sup>1</sup></b>
Monitoring <sup>2</sup>	Establish or support citizen monitoring group
Restoration <sup>2</sup>	Stream, watershed, shoreline, or park clean-up day, adopt-a-waterway program, tree plantings, and riparian buffer plantings
Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education or curriculum requirements, or watershed walks
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecosystem restoration projects, TMDL development, voluntary residential low impact development, or other stormwater issues
Public comment	Issue public notice for comments on SWMP updates or other MS4 program activities (provided a response to comments is prepared)
Disposal or collection events	Household hazardous chemicals collection, vehicle fluids collection
Pollution prevention <sup>2</sup>	Adopt-a-storm drain program, implement a storm drain marking program, promote use of residential stormwater BMPs, implement pet waste stations in public areas,

1. *Examples provided for illustrative purposes; not meant to be all-inclusive or limiting.*
2. *Activities that continue for more than one year can be credited for each year.*

- c. **Public Comment on the New or Updated SWMP.** Within 30 days of submitting the new or updated SWMP to the Department in accordance with Part II.B, the Permittees shall publish a public notice that the SWMP is available for review and comment by the public. The notice shall be posted to the Permittee's website. The notice may also be published in a newspaper of general circulation in the MS4 service area. The notice shall state (i) where the public can obtain a copy of the SWMP; (ii) contact information for a person designated to accept comments on or answer questions about the SWMP; and (iii) a period of no less than 60 days for the public to ask questions or request information (telephone) and submit written comments on the SWMP. The Permittees shall consider and prepare a written response to each written comment received during the comment period. The response to comments shall be sent to any commenter who provided contact information.

The Permittees may not count its compliance with this public comment and response requirement as an "activity" for the purpose of complying with the public involvement requirements in Part III.B.2.b. However, any subsequent public notice and comment opportunities provided on other elements of the Permittee's MS4 program may be counted as "activities" for the purpose of Part III.B.2.b.

### 3. **Reporting and Evaluation**

To allow the Department to determine whether the Permittees has successfully implemented the enforceable, measurable goals set forth in this individual permit for MCM 2, the Annual Report shall include the following information for the reporting year:

- a. A summary of all public comments received by the Permittees under Part III.B.2.c and the Permittee's written responses to each comment. The summary should identify any changes the Permittees made to the SWMP in response to a public comment. Documentation of the public notice issued under Part III.B.2.c shall also be included;
- b. A summary of any stormwater pollution complaints received from the public, excluding natural flooding complaints, and how the Permittees responded;
- c. A link to the Permittee's dedicated MS4 program website where publicly accessible MS4 documents are maintained;
- d. A description of the public involvement activities implemented by the Permittees. To the extent such information is reasonably available or voluntarily disclosed by the participants, the Permittees shall include (1) an estimate of the number of participants in the activity and (2) a summary of the demographic characteristics of the participants;
- e. An evaluation of whether the public involvement activities implemented during the year were beneficial to improving water quality (to the extent practicable); and
- f. A description of any changes in the Permittee's public involvement activities for the

upcoming year, including the rationale for any such changes.

### **C. MCM 3: Illicit Discharge Detection and Elimination**

#### **1. Objectives**

The Permittees shall implement an illicit discharge and detection elimination (IDDE) program designed to:

- a. Appropriately map the regulated MS4; and
- b. Implement measures to effectively identify and eliminate illicit discharges.

#### **2. Implementation**

To comply with this MCM, the Permittees shall complete each of the following actions:

- a. Maintain an MS4 Map. The Permittees shall maintain a map of the regulated MS4. The SWMP shall either (1) include the MS4 map as an attachment or, (2) if the map is maintained primarily in a digital form, identify the format of the digital version and where the relevant files are primarily stored or hosted. The map shall be updated at least annually to reflect any new or revised relevant information obtained by the Permittees in the previous year. The Permittees shall continue to maintain the MS4 map in accordance with this individual permit.
  - i. The map shall identify and show the location of the following elements:
    - (1) Known MS4 outfalls;
    - (2) Known connections to the MS4;
    - (3) Receiving waters for discharges from the MS4, with labels for any waters listed as impaired or subject to an approved TMDL;
    - (4) Structural stormwater BMPs owned, operated, or maintained by the Permittees, and which discharge to the MS4;
    - (5) Boundary of the regulated MS4 service area; and
    - (6) Any other relevant information (e.g., land uses) the Permittees elects to include.
  - ii. The map shall be formatted at a legible scale and contain conventional map markings, including:
    - (1) North arrow;



- (2) Scale bar; and
- (3) Legend explaining the meaning of all symbols, color codes, or other representations.
- iii. The Permittees shall maintain a digital boundary of the current MS4 area. These files must be georeferenced. Examples of acceptable boundaries are those used in GIS mapping which include shapefiles, autocad drawings, or other digital boundaries such as KMZ or KML files.
- b. Implement an IDDE Program. The Permittees shall adopt and implement an IDDE program with procedures set forth in the SWMP to investigate, track, and respond to potential illicit discharges. Except as noted below, Permittees shall evaluate their IDDE programs annually and implement any necessary updates from that annual evaluation. The IDDE Program shall consist of the following elements:
  - i. Unauthorized Discharge Prohibition. Excluding authorized non-stormwater discharges identified in Part I.E and Appendix C, the Permittees shall prohibit non-stormwater discharges into the MS4 by ordinance or other legal mechanism to the extent allowable under Federal, State, or Local law. The ordinance or mechanism shall provide for enforcement actions against persons found to be in violation. The Permittees must review and, if necessary, update its IDDE ordinance or mechanism within 12 months of the effective date of this individual permit. The legal mechanism shall be cited or referenced in the SWMP.
  - ii. Other Relevant Legal Authorities. The SWMP shall include a description of the legal authorities, policies, standard operating procedures, or other legal mechanisms available to the Permittees to eliminate identified sources of ongoing illicit discharges, including procedures for using legal enforcement authorities.
  - iii. Dry Weather Screening of High-Priority Outfalls. The Permittees shall implement a risk-based screening program to assist in detecting and eliminating illicit discharges. The SWMP shall include a schedule and methodology to evaluate at least 25% of the Permittee's MS4 outfalls each year. The Permittee shall use, as appropriate, mapping, past history of illicit discharges, upstream entities or facilities, public complaints, and available water quality data to determine areas with high potential for illicit discharges and improper disposal. Dry weather screening activities shall be prioritized in these areas. The SWMP shall identify high-priority outfalls and provide the rationale for the prioritization decisions. It also should include a copy of the inspection report form that will be completed for each outfall screening event. The inspection form shall, at a minimum, document the following:
    - (1) The location and/or unique identifier for the outfall;
    - (2) Time since last runoff-producing precipitation or snowmelt event;
    - (3) Whether the outfall is discharging and, if so, a description of the estimated discharge rate and visual characteristics of the discharge (e.g., odor, color, clarity);
    - (4) Any observed indicators of a possible illicit charge, including floatables, deposits,

stains, and unusual vegetative conditions (e.g., dying or dead vegetation, excessive vegetative growth); and

- (5) The inspector's opinion as to whether the observed conditions indicate the potential for an ongoing or unknown past illicit discharge.

iv. Investigation of Suspected Illicit Discharges. The SWMP shall document procedures the Permittees will follow to investigate suspected discharges. At a minimum, an investigation will be conducted for each known or suspected illicit discharge documented during a dry weather screening event, reported by a member of the public or other third party, or otherwise observed by Permittee's staff. If the Permittees are unable to identify the source of an illicit discharge within six months of beginning the investigation, then the Permittees shall document that the source remains unidentified. If the observed discharge is intermittent, the Permittees shall document that the attempts to observe the discharge flowing were unsuccessful. A report shall be generated for each investigation, which shall, at a minimum, record the following:

- (1) Date the known or suspected illicit discharge was initially observed or report and the source of the information (e.g., dry weather screening report, citizen complaint);
- (2) Results of the investigation, including the source, if identified;
- (3) Resolution of the investigation, including whether any remediation or enforcement actions were taken; and
- (4) Date the investigation was closed.

v. Public Reports and Complaints. The Permittees shall establish and maintain methods by which the public can report water quality complaints, including potential illicit discharges. The Permittees must publish a phone number, email address (or web-based form), and/or mailing address for the public to submit water quality complaints. The methods of submitting a complaint shall be published on the MS4 section of the Permittee's website.

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittees has successfully implemented the enforceable, measurable goals set forth in this individual permit for MCM 3, the Annual Report shall include the following information for the reporting year:

- a. A statement confirming that the MS4 map was updated to reflect any relevant changes since the last Annual Report and, if applicable, a summary of the updates;
- b. A summary of any revisions to the Permittee's prohibition on illicit discharges or other relevant legal authorities during the reporting year;
- c. The methods maintained by the Permittees for the public to report potential illicit discharges or other water quality complaints, and a summary of any water quality complaints received through those methods from the public and the Permittee's response to the same. (The

Permittees need not repeat any summaries that are included in the section of the Annual Report for MCM 2 (Part III.B.3));

- d. A summary of the dry weather screening events completed during the reporting year, including the number of outfalls screened and the number that presented evidence of possible illicit discharges;
- e. A summary of illicit discharge investigations completed during the year. The summary must include the number of investigations that determined that an illicit discharge is unlikely to have occurred; the number of investigations that were inconclusive; and the number of investigations for which an illicit discharge was determined likely or confirmed. For each likely or confirmed illicit discharge, the Permittees shall provide a summary of how the incident was resolved, including any remediation or enforcement actions; and
- f. Provide a description of the of the permittees IDDE program evaluation, and a description of any changes for the upcoming year as a result of the program evaluation, including the rationale for any such changes..

#### **D. MCM 4: Controlling Runoff from Construction Sites**

##### **1. Objectives**

The Permittees shall implement a program to reduce pollutants in stormwater runoff from construction activities in the MS4 Service Area that result in a land disturbance of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater, unless such activities are exempt from NPDES permitting requirements by Federal or State law (“Regulated Construction Activities”).

##### **2. Implementation**

To comply with this MCM, the Permittees shall complete each of the following actions:

- a. Legal Authority. The Permittee’s SWMP shall document that the Permittees has adopted an ordinance, regulation, or other similar enforceable legal authority to regulate land-disturbing activities that meet or exceed the criteria stated in Part III.D. The Permittees must have authority to (1) review and approve Regulated Construction Activities; (2) prohibit Regulated Construction Activities that do not comply with requirements of the program; (3) inspect Regulated Construction Activities; (4) issue stop work orders to operators of non-compliant construction activities; and (5) enforce violations. The Permittees shall implement all requirements of Part III.D to the extent of its legal authority, and the SWMP shall document and explain any provisions of Federal or State law that could materially limit or affect the Permittee’s authority to implement any provisions of this part;
- b. Stormwater Pollution Prevention Plan Review and Approval. The Permittees shall require by ordinance, regulation, or similar mechanism that any person proposing to engage in a Regulated Construction Activity submit a proposed Stormwater Pollution Prevention Plan (SWPPP) to the Permittees for review and approval. At a minimum, an approvable SWPPP must satisfy the criteria and standards minimize water quality impacts. The Permittees shall have authority to request additional information from the applicant and require revisions to

the SWPPP to ensure compliance with the applicable requirements in and any other local requirements. The Permittees shall not approve a proposed SWPPP for a Regulated Construction Activity until the operator provides documentation that the Department has issued NPDES permit coverage for construction stormwater discharges from the activity by an (1) individual WV/NPDES permit or (2) a general WV/NPDES permit (e.g., WV/NPDES Permit No. WV0115924, WV/NPDES Permit No. WV0116815). If a relevant NPDES stormwater discharge permit issued by the Department satisfies the minimum requirements listed in Appendix C, the Permittees may presume the SWPPP satisfies the requirements of this subsection except any additional local requirements adopted by the Permittee. SWPPP approvals shall be issued in writing by mail, email, web-based system, or other similar method. The Permittees shall prohibit the commencement of any Regulated Construction Activity without a SWPPP approved by the Permittees. The Permittee's procedures for reviewing and approving SWPPPs shall be documented in its SWMP;

- c. Inspections. The Permittees shall develop and implement a program to inspect Regulated Construction Activities for compliance with approved SWPPPs. The inspection program procedures shall be incorporated into the SWMP and shall include, at a minimum, the following elements:
  - i. Inspection Frequency. Each Regulated Construction Activity shall be inspected at least once during the period of active land disturbance. High-priority construction activities must be inspected at least once per month. The SWMP shall define high-priority construction activities to include (1) projects that have a land-disturbance area greater than 5 acres; (2) projects that drain to waterbody subject to a TMDL Implementation Plan developed pursuant to Part VI.C, Tier 2 and Tier 3 waters; and, as appropriate, (3) any other project types or project locations determined by the Permittees to present an elevated risk of impacts to water quality based on local conditions.
  - ii. Inspection Report Forms. To ensure that Regulated Construction Activity inspections are conducted in a consistent manner, the Permittees shall develop a standardized inspection report form to be completed by the Permittee's inspectors. The inspection report forms shall, at a minimum, include entries for the following items: (1) SWPPP and CGP are maintained onsite; (2) BMPs are implemented in accordance with the approved SWPPP; (3) BMPs are properly maintained; (4) disturbed soils are stabilized in accordance with the SWPPP; (5) documentation is maintained demonstrating that the operator is conducting self-inspections and maintenance on the frequency required by the SWPPP; and (6) documentation that any corrective actions prescribed by the operator's inspector, the Permittees have been completed in a timely manner as required. The form shall include a space to document any deficiencies discovered during the inspection.
  - iii. Communication of Inspection Findings to Operators. A copy of each inspection report form (or an abbreviated or modified version thereof documenting the inspector's findings) shall be provided to the owner or operator of the Regulated Construction Activity as soon as practicable, but no later than 7 days. Any pollution event must be reported to the operator immediately upon discovery. The communication shall include an instruction to complete any necessary maintenance or corrective actions within 24 hours.
- d. Compliance and Enforcement. The Permittees shall develop standard compliance and

enforcement procedures for Regulated Construction Activity operators that fail to comply with any requirements imposed by the Permittees under this Part III.D (MCM 4). The procedures shall outline the circumstances and measures to be employed to bring operators into compliance, including, as appropriate, (1) notices to correct SWPPP deficiencies per Part III.D.2.c.iii, (2) warning letters, (3) orders, instructions, or other legal mechanism to require that operators take corrective action to remedy significant or repeated noncompliance (including, when appropriate, an order to stop work until the deficiencies are corrected), and (4) directives to minimize or remediate environmental or property damage result resulting from SWPPP noncompliance (e.g., retrieving sediment deposited outside of the construction BMPs). The procedures shall outline an enforcement process for significant and/or chronic noncompliance, including, as appropriate, penalties, corrective actions, legal actions, or referral to other regulatory or law enforcement authority. These procedures shall be incorporated into the Permittee's SWMP. The Permittees shall implement the compliance and enforcement procedures developed under this subsection, subject to the reasonable exercise of enforcement discretion;

- e. Public Reports and Complaints. The Permittees shall develop as part of its SWMP a program to accept, track, and respond to substantive complaints from the public related to BMP implementation at and stormwater discharges from Regulated Construction Activities to the Permittee's MS4. As part of the program, the Permittees shall publish information on its website, and/or through other appropriate means advising the public how to report stormwater-related problems at the sites of Regulated Construction Activities, including an email address (or web-based form) and phone number available to receive reports. The Permittees shall log all public reports and complaints in a tracking system, which shall include a (1) summary or copy of the complaint; (2) actions taken to investigate the complaint; and (3) whether any compliance, enforcement, or other actions were taken as a result of the investigation. Permittees may use the example complaint tracking form template in Appendix D for this purpose. The Permittees shall provide a response to any commenter that provided contact information within 30 days of receipt of complaint. However, the Permittees need not provide responses to individual commenters if it elects to post a record of public complaints and their resolutions to its website.
- f. Recordkeeping. With respect to Regulated Construction Activities, the Permittees shall maintain records of (1) SWPPP approvals; (2) SWPPP inspections conducted by or on behalf of the Permittees; (3) enforcement and compliance actions taken by the Permittees; and (4) public reports and complaints and the Permittee's responses thereto.

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittees has successfully implemented the enforceable, measurable goals set forth in this individual permit for MCM 4, the Annual Report shall include the following information for the reporting year:

- a. Any material changes to the relevant legal authorities identified in the SWMP in accordance with Part III.D.2.a, including an explanation of the beneficial or adverse effect the change may have on the Permittee's ability to implement the requirements of Part III.D;
- b. Any material changes in the local requirements for SWPPPs, if any, adopted by the Permittees;

- c. The number SWPPPs submitted to the Permittees for review and the respective number of approvals and denials issued;
- d. A summary of compliance and enforcement actions taken by the Permittees, including the total number of each type of compliance action and enforcement action implemented;
- e. An evaluation of the effect Permittee's compliance and enforcement actions have had on facilitating compliance with requirements of this Part III.D by Regulated Construction Activity operators. This evaluation shall be based on a comparison of rates of noncompliance and public reports compared to previous years (with due consideration of circumstances that could affect the number of documented noncompliance incidents, such as increased construction activity, more frequent inspections, or natural variability) and any other appropriate factors. The evaluation shall also document any modifications to the compliance and enforcement processes in the Permittee's SMWP in response to the evaluation.
- f. Attach a copy of the public report and complaint tracker developed in accordance with Part III.D.2.f.

#### **E. MCM 5: Controlling Runoff from New Development and Redevelopment**

##### **1. Objectives**

The Permittees shall implement a post-construction stormwater management program to reduce the discharge of stormwater-based pollutants from development and redevelopment projects in the MS4 Service Area that have a land disturbance area of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater ("Regulated Development Projects," "Regulated Redevelopment Projects," or, collectively, "Regulated Projects").

##### **2. Implementation**

To comply with this MCM, the Permittees shall complete each of the following actions:

- a. **Legal Authority.** The Permittee's SWMP shall document that the Permittees has adopted an ordinance, regulation, or other similar enforceable legal authority to regulate Regulated Projects that meet or exceed the criteria stated in Part III.D. The Permittees must have authority to (1) review and approve Regulated Projects; (2) prohibit discharges from Regulated Projects that do not comply with requirements of the program; (3) inspect stormwater management facilities for Regulated Projects; and (4) enforce violations. The Permittees shall implement all requirements of Part III.E to the extent of its legal authority, and the SWMP shall document and explain any provisions of Federal or State law that could materially limit or affect the Permittee's authority to implement any provisions of this part;
- b. **Post-Construction Stormwater Management Plan Review and Approval.** The Permittees shall require by ordinance, regulation, or similar mechanism that any person proposing to undertake a Regulated Project submit a proposed Post-Construction Stormwater Management Plan (PCSMP) to the Permittees for review and approval. At a minimum, an approvable PCSMP must satisfy the standards listed below in Part III.E.2.d to minimize water quality

impacts. The Permittees shall have authority to request additional information from the applicant and require revisions to the PCSMP to ensure compliance with the applicable requirements of this part and any other local requirements. PCSMP approvals shall be issued in writing by mail, email, web-based system, or other similar method. The Permittees shall prohibit the commencement of any Regulated Projects without a PCSMP approved by the Permittees. The Permittee's procedures for reviewing and approving PCSMP shall be documented in its SWMP;

- c. Post-Construction Development Standards. The Permittees shall adopt post-construction development standards in accordance with this subpart, which shall be documented in its SWMP. The Permittees shall adopt one primary standard and two alternatives available for use by developers. The Permittees also may define locations, categories of projects, or other criteria which dictate which standard may be used for a Regulated Development Project. Provided, however, that the SWMP shall clearly state which standard is required or permitted, and a reasonable grandfathering or transition period shall be adopted for any changes to the required standard.
  - i. Development Standard 1: Runoff Retention. Regulated Development Projects must be designed to retain a volume of runoff equivalent to 1.0 inch (or greater) multiplied by the total post-construction impervious surface area on the site. The Permittees may allow the runoff retention standard to be lowered to 0.8 inch (or greater) for high-density development (greater than 7 units per acre), transit-oriented development, and projects that have direct or indirect water quality benefits in accordance with criteria identified in the SWMP. The Permittees may reject as incomplete any PCSMP relying on Development Standard 1 that does not include a completed copy of the most current version of Department's Compliance Spreadsheet (Appendix F) (or alternative documentation designated by the Permittees) demonstrating compliance with this standard;
  - ii. Development Standard 2: Extended Infiltration. Regulated Development Projects must be designed to treat stormwater before releasing it to surface waters by extended or engineered infiltration. Extended filtration practices that are designed to capture and manage up to one inch of rainfall may discharge through an underdrain system. The Permittees may reject as incomplete any PCSMP relying on Development Standard 3 that does not include calculations and other support sufficient to demonstrate compliance with this standard; and/or
  - iii. Development Standard 3: Equivalent Alternative. The Permittees may adopt an alternative standard for Regulated Development Projects provided it demonstrates to the Department's satisfaction that adoption of the standard for development projects will result in improved water quality compared to Development Standard 1, 2, or 3. To obtain approval for an equivalent standard, the Permittees must prepare a package including the development standard and supporting technical documentation. The package must be publicly noticed for at least 30 days. The package, any public comments received by the Permittees, and the Permittee's responses thereto shall be submitted to the Department. The Permittees may assume approval of the equivalent standard if the Department does not notify the Permittees within 90 days (1) that the standard is disapproved or (2) that additional information is needed to complete the Department's review.

In addition to satisfying one of the standards stated above, PCSMPs must comply with the general criteria and any other local requirements adopted by the Permittees.

- d. Post-Construction Redevelopment Standards. The Permittees shall adopt post-construction redevelopment standards in accordance with this Part III.E.2.d, which shall be documented in its SWMP. The standards listed below are alternatives, and the Permittees shall approve at least one of the standards for use on Regulated Redevelopment Projects. The Permittees also may define locations, categories of projects, or other criteria which dictate which standard may be used for a Regulated Redevelopment Project. Provided, however, that the SWMP shall clearly state which standard is required or permitted, and a reasonable grandfathering or transition period shall be adopted for any changes to the required standard.
- i. Redevelopment Standard 1: Runoff Retention. Regulated Redevelopment Projects must be designed to retain a volume of runoff equivalent to 0.8 inch (or greater) multiplied by the total post-construction impervious surface area on the site. The Permittees may allow the runoff retention standard to be lowered to 0.5 inch (or greater) for high-density development (greater than 7 units per acre), transit-oriented development, brownfield redevelopment, and projects that have direct or indirect water quality benefits in accordance with criteria identified in the SWMP. The Permittees may reject as incomplete any PCSMP relying on Redevelopment Standard 1 that does not include a completed copy of the most current version of Department's Compliance Spreadsheet (Appendix E) demonstrating compliance with this standard;
  - ii. Redevelopment Standard 2: Extended Infiltration. Regulated Redevelopment Projects must be designed to treat stormwater before releasing it to surface waters by extended or engineered infiltration. Extended filtration practices that are designed to capture and manage up to one inch of rainfall may discharge through an underdrain system. The Permittees may reject as incomplete any PCSMP relying on Redevelopment Standard 3 that does not include calculations and other support sufficient to demonstrate compliance with this standard.
  - iii. Redevelopment Standard 3: Impervious Area Reduction. Regulated Redevelopment Projects that produce a net decrease of impervious area within the limits of disturbance must comply with the following standard:
    - (1) If the net impervious area is decreased by less than 50%, the post-construction TP load shall be reduced by at least 20% below the predevelopment TP load; or
    - (2) The impervious area has decreased by 50% or more.The Permittees may reject as incomplete any PCSMP relying on Redevelopment Standard 3 that does not include calculations and other support sufficient to demonstrate compliance with this standard. Redevelopment Standard 4 may not be applied to a Regulated Redevelopment Project that produces a net increase of impervious area within the limits of disturbance.
  - iv. Redevelopment Standard 4: Equivalent Alternative. The Permittees may adopt an alternative standard for Regulated Redevelopment Projects provided it demonstrates to the Department's satisfaction that adoption of the standard for redevelopment projects



will result in improved water quality compared to Redevelopment Standard 1, 2, 3, or 4. To obtain approval for an equivalent standard, the Permittees must prepare a package including the redevelopment standard and supporting technical documentation. The package must be publicly noticed for at least 30 days. The package, any public comments received by the Permittees, and the Permittee's responses thereto shall be submitted to the Department. The Permittees may assume approval of the equivalent standard if the Department does not notify the Permittees within 90 days (1) that the standard is disapproved or (2) that additional information is needed to complete the Department's review.

In addition to satisfying one of the standards listed above, PCSMPs must comply with the general criteria and any other local requirements adopted by the Permittees. However, Regulated Redevelopment Projects that are exclusively limited to maintenance and improvement of existing roadways (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects), sidewalks, and parking lots shall improve existing conditions where feasible but may be exempted from compliance with Redevelopment Standards 1 and 2. Any categories of exempt redevelopment activities shall be identified in the SWMP.

- e. Offsite Compliance Options. The Permittees may allow Regulated Projects to satisfy the applicable development or redevelopment standard, in whole or in part, through offsite compliance options. If the Permittees elects to permit offsite compliance options, the SWMP shall document (1) which offsite compliance options are available for use; (2) any eligibility criteria for the use of offsite compliance options; (3) submission and documentation requirements for project proponents seeking to use offsite compliance options; and (4) procedures for the review and approval of PCSMPs that propose offsite compliance options. The Permittee's offsite compliance program shall be materially consistent with the Department's *Guidance for Developing an Off-Site Stormwater Compliance Program in West Virginia* (Appendix F), including any subsequent Department-issued documents or regulations that may revise or supersede the guidance.
- f. Stormwater Management Facility Inspection and Maintenance. The Permittees shall operate a program to facilitate proper inspection and maintenance of stormwater management facilities constructed to comply with this Permit's development and redevelopment standards (Parts III.E.2.c & III.E.2.d). The program shall be documented in the SWMP and include the following components:
  - i. As-Built Drawings. The Permittees shall require that proponents of Regulated Projects submit certified as-built drawings of all stormwater management facilities required by a PCSMP no later than 90 days after the completion of the development or redevelopment project. The as-built drawings must be appended to Long-Term Maintenance Agreements (Part III.E.2.f.ii).
  - ii. Long-Term Maintenance Agreements. The Permittees shall require that proponents of Regulated Projects (other than the Permittees) execute binding agreements for the long-term inspection and maintenance of any stormwater management facilities installed on Regulated Projects. Such agreements shall require the Regulated Project proponent, its successor, or other responsible party to (1) inspect stormwater facilities on an annual basis (unless the Permittees determines that an alternative schedule is appropriate); (2)

perform any necessary maintenance within a prescribed period; and (3) provide inspection and maintenance records to the Permittees. Agreements shall be made in favor of the Permittees or a designated party acting on the Permittee's behalf. To the extent allowed by law, the Permittees may require that Long-Term Maintenance Agreements be recorded in the local property records and be made to run with the land.

- iii. Inspections by Permittees. The Permittees shall keep an inventory of stormwater management facilities subject to maintenance agreements. The Permittees shall inspect each stormwater management facility on the inventory at least once every five years. If the inspection identifies any deficiencies, the Permittees shall take reasonable action to enforce its rights under the Long-Term Maintenance Agreement or exercise its compliance and enforcement authority to compel the responsible party to complete any necessary maintenance.
- iv. Legacy Stormwater Management Facilities. For any stormwater management facility maintenance agreements or maintenance plans approved under prior versions of General Permit No. WV0116025, the Permittees shall continue to enforce those agreements and plans in accordance with their respective terms and conditions.
- g. Compliance and Enforcement. The Permittees shall develop standard compliance and enforcement procedures for Regulated Project owners that fail to comply with any requirements imposed by the Permittees under this Part III.E (MCM 5). The procedures shall outline the circumstances and measures to be employed to bring owners into compliance, including, as appropriate, (1) notices to correct deficiencies, (2) warning letters, and (3) orders, instructions, or other legal mechanisms, including those in the Long-Term Maintenance Agreement, to require that owners take corrective action to remedy significant or repeated noncompliance. The procedures shall outline an enforcement process for significant and/or chronic noncompliance, including, as appropriate, penalties, corrective actions, legal actions, or referral to other regulatory or law enforcement authority. These procedures shall be incorporated into the Permittee's SWMP. The Permittees shall implement the compliance and enforcement procedures developed under this subsection.
- i. Public Reports and Complaints. The Permittees shall develop as part of its SWMP a program to accept, track, and respond to substantive complaints from the public related to post-construction stormwater management and stormwater discharges from Regulated Projects to the Permittee's MS4 (excluding natural flooding events). As part of the program, the Permittees shall publish information on its website or through other appropriate means advising the public how to report stormwater-related problems at the sites of Regulated Projects, including an email address (or web-based form) and phone number available to receive reports. The Permittees shall log all public reports and complaints in a tracking system, which shall include a (1) summary or copy of the complaint; (2) actions taken to investigate the complaint; and (3) whether any compliance, enforcement, or other actions were taken as a result of the investigation; and
- j. Recordkeeping. The Permittees shall maintain records of (1) PSCMP approvals; (2) inventory of stormwater management facilities; (3) Long-Term Maintenance Agreements; (4) stormwater management facility inspections conducted by or on behalf of the Permittees; (5) enforcement and compliance actions taken by the Permittees; and (6) public reports and complaints.

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittees has successfully implemented the enforceable, measurable goals set forth in this individual permit for MCM 5, the Annual Report shall include the following information:

- a. Any material changes to the relevant legal authorities identified in the SWMP in accordance with Part III.E.2.a, including an explanation of the beneficial or adverse effect the change may have on the Permittee's ability to implement the requirements of Part III.E;
- b. Any material changes in the local requirements for PCSMPs, if any, adopted by the Permittees;
- c. The number PCSMPs submitted to the Permittees for review and the respective number of approvals and denials issued;
- d. A summary of compliance and enforcement actions taken by the Permittees, including the total number of each type of compliance action and enforcement action implemented;
- e. An evaluation of the development and redevelopment standards approved for use by existing Permittees. The evaluation shall identify any (1) public complaints, (2) known water quality issues, or (3) observed downstream flooding or channel erosion problems reasonably attributable to post-construction stormwater discharges from Regulated Projects completed during the term of this permit. For any such issues identified during the reporting year, the Permittees shall identify the development or redevelopment standard utilized for the project and determine, if practicable, whether the issue was likely caused by (1) an apparent deficiency in the standard; (2) improper installation or maintenance of the required stormwater controls; or (3) another cause. The report shall document any adaptive changes to the SWMP made in response to the evaluation.existing
- f. A copy of the public report and complaint tracker developed in accordance with Part III.E.2.i.

## **F. MCM 6: Pollution Prevention & Good Housekeeping for Municipal Operations**

### **1. Objective**

The Permittees shall implement good housekeeping procedures designed to minimize the facility discharge of pollutants from municipal facilities and operations to the MEP.

### **2. Implementation**

To comply with this MCM, the Permittees shall complete each of the following actions, which must be consolidated into a written Pollution Prevention and Good Housekeeping Program included in the SWMP:

- a. Landscape Management Activities. Permittees shall update and/or adopt written procedures for implementing best management practices for each of the landscape management activities listed below to minimize the discharge of pollutants to the MS4. However, if the Permittees does not engage in any of the listed activities, it need not develop written procedures for that activity.
  - i. Use of Fertilizer. The application of fertilizers to municipal properties shall not exceed the application rates established by any applicable nutrient management plan. For areas not covered under nutrient management plans where fertilizer is applied, application rates shall not exceed manufacturer's recommendations;
  - ii. Use of Herbicides and Pesticides. The application of herbicides and pesticides to municipal properties shall not exceed the manufacturer's recommendations;
  - iii. Vegetation Disposal. Landscaping and vegetation management activities on municipal properties shall ensure that leaves, lawn and bush trimming, and other related vegetative debris is not stockpiled or disposed of in areas where it may be washed into the MS4; and
- b. Management of High-Priority Facilities. The Permittees shall identify all "High-Priority Facilities," which means any facilities owned or operated by the Permittees with drainage to the regulated MS4 where one or more of the following activities occur: (i) composting; (ii) equipment storage, cleaning, maintenance, and fueling; (iii) long-term bulk materials storage; (iv) pesticide, herbicide, fertilizer, or other chemicals storage; (v) recycling; (vi) anti-icing and deicing agent bulk storage, handling, and transfer; (vii) solid waste handling and transfer, and (viii) Permittee-owned or -operated vehicle washing, maintenance, and salvage. The Permittees may exclude any facilities that operate under a separate NPDES permit for stormwater discharges or for which the relevant materials or activities are not exposed to rain, snow, snowmelt, or runoff. For each High-Priority Facility, the Permittees shall develop a site-specific Stormwater Pollution Prevention Plan (SWPPP) that includes the following elements:
  - i. Site Description. A site description that includes a site map identifying all stormwater outfalls, direction of stormwater flows, existing source controls, and receiving water bodies;
  - ii. Responsible Personnel. All persons (by name or job title) responsible implementing each requirement of the SWPPP shall be identified;
  - iii. Potential Sources of Pollutants to the MS4. All potential pollutants, pollutant sources, and non-stormwater discharges shall be identified in the SWPPP;
  - iv. Pollution Prevention Procedures. The SWPPP shall contain written procedures and practices tailored to Berkeley County that are designed to reduce and prevent pollutant discharges to the MS4;
  - v. Catalogue of Stormwater Controls. All structural control measures, such as stormwater management facilities and other stormwater pollutant source controls that are intended to or have the effect of avoiding or minimizing the discharge of stormwater pollutants to the MS4 shall be identified in the SWPPP;

- vi. Inspection Procedures and Schedule. The SWPPP must include an inspection schedule mandating that each facility in Berkeley County be inspected by qualified personnel on a frequency of no less than twice per year. Inspections shall document compliance with the SWPPP, including, at a minimum, the following elements: (i) implementation of the Pollution Prevention Procedures; (ii) condition of each stormwater control identified in the SWPPP; and (iii) documentation that maintenance activities required by the SWPPP have been completed. The results of each inspection shall be documented in an inspection report. Any deficiencies identified in an inspection report shall be corrected as soon as practicable;
- vii. Maintenance Procedures and Schedule. The maintenance requirements, including the maintenance frequency, for each stormwater control shall be identified in the SWPPP;
- viii. Incident Log. A log of each unauthorized discharge, release, or spill incident for Berkeley County facilities that caused or was reasonably likely to cause a discharge of pollutants to the MS4, to include the following information: (i) date of incident; (ii) material discharged, released, or spilled; (iii) estimated quantity discharged, released, or spilled; and (iv) remediation or other corrective actions;
- ix. Training. On at least an annual basis, all staff and contractors active at Berkeley County's facilities and responsible for high-priority activities shall receive training on the requirements of the SWPPP, with an emphasis on the importance of eliminating unauthorized discharges to the MS4; and
- x. Recordkeeping. All (i) inspection reports; (ii) maintenance reports; (iii) incident logs; and (iv) training records generated pursuant to the SWPPP shall be kept with the SWPPP.
- c. Construction and Other Land-Disturbing Activities. Through training, inspection, contract terms, and/or other effective means, the Permittees shall adopt measures to require that its employees and contractors comply with all applicable erosion and sediment control and stormwater discharge requirements for land-disturbing activities conducted for or on behalf of the Permittees.
- d. Employee and Contractor Training. Staff and contractors engaged by the Permittees to conduct any of the activities covered by the Pollution Prevention and Good Housekeeping Program shall receive training on the procedures and practices relevant to their respective functions and responsibilities. The training shall be given to new employees and contractors within three months of their engagement. Refresher training shall be provided to each covered employee and contractor each year. For contractors, the Permittees may provide training or require that its contractors certify that employees and subcontractors performing the relevant tasks for the Permittees have received appropriate training in accordance with this Part III.F. In addition to the training requirements referenced elsewhere in this Part III.F, employees and contractors shall receive training on the following topics to the extent they may be relevant and applicable to the employee or contractor's functions for the Permittees:
  - i. Proper Chemical and Material Storage and Use. This training shall be provided to employees and contractors whose duties involve the storing and use of chemicals or other materials that may cause pollution in stormwater discharging to the MS4. This includes

fuel, oils, grease, strippers, and additional products for operation and maintenance of equipment and of buildings, streets, and the MS4.

- ii. Trash Management. Employees and contractors whose duties include managing solid waste or maintaining public lands (e.g., trash collection in public parks) shall receive training on the importance of keeping trash and litter from being washed into the MS4.
- iii. Fleet Maintenance. Employees and contractors responsible for vehicle fleet storage and maintenance shall receive training on preventing the discharge of pollutants to the MS4 from activities including (i) vehicle cleaning (e.g., discharge of polluted wash water) and (ii) vehicle maintenance (e.g., avoiding spills of fuel, oil, and other chemicals).

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittees has successfully implemented the enforceable, measurable goals set forth in this individual permit for MCM 6, the Annual Report shall include the following information:

- a. A summary of any written procedures developed or modified to implement the Pollution Prevention and Good Housekeeping Program during the reporting period;
- b. A statement confirming that the Permittees properly implemented the SWPPPs for High-Priority Facilities during the reporting year, except for any deficiencies that are documented in the Annual Report;
- c. A hardcopy, digital file, or link to a digital version of the current SWPPP, including all attachments and updates, for each High-Priority Facility, subject to the following: (i) Portions of the SWPPP that have been updated or revised during the reporting year (e.g., inspection reports) shall be attached to the Annual Report. (ii) Portions of the SWPPP that were previously submitted to the Department and have not been revised during the reporting year may be incorporated by reference into the Annual Report. For example, if the body of the SWPPP has not been revised during the reporting year, then only the inspection reports and other attachments there updated must be attached to the Annual Report.
- d. A statement identifying any facilities that have been added to or removed from the list of High-Priority Facilities, with an explanation any removed facilities;
- e. A summary of the inspections or other measures taken by the Permittees (except for training activities, which are reported in accordance with Part III.F.3.e, below) to determine that its employees and contractors complied with applicable erosion and sediment control and stormwater discharge requirements for land-disturbing activities conducted for or on behalf of the Permittees during the reporting year; and
- f. A summary of all employee and contractor training events conducted under this individual permit for the reporting year, including the (i) completion date for the training activity; (ii) number of employees who completed the training activity; and (iii) a summary of the content and objectives of the training consistent with the Pollution Prevention and Good Housekeeping Program. However, if a contractor conducts its own training, then documentation that the contractor has certified that the training was conducted.

## **PART IV. MS4 PROGRAM EVALUATION, RECORDKEEPING, AND REPORTING**

### **A. Recordkeeping**

#### **1. Record Retention**

The Permittees shall keep records to verify compliance with this individual permit for at least three years beyond the permit expiration date and any continuance as described in Part I.G.

#### **2. Availability of Records**

Upon request, records related to this individual permit shall be submitted to the Department and released to the public in accordance with the Freedom of Information Act.

### **B. Annual Reports**

#### **1. Reporting Periods and Submission Deadlines**

An Annual Report shall be submitted to the Department no later than October 1 of each year in an electronic format via the Department's Electronic Submittal System (ESS) (<http://dep.wv.gov/ess>).

Each report shall cover the previous year from July 1 to June 30.

#### **2. General Contents of the Annual Report**

Each Annual Report shall include the following information:

- a. The Permittees, system name, registration number, and permit number;
- b. The reporting period for which the Annual Report is being submitted;
- c. A signed certification as per 47 CSR 10-4.6;
- d. Each annual reporting item referenced in Part III for the six MCMs (refer to the subsections titled, "Reporting and Evaluation," under each of the six MCMs);
- e. An evaluation of the MS4 program implementation, including a review of each MCM, to determine the MS4 program's effectiveness and whether or not changes to the SWMP are necessary.

#### **3. Additional Reporting Requirements for Permittees Discharging to TMDL Waters**

For those Permittees with requirements established under Part V, the Annual Report shall include a status report on the implementation of any local TMDL Implementation Plan and Pollution Reduction Plan in accordance with Part V.B, including any revisions to the plan.

## **PART V. TMDL SPECIAL CONDITIONS**

### **A. Applicability**

This Part V applies to any regulated MS4 that discharges to a waterbody subject to a TMDL that has been approved by EPA. For TMDLs based on biological impairment, the TMDL Implementation shall be based on the stressors for which a wasteload allocation is assigned to the Permittees. The SWMP must include the following measures:

1. Identification of the significant sources of the pollutants of concern discharging to the Permittee's MS4 that are not covered under a separate NPDES permit to the extent known. For the purposes of this requirement, a significant source of pollutants of concern means a discharge where the expected pollutant loading is greater than the average pollutant loading for the land use identified in the TMDL;
2. The BMPs designed to reduce the pollutants of concern in accordance with Parts V.C to V.H, as applicable;
3. A schedule of anticipated actions planned for implementation during this permit term.
4. This permit does not authorize new sources or new discharges of pollutants of concern to impaired waters unless consistent with applicable state law.
5. Impaired waters are those that do not meet applicable water quality standards. Impaired waters are identified on the West Virginia, Section 303(d) list until a TMDL is developed and approved by USEPA.
6. Pollutants of concern are those pollutants for which the water body is listed as impaired. A current list of impaired water bodies for each MS4 entity known on the effective date of this permit is provided on the WVDEP website at the following URL:

<https://dep.wv.gov/WWE/Programs/stormwater/MS4/Pages/default.aspx>

and can also be found in the West Virginia Integrated Water Quality Monitoring and Assessment Report (Integrated Report), which is updated every other year and available for review on the Department's website. The Website contains maps showing approximate MS4 boundaries along with 303(d) receiving streams. The maps are not the result of surveys.

- i) The permittees are required to examine the relevant map from the website and make a determination if the boundaries are sufficiently accurate for the WVDEP to capture the applicable 303(d) data on a watershed scale. If the provided mapping is deemed insufficient by the MS4 entity, the MS4 shall notify the director and provide updated boundaries.
7. The permittees shall summarize impairment pollutant-reduction activities completed during the year in the annual report.



## **B. Implementation Plans for MS4s Discharging into Waters with Approved State and Federal TMDLs**

- a) Each discharger to a TMDL water shall propose BMPs to reduce pollutants of concern to the TMDL in the SWMP.
  - i) Upon updating the SWMP, permittees shall implement BMPs and each year thereafter, evaluate BMP effectiveness. The Annual Report shall contain the evaluation, along with proposed new BMPs to replace ineffective ones.
- b) Within six (6) months of notification from the Director of the approval of a new state or federal TMDL for which the permittees are identified as a stressor, permittees must develop and implement BMPs targeting the pollutant of concern and must gauge the effectiveness of selected BMPs in making progress toward achieving wasteload allocations.

## **C. Bacterial TMDLs**

The Permittees shall select and implement at least three of the strategies listed in Table 3 designed to reduce the load of bacteria to the MS4. Permittees may select and implement an alternative strategy provided the TMDL Implementation Plan explains that it is no less effective than five of the strategies listed in Table 3. Selection of the strategies shall correspond to sources identified in Part V.B.4.

<b>Table 3</b>	
<b>Strategies for Bacteria Reduction Stormwater Control/Management Strategy</b>	
<b>Source</b>	<b>Strategies<sup>1</sup></b>
Domestic pets (dogs and cats)	Provide signage to pick up dog waste, providing pet waste bags and disposal containers. Adopt and enforce pet waste ordinances or policies, or leash laws or policies. Place dog parks away from environmentally sensitive areas. Maintain dog parks by removing disposed of pet waste bags and cleaning up other sources of bacteria. Protect riparian buffers and provide unmanicured vegetative buffers along streams to dissuade stream access.
Urban wildlife	Educate the public on how to reduce food sources accessible to urban wildlife (e.g., manage restaurant dumpsters and grease traps, residential garbage). Install storm drain inlet or outlet controls. Clean out storm drains to remove waste from wildlife. Implement and enforce urban trash management practices. Implement rooftop disconnection programs or site designs that minimize connections to reduce bacteria from rooftops. Implement a program for removing animal carcasses from roadways and properly disposing of the same (either through proper storage or through transport to a licensed facility).
Illicit connections or illicit discharges to the MS4	Implement an enhanced dry weather screening and illicit discharge, detection, and elimination program beyond the requirements of Part III.C to identify and remove illicit connections and identify leaking sanitary sewer lines infiltrating to the MS4 and implement repairs.

	<p>Implement a program to identify potentially failing septic systems.</p> <p>Educate the public on how to determine whether their septic system is failing.</p> <p>Implement septic tank inspection and maintenance program.</p> <p>Implement an educational program beyond any requirements in Part III.C to explain to citizens why they should not dump materials into the MS4.</p>
Dry weather urban flows (e.g., irrigation, car washing)	<p>Implement public education programs to reduce dry weather flows from storm sewers related to lawn and park irrigation practices, car washing, powerwashing and other non-stormwater flows.</p> <p>Provide irrigation controller rebates.</p> <p>Implement and enforce ordinances or policies related to outdoor water waste.</p> <p>Inspect commercial trash areas, grease traps, washdown practices, and enforce corresponding ordinances or policies.</p>
Birds (e.g., Canadian geese, pigeons)	<p>Identify areas with high bird populations and evaluate deterrents, population controls, habitat modifications, and other measures that may reduce bird-associated bacteria loading.</p> <p>Prohibit feeding of birds.</p>
Other Sources	<p>Enhance maintenance of stormwater management facilities owned or operated by the Permittees.</p> <p>Enhance requirements for third parties to maintain stormwater management facilities.</p> <p>Develop BMPs for locating, transporting, and maintaining portable toilets used on Permittee-owned sites. Educate third parties that use portable toilets on BMPs.</p> <p>Provide public education on appropriate recreational vehicle dumping practices.</p>

1. *Examples provided for illustrative purposes; not meant to be all-inclusive or limiting.*

#### **D. Local Sediment, Metals, and Nutrients TMDLs**

The Permittees shall reduce the loads associated with local sediment (including TSS and biological impairments caused by sediment), metal (including, without limitation, iron, aluminum, manganese, lead, and selenium), and nutrient (including phosphorus and nitrogen) TMDLs through implementation of one or more of the practices listed below. This subsection does not apply to the Chesapeake Bay TMDL, which is addressed in Part V.F. However, a BMP implemented or installed for purposes of the Chesapeake Bay TMDL can also be used for a local TMDL, and vice-versa.

Only BMPs that have been approved by the CBP partnership can be used to achieve reductions required by the CB TMDL. If the BMPs used to implement local TMDLs are not on the approved list, they cannot be used for the CB TMDL.

1. One or more BMPs approved by the Chesapeake Bay Program. Pollutant load reductions generated by annual practices, such as street and storm drain cleaning, shall only be applied to the compliance year in which the annual practice was implemented.

With each Annual Report, the Permittees shall submit to the Department an update on the progress made toward achieving local TMDL Implementation Plan goals for sediment, metals, and/or nutrients. The Permittee's compliance with its TMDL Implementation Plan will constitute adequate progress toward attaining each applicable wasteload allocation.

#### **E. Polychlorinated biphenyl (PCB) TMDLs**

The Permittees shall reduce the loads associated with PCBs through implementation of the following measures:

1. The Permittees shall develop, maintain, or update, as appropriate, an inventory of potentially significant sources of PCBs owned or operated by the Permittees that drain to the MS4. The inventory shall include the following information for each potential source:
  - a. Location of the potential source;
  - b. Whether or not the potential source is from current site activities or activities previously conducted at the site that have been terminated (i.e., legacy activities); and
  - c. A description of any measures, if known, being implemented or to be implemented to prevent exposure to stormwater and the discharge of PCBs from the site.
2. If at any time during the term of this individual permit, the Permittees discovers a previously unidentified significant source of PCBs within the MS4 Service Area, the Permittees shall notify the Department in writing within 30 days of discovery.

#### **F. Chloride TMDLs**

The Permittees shall reduce the loads associated with chlorides through implementation of the following measures:

1. No later than 24 months after the permit effective date, the Permittees shall develop an anti-icing and deicing agent education and outreach strategy that identifies target audiences (e.g., big box retailers) for increasing awareness of anti-icing and deicing agent application impacts on receiving waters and encourages implementation of enhanced BMPs for application, handling, and storage of anti-icing and de-icing agents used for snow and ice management.
2. Anti-icing and deicing agent education and outreach strategies shall contain a schedule to implement one or more of the strategies listed in Table 1 (Part III.A) per year to communicate to target audiences the importance of responsible anti-icing and deicing agent application, transport, and storage.
3. The Permittees shall implement an increased SWPPP inspection frequency of at least three times per year for any High-Priority Facility in Berkeley County identified under Part III.F where anti-icing and deicing agent bulk handling and storage activities are occurring. One inspection shall occur during winter months when icy conditions are possible (generally, October to March) and the other shall occur during the warmer months when icy conditions are unlikely (generally, May to August). In its Annual Report, the Permittees shall evaluate the effectiveness of its SWPPP for these facilities based on the results of the inspections and any other relevant and available information. If the evaluation identifies any deficiencies in the implementation of the SWPPP or controls that are not performing as intended, it shall revise the SWPPP appropriately.

## **G. Chesapeake Bay TMDL**

West Virginia's plan for the Chesapeake Bay TMDL is to reduce or maintain pollutant levels in stormwater discharges from MS4s.

1. Notwithstanding Parts V.A and V.B., Permittees with stormwater discharges in the Chesapeake Bay drainage area must develop and submit a TMDL Pollution Reduction Plan (PRP) as a separate document from the SWMP. However, as appropriate, the PRP may incorporate by reference sections of the SWMP. The Permittee's PRP must be updated and be consistent with this Part V. within twelve (12) months of the initial submittal of the SWMP. The PRP shall identify BMPs the Permittees will implement to minimize pollutant discharges to the MEP, consistent with the following provisions:
  - a. BMPs required for the PRP include ordinances for construction site operators to utilize effective sediment controls; minimize total area disturbance; phase construction to minimize disturbance at any one time; stockpile and reuse topsoil; compaction control measures; timely re-vegetation; and post-construction stormwater management controls and enforceable maintenance agreements. Ordinances must address the proper application of fertilizers and must provide for measures that reduce the washing of fertilizers off the site during storm events.
  - b. The PRP must address the reduction of impervious surfaces. Whether approving construction plans or replacing parking lots owned by the municipality, the Permittees must require non-pervious surfaces and/or permanent stormwater management systems that minimize the discharge of sediment from all development or redevelopment activity as described in part III.2.E.d.iv.
  - c. Required BMPs include ordinances for illicit connections to the MS4. The Permittees must inspect the drainage system to look for unauthorized connections and illegal dumping of materials into or near the system, where storm events may wash related pollutants into the system.
  - d. The PRP must address leaching from known poorly managed on-site sewage systems draining or discharging to the MS4 by documenting an ordinance or other regulatory mechanism that requires owners of such systems to make timely repairs.
  - e. The PRP must address leaking from sanitary sewer lines into the MS4 system, even when the MS4 Permittees is also the owner or operator of the sewage collection system, through an appropriate ordinance or other regulatory mechanism.
  - f. The PRP must include an ordinance to require pet owners and owners of other domestic animals to follow practices to keep waste from washing into the MS4. This may be done by, for example, requiring dog owners to pick up pet waste, designating geographical areas unsuitable for keeping livestock, or by requiring owners to install systems or barriers to keep waste from the MS4. The Permittees shall work with the West Virginia Department of Agriculture for guidance when developing this ordinance, if questions arise about the definition of "agriculture" to ensure compliance with NPDES exemptions.
  - g. The PRP shall describe a systematic approach for disconnecting roof-drains from the MS4 to

be implemented by the Permittees. To address potential flooding, the Permittees shall consult with the local floodplain managers and other MS4 entities such as the WV Division of Highways prior to implementing this BMP.

- h. The PRP shall document the Permittee's enforcement strategy in a manner that clearly explains how inspections, violations, corrective actions, and penalties are to be implemented for all ordinances and other regulatory mechanisms implemented in compliance with the PRP.
  - i. The PRP shall document the Permittee's maintenance plan and schedule for the MS4. Open ditch systems shall be inspected and, where practicable, eroded banks on properties owned by the Permittee shall be stabilized. Streets shall be swept or otherwise cleaned of litter, debris, and sediment on a regular schedule. Splash grout and/or concrete systems shall be inspected and repairs made to damaged systems. Buried pipes shall be inspected, clogged pipes cleared, catch basins cleaned of debris. The maintenance schedule shall prioritize areas known by MS4 work crews to be problem areas.
  - j. The PRP shall include a long-term plan for routing and regulating stormwater from developing and redeveloping areas without increasing pollutant loading.
  - k. The PRP shall include a source control plan. New businesses seeking authorization to operate in an area draining to the MS4 must be evaluated by the Permittees for its potential to discharge pollutants to the MS4. Restaurants must be required to effectively manage trash and grease. Auto repair shops must manage oil, grease, and other materials to prevent spills and leaks into the system. Other businesses must be similarly evaluated. Procedures and/or structural controls must be approved by the Permittees and the controls must be inspected by the business operator on a routine basis, as well as by the Permittees on a frequency established in the PRP.
2. Annual Reporting of the PRP's BMP implementation and effectiveness is required. The Permittees shall summarize PRP status in the first report required by the Director. Each subsequent year, a detailed description of the progress made during the year under the PRP shall be submitted with the Annual Report. The progress report shall detail BMPs developed and implemented, state whether timelines established in the PRP have been met, and evaluate BMP effectiveness by enumerating measures such as construction acres developed under phasing approach, the distance (feet) of piping inspected, and so forth.

#### **H. Other TMDLs**

For any TMDL not addressed in Parts V.C to V.F, the Permittees shall include BMPs designed to reduce the discharge of the relevant pollutant from the regulated MS4 to the MEP. The selection of BMPs shall be included in the SWMP, including the wasteload allocation assigned to MS4s, and any other related or supporting documents. As stated in Part III.B.2. the SWMP must be made available for public review and comment.

## **PART VI. STANDARD NPDES PERMIT CONDITIONS**

### **A. Management Conditions**

#### **1. Duty to Comply**

The Permittees must comply with all conditions of this individual permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.

#### **2. Duty to Mitigate**

The Permittees shall take all reasonable steps to minimize or prevent any discharge in violation of this individual permit that has a reasonable likelihood of adversely affecting human health or the environment.

#### **3. Permit Actions**

This permit may be modified, revoked and reissued, suspended, or revoked for cause in accordance with the provisions of Chapter 22-11-12 of the Code of West Virginia. The filing of a request by the Permittees for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

#### **4. Property Rights**

This permit does not convey any property rights of any sort or any exclusive privilege.

#### **5. Signatory Requirements**

All applications, reports, or information submitted to the Director in accordance with the permit shall be signed and certified as required in Title 47, Series 10, Section 4.6 of the West Virginia Legislative Rules.

#### **6. Transfers**

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittees and incorporate such other requirements as may be necessary.

#### **7. Duty to Provide Information**

The Permittees shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The Permittees shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

## **8. Other Information**

Where the Permittees becomes aware that it failed to submit any relevant facts in the Application or submitted incorrect information in an Application or in any report to the Director, it shall promptly submit such facts or information.

## **9. Inspection and Entry**

The Permittees shall allow the Director, an authorized representative, or an EPA representative, upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
- b. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

## **11. Outlet Markers**

A permanent marker shall be posted as close as practicable to the discharge location of the representative outfall or other outfalls contained in the approved SWMP in accordance with Title 47, Series 11, Section 9 of the West Virginia Legislative Rules.

## **12. Liabilities**

- a. Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.
- b. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- c. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

- d. Nothing in this subsection shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11.

## **B. Operation and Maintenance**

### **1. Proper Operation and Maintenance**

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittees to achieve compliance with the conditions of this permit. Proper operation and maintenance also include adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the Permittees only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators, as classified by the WV Bureau of Public Health Laws, W. Va. Code Chapter 16-1, will be required except that in circumstances where the domestic waste treatment facility in Berkeley County is receiving any type of industrial waste, the Director may require a more highly skilled operator.

### **2. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a Permittees 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 the permit.

### **3. Bypass**

#### **a. Definitions**

- i. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and
- ii. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- b. Bypass not exceeding limitations. The Permittees may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts VI.B.11.3.c and VI.B.11.3.d of this permit

- c. If the Permittees knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten (10) days before the date of the bypass. If the Permittees does not know in advance of the need for bypass, notice shall be submitted as required Part VI.D of this permit

- d. Prohibition of Bypass



- i. Bypass is permitted only under the following conditions, and the Director may take enforcement action against a Permittees for a bypass, unless;
  - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of engineer equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - (3) The Permittees submitted notices as required under Part VI.B.3.c of this permit.
- ii. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part VI.B.3.d.i of this permit.

#### **4. Upset**

- a. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittees. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitation if the requirements of Part VI.B.4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset. A Permittees who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - i. An upset occurred, and that the Permittees can identify the cause(s) of the upset;
  - ii. The permitted facility was at the time being properly operated;
  - iii. The Permittees submitted notice of the upset as required in IV.2.b) of this permit; and
  - iv. The Permittees complied with any remedial measures required under Part VI.A.2 of this permit.
- d. Burden of proof. In any enforcement proceeding the Permittees seeking to establish the occurrence of an upset has the burden of proof.

## C. Monitoring and Reporting

### 1. Stormwater Monitoring

- a) The permittees shall monitor stormwater from a minimum of each outfall twice per year. The required parameters to be monitored are fecal coliform and sediment.
- b) An outfall located in the most densely populated section of the MS4 shall be selected as the representative outfall.
- c) The permittees shall monitor at least one outfall for the following parameters:

Parameter	EPA Method No.	Method Detection Limit (mg/l)
Total Kjeldahl Nitrogen	351.2	0.03
Nitrate Nitrogen	300.0	0.002
Nitrite Nitrogen	300.0	0.004
Total Phosphorous	365.4	0.01

- d) At the time this permit is issued, the USEPA has not approved a method to directly test for Total Nitrogen. The Total Nitrogen value to be reported shall be the sum of the test results for Total Kjeldahl Nitrogen, Nitrate, and Nitrite.
- e) If all three constituents of total nitrogen are not detected at its method detection limit (MDL), the permittees shall sum the actual MDLs for each constituent and report the result as less than the calculation.
- f) When calculating the sum of the constituents for total nitrogen, the permittees shall use actual analytical results when these results are greater than or equal to the MDL for a particular constituent and should use zero (0) for a constituent if one or two of the constituents are less than the MDL.
- g) The methods and detection levels in the table above are recommended to be used unless the permittees desires to use an EPA approved method with a detection level equal to or lower than those specified above.
- h) The permittees issued/reissued on the first through the fifteenth of a month will use the issued month to determine the semi-annual reporting date.
- i) The permittees issued after the fifteenth of each month will use the next month after the issued month to determine the reporting start date.
- j) The permittees whose monitoring is initiated as a result of a modification, the approval date of the modification will be used to determine the discharge monitoring reporting start date, instead of the registration issued date.
- k) All discharge monitoring reporting will require mandatory electronic submission via the Department's electronic Discharge Monitoring Report (eDMR) system. The

technical requirements for the eDMR process will be an internet connection, an email account, and internet browser software.

- l) Stormwater samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable storm event (greater than 0.1 in rainfall).
  - i) Where semi-annual sampling is required, the samples for each six month period shall be collected at least three months apart.
  - ii) The grab sample shall be taken during the first thirty minutes of the discharge.
  - iii) If the collection of a grab sample during the first thirty minutes is impractical, a sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impractical.
  - iv) Stormwater samples may be collected during routine work hours and on routine work days of the permittee's staff responsible for collection.

#### **D. Other Reporting**

##### **1. Reporting Spills and Accidental Discharges**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittees from any responsibilities, liabilities or penalties established pursuant to Title 47, Series 11, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

Attached is a copy of the West Virginia Spill Alert System for use in complying with Title 47, Series 11, Section 2 of the Legislative rules as they pertain to the reporting of spills and accidental discharges (Appendix F).

##### **2. Immediate Reporting**

- a. The Permittees shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Agency's designated spill alert telephone number. A written submission shall be provided within five (5) days of the time the Permittees become aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- b. The following shall also be reported immediately:
  - i. Any unanticipated bypass which exceeds any effluent limitation in the permit;

- ii. Any upset which exceeds any effluent limitation in the permit; and
- iii. The Permittees complied with any remedial measures required by Part VI.A.2 of this permit.
- c. The Director may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.
- d. Compliance with the requirements of this subsection shall not relieve a person of compliance with Title 47, Series 11, Section 2

#### **4. Reporting Requirements**

- a. **Planned changes.** The Permittees shall give notice to the Director of any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge. Notice is required when:
  - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Series 10, Title 47; or
  - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under IV.2 of this section.
- b. **Anticipated noncompliance.** The Permittees shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c. **In addition to the above reporting requirements, all existing manufacturing, commercial, and silvicultural discharges must notify the Director in writing as soon as they know or have reason to believe:VI**
  - i. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit.
  - ii. That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that pollutant under approved analytical procedure.
  - iii. That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a non-routine or infrequent basis of that toxic pollutant at levels which exceed ten times the detection limit for that pollutant under approved analytical procedure.

#### **4. Other Noncompliance**

The Permittees shall report all instances of noncompliance not reported under the above paragraphs at the time annual reports are submitted. The reports shall contain the information listed in Part VI.D.2.b. Should other applicable noncompliance reporting be required, these terms and conditions will be found in Part VI of this permit.

#### **F. Program Review**

- a) The Department will assess the effectiveness of the SWMP for eliminating non-storm water discharges and reducing the discharge of pollutants to the MEP, by reviewing program implementation and annual reports.
- b) Additional periodic evaluations may be conducted to determine compliance with permit conditions.

The permittee must comply with all terms and conditions of this permit. Permit noncompliance constitutes a violation of the federal Clean Water Act (CWA) and State Act, Chapter 22, Article 11 & Article 12 and is grounds for enforcement action; for permit modification, suspension or revocation.

Failure to comply with the terms and conditions of this permit shall constitute grounds for the revocation or suspension of this permit and for the invocation of all the enforcement procedures set forth in Chapter 22, Article 11 of the Code of West Virginia.

  
**Jeremy W. Bandy**  
**Director**

## **APPENDIX A DEFINITIONS**

Unless the context in which used clearly requires a different meaning, as used in this individual permit:

“Annual practice” means a nonstructural best management practice such as street or storm drain cleaning that reduces pollution for one compliance year upon implementation.

“Annual Report” means a document submitted to the Department no later than October 1 of each year in an electronic format via the Department’s Electronic Submittal System that summarizes and evaluates the Permittee’s implementation of this individual permit during the reporting year.

“Best management practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, policies, and other management practices to prevent or reduce the pollution of waters of the State of West Virginia. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal or drainage from material storage. BMP's can include structural as well as non-structural practices.

“CFR” means the Code of Federal Regulations.

“Clean Water Act” or “CWA” means Public Law 92-500, as amended by Public Law 95-217, Public Law 97-117 and Public Law 95-576; U.S.C. 1251 et seq.

“Common Plan of Development” is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The “plan” is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions and industrial parks.

“CSR” means the West Virginia Code of State Rules.

“Department” means the West Virginia Department of Environmental Protection.

“Director” means the Director of the Division of Water and Waste Management, West Virginia Department of Environmental Protection, or his/her designated representative.

“Dry Weather” means a period in which there has not been a measurable precipitation or snowmelt event within a twenty-four (24) hour period.

“Dry Weather Screenings” are on-site inspections of storm water outfalls during dry periods for the purpose of locating and evaluating the quality of discharges in an effort to reduce or eliminate pollution.

“EPA” means the United States Environmental Protection Agency.

“Evaluative Process” The use of collected data and best professional judgment to interpret received data, rather than accepting generalized assumptions.

**“Illicit Discharge”** means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except (1) discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and (2) non-stormwater discharges listed in Appendix C of this individual permit.

**“Impervious”** means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

**“Long-Term Maintenance Agreements”** means a formal written agreement or contract between a Permittees and a property owner that obligates the owner and its successors and assigns to inspect and maintain stormwater management facilities installed in accordance with this individual permit in perpetuity.

**“Maximum Extent Practicable”** Each permitted entity shall select appropriate Best Management Practices (BMPs) based on an evaluative process which should include the following: Public input and acceptance, Consideration of the receiving water, Technical feasibility of selected BMP, Cost of implementation, Regulatory compliance, and Effectiveness.

**“Minimum Control Measure” or “MCM”** means the six programmatic elements of Part III of this individual permit that are documented in the Permittee’s Stormwater Management Plan and which are designed to result in the reduction of the discharge of pollutants from the regulated Small MS4. The programmatic elements include: (1) Public Education and Outreach, (2) Public Involvement and Participation, (3) Illicit Detection and Elimination, (4) Construction Site Stormwater Runoff Control Stormwater, (5) Post Construction Stormwater Management, (6) Pollution Prevention and Good Housekeeping.

**“Municipal Separate Storm Sewer System” or “MS4”** means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by any municipality, sewer or sewage board, State agency or Federal agency or other public entity that discharges directly to surface waters of the State of West Virginia that is designed or used for collecting or conveying storm water but which is not a combined sewer or part of a publicly owned treatment works.

**“MS4 Service Area”** means the drainage area served by a Permittee’s MS4 that is located (i) within the 2020 census urban areas with a population of at least 50,000 as determined by the Bureau of the Census and (ii) areas that have been otherwise designated by the Department or the United States Environmental Protection Agency. The MS4 Service Area shall also include any portions of the service area defined for Permit No. WV01106275 (2014) that lie outside the boundaries of (i) and (ii).

**“National Pollutant Discharge Elimination System” or “NPDES”** means a provision of the Clean Water Act which regulates the discharge of pollutants into waters of the United States. This federally mandated permit program regulating point source discharges.

**“Operator”** means the Berkeley County Public Service Storm Sewer District and Berkeley County

Commission of this individual permit. In the context of stormwater associated with a construction project or land-disturbing activity, "operator" means any person associated with the project or activity that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site (i.e., the person is authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from an MS4, "operator" means the municipal or other governmental entity that owns or operates the regulated MS4.

"Outfall" means a point source as defined by 40 CFR § 122.2 at the point where a municipal separate storm sewer discharges to waters of the State of West Virginia and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

"Pollutant of concern" means a pollutant which causes a water body to be placed on the Section 303(d) list of impaired waters and for which the Permittees has been assigned a wasteload allocation in an applicable Total Maximum Daily Load.

"Post-Construction Stormwater Management Plan" or "PCSMP" means a plan developed by the operator of a regulated development or redevelopment project to minimize water quality impacts from stormwater discharges from the site after the completion of construction activities. The PCSMP must satisfy the standards adopted by the Permittees in accordance with this individual permit and is subject to review and approval by the Permittees.

"Receiving water" means a surface water of the State of West Virginia into which stormwater is discharged from an outfall.

"Redevelopment," including brownfield development, means any construction, alteration, or improvement, including, but not limited to, the demolition or building of structures, filling, grading, paving, or excavating, where existing land use is residential, commercial, industrial, or institutional. Ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements are not considered to be redevelopment activities for the purposes of this individual permit.

"Regulated Construction Activity" means a construction activity in the MS4 Service Area that results in a land disturbance of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater, unless such activities are exempt from NPDES permitting requirements by Federal or State law.

"Regulated Development Project" means a development project in the MS4 Service Area that has a land disturbance area of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater.

"Regulated Redevelopment Project" means a redevelopment project in the MS4 Service Area that has a land disturbance area of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of



development or sale that will result in land disturbance of one acre or greater.

“Regulated Small MS4” or “regulated MS4” means those portions of an MS4 that are (1) located in an urban area as determined by the 2020 Decennial Census of the United States Census Bureau with a population of at least 50,000; (2) designated by the Department or United States Environmental Protection Agency under the Clean Water Act and associated regulations; or (3) covered under General Permit No. WV01106275 (2014) as of the effective date of this individual permit. An MS4, or portion thereof, that has been granted a waiver in accordance with 40 CFR §122.32(a) is not a regulated Small MS4.

“Reporting year” means the period from July 1 to June 30 of each year that is covered by an Annual Report submitted within three months of the conclusion of the period. For example, the Annual Report due by October 1, 2028, should cover the reporting year running from July 1, 2027, to June 30, 2028.

“Secretary” means the Secretary of the West Virginia Department of Environmental Protection, or his/her designated representative.

“Small municipal storm sewer system” or “Small MS4” means an MS4 that is not defined as “Large” or “Medium” by 40 CFR § 122.26(b). All MS4s in West Virginia are Small MS4s.

“Stormwater Management Program” or “SWMP” means a document describing the management program covering the duration of this individual permit for a MS4 that includes a comprehensive planning process that involves public participation and intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the State law and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

“Stormwater Pollution Prevention Plan” or “SWPPP” means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges and required measures to minimize the water quality impacts from those discharges. In the context of stormwater associated with a construction project or land-disturbing activity, a SWPPP consists of an approved erosion and sediment control plan, approved post-construction stormwater management plan, and other provisions. In the context of stormwater discharges from an MS4, a SWPPP is a site-specific plan for managing stormwater discharges from a high-priority facility owned by the Permittees in accordance with Part III.F.2.b.

“Total Maximum Daily Load” or “TMDL” means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety calculated the pollutant loading that a waterbody can receive and still safely meet water quality standards.

“USC” means the United States Code.

“Wasteload allocation” or “WLA” means the portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

**APPENDIX B  
LIST OF AUTHORIZED  
NON-STORMWATER DISCHARGES**

1. Uncontaminated water line flushing;
2. Landscape irrigation and lawn watering, provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
3. Diverted stream flows;
4. Rising groundwaters;
5. Uncontaminated groundwater infiltration, as defined at 40 CFR § 35.2005(20);
6. Uncontaminated pumped groundwater;
7. Discharges from potable water sources managed in a manner to avoid instream impact;
8. Foundation or footer drains where flows are not contaminated with process materials;
9. Air conditioning condensation;
10. Springs;
11. Water from crawl space pumps;
12. Individual residential vehicle washing, or discharges from fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaner;
13. Flows from riparian habitats and wetlands;
14. Dechlorinated freshwater swimming pool discharges managed in a manner to avoid instream impact;
15. Street and pavement wash waters that do not contain cleaning additives or are otherwise managed in a manner to avoid instream impact;
16. Routine external building washdown provided no soaps, solvents, or detergents are used, external building surfaces do not contain hazardous substances, and the wash water is filtered, settled, or similarly treated prior to discharge;
17. Discharges or flows from emergency/unplanned firefighting activities including the immediate discharge of materials determined by fire department personnel or emergency management officials to be necessary to protect life or property, provided the Permittees takes or ensures that the responsible party takes all reasonable steps to minimize or prevent any adverse effect on

human health or the environment. This authorization does not transfer liability for a spill from the party responsible for the spill to the MS4 operator or relieve the party responsible for a spill from any reporting requirements imposed by Federal, State, or Local law.;

18. Discharges from flows of water for fire prevention or firefighting training activities managed in a manner to avoid instream impact;
19. Discharges authorized by a separate National Pollutant Discharge Elimination System (NPDES) permit;

APPENDIX C  
STORMWATER PUBLIC COMPLAINT TRACKER TEMPLATE\*

Public Report or Complaint				Investigation and Resolution		
Incident ID	Date Received	Reported By	Summary of Complaint / Report	Assigned To	Summary of Findings / Resolution	Closure Date

\*Provided as an example for the convenience of Permittees; use of this template is not required.

**APPENDIX D**  
**POST-CONSTRUCTION STORMWATER RESOURCES**

**Sediment and Erosion Control BMP manuals:**

1. Erosion and Sediment Control BMP manual — WV DEP

[https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/ESC\\_BMP.aspx](https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/ESC_BMP.aspx)

2. Maryland Soil Erosion and Sediment Control BMP manual;

[https://mde.maryland.gov/programs/water/stormwatermanagementprogram/pages/stormwater\\_design.aspx](https://mde.maryland.gov/programs/water/stormwatermanagementprogram/pages/stormwater_design.aspx)

3. Virginia Erosion and Sediment Control Handbook;

[https://assets.vbt.io/public/files/6975/VA\\_Resources\\_Construction/Virginia\\_DEQ\\_Erosion\\_and\\_Sediment\\_Control\\_Handbook.pdf](https://assets.vbt.io/public/files/6975/VA_Resources_Construction/Virginia_DEQ_Erosion_and_Sediment_Control_Handbook.pdf)

4. USEPA has a listing of available stormwater manuals on its website.

<https://search.epa.gov/epasearch/?querytext=stormwater+manuals&areaname=&areacontacts=&areasearchurl=&typeofsearch=epa&resulttemplate=2col.ftl#/>

5. West Virginia Department of Transportation, Division of Highways, Erosion and Sediment Control Manual, March 1, 2003

<https://transportation.wv.gov/highways/engineering/files/Erosion/Erosion2003.pdf>

6. Guidance For Developing an Off-Site Stormwater Compliance Program in West Virginia, December 2012

[https://dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Documents/WV\\_Mitigation-FeeInLieu-Guidance\\_Final\\_Jan-2013.pdf](https://dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Documents/WV_Mitigation-FeeInLieu-Guidance_Final_Jan-2013.pdf)

**APPENDIX E**  
**WEST VIRGINIA SPILL ALERT SYSTEM**

In the event of a spill or accidental discharge, immediately call (800) 642-3074

# Attachment

C



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west virginia department of environmental protection

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**STATE OF WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT  
601 57th STREET SE  
CHARLESTON, WV 25304-2345  
GENERAL WATER POLLUTION CONTROL PERMIT**

Permit No. WV0116025

Issue Date: September 8, 2025

Effective Date: October 8, 2025

Expiration Date: September 7, 2030

Subject: Stormwater Discharges from Municipal Separate Storm Sewer Systems

To Whom It May Concern:

This is to certify that owners and operators of small municipal separate storm sewer systems (MS4s) located in the State of West Virginia who have satisfied the registration requirements and who have agreed to be regulated under the terms and conditions of this general permit are hereby granted coverage under this General WV/NPDES Water Pollution Control Permit to discharge stormwater into waters of the State.

All operators of regulated small MS4s are required to submit a notice of intent (NOI) to be covered by this general permit, unless the small MS4 obtains an individual WV/NPDES permit in accordance with 40 CFR §122.28(b)(3)(iii) or the requirements of the small MS4 permit are waived in accordance with 40 CFR §122.32(c).

The authorized discharges shall be in accordance with the NOI filed with the department, this cover page, and Parts I – VI, as set forth in this general permit.



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## **PART I. COVERAGE UNDER GENERAL PERMIT NO. WV0116025**

### **A. Authorization to Discharge**

The owner or operated of a Small Municipal Separate Storm Sewer System (MS4) covered by this general permit ("Permittee") is authorized to discharge stormwater and certain authorized non-stormwater described in described Part I.F from the regulated Small MS4 to surface waters of the State of West Virginia provided that:

1. The Permittee submits a complete and accurate Notice of Intent (NOI) in accordance with Part I.E and that NOI is accepted by the Department of Environmental Protection (Department);
2. The Permittee submits any permit fees required by the Department;
3. The Permittee complies with the requirements of this general permit; and
4. The Department has not notified the operator that the discharge is ineligible for coverage in accordance with Part I.D.
5. This permit does not relieve entities that cause illicit discharges, including spills, of oil or hazardous substances, from responsibilities and liabilities under State and Federal law and regulations pertaining to those discharges.

### **B. Water Quality Requirements**

Compliance with this general permit constitutes compliance with the standard expressed in 33 USC § 1342(p)(3)(B)(iii) of reducing pollutants to the Maximum Extent Practicable (MEP); demonstrates adequate progress in meeting water quality standards; and satisfies the appropriate water quality requirements of the Clean Water Act, West Virginia Code, and their attendant regulations (including any applicable wasteload allocations in a Total Maximum Daily Load (TMDL)).

1. This permit does not authorize a violation of West Virginia State Water Quality Standards (Title 47 CSR Series 2) and West Virginia Ground Water Quality Standards (Title 47 CSR Series 58).

### **C. MS4 Service Area**

This general permit regulates activities within the Permittee's MS4 Service Area that may affect discharges from the regulated MS4. The MS4 Service Area is the drainage area served by the Permittee's Regulated Small MS4 that is within the jurisdiction or control of the Permittee.

Areas draining to a combined sewer system are not within the Permittee's MS4 Service Area.

#### **D. Regulated MS4 Owners and Operators Eligible for Coverage under this General Permit**

Entities eligible to obtain coverage under this general permit are municipalities, counties, transportation facilities, and federal and state-owned facilities who own, operate, or have jurisdiction over an MS4 in the State of West Virginia which are:

1. Entities that have already obtained coverage under WV0116025 based on the 2000 and 2010 Census or, located in an urban area as determined by the 2020 Decennial Census of the United States Census Bureau with a population of at least 50,000;
2. Designated by the Department or the United States Environmental Protection Agency under the Clean Water Act and associated regulations.

#### **E. Duty to Submit a Notice of Intent**

All eligible owners or operators of a regulated Small MS4 must submit an NOI for coverage under this general permit for any stormwater and authorized non-stormwater discharge from the regulated MS4, unless any of following situations apply:

1. Such discharge is covered by another WV/NPDES permit issued by the Department;
2. The Department has exercised its authority under 40 CFR § 122.28(b)(3) to require the MS4 operator apply for an individual WV/NPDES permit; or
3. The Department has waived the requirement to obtain permit coverage pursuant to 40 CFR § 122.32(d) or (e).
4. Jurisdictions eligible for permit coverage may apply for a waiver from permit coverage and may retain permit eligibility, provided the waiver is approved, by complying with the terms and conditions of the waiver or waiver order.
5. The Director retains the option to waive a portion or portions of the permit requirements
6. The Director retains the option to waive permit requirements and instead issue an Order directing the jurisdiction to conduct activities necessary for gathering evidence to support a waiver determination. This option refers to but is not limited to an Order to conduct sampling of MS4 application discharges; to test for specified parameters; and to report test results for evaluation prior to a decision on a waiver application.
7. The Director retains the authority to conduct reviews and terminate waivers at any time during the waived period.
9. Waived jurisdictions must reapply for waiver approval with each permit reissuance.
10. DEP has the duty of reviewing waivers periodically but no less than once every (5) five years.

Operators of MS4s that are applying for initial coverage under this general permit must submit a complete NOI to the Department within 180 days of notice of designation, unless the department grants a later date. Operators of MS4s that are covered by General Permit No. WV0116025 (2014) as

of the effective date of this general permit must submit a new NOI no later than January 6, 2026, unless permission for a later date has been granted by the Department. Two or more regulated MS4 operators may submit joint NOIs in accordance with 40 CFR § 122.33(b)(1)(i). Refer to Appendix B for NOI submission instructions and information requirements.

#### **F. Authorized Non-Stormwater Discharges**

Unless identified by the Department or Permittee as a significant source of pollutants to waters of the State, the non-stormwater discharge categories listed in Appendix C are allowed to enter into and discharge from the MS4.

#### **G. Continuation of Permit Coverage**

Coverage under General Permit No. WV0116025 shall be continued under the following conditions.

1. The 2014 General Permit No. WV0116025 expired on August 11, 2019. By rule, coverage under the 2014 permit continues until the issuance of a new general permit. Any Permittee that was authorized to discharge under General Permit No. WV0116025 issued in 2014, and that submits a complete NOI on or before January 6, 2026, is authorized to continue to discharge until such time as the Department either:
  - a. Issues coverage to the Permittee under this general permit; or
  - b. Notifies the Permittee that the discharge is not eligible for coverage under this general permit.
2. Failure to submit an NOI by January 6, 2026 will result in a condition where the permittee will be operating with no permit coverage.
3. Expiration of This General Permit on October 8, 2030. If this general permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 47 CSR 10 and remain in force and effect for those entities that are covered by the general permit on the expiration date.

#### **H. Termination of Permit Coverage**

Notwithstanding Part I.D, the Permittee's coverage under this general permit will terminate upon the occurrence of any of the following conditions.

1. The Permittee is granted coverage for discharges from its regulated MS4 under a new or reissued general permit or an individual WV/NPDES permit;
2. The Permittee notifies the Department that the MS4 municipality or facility has ceased operations or unincorporates;
3. The Department grants a waiver to the permit requirement in accordance with 40 CFR §122.32(a);

4. The Department terminates coverage under this general permit in accordance with 40 CFR § 122.28(b), 47 CSR 10-9, and or Part VI.A.4 of this permit, as applicable.

## **PART II. STORMWATER MANAGEMENT PLAN**

### **A. General Requirements**

The Permittee shall develop, implement, and enforce a Stormwater Management Plan (SWMP) designed to reduce the discharge of pollutants from the regulated MS4 to the Maximum Extent Practicable (MEP) in accordance with this permit, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, West Virginia Code, and their attendant regulations.

The SWMP shall include, at a minimum, the following written components:

1. The roles and responsibilities of each of the Permittee's divisions and departments in the implementation of the requirements of the permit tasked with ensuring that the permit requirements are met;
2. If the Permittee utilizes another entity to implement portions of the MS4 program, including MS4 operators submitting a joint NOI and sharing responsibility for implementing the SWMP, a copy of all written agreements. The description of each party's roles and responsibilities, including any written agreements with third parties, shall be updated as necessary;
3. A list of all waters that receive a discharge from the MS4 owned or operated by the Permittee, including the following information for each such receiving water:
  - a. The names of the receiving surface waters;
  - b. Identification of any impairments in the West Virginia Combined 2018/2020/2022 305(b)/303(d) Integrated Water Quality Monitoring and Assessment Report; and
  - c. Identification of any TMDLs.
4. For each Minimum Control Measure (MCM) in Part III, the following information shall be included:
  - a. Each SWMP requirement stated in Part III;
  - b. A description of the BMPs or strategies that the Permittee anticipates will be implemented to demonstrate compliance with the permit conditions in Part III;
  - c. The standard operating procedures or policies necessary to implement the BMPs;
  - d. The measurable goal by which each BMP or strategy will be evaluated (by reference to the goals stated in the reporting and evaluation sections of Part III); and
  - e. The persons, positions, departments, and/or co-permittees responsible for implementing each

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BMP or strategy.

5. A list of documents incorporated by reference, including the version and date of the document being incorporated; and

#### **B. Preparation of New or Revised SWMP**

The following conditions shall govern the preparation of revised SWMPs by existing Permittees or new SWMPs by new Permittees.

1. Existing Permittees. Each Permittee covered by General Permit No. WV0116025 as of the effective date of this general permit must update its SWMP to meet the requirements of this general permit within 180 days of the approval of the NOI. The updated SWMP may be submitted to the Department for a courtesy review. The Department may, at its discretion, provide comments and recommendations within 60 days of receipt of the updated SWMP. Until such time that the SWMP is updated in accordance with this subsection, the Permittee shall continue to implement the SWMP in effect as of the effective date of this general permit.
2. New Permittees. No later than 180 days following the date of permit coverage, a new Permittee shall submit to the Department a schedule for the development and implementation of each component of the SWMP listed in Part II.A of this general permit. Upon approval by the Department, the Permittee shall comply with the schedule. If the Department provides no response within 60 days of the submission, the Permittee shall comply with the schedule as submitted.
3. Existing and New Permittees. The Permittee shall post the most up-to-date version of the SWMP on the Permittee's website, if available. If the Permittee does not operate a website, a copy of the SWMP shall be provided to any person upon request.

#### **C. Sharing Responsibility**

In accordance with 40 CFR § 122.35, two or more Permittees may rely on one another to satisfy one or more permit obligations, provided the SWMP contains a clear description of the parties' agreement (as stated in Part II.A.2). However, each Permittee remains responsible for compliance with all terms of the general permit.

Each party must confirm the terms of the agreement(s) in writing and retain copies of the agreement(s) for the duration of this general permit, including any automatic extensions of the permit term.

#### **D. Subsequent Review and Revision of the SWMP**

Revisions to the SWMP are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality to the MEP. As such, revisions made in accordance with this general permit as a result of the iterative process do not require modification of this permit. The Permittee shall summarize revisions to SWMP as part of the Annual Report as described in Part IV.B.

#### **E. Legal Authority to Implement the SWMP**

The Permittee shall utilize the legal authority provided by the laws and regulations of the State of West Virginia to control discharges to and from the MS4 as required by this general permit and described in the SWMP. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order, or interjurisdictional agreements.

### **PART III. MINIMUM CONTROL MEASURES**

The Permittee shall implement each of the six Minimum Control Measures (MCMs) as described in this Part III within its MS4 Service Area. Permittees are encouraged to work with other MS4 operators to implement these MCMs when appropriate.

#### **A. MCM 1: Public Education and Outreach**

##### **1. Objectives**

The Permittee shall implement a public education and outreach program designed to:

- a. Increase the public's knowledge of how to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;
- b. Increase the public's knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and
- c. Implement a diverse program with strategies that are targeted toward individuals or groups most likely to have significant stormwater impacts.

##### **2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Define High-Priority Stormwater Issues. The Permittee shall identify no fewer than three high-priority stormwater issues to meet the goal of educating the public in accordance with the objectives stated in Part III.A.1. High-priority issues may include, but are not limited to, the following examples: Chesapeake Bay nutrients, pet wastes, local receiving water impairments, TMDLs, high-quality receiving waters, litter control, BMP maintenance, anti-icing and deicing agent bulk storage, planned green infrastructure redevelopment, and illicit discharges from commercial sites. For each high-priority stormwater issue, the SWMP shall document the following:
  - i. The rationale for selection of each high-priority stormwater issue and an explanation of how each education or outreach strategy is intended to have a positive impact on stormwater discharges;
  - ii. The target audience to receive each high-priority stormwater message;
  - iii. The strategies from Table 1 that will be used to communicate each high-priority stormwater message; and

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- iv. The anticipated time periods the messages will be communicated or made available to the public.
- b. Implement Education and Outreach Strategies. The Permittee shall use two or more of the strategies listed in Table 1 per year to communicate to the target audience the high-priority stormwater issues identified in accordance with Part III.A.2.a, including how to reduce stormwater pollution.

<b>Table 1</b>	
<b>Strategies for Public Education and Outreach</b>	
<b>Strategies</b>	<b>Examples<sup>1</sup></b>
Traditional written materials	Informational brochures, newsletters, fact sheets, utility bill inserts, or recreational guides for targeted groups of citizens
Alternative materials	Bumper stickers, refrigerator magnets, t-shirts, or drink koozies
Educational Materials	Educational materials provided from the EPA or WVDEP, or made by other MS4's public interest, or environmental organizations.
Signage	Temporary or permanent signage in public places or facilities, vehicle signage, billboards, or storm drain stenciling
Media materials	Information disseminated through electronic media, radio, televisions, movie theater, newspaper, or GIS story maps
Speaking engagements	Presentations to school, church, industry, trade, special interest, or community groups
Curriculum materials	Materials developed for school-aged children, students at local colleges or universities, or extension classes offered to local citizens
Training materials	Materials developed to disseminate during workshops offered to local citizens, trade organization, or industrial officials
Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education or curriculum requirements, or watershed walks, and ways in which the public can become involved in conservation efforts.
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecosystem restoration projects, TMDL development, voluntary residential low impact development, or other stormwater issues

1. *Examples provided for illustrative purposes; not meant to be all-inclusive or limiting.*

### 3. Reporting and Evaluation

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 1, the Annual Report shall include the following information for the reporting year:

- a. The high-priority stormwater issues the Permittee addressed in the public education and outreach program;

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- b. A summary of the public education and outreach activities conducted for the report year.. This summary shall also include numeric tracking where applicable, of outreach strategies. For example only: number of people who attended meetings or other outreach activities, the number of flyers sent out, the number of surveys completed;
- c. A description of any changes in high-priority stormwater issues for the upcoming year, including strategies used to communicate high-priority stormwater issues or target audiences for the public education and outreach plan. The Permittee shall provide a rationale for any of these changes.

## **B. MCM 2: Public Involvement and Participation**

### **1. Objectives**

The Permittee shall implement a public involvement and participation program designed to:

- a. Ensure that information about the MS4 program activities is readily available to the public;
- b. Allow the public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding land disturbing activities, or other potential stormwater pollution concerns; and
- b. Provide opportunities for the public to provide comments on the Permittee's SWMP.

### **2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Ensure MS4 Program Information Is Readily Available to the Public. The Permittee shall ensure that information about the MS4 program is readily available to the public. If the Permittee maintains a suitable website, the information may be posted online to a page dedicated to the MS4 program. If the Permittee does not operate a suitable website or determines that the posting of the information online would not be the most effective way to reach its target audience, the Permittee may instead keep publicly available copies of the information in an easily accessible location including, but not limited to, a public library, community center, or local government building, during normal business hours. The SWMP shall include a list of the information made publicly available and the rationale for the selected method of dissemination. Copies of the following will be made available to the public in accordance with this subsection:
  - i. This general permit and the Permittee's coverage letter;
  - ii. The most current SWMP;
  - iii. The Annual Report submitted to the Department for each year of the term covered by this general permit;

- iv. Documentation of the methods available to the public to provide comments, suggestions, recommendations, or other input on the SWMP and Annual Report, which methods may be consolidated with the complaint and reporting methods referenced in the next subsection (Part III.B.2.a.v); and
  - v. Documentation of the methods available to the public to report potential illicit discharges, improper disposal, spills to the MS4, land-disturbing activity complaints, other potential stormwater pollution concerns in accordance with the respective public participation requirements of MCM 3 (Part III.C.2.b.v), MCM 4 (Part III.D.2.f); and MCM 5 (Part III.E.2.i). The Permittee may provide separate public reporting and complaint methods for MCMs 3, 4, and 5, or a single, comprehensive method through which all public reports and complaints may be submitted to the Permittee.
- b. **Provide Public Involvement Opportunities.** The Permittee shall implement no fewer than three activities per year from two or more of the categories listed in Table 2 to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects. The SWMP shall describe the public involvement opportunities to be implemented by the Permittee, the anticipated time period the activities will occur, and the water quality benefits expected to be obtained by each activity.

<b>Table 2</b> <b>Public Involvement Opportunities</b>	
<b>Strategies</b>	<b>Examples<sup>1</sup></b>
Monitoring	Establish or support citizen monitoring group
Restoration	Stream, watershed, shoreline, or park clean-up day, adopt-a-waterway program, tree plantings, and riparian buffer plantings
Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education or curriculum requirements, or watershed walks
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecosystem restoration projects, TMDL development, voluntary residential low impact development,, or other stormwater issues
Public comment	Issue public notice for comments on SWMP updates or other MS4 program activities (provided a response to comments is prepared)
Disposal or collection events	Household hazardous chemicals collection, vehicle fluids collection
Pollution prevention	Adopt-a-storm drain program, implement a storm drain marking program, promote use of residential stormwater BMPs, implement pet waste stations in public areas, adopt-a-street program

1. *Examples provided for illustrative purposes; not meant to be all-inclusive or limiting.*

2. *Activities that continue for more than one year can be credited for each year.*

- c. **Public Comment on the New or Updated SWMP.** Within 30 days of preparing a new or updated SWMP in accordance with Part II.B, the Permittee shall publish a public notice that the SWMP is available for review and comment by the public. The notice shall be posted to the Permittee's website if the Permittee maintains a website dedicated to the MS4. If the Permittee does not maintain a website, the notice shall be published in a newspaper of general circulation in the MS4 service area. The notice shall state (i) where the public can obtain a

copy of the SWMP; (ii) contact information for a person designated to accept comments on or answer questions about the SWMP; and (iii) a period of no less than 60 days for the public to ask questions or request information (telephone) and submit written comments on the SWMP. The Permittee shall consider and prepare a written response to each written comment received during the comment period. The response to comments shall be sent to any commenter who provided contact information.

The Permittee may not count its compliance with this public comment and response requirement as an “activity” for the purpose of complying with the public involvement requirements in Part III.B.2.b. However, any subsequent public notice and comment opportunities provided on other elements of the Permittee’s MS4 program may be counted as “activities” for the purpose of Part III.B.2.b.

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 2, the Annual Report shall include the following information for the reporting year:

- a. A summary of all public comments received by the Permittee under Part III.B.2.c and the Permittee’s written responses to each comment. The summary should identify any changes the Permittee made to the SWMP in response to a public comment. Documentation of the public notice issued under Part III.B.2.c shall also be included;
- b. A summary of any stormwater pollution complaints received from the public, excluding natural flooding complaints, and how the Permittee responded;
- c. A link to the Permittee’s dedicated MS4 program website or the location where publicly accessible MS4 documents are maintained;
- d. A description of the public involvement activities implemented by the Permittee. To the extent such information is reasonably available or voluntarily disclosed by the participants, the Permittee shall include (1) an estimate of the number of participants in the activity and (2) a summary of the demographic characteristics of the participants;
- e. An evaluation of whether the public involvement activities implemented during the year were beneficial to improving water quality (to the extent practicable); and
- f. A description of any changes in the Permittee’s public involvement activities for the upcoming year, including the rationale for any such changes.

## **C. MCM 3: Illicit Discharge Detection and Elimination**

### **1. Objectives**

The Permittee shall implement an illicit discharge and detection elimination (IDDE) program designed to:

- a. Appropriately map the regulated MS4; and

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- b. Implement measures to effectively identify and eliminate illicit discharges.

## 2. Implementation

To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Maintain an MS4 Map. The Permittee shall maintain a map of the regulated MS4. The SWMP shall either (1) include the MS4 map as an attachment or, (2) if the map is maintained primarily in a digital form, identify the format of the digital version and where the relevant files are primarily stored or hosted. . The map shall be updated at least annually to reflect any new or revised relevant information obtained by the Permittee in the previous year. Existing Permittees shall continue to maintain their MS4 maps in accordance with this general permit. New Permittees shall prepare an MS4 map within 2 (Two) years from submission of the NOI. The Permittee's MS4 will be formatted as described below.
  - i. The map shall identify and show the location of the following elements:
    - (1) Known MS4 outfalls;
    - (2) Known connections to the MS4;
    - (3) Receiving waters for discharges from the MS4, with labels for any waters listed as impaired or subject to an approved TMDL;
    - (4) Structural stormwater BMPs owned, operated, or maintained by the Permittee, and which discharge to the MS4;
    - (5) Boundary of the regulated MS4 service area; and
    - (6) Any other relevant information (e.g., land uses) the Permittee elects to include.
  - ii. The map shall be formatted at a legible scale and contain conventional map markings, including:
    - (1) North arrow;
    - (2) Scale bar; and
    - (3) Legend explaining the meaning of all symbols, color codes, or other representations.
  - iii. The Permittee shall maintain a digital boundary of the current MS4 area. These files must be georeferenced. Examples of acceptable boundaries are those used in GIS mapping which include shapefiles, autocad drawings, or other digital boundaries such as KMZ or KML files.
- b. Implement an IDDE Program. The Permittee shall adopt and implement an IDDE program with procedures set forth in the SWMP to investigate, track, and respond to potential illicit discharges. Except as noted below, Permittees shall update their IDDE programs, or develop

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an IDDE program for new Permittees. in accordance with this general permit to accompany the SWMP. The IDDE Program shall consist of the following elements:

- i. Unauthorized Discharge Prohibition. Excluding authorized non-stormwater discharges identified in Part I.E and Appendix C, the Permittee shall prohibit non-stormwater discharges into the MS4 by ordinance or other legal mechanism to the extent allowable under Federal, State, or Local law. The ordinance or mechanism shall provide for enforcement actions against persons found to be in violation. An existing Permittee must review and, if necessary, update its IDDE ordinance or mechanism within 12 months of the effective date of this general permit. A new Permittee must adopt an IDDE ordinance by the date stated in its SWMP. The legal mechanism shall be cited or referenced in the SWMP.
- ii. Other Relevant Legal Authorities. The SWMP shall include a description of the legal authorities, policies, standard operating procedures, or other legal mechanisms available to the Permittee to eliminate identified sources of ongoing illicit discharges, including procedures for using legal enforcement authorities.
- iii. Dry Weather Screening of High-Priority Outfalls. The Permittee shall implement a risk-based screening program to assist in detecting and eliminating illicit discharges. The SWMP shall include a schedule and methodology to evaluate at least 20% of the Permittee's MS4 outfalls, or 50 outfalls, whichever is less, each year. The Permittee shall use, as appropriate, mapping, past history of illicit discharges, upstream entities or facilities, public complaints, and available water quality data to determine areas with high potential for illicit discharges and improper disposal. Dry weather screening activities shall be prioritized in these areas. The SWMP shall identify high-priority outfalls and provide the rationale for the prioritization decisions. It also should include a copy of the inspection report form that will be completed for each outfall screening event. The inspection form shall, at a minimum, document the following:
  - (1) The location and/or unique identifier for the outfall;
  - (2) Time since last runoff-producing precipitation or snowmelt event;
  - (3) Whether the outfall is discharging and, if so, a description of the estimated discharge rate and visual characteristics of the discharge (e.g., odor, color, clarity);
  - (4) Any observed indicators of a possible illicit charge, including floatables, deposits, stains, and unusual vegetative conditions (e.g., dying or dead vegetation, excessive vegetative growth); and
  - (5) The inspector's opinion as to whether the observed conditions indicate the potential for an ongoing or unknown past illicit discharge.
- iv. Investigation of Suspected Illicit Discharges. The SWMP shall document procedures the Permittee will follow to investigate suspected discharges. At a minimum, an investigation will be conducted for each known or suspected illicit discharge documented during a dry weather screening event, reported by a member of the public or other third party, or otherwise observed by Permittee's staff. If the Permittee is unable to identify the source

of an illicit discharge within six months of beginning the investigation, then the Permittee shall document that the source remains unidentified. If the observed discharge is intermittent, the Permittee shall document that attempts to observe the discharge flowing were unsuccessful. A report shall be generated for each investigation, which shall, at a minimum, record the following:

- (1) Date the known or suspected illicit discharge was initially observed or report and the source of the information (e.g., dry weather screening report, citizen complaint);
  - (2) Results of the investigation, including the source, if identified;
  - (3) Resolution of the investigation, including whether any remediation or enforcement actions were taken; and
  - (4) Date the investigation was closed.
- v. Public Reports and Complaints. The Permittee shall establish and maintain methods by which the public can report water quality complaints, including potential illicit discharges. The Permittee must publish a phone number, email address (or web-based form), and/or mailing address for the public to submit water quality complaints. The methods of submitting a complaint shall be published on the MS4 section of the Permittee's website if Permittee maintains such a website.

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 3, the Annual Report shall include the following information for the reporting year:

- a. A statement confirming that the MS4 map was updated to reflect any relevant changes since the last Annual Report and, if applicable, a summary of the updates;
- b. A summary of any revisions to the Permittee's prohibition on illicit discharges or other relevant legal authorities during the reporting year;
- c. The methods maintained by the Permittee for the public to report potential illicit discharges or other water quality complaints, and a summary of any water quality complaints received through those methods from the public and the Permittee's response to the same. (The Permittee need not repeat any summaries that are included in the section of the Annual Report for MCM 2 (Part III.B.3));
- d. A summary of the dry weather screening events completed during the reporting year, including the number of outfalls screened and the number that presented evidence of possible illicit discharges;
- e. A summary of illicit discharge investigations completed during the year. The summary must include the number of investigations that determined that an illicit discharge is unlikely to have occurred; the number of investigations that were inconclusive; and the number of investigations for which an illicit discharge was determined likely or confirmed. For each

likely or confirmed illicit discharge, the Permittee shall provide a summary of how the incident was resolved, including any remediation or enforcement actions; and

- f. Provide a description of the of the permittees IDDE program evaluation, and a description of any changes for the upcoming year as a result of the program evaluation, including the rationale for any such changes..

#### **D. MCM 4: Controlling Runoff from Construction Sites**

##### **1. Objectives**

The Permittee shall implement a program to reduce pollutants in stormwater runoff from construction activities in the MS4 Service Area that result in a land disturbance of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater, unless such activities are exempt from NPDES permitting requirements by Federal or State law ("Regulated Construction Activities").

##### **2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Legal Authority. The Permittee's SWMP shall document that the Permittee has adopted an ordinance, regulation, or other similar enforceable legal authority to regulate land-disturbing activities that meet or exceed the criteria stated in Part III.D. The Permittee must have authority to (1) review and approve Regulated Construction Activities; (2) prohibit Regulated Construction Activities that do not comply with requirements of the program; (3) inspect Regulated Construction Activities; (4) issue stop work orders to operators of non-compliant construction activities; and (5) enforce violations. The Permittee shall implement all requirements of Part III.D to the extent of its legal authority, and the SWMP shall document and explain any provisions of Federal or State law that could materially limit or affect the Permittee's authority to implement any provisions of this part;
- b. Stormwater Pollution Prevention Plan Review and Approval. The Permittee shall require by ordinance, regulation, or similar mechanism that any person proposing to engage in a Regulated Construction Activity submit a proposed Stormwater Pollution Prevention Plan (SWPPP) to the Permittee for review and approval. At a minimum, an approvable SWPPP must satisfy the criteria and standards minimize water quality impacts. The MS4 shall have authority to request additional information from the applicant and require revisions to the SWPPP to ensure compliance with the General Permit requirements and any other local requirements. The Permittee shall not approve a proposed SWPPP for a Regulated Construction Activity until the operator provides documentation that the Department has issued NPDES permit coverage for construction stormwater discharges from the activity by an (1) individual WV/NPDES permit or (2) a general WV/NPDES permit (e.g., WV/NPDES Permit No. WV0115924, WV/NPDES Permit No. WV0116815). If a relevant NPDES stormwater discharge permit issued by the Department satisfies the minimum requirements listed in Appendix C, the Permittee may presume the SWPPP satisfies the requirements of this subsection except any additional local requirements adopted by the Permittee. SWPPP approvals shall be issued in writing by mail, email, web-based system, or other similar method. The Permittee shall prohibit the commencement of any Regulated Construction



Activity without a SWPPP approved by the Permittee. The Permittee's procedures for reviewing and approving SWPPPs shall be documented in its SWMP;

- c. Inspections. The Permittee shall develop and implement a program to inspect Regulated Construction Activities for compliance with approved SWPPPs. The inspection program procedures shall be incorporated into the SWMP and shall include, at a minimum, the following elements:
- i. Inspection Frequency. Each Regulated Construction Activity shall be inspected at least once during the period of active land disturbance. High-priority construction activities must be inspected at least once per month. The SWMP shall define high-priority construction activities to include (1) projects that have a land-disturbance area greater than 5 acres; (2) projects that drain to waterbody subject to a TMDL; and, as appropriate, (3) any other project types or project locations determined by the Permittee to present an elevated risk of impacts to water quality based on local conditions.
  - ii. Inspection Report Forms. To ensure that Regulated Construction Activity inspections are conducted in a consistent manner, the Permittee shall develop a standardized inspection report form to be completed by the Permittee's inspectors. The inspection report forms shall, at a minimum, include entries for the following items: (1) SWPPP and CGP are maintained onsite; (2) BMPs are implemented in accordance with the approved SWPPP; (3) BMPs are properly maintained; (4) disturbed soils are stabilized in accordance with the SWPPP; (5) documentation is maintained demonstrating that the operator is conducting self-inspections and maintenance on the frequency required by the SWPPP; and (6) documentation that any corrective actions prescribed by the operator's inspector or the Permittee, have been completed in a timely manner as required. The form shall include a space to document any deficiencies discovered during the inspection.
  - iii. Communication of Inspection Findings to Operators. A copy of each inspection report form (or an abbreviated or modified version thereof documenting the inspector's findings) shall be provided to the owner or operator of the Regulated Construction Activity as soon as practicable, but no later than 7 days. Any pollution event must be reported to the operator immediately upon discovery. The communication shall include an instruction to complete any necessary maintenance or corrective actions within 24 hours.
- d. Compliance and Enforcement. The Permittee shall develop standard compliance and enforcement procedures for Regulated Construction Activity operators that fail to comply with any requirements imposed by the Permittee under this Part III.D (MCM 4). The procedures shall outline the circumstances and measures to be employed to bring operators into compliance, including, as appropriate, (1) notices to correct SWPPP deficiencies per Part III.D.2.c.iii, (2) warning letters, (3) orders, instructions, or other legal mechanism to require that operators take corrective action to remedy significant or repeated noncompliance (including, when appropriate, an order to stop work until the deficiencies are corrected), and (4) directives to minimize or remediate environmental or property damage result resulting from SWPPP noncompliance (e.g., retrieving sediment deposited outside of the construction BMPs). The procedures shall outline an enforcement process for significant and/or chronic noncompliance, including, as appropriate, penalties, corrective actions, legal actions, or referral to other regulatory or law enforcement authority. These procedures shall be

incorporated into the Permittee's SWMP. The Permittee shall implement the compliance and enforcement procedures developed under this subsection.

- e. Public Reports and Complaints. The Permittee shall develop as part of its SWMP a program to accept, track, and respond to substantive complaints from the public related to BMP implementation and stormwater discharges from Regulated Construction Activities to the Permittee's MS4. As part of the program, the Permittee shall publish information on its website (if one is maintained) or if no website exists, through other appropriate means advising the public how to report stormwater-related problems at the sites of Regulated Construction Activities, including an email address (or web-based form) and phone number available to receive reports. The Permittee shall log all public reports and complaints in a tracking system, which shall include a (1) summary or copy of the complaint; (2) actions taken to investigate the complaint; and (3) whether any compliance, enforcement, or other actions were taken as a result of the investigation. Permittees may use the example complaint tracking form template in Appendix D for this purpose. The Permittee shall provide a response to any commenter that provided contact information within 30 days of receipt of complaint. However, the Permittee need not provide responses to individual commenters if it elects to post a record of public complaints and their resolutions to its website.
- f. Recordkeeping. With respect to Regulated Construction Activities, the Permittee shall maintain records of (1) SWPPP approvals; (2) SWPPP inspections conducted by or on behalf of the Permittee; (3) enforcement and compliance actions taken by the Permittee; and (4) public reports and complaints and the Permittee's responses thereto.

### 3. Reporting and Evaluation

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 4, the Annual Report shall include the following information for the reporting year:

- a. Any material changes to the relevant legal authorities identified in the SWMP in accordance with Part III.D.2.a, including an explanation of the beneficial or adverse effect the change may have on the Permittee's ability to implement the requirements of Part III.D;
- b. Any material changes in the local requirements for SWPPPs, if any, adopted by the Permittee;
- c. The number of SWPPPs submitted to the Permittee for review and the respective number of approvals and denials issued;
- d. A summary of compliance and enforcement actions taken by the Permittee, including the total number of each type of compliance actions and enforcement actions implemented;
- e. An evaluation of the effect of the Permittee's compliance and enforcement actions have had on facilitating compliance with requirements of this Part III.D by Regulated Construction Activity operators. This evaluation shall be based on a comparison of rates of noncompliance and public reports compared to previous years (with due consideration of circumstances that could affect the number of documented noncompliance incidents, such as increased construction activity, more frequent inspections, or natural variability) and any other

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appropriate factors. The evaluation shall also document any modifications to the compliance and enforcement processes in the Permittee's SMWP in response to the evaluation.

- f. Attach a copy of the public report and complaint tracker developed in accordance with Part III.D.2.f.

## **E. MCM 5: Controlling Runoff from New Development and Redevelopment**

### **1. Objectives**

The Permittee shall implement a post-construction stormwater management program to reduce the discharge of stormwater-based pollutants from development and redevelopment projects in the MS4 Service Area that have a land disturbance area of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater ("Regulated Development Projects," "Regulated Redevelopment Projects," or, collectively, "Regulated Projects").

### **2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Legal Authority. The Permittee's SWMP shall document that the Permittee has adopted an ordinance, regulation, or other similar enforceable legal authority to regulate Regulated Projects that meet or exceed the criteria stated in Part III.D. The Permittee must have authority to (1) review and approve Regulated Projects; (2) prohibit discharges from Regulated Projects that do not comply with requirements of the program; (3) inspect stormwater management facilities for Regulated Projects; and (4) enforce violations. The Permittee shall implement all requirements of Part III.E to the extent of its legal authority, and the SWMP shall document and explain any provisions of Federal or State law that could materially limit or affect the Permittee's authority to implement any provisions of this part;
- b. Post-Construction Stormwater Management Plan Review and Approval. The Permittee shall require by ordinance, regulation, or similar mechanism that any person proposing to undertake a Regulated Project submit a proposed Post-Construction Stormwater Management Plan (PCSMP) to the Permittee for review and approval. At a minimum, an approvable PCSMP must satisfy the standards listed below in Part III.E.2.d to minimize water quality impacts. The Permittee shall have authority to request additional information from the applicant and require revisions to the PCSMP to ensure compliance with the applicable requirements of this part and any other local requirements. PCSMP approvals shall be issued in writing by mail, email, web-based system, or other similar method. The Permittee shall prohibit the commencement of any Regulated Projects without a PCSMP approved by the Permittee. The Permittee's procedures for reviewing and approving PCSMP shall be documented in its SWMP;
- c. Post-Construction Development Standards. The Permittee shall adopt post-construction development standards in accordance with this subpart, which shall be documented in its SWMP. The Permittee may adopt one standard exclusively or approve more than one standard as alternatives available for use by developers. The Permittee also may define locations, categories of projects, or other criteria which dictate which standard may be used for a

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Regulated Development Project. Provided, however, that the SWMP shall clearly state which standard is required or permitted, and a reasonable grandfathering or transition period shall be adopted for any changes to the required standard.

- i. Development Standard 1: Runoff Retention. Regulated Development Projects must be designed to retain a volume of runoff equivalent to 1.0 inch (or greater) multiplied by the total post-construction impervious surface area on the site. The Permittee may allow the runoff retention standard to be lowered to 0.8 inch (or greater) for high-density development (greater than 7 units per acre), transit-oriented development, and projects that have direct or indirect water quality benefits in accordance with criteria identified in the SWMP. The Permittee may reject as incomplete any PCSMP relying on Development Standard 1 that does not include a completed copy of the most current version of Department's Compliance Spreadsheet found at: <https://dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Pages/ToolsandGuidance.aspx> (or alternative documentation designated by the Permittee) demonstrating compliance with this standard;
- ii. Development Standard 2: Pollutant Reduction. Regulated Development Projects must be designed to reduce the total average annual load of Total Phosphorus (TP), Nitrates, Nitrites, and Total Suspended Solids (TSS) generated from the total post-construction surface area of the site. PCSMP plans shall use the TP, TSS, Nitrates, and Nitrite removal efficiencies for selected BMPs that have been published by the Chesapeake Bay Program, if available. If the Chesapeake Bay Program has not addressed the planned or installed BMP performance, the Permittee may accept the use of other Federal- or State-approved BMP design guidance or performance standards (e.g. State stormwater handbooks and design guidance manuals) to calculate BMP performance. A non-exclusive list of other Federal- or State-approved BMP design guidance or performance standards can be found in Appendix E. The Permittee may reject as incomplete any PCSMP relying on Development Standard 2 that does not include calculations and other support sufficient to demonstrate compliance with this standard;
- iii. Development Standard 3: Extended Infiltration. Regulated Development Projects must be designed to treat stormwater before releasing it to surface waters by extended or engineered infiltration. Extended filtration practices that are designed to capture and manage up to one inch of rainfall may discharge through an underdrain system. The Permittee may reject as incomplete any PCSMP relying on Development Standard 3 that does not include calculations and other support sufficient to demonstrate compliance with this standard; and/or
- iv. Development Standard 4: Equivalent Alternative. The Permittee may adopt an alternative standard for Regulated Development Projects provided it demonstrates to the Department's satisfaction that adoption of the standard for development projects will result in improved water quality compared to Development Standard 1, 2, or 3. To obtain approval for an equivalent standard, the Permittee must prepare a package including the development standard and supporting technical documentation. The package must be publicly noticed for at least 30 days. The package, any public comments received by the Permittee, and the Permittee's responses thereto shall be submitted to the Department. The Permittee may assume approval of the equivalent standard if the Department does not



notify the Permittee within 90 days (1) that the standard is disapproved or (2) that additional information is needed to complete the Department's review.

In addition to satisfying one of the standards stated above, PCSMPs must comply with the general criteria and any other local requirements adopted by the Permittee.

- d. Post-Construction Redevelopment Standards. The Permittee shall adopt post-construction redevelopment standards in accordance with this Part III.E.2.d, which shall be documented in its SWMP. The standards listed below are alternatives, and the Permittee shall approve at least one of the standards for use on Regulated Redevelopment Projects. The Permittee also may define locations, categories of projects, or other criteria which dictate which standard may be used for a Regulated Redevelopment Project. Provided, however, that the SWMP shall clearly state which standard is required or permitted, and a reasonable grandfathering or transition period shall be adopted for any changes to the required standard.
- i. Redevelopment Standard 1: Runoff Retention. Regulated Redevelopment Projects must be designed to retain a volume of runoff equivalent to 0.8 inch (or greater) multiplied by the total post-construction impervious surface area on the site. The Permittee may allow the runoff retention standard to be lowered to 0.5 inch (or greater) for high-density development (greater than 7 units per acre), transit-oriented development, brownfield redevelopment, and projects that have direct or indirect water quality benefits in accordance with criteria identified in the SWMP. The Permittee may reject as incomplete any PCSMP relying on Redevelopment Standard 1 that does not include a completed copy of the most current version of the permittees Compliance Spreadsheet found at: <https://dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Pages/ToolsandGuidance.aspx> demonstrating compliance with this standard;
- ii. Redevelopment Standard 2: Extended Infiltration. Regulated Redevelopment Projects must be designed to treat stormwater before releasing it to surface waters by extended or engineered infiltration. Extended filtration practices that are designed to capture and manage up to one inch of rainfall may discharge through an underdrain system. The Permittee may reject as incomplete any PCSMP relying on Redevelopment Standard 3 that does not include calculations and other support sufficient to demonstrate compliance with this standard.
- iii. Redevelopment Standard 3: Impervious Area Reduction. Regulated Redevelopment Projects that produce a net decrease of impervious area within the limits of disturbance must comply with the following standard:
- (1) If the net impervious area is decreased by less than 50%, the post-construction TP load shall be reduced by at least 20% below the predevelopment TP load; or
- (2) The impervious area is decreased by 50% or more.

The Permittee may reject as incomplete any PCSMP relying on Redevelopment Standard 3 that does not include calculations and other support sufficient to demonstrate compliance with this standard. Redevelopment Standard 4 may not be applied to a Regulated Redevelopment Project that produces a net increase of impervious area within the limits of disturbance.

- iv. Redevelopment Standard 4: Equivalent Alternative. The Permittee may adopt an alternative standard for Regulated Redevelopment Projects provided it demonstrates to the Department's satisfaction that adoption of the standard for redevelopment projects will result in improved water quality compared to Redevelopment Standard 1, 2, 3, or 4. To obtain approval for an equivalent standard, the Permittee must prepare a package including the redevelopment standard and supporting technical documentation. The package must be publicly noticed for at least 30 days. The package, any public comments received by the Permittee, and the Permittee's responses thereto shall be submitted to the Department. The Permittee may assume approval of the equivalent standard if the Department does not notify the Permittee within 90 days (1) that the standard is disapproved or (2) that additional information is needed to complete the Department's review.

In addition to satisfying one of the standards listed above, PCSMPs must comply with the general criteria and any other local requirements adopted by the Permittee. However, Regulated Redevelopment Projects that are exclusively limited to maintenance and improvement of existing roadways (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects), sidewalks, and parking lots shall improve existing conditions where feasible but may be exempted from compliance with Redevelopment Standards 1 and 2. Any categories of exempt redevelopment activities shall be identified in the SWMP.

- e. Offsite Compliance Options. The Permittee may allow Regulated Projects to satisfy the applicable development or redevelopment standard, in whole or in part, through offsite compliance options. If the Permittee elects to permit offsite compliance options, the SWMP shall document (1) which offsite compliance options are available for use; (2) any eligibility criteria for the use of offsite compliance options; (3) submission and documentation requirements for project proponents seeking to use offsite compliance options; and (4) procedures for the review and approval of PCSMPs that propose offsite compliance options. The Permittee's offsite compliance program shall be materially consistent with the Department's *Guidance for Developing an Off-Site Stormwater Compliance Program in West Virginia* (Appendix E), including any subsequent Department-issued documents or regulations that may revise or supersede the guidance.
- f. Stormwater Management Facility Inspection and Maintenance. The Permittee shall operate a program to facilitate proper inspection and maintenance of stormwater management facilities constructed to comply with this Permit's development and redevelopment standards (Parts III.E.2.c & III.E.2.d). The program shall be documented in the SWMP and include the following components:
  - i. As-Built Drawings. The Permittee shall require that proponents of Regulated Projects submit certified as-built drawings of all stormwater management facilities required by a PCSMP no later than 90 days after the completion of the development or redevelopment project. The as-built drawings must be appended to Long-Term Maintenance Agreements (Part III.E.2.f.ii).
  - ii. Long-Term Maintenance Agreements. The Permittee shall require that proponents of Regulated Projects (other than the Permittee) execute binding agreements for the

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long-term inspection and maintenance of any stormwater management facilities installed on Regulated Projects. Such agreements shall require the Regulated Project owner or operator, its successor, or other responsible party to (1) inspect stormwater facilities on an annual basis (unless the Permittee determines that an alternative schedule is appropriate); (2) perform any necessary maintenance within a prescribed period; and (3) provide inspection and maintenance records to the Permittee. Agreements shall be made in favor of the Permittee or a designated party acting on the Permittee's behalf. To the extent allowed by law, the Permittee may require that Long-Term Maintenance Agreements be recorded in the local property records and be made to run with the land.

- iii. Inspections by Permittee. The Permittee shall keep an inventory of stormwater management facilities subject to maintenance agreements. The Permittee shall inspect each stormwater management facility on the inventory at least once every five years. If the inspection identifies any deficiencies, the Permittee shall take reasonable action to enforce its rights under the Long-Term Maintenance Agreement or exercise its compliance and enforcement authority to compel the responsible party to complete any necessary maintenance.
- iv. Legacy Stormwater Management Facilities. For any stormwater management facility maintenance agreements or maintenance plans approved under prior versions of General Permit No. WV0116025, the Permittee shall continue to enforce those agreements and plans in accordance with their respective terms and conditions.
- g. Compliance and Enforcement. The Permittee shall develop standard compliance and enforcement procedures for Regulated Project owners that fail to comply with any requirements imposed by the Permittee under this Part III.E (MCM 5). The procedures shall outline the circumstances and measures to be employed to bring owners into compliance, including, as appropriate, (1) notices to correct deficiencies, (2) warning letters, and (3) orders, instructions, or other legal mechanisms, including those in the Long-Term Maintenance Agreement, to require that owners take corrective action to remedy significant or repeated noncompliance. The procedures shall outline an enforcement process for significant and/or chronic noncompliance, including, as appropriate, penalties, corrective actions, legal actions, or referral to other regulatory or law enforcement authority. These procedures shall be incorporated into the Permittee's SWMP. The Permittee shall implement the compliance and enforcement procedures developed under this subsection.
- i. Public Reports and Complaints. The Permittee shall develop as part of its SWMP a program to accept, track, and respond to substantive complaints from the public related to post-construction stormwater management and stormwater discharges from Regulated Projects to the Permittee's MS4 (excluding natural flooding events). As part of the program, the Permittee shall publish information on its website (if one is maintained) or through other appropriate means advising the public how to report stormwater-related problems at the sites of Regulated Projects, including an email address (or web-based form) and phone number available to receive reports. The Permittee shall log all public reports and complaints in a tracking system, which shall include a (1) summary or copy of the complaint; (2) actions taken to investigate the complaint; and (3) whether any compliance, enforcement, or other actions were taken as a result of the investigation; and
- j. Recordkeeping. The Permittee shall maintain records of (1) PCSMP approvals; (2) inventory

of stormwater management facilities; (3) Long-Term Maintenance Agreements; (4) stormwater management facility inspections conducted by or on behalf of the Permittee; (5) enforcement and compliance actions taken by the Permittee; and (6) public reports and complaints.

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 5, the Annual Report shall include the following information:

- a. Any material changes to the relevant legal authorities identified in the SWMP in accordance with Part III.E.2.a, including an explanation of the beneficial or adverse effect the change may have on the Permittee's ability to implement the requirements of Part III.E;
- b. Any material changes in the local requirements for PCSMPs, if any, adopted by the Permittee;
- c. The number PCSMPs submitted to the Permittee for review and the respective number of approvals and denials issued;
- d. A summary of compliance and enforcement actions taken by the Permittee, including the total number of each type of compliance action and enforcement action implemented;
- e. An evaluation of the development and redevelopment standards approved for use by Permittee. The evaluation shall identify any (1) public complaints, (2) known water quality issues, or (3) observed downstream flooding or channel erosion problems reasonably attributable to post-construction stormwater discharges from Regulated Projects completed during the term of this permit. For any such issues identified during the reporting year, the Permittee shall identify the development or redevelopment standard utilized for the project and determine, if practicable, whether the issue was likely caused by (1) an apparent deficiency in the standard; (2) improper installation or maintenance of the required stormwater controls; or (3) another cause. The report shall document any adaptive changes to the SWMP made in response to the evaluation.
- f. A copy of the public report and complaint tracker developed in accordance with Part III.E.2.i.

## **F. MCM 6: Pollution Prevention & Good Housekeeping for Municipal Operations**

### **1. Objective**

The Permittee shall implement good housekeeping procedures designed to minimize the facility discharge of pollutants from municipal facilities and operations to the MEP.

### **2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions, which must be consolidated into a written Pollution Prevention and Good Housekeeping Program included in the SWMP:

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- a. Landscape Management Activities. Permittees shall update and/or adopt written procedures for implementing best management practices for each of the landscape management activities listed below to minimize the discharge of pollutants to the MS4. However, if the Permittee does not engage in any of the listed activities, it need not develop written procedures for that activity.
  - i. Use of Fertilizer. The application of fertilizers to municipal properties shall not exceed the application rates established by any applicable nutrient management plan. For areas not covered under nutrient management plans where fertilizer is applied, application rates shall not exceed manufacturer's recommendations;
  - ii. Use of Herbicides and Pesticides. The application of herbicides and pesticides to municipal properties shall not exceed the manufacturer's recommendations;
  - iii. Vegetation Disposal. Landscaping and vegetation management activities on municipal properties shall ensure that leaves, lawn and bush trimming, and other related vegetative debris is not stockpiled or disposed of in areas where it may be washed into the MS4; and
- b. Management of High-Priority Facilities. The Permittee shall identify all "High-Priority Facilities," which means any facilities owned or operated by the Permittee with drainage to the regulated MS4 where one or more of the following activities occur: (i) composting; (ii) equipment storage, cleaning, maintenance, and fueling; (iii) long-term bulk materials storage; (iv) pesticide, herbicide, fertilizer, or other chemicals storage; (v) recycling; (vi) anti-icing and deicing agent bulk storage, handling, and transfer; (vii) solid waste handling and transfer, and (viii) Permittee-owned or -operated vehicle washing, maintenance, and salvage. The Permittee may exclude any facilities that operate under a separate NPDES permit for stormwater discharges or for which the relevant materials or activities are not exposed to rain, snow, snowmelt, or runoff. For each High-Priority Facility, the Permittee shall develop a site-specific Stormwater Pollution Prevention Plan (SWPPP) that includes the following elements:
  - i. Site Description. A site description that includes a site map identifying all stormwater outfalls, direction of stormwater flows, existing source controls, and receiving water bodies;
  - ii. Responsible Personnel. All persons (by name or job title) responsible for implementing each requirement of the SWPPP shall be identified;
  - iii. Potential Sources of Pollutants to the MS4. All potential pollutants, pollutant sources, and non-stormwater discharges shall be identified in the SWPPP;
  - iv. Pollution Prevention Procedures. The SWPPP shall contain written procedures and practices tailored to the facility that are designed to reduce and prevent pollutant discharges to the MS4;
  - v. Catalogue of Stormwater Controls. All structural control measures, such as stormwater management facilities and other stormwater pollutant source controls that are intended to or have the effect of avoiding or minimizing the discharge of stormwater pollutants to the MS4 shall be identified in the SWPPP;

- vi. Inspection Procedures and Schedule. The SWPPP must include an inspection schedule mandating that each facility be inspected by qualified personnel on a frequency of no less than once per year. Inspections shall document compliance with the SWPPP, including, at a minimum, the following elements: (i) implementation of the Pollution Prevention Procedures; (ii) condition of each stormwater control identified in the SWPPP; and (iii) documentation that maintenance activities required by the SWPPP have been completed. The results of each inspection shall be documented in an inspection report. Any deficiencies identified in an inspection report shall be corrected as soon as practicable;
- vii. Maintenance Procedures and Schedule. The maintenance requirements, including the maintenance frequency, for each stormwater control shall be identified in the SWPPP;
- viii. Incident Log. A log of each unauthorized discharge, release, or spill incident at the facility that caused or was reasonably likely to cause a discharge of pollutants to the MS4, to include the following information: (i) date of incident; (ii) material discharged, released, or spilled; (iii) estimated quantity discharged, released, or spilled; and (iv) remediation or other corrective actions;
- ix. Training. On at least an annual basis, all staff and contractors active at the facility and responsible for high-priority activities shall receive training on the requirements of the SWPPP, with an emphasis on the importance of eliminating unauthorized discharges to the MS4; and
- x. Recordkeeping. All (i) inspection reports; (ii) maintenance reports; (iii) incident logs; and (iv) training records generated pursuant to the SWPPP shall be kept with the SWPPP.
- c. Construction and Other Land-Disturbing Activities. Through training, inspection, contract terms, and/or other effective means, the Permittee shall adopt measures to require that its employees and contractors comply with all applicable erosion and sediment control and stormwater discharge requirements for land-disturbing activities conducted for or on behalf of the Permittee.
- d. Employee and Contractor Training. Staff and contractors engaged by the Permittee to conduct any of the activities covered by the Pollution Prevention and Good Housekeeping Program shall receive training on the procedures and practices relevant to their respective functions and responsibilities. The training shall be given to new employees and contractors within three months of their engagement. Refresher training shall be provided to each covered employee and contractor each year. For contractors, the Permittee may provide training or require that its contractors certify that employees and subcontractors performing the relevant tasks for the Permittee have received appropriate training in accordance with this Part III.F. In addition to the training requirements referenced elsewhere in this Part III.F, employees and contractors shall receive training on the following topics to the extent they may be relevant and applicable to the employee or contractor's functions for the Permittee:
  - i. Proper Chemical and Material Storage and Use. This training shall be provided to employees and contractors whose duties involve the storing and use of chemicals or other materials that may cause pollution in stormwater discharging to the MS4. This includes

fuel, oils, grease, strippers, and additional products for operation and maintenance of equipment and of buildings, streets, and the MS4.

- ii. Trash Management. Employees and contractors whose duties include managing solid waste or maintaining public lands (e.g., trash collection in public parks) shall receive training on the importance of keeping trash and litter from being washed into the MS4.
- iii. Fleet Maintenance. Employees and contractors responsible for vehicle fleet storage and maintenance shall receive training on preventing the discharge of pollutants to the MS4 from activities including (i) vehicle cleaning (e.g., discharge of polluted wash water) and (ii) vehicle maintenance (e.g., avoiding spills of fuel, oil, and other chemicals).

### 3. Reporting and Evaluation

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 6, the Annual Report shall include the following information:

- a. A summary of any written procedures developed or modified to implement the Pollution Prevention and Good Housekeeping Program during the reporting period;
- b. A statement confirming that the Permittee properly implemented the SWPPPs for High-Priority Facilities during the reporting year, except for any deficiencies that are documented in the Annual Report;
- c. A hardcopy, digital file, or link to a digital version of the current SWPPP, including all attachments and updates, for each High-Priority Facility, subject to the following: (i) Portions of the SWPPP that have been updated or revised during the reporting year (e.g., inspection reports) shall be attached to the Annual Report. (ii) Portions of the SWPPP that were previously submitted to the Department and have not been revised during the reporting year may be incorporated by reference into the Annual Report. For example, if the body of the SWPPP has not been revised during the reporting year, then only the inspection reports and other attachments that are updated must be attached to the Annual Report.
- d. A statement identifying any facilities that have been added to or removed from the list of High-Priority Facilities, with an explanation any removed facilities;
- e. A summary of the inspections or other measures taken by the Permittee (except for training activities, which are reported in accordance with Part III.F.3.e, below) to determine that its employees and contractors complied with applicable erosion and sediment control and stormwater discharge requirements for land-disturbing activities conducted for or on behalf of the Permittee during the reporting year; and
- f. A summary of all employee and contractor training events conducted under this general permit for the reporting year, including the (i) completion date for the training activity; (ii) number of employees who completed the training activity; and (iii) a summary of the content and objectives of the training consistent with the Pollution Prevention and Good Housekeeping Program. However, if a contractor conducts its own training, then documentation that the contractor has certified that the training was conducted.

## **PART IV. MS4 PROGRAM EVALUATION, RECORDKEEPING, AND REPORTING**

### **A. Recordkeeping**

#### **1. Record Retention**

The Permittee shall keep records to verify compliance with this general permit for at least three years beyond the permit expiration date and any continuance as described in Part I.G.

#### **2. Availability of Records**

Upon request, records related to this general permit shall be submitted to the Department and released to the public in accordance with the Freedom of Information Act.

### **B. Annual Reports**

#### **1. Reporting Periods and Submission Deadlines**

An Annual Report shall be submitted to the Department no later than October 1 of each year in an electronic format via the Department's Electronic Submittal System (ESS) (<http://dep.wv.gov/ess>).

Each report shall cover the previous year from July 1 to June 30.

#### **2. General Contents of the Annual Report**

For existing Permittees, each Annual Report shall include the following information:

- a. The Permittee, system name, registration number, and permit number;
- b. The reporting period for which the Annual Report is being submitted;
- c. A signed certification as per 47 CSR 10-4.6;
- d. Each annual reporting item referenced in Part III for the six MCMs (refer to the subsections titled, "Reporting and Evaluation," under each of the six MCMs);
- e. An evaluation of the MS4 program implementation, including a review of each MCM, to determine the MS4 program's effectiveness and whether or not changes to the SWMP are necessary.

#### **3. Modified Annual Reporting Requirements for New Permittees**

For any Permittee receiving initial coverage under this general permit for the discharge of stormwater, the Annual Report shall include the following information:

- a. The general content items referenced above in Parts IV.B.2.a, IV.B.2.a.b, and IV.B.2.a.c;

- b. A status update on each component of SWMP being developed, including an assessment of whether the Permittee has been and/or anticipates being in compliance with the MCM-development schedule in the SWMP (Part II.B.2); and
- c. The general content items referenced above in Parts IV.B.2.d and IV.B.2.e, as modified by this subsection. A new Permittee need not include the reporting items in Parts V.B.2.d and V.B.2.e for any MCM that has not yet been implemented by the Permittee. The Permittee shall include the referenced reporting items in the Annual Report in the next reporting period following the first full year of implementing the MCM. For example, if a new Permittee begins implementing MCM 4 in March 2026, it need not include the reporting items in Parts IV.B.2.d and IV.B.2.e for MCM 4 until the Annual Report due October 1, 2027.

#### **4. Additional Reporting Requirements for Permittees Discharging to TMDL Waters**

For those Permittees with requirements established under Part V, the Annual Report shall include a status report on the implementation of any local TMDL BMP's in accordance with Part V.B.

### **PART V. TMDL SPECIAL CONDITIONS**

#### **A. Applicability**

This Part V applies to any regulated MS4 that discharges to a waterbody subject to a TMDL that has been approved by EPA. For TMDLs based on biological impairment, the TMDL Implementation shall be based on the stressors for which a wasteload allocation is assigned to the Permittee. The SWMP must include the following measures:

1. Identification of the significant sources of the pollutants of concern discharging to the Permittee's MS4 that are not covered under a separate NPDES permit to the extent known.
2. The BMPs designed to reduce the pollutants of concern in accordance with Parts V.C to V.H, as applicable;
3. A schedule of anticipated actions planned for implementation during this permit term.
4. This permit does not authorize new sources or new discharges of pollutants of concern to impaired waters unless consistent with applicable state law.
5. Impaired waters are those that do not meet applicable water quality standards. Impaired waters are identified on the West Virginia, Section 303(d) list until a TMDL is developed and approved by USEPA.
6. Pollutants of concern are those pollutants for which the water body is listed as impaired. A current list of impaired water bodies and TMDL's for each MS4 entity known on the effective date of this permit is provided on the WVDEP website at the following URL:  
<https://dep.wv.gov/WWE/Programs/stormwater/MS4/Pages/default.aspx>. The website contains maps showing approximate MS4 boundaries along with 303(d) receiving streams. The maps are not the result of surveys.



- i) Each permittee is required to examine the relevant map from the website and make a determination if the boundaries are sufficiently accurate for the WVDEP to capture the applicable 303(d) data on a watershed scale. If the provided mapping is deemed insufficient by the MS4 entity, the MS4 shall notify the director and provide updated boundaries.
- 7. The permittee shall summarize impairment pollutant-reduction activities completed during the year in the annual report.
  - a) New permittees shall develop and implement BMPs for areas within the MS4 that drain to impaired waters and describe the BMPs in the annual report.

## **B. Implementation for MS4s Discharging into Waters with Approved State and Federal TMDLs**

- a) Each discharger to a TMDL water shall propose BMPs to reduce pollutants of concern to the TMDL in the SWMP.
  - i) Permittees shall implement BMPs in accordance with the SWMP and annually, evaluate BMP effectiveness. The Annual Report shall contain the evaluation, along with proposed new BMPs to replace ineffective ones
- b) Within six (6) months of notification from the Director of the approval of a new state or federal TMDL for which the permittee is identified as a source, permittees must develop and implement BMPs targeting the pollutant of concern and must gauge the effectiveness of selected BMPs in making progress toward achieving wasteload allocations.

## **C. Bacterial TMDLs**

The Permittee shall select and implement at least three of the strategies listed in Table 3 designed to reduce the load of bacteria to the MS4. Permittee may select and implement an alternative strategy provided the TMDL Implementation explains that it is no less effective than one of the strategies listed in Table 3. Selection of the strategies shall correspond to sources identified in Part V.B.4.

<b>Table 3</b>	
<b>Strategies for Bacteria Reduction Stormwater Control/Management Strategy</b>	
<b>Source</b>	<b>Strategies<sup>1</sup></b>
Domestic pets (dogs and cats)	Provide signage to pick up dog waste, providing pet waste bags and disposal containers. Adopt and enforce pet waste ordinances or policies, or leash laws or policies. Place dog parks away from environmentally sensitive areas. Maintain dog parks by removing disposed of pet waste bags and cleaning up other sources of bacteria. Protect riparian buffers and provide unmanicured vegetative buffers along streams to dissuade stream access.
Urban wildlife	Educate the public on how to reduce food sources accessible to urban wildlife (e.g., manage restaurant dumpsters and grease traps, residential garbage).

	<p>Install storm drain inlet or outlet controls.</p> <p>Clean out storm drains to remove waste from wildlife.</p> <p>Implement and enforce urban trash management practices.</p> <p>Implement rooftop disconnection programs or site designs that minimize connections to reduce bacteria from rooftops.</p> <p>Implement a program for removing animal carcasses from roadways and properly disposing of the same (either through proper storage or through transport to a licensed facility).</p>
<p>Illicit connections or illicit discharges to the MS4</p> <p>Illicit connections or illicit discharges to the MS4</p>	<p>Implement an enhanced dry weather screening and illicit discharge, detection, and elimination program beyond the requirements of Part III.C to identify and remove illicit connections and identify leaking sanitary sewer lines infiltrating to the MS4 and implement repairs.</p> <p>Implement a program to identify potentially failing septic systems.</p> <p>Educate the public on how to determine whether their septic system is failing.</p> <p>Implement septic tank inspection and maintenance program.</p> <p>Implement an educational program beyond any requirements in Part III.C to explain to citizens why they should not dump materials into the MS4.</p>
<p>Dry weather urban flows (e.g., irrigation, car washing)</p>	<p>Implement public education programs to reduce dry weather flows from storm sewers related to lawn and park irrigation practices, car washing, powerwashing and other non-stormwater flows.</p> <p>Provide irrigation controller rebates.</p> <p>Implement and enforce ordinances or policies related to outdoor water waste.</p> <p>Inspect commercial trash areas, grease traps, washdown practices, and enforce corresponding ordinances or policies.</p>
<p>Birds (e.g., Canadian geese, pigeons)</p>	<p>Identify areas with high bird populations and evaluate deterrents, population controls, habitat modifications, and other measures that may reduce bird-associated bacteria loading.</p> <p>Prohibit feeding of birds.</p>
<p>Other Sources</p>	<p>Enhance maintenance of stormwater management facilities owned or operated by the Permittee.</p> <p>Enhance requirements for third parties to maintain stormwater management facilities.</p> <p>Develop BMPs for locating, transporting, and maintaining portable toilets used on Permittee-owned sites. Educate third parties that use portable toilets on BMPs.</p> <p>Provide public education on appropriate recreational vehicle dumping practices.</p>

1. Examples provided for illustrative purposes; not meant to be all-inclusive or limiting.

#### **D. Local Sediment, Metals, and Nutrients TMDLs**

The Permittee shall reduce the loads associated with local sediment (including TSS and biological impairments caused by sediment), metal (including, without limitation, iron, aluminum, manganese, lead, and selenium), and nutrient (including phosphorus and nitrogen) TMDLs through implementation of one or more of the practices listed below.

1. One or more BMPs approved by the Chesapeake Bay Program. Pollutant load reductions generated by annual practices, such as street and storm drain cleaning, shall only be applied to the compliance year in which the annual practice was implemented.

With each Annual Report, the Permittee shall submit to the Department an update on the progress made toward achieving local TMDL Implementation goals for sediment, metals, and/or nutrients. The Permittee's compliance with its TMDL Implementation will constitute adequate progress toward attaining each applicable wasteload allocation.

#### **E. Polychlorinated Biphenyl (PCB) TMDLs**

The Permittee shall reduce the loads associated with PCBs through implementation of the following measures:

1. The Permittee shall develop, maintain, or update, as appropriate, an inventory of potentially significant sources of PCBs owned or operated by the Permittee that drain to the MS4. The inventory shall include the following information for each potential source:
  - a. Location of the potential source;
  - b. Whether or not the potential source is from current site activities or activities previously conducted at the site that have been terminated (i.e., legacy activities); and Pollution red
  - c. A description of any measures, if known, being implemented or to be implemented to prevent exposure to stormwater and the discharge of PCBs from the site.
2. If at any time during the term of this general permit, the Permittee discovers a previously unidentified significant source of PCBs within the MS4 Service Area, the Permittee shall notify the Department in writing within 30 days of discovery.

#### **F. Chloride TMDLs**

The Permittee shall reduce the loads associated with chlorides through implementation of the following measures:

1. No later than 36 months after the permit effective date, the Permittees shall develop an anti-icing and deicing agent education and outreach strategy that identifies target audiences (e.g., big box retailers) for increasing awareness of anti-icing and deicing agent application impacts on receiving waters and encourages implementation of enhanced BMPs for application, handling, and storage of anti-icing and de-icing agents used for snow and ice management.
2. Anti-icing and deicing agent education and outreach strategies shall contain a schedule to implement one or more of the strategies listed in Table 1 (Part III.A) per year to communicate to target audiences the importance of responsible anti-icing and deicing agent application, transport, and storage.
3. The Permittee shall implement an increased SWPPP inspection frequency of at least two times per year for any High-Priority Facility identified under Part III.F where anti-icing and deicing agent bulk handling and storage activities are occurring. One inspection shall occur during winter months when icy conditions are possible (generally, October to March) and the other shall occur during the warmer months when icy conditions are unlikely (generally, May to August). In its Annual Report, the Permittee shall evaluate the effectiveness of its SWPPP for these facilities



based on the results of the inspections and any other relevant and available information. If the evaluation identifies any deficiencies in the implementation of the SWPPP or controls that are not performing as intended, it shall revise the SWPPP appropriately.

#### **G. Other TMDLs**

For any TMDL not addressed in Parts V.C to V.F, the Permittee shall include BMPs designed to reduce the discharge of the relevant pollutant from the regulated MS4 to the MEP. The selection of BMPs shall be included in the SWMP, including the wasteload allocation assigned to MS4s, and any other related or supporting documents. As stated in Part III.B.2.c. the SWMP must be made available for public review and comment.

### **PART VI. STANDARD NPDES PERMIT CONDITIONS**

#### **A. Management Conditions**

##### **1. Duty to Comply**

The Permittee must comply with all conditions of this general permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.

##### **2. Duty to Mitigate**

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

##### **3. Permit Actions**

This permit may be modified, revoked and reissued, suspended, or revoked for cause in accordance with the provisions of Chapter 22-11-12 of the Code of West Virginia. The filing of a request by the Permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

##### **4. Property Rights**

This permit does not convey any property rights of any sort or any exclusive privilege.

##### **5. Signatory Requirements**

All applications, reports, or information submitted to the Director in accordance with the permit shall be signed and certified as required in Title 47, Series 10, Section 4.6 of the West Virginia Legislative Rules.

## **6. Transfers**

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary.

## **7. Duty to Provide Information**

The Permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

## **8. Other Information**

Where the Permittee becomes aware that it failed to submit any relevant facts in the NOI or submitted incorrect information in an NOI or in any report to the Director, it shall promptly submit such facts or information.

## **9. Inspection and Entry**

The Permittee shall allow the Director, an authorized representative, or an EPA representative, upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
- b. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

## **10. Outlet Markers**

A permanent marker shall be posted as close as practicable to the discharge location of the representative outfall or other outfalls contained in the SWMP in accordance with Title 47, Series 11, Section 9 of the West Virginia Legislative Rules.

This permit does not require monitoring for compliance, however the EPA requires a representative outfall must be designated and an outlet marker placed as close as practicable to the location.

## **11. Liabilities**

- a. Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308,

Promoting a healthy environment.

318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

- b. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- c. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- d. Nothing in this subsection shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11.

## **B. Operation and Maintenance**

### **1. Proper Operation and Maintenance**

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the Permittee only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators, as classified by the WV Bureau of Public Health Laws, W. Va. Code Chapter 16-1, will be required except that in circumstances where the domestic waste treatment facility is receiving any type of industrial waste, the Director may require a more highly skilled operator.

### **2. Need to Halt or Reduce Activity Not a Defense**

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

### **3. Bypass**

#### **a. Definitions**

- i. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and

- ii. “Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- b. Bypass not exceeding limitations. The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts VI.B.11.3.c and VI.B.11.3.d of this permit
- c. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten (10) days before the date of the bypass. If the Permittee does not know in advance of the need for bypass, notice shall be submitted as required Part VI.D of this permit
- d. Prohibition of Bypass
  - i. Bypass is permitted only under the following conditions, and the Director may take enforcement action against a Permittee for a bypass, unless;
    - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of engineer equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
    - (3) The Permittee submitted notices as required under Part VI.B.3.c of this permit.
  - ii. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part VI.B.3.d.i of this permit.

#### **4. Upset**

- a. “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitation if the requirements of Part VI.B.4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

- c. Conditions necessary for a demonstration of upset. A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - i. An upset occurred, and that the Permittee can identify the cause(s) of the upset;
  - ii. The permitted facility was at the time being properly operated;
  - iii. The Permittee submitted notice of the upset as required in IV.2.b) of this permit; and
  - iv. The Permittee complied with any remedial measures required under Part VI.A.2 of this permit.
- d. Burden of proof. In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

## **C. Monitoring and Reporting**

### **1. Monitoring Generally**

Discharge monitoring is not required for compliance purposes by this general permit. If the Permittee chooses to monitor stormwater discharges for informational or screening purposes, they may do so. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

## **D. Other Reporting**

### **1. Reporting Spills and Accidental Discharges**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities or penalties established pursuant to Title 47, Series 11, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

Attached is a copy of the West Virginia Spill Alert System for use in complying with Title 47, Series 11, Section 2 of the Legislative rules as they pertain to the reporting of spills and accidental discharges (Appendix F).

### **2. Immediate Reporting**

- a. The Permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Agency's designated spill alert telephone number located in Appendix F. A written submission shall be provided within five (5) days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been

corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

- b. The following shall also be reported immediately:
  - i. Any unanticipated bypass which exceeds any effluent limitation in the permit;
  - ii. Any upset which exceeds any effluent limitation in the permit; and
  - iii. The Permittee complied with any remedial measures required by Part VI.A.2 of this permit.
- c. The Director may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.
- d. Compliance with the requirements of this subsection shall not relieve a person of compliance with Title 47, Series 11, Section 2

### **3. Reporting Requirements**

- a. Planned changes. The Permittee shall give notice to the Director of any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge. Notice is required when:
  - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Series 10, Title 47; or
  - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under IV.2 of this section.
- b. Anticipated noncompliance. The Permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c. In addition to the above reporting requirements, all existing manufacturing, commercial, and silvicultural discharges must notify the Director in writing as soon as they know or have reason to believe:
  - i. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit.
  - ii. That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that pollutant under approved analytical procedure.



- iii. That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a non-routine or infrequent basis of that toxic pollutant at levels which exceed ten times the detection limit for that pollutant under approved analytical procedure.

#### **4. Other Noncompliance**

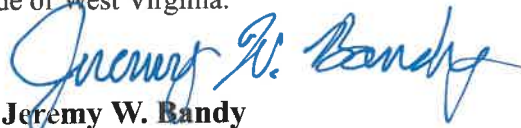
The Permittee shall report all instances of noncompliance not reported under the above paragraphs at the time annual reports are submitted. The reports shall contain the information listed in Part VI.D.2.b. Should other applicable noncompliance reporting be required, these terms and conditions will be found in Part VI of this permit.

#### **5. Program Review**

- a) The Department will assess the effectiveness of the SWMP for eliminating non-storm water discharges and reducing the discharge of pollutants to the MEP, by reviewing program implementation and annual reports.
- b) Additional periodic evaluations may be conducted to determine compliance with permit conditions.

The permittee must comply with all terms and conditions of this permit. Permit noncompliance constitutes a violation of the federal Clean Water Act (CWA) and State Act, Chapter 22, Article 11 & Article 12 and is grounds for enforcement action; for permit modification, suspension or revocation.

Failure to comply with the terms and conditions of this permit shall constitute grounds for the revocation or suspension of this permit and for the invocation of all the enforcement procedures set forth in Chapter 22, Article 11 of the Code of West Virginia.



**Jeremy W. Randy**  
**Director**

## **APPENDIX A DEFINITIONS**

Unless the context in which used clearly requires a different meaning, as used in this general permit:

“Annual practice” means a nonstructural best management practice such as street or storm drain cleaning that reduces pollution for one compliance year upon implementation.

“Annual Report” means a document submitted to the Department no later than October 1 of each year in an electronic format via the Department’s Electronic Submittal System that summarizes and evaluates the Permittee’s implementation of this general permit during the reporting year.

“Best management practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, policies, and other management practices to prevent or reduce the pollution of waters of the State of West Virginia. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal or drainage from material storage. BMP's can include structural as well as non-structural practices.

“CFR” means the Code of Federal Regulations.

“Clean Water Act” or “CWA” means Public Law 92-500, as amended by Public Law 95-217, Public Law 97-117 and Public Law 95-576; U.S.C. 1251 et seq.

“Common Plan of Development” is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The “plan” is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions and industrial parks.

“CSR” means the West Virginia Code of State Rules.

“Department” means the West Virginia Department of Environmental Protection.

“Director” means the Director of the Division of Water and Waste Management, West Virginia Department of Environmental Protection, or his/her designated representative.

“Dry Weather” means a period in which there has not been a measurable precipitation or snowmelt event within a twenty-four (24) hour period.

“Dry Weather Screenings” are on-site inspections of storm water outfalls during dry periods for the purpose of locating and evaluating the quality of discharges in an effort to reduce or eliminate pollution.

“EPA” means the United States Environmental Protection Agency.

“Evaluative Process” The use of collected data and best professional judgment to interpret received data, rather than accepting generalized assumptions.

“Existing Permittee” is the owner or operator of a regulated small municipal separate storm sewer that was authorized to discharge under General Permit No. WV0116025 (2014).



“Illicit Discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except (1) discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and (2) non-stormwater discharges listed in Appendix C of this general permit.

“Impervious” means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

“Long-Term Maintenance Agreements” means a formal written agreement or contract between a Permittee and a property owner that obligates the owner and its successors and assigns to inspect and maintain stormwater management facilities installed in accordance with this general permit in perpetuity.

“Maximum Extent Practicable” Each permitted entity shall select appropriate Best Management Practices (BMPs) based on an evaluative process which should include the following: Public input and acceptance, Consideration of the receiving water, Technical feasibility of selected BMP, Cost of implementation, Regulatory compliance, and Effectiveness.

“Minimum Control Measure” or “MCM” means the six programmatic elements of Part III of this general permit that are documented in the Permittee’s Stormwater Management Plan and which are designed to result in the reduction of the discharge of pollutants from the regulated Small MS4. The programmatic elements include: (1) Public Education and Outreach, (2) Public Involvement and Participation, (3) Illicit Discharge Detection and Elimination, (4) Controlling Runoff from Construction Sites, (5) Post Construction Stormwater Management, (6) Pollution Prevention and Good Housekeeping.

“Municipal Separate Storm Sewer System” or “MS4” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by any municipality, sewer or sewage board, State agency or Federal agency or other public entity that discharges directly to surface waters of the State of West Virginia that is designed or used for collecting or conveying storm water but which is not a combined sewer or part of a publicly owned treatment works.

“MS4 Service Area” The MS4 Service Area is the drainage area served by the Permittee’s Regulated Small MS4 that is within the jurisdiction or control of the Permittee.

“New Permittee” is the owner or operator of a small municipal separate storm sewer that was not authorized to discharge under General Permit No. WV0116025 (2014) but who is required to submit a notice of intent to obtain authorization to discharge under this general permit.

“Notice of Intent” or “NOI” means a notification of intent to seek coverage under this general permit to discharge stormwater from a regulated small municipal separate storm sewer permit to waters of the State of West Virginia.

“National Pollutant Discharge Elimination System” or “NPDES” means a provision of the Clean Water Act which regulates the discharge of pollutants into waters of the United States. This federally mandated permit program regulating point source discharges.

“Operator” means the owner or operator of any facility or activity subject to this general permit. In the

context of stormwater associated with a construction project or land-disturbing activity, “operator” means any person associated with the project or activity that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site (i.e., the person is authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from an MS4, “operator” means the municipal or other governmental entity that owns or operates the regulated MS4.

“Outfall” means a point source as defined by 40 CFR § 122.2 at the point where a municipal separate storm sewer discharges to waters of the State of West Virginia and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

“Pollutant of concern” means a pollutant which cause a water body to be placed on the Section 303(d) list of impaired waters and for which a Permittee has been assigned a wasteload allocation in an applicable Total Maximum Daily Load.

“Post-Construction Stormwater Management Plan” or “PCSMP” means a plan developed by the operator of a regulated development or redevelopment project to minimize water quality impacts from stormwater discharges from the site after the completion of construction activities. The PCSMP must satisfy the standards adopted by the Permittee in accordance with this general permit and is subject to review and approval by the Permittee.

“Receiving water” means a surface water of the State of West Virginia into which stormwater is discharged from an outfall.

“Redevelopment,” including brownfield development, means any construction, alteration, or improvement, including, but not limited to, the demolition or building of structures, filling, grading, paving, or excavating, where existing land use is residential, commercial, industrial, or institutional. Ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements are not considered to be redevelopment activities for the purposes of this general permit.

“Regulated Construction Activity” means a construction activity in the MS4 Service Area that results in a land disturbance of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater, unless such activities are exempt from NPDES permitting requirements by Federal or State law.

“Regulated Development Project” means a development project in the MS4 Service Area that has a land disturbance area of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater.

“Regulated Redevelopment Project” means a redevelopment project in the MS4 Service Area that has a land disturbance area of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater.

“Regulated Small MS4” or “regulated MS4” means those portions of an MS4 that are (1) located in an

urban area as determined by the 2020 Decennial Census of the United States Census Bureau with a population of at least 50,000; (2) designated by the Department or United States Environmental Protection Agency under the Clean Water Act and associated regulations; or (3) covered under General Permit No. WV0116025 (2014) as of the effective date of this general permit. An MS4, or portion thereof, that has been granted a waiver in accordance with 40 CFR §122.32(a) is not a regulated Small MS4.

“Reporting year” means the period from July 1 to June 30 of each year that is covered by an Annual Report submitted within three months of the conclusion of the period. For example, the Annual Report due by October 1, 2028, should cover the reporting year running from July 1, 2027, to June 30, 2028.

“Secretary” means the Secretary of the West Virginia Department of Environmental Protection, or his/her designated representative.

“Small municipal storm sewer system” or “Small MS4” means an MS4 that is not defined as “Large” or “Medium” by 40 CFR § 122.26(b). All MS4s in West Virginia are Small MS4s.

“Stormwater Management Program” or “SWMP” means a document describing the management program covering the duration of this general permit for a MS4 that includes a comprehensive planning process that involves public participation and intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the State law and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

“Stormwater Pollution Prevention Plan” or “SWPPP” means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges and required measures to minimize the water quality impacts from those discharges. In the context of stormwater associated with a construction project or land-disturbing activity, a SWPPP consists of an approved erosion and sediment control plan, approved post-construction stormwater management plan, and other provisions. In the context of stormwater discharges from an MS4, a SWPPP is a site-specific plan for managing stormwater discharges from a high-priority facility owned by the Permittee in accordance with Part III.F.2.b.

“Total Maximum Daily Load” or “TMDL” means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety calculated the pollutant loading that a waterbody can receive and still safely meet water quality standards.

“USC” means the United States Code.

“Wasteload Allocation” or “WLA” means the portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

**APPENDIX B  
NOTICE OF INTENT  
SUBMISSION PROCEDURE  
AND INFORMATION REQUIREMENTS**

**A. Submission Instructions**

Each MS4 operator required to submit a Notice of Intent (NOI) by Part I.C of this general permit must submit its NOI electronically using the Department's Electronic Submission System (ESS). ESS can be accessed at the following link: <http://dep.wv.gov/ess>.

Existing permittees may use their current ESS login to submit the NOI. New permittees must follow the instructions on the ESS website (<http://dep.wv.gov/ess>) to request an ESS login in advance of submitting the NOI.

The information necessary to populate the NOI must be input directly into an electronic form on ESS. The required information is stated in subsection B, below. When all information has been input on the electronic form, the system will give the Permittee the option of signing and submitting the NOI to the Department.

**B. Information Requirements**

Operators must enter the following information into the NOI form on ESS:

1. The name and location of the MS4 (including latitude and longitude coordinates);
2. The name of the owner or operator of the MS4;
3. The mailing address of the owner or operator of the MS4;
4. The type of MS4 (e.g., city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other);
5. The name, title, mailing address, telephone number, and email address for the following individuals:
  - a. The responsible official with authority to sign reports on behalf of the Permittee; and
  - b. The MS4 permit contact.
6. The following receiving waters information:
  - a. The names of the receiving surface waters to which the MS4 system discharges; and
  - b. Whether or not the receiving waters are listed as impaired in the West Virginia Combined 2018/2020/2022 305(b)/303(d) Integrated Water Quality Monitoring and Assessment Report; and

- c. Whether or not the receiving waters are subject to a TMDL.
7. The names of any physically interconnected MS4s to which the MS4 discharges;
8. A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures; and
9. If the two more MS4 operators are submitting a joint NOI, the information referenced below in subsection C.

**C. Joint NOIs**

The Department encourages regulated MS4 operators to submit joint NOIs in accordance with 40 CFR § 122.33(b)(1)(i). In addition to the information listed in subsection B, joint NOIs must include the following:

1. The information required by numbers 1 through 8 of subsection B shall be repeated for each MS4 operator participating in the joint NOI; and
2. The NOI shall include a description of the roles and responsibilities of each operator, including a summary of which stormwater minimum control measures each operator will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the MS4(s). Joint NOI's shall include any Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) with the application.



**APPENDIX C  
LIST OF AUTHORIZED  
NON-STORMWATER DISCHARGES**

1. Uncontaminated water line flushing;
2. Landscape irrigation and lawn watering, provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
3. Diverted stream flows;
4. Rising groundwaters;
5. Uncontaminated groundwater infiltration, as defined at 40 CFR § 35.2005(20);
6. Uncontaminated pumped groundwater;
7. Discharges from potable water sources managed in a manner to avoid instream impact;
8. Foundation or footer drains where flows are not contaminated with process materials;
9. Air conditioning condensation;
10. Springs;
11. Water from crawl space pumps;
12. Individual residential vehicle washing, or discharges from fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaner;
13. Flows from riparian habitats and wetlands;
14. Dechlorinated freshwater swimming pool discharges managed in a manner to avoid instream impact;
15. Street and pavement wash waters that do not contain cleaning additives or are otherwise managed in a manner to avoid instream impact;
16. Routine external building washdown provided no soaps, solvents, or detergents are used, external building surfaces do not contain hazardous substances, and the wash water is filtered, settled, or similarly treated prior to discharge;
17. Discharges or flows from emergency/unplanned firefighting activities including the immediate discharge of materials determined by fire department personnel or emergency management officials to be necessary to protect life or property, provided the Permittee takes or ensures that the responsible party takes all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This authorization does not transfer liability for a spill from the party responsible for the spill to the MS4 operator or relieve the party responsible for a spill from any reporting requirements imposed by Federal, State, or Local law.;

Promoting a healthy environment.

18. Discharges from flows of water for fire prevention or firefighting training activities managed in a manner to avoid instream impact;
19. Discharges authorized by a separate National Pollutant Discharge Elimination System (NPDES) permit;

**APPENDIX D**  
**STORMWATER PUBLIC COMPLAINT TRACKER TEMPLATE\***

Public Report or Complaint				Investigation and Resolution		
Incident ID	Date Received	Reported By	Summary of Complaint / Report	Assigned To	Summary of Findings / Resolution	Closure Date

*\*Provided as an example for the convenience of Permittees; use of this template is not required.*



## APPENDIX E EROSION AND SEDIMENT CONTROL RESOURCES

### Sediment and Erosion Control BMP manuals:

1. Erosion and Sediment Control BMP manual — WV DEP

[https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/ESC\\_BMP.aspx](https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/ESC_BMP.aspx)

2. Maryland Soil Erosion and Sediment Control BMP manual;

<https://mde.maryland.gov/programs/water/StormwaterManagementProgram/Documents/2011%20MD%20Standard%20and%20Specifications%20for%20Soil%20Erosion%20and%20Sediment%20Control.pdf>

3. Virginia Erosion and Sediment Control Handbook;

[https://assets.vbt.io/public/files/6975/VA\\_Resources\\_Construction/Virginia\\_DEQ\\_Erosion\\_and\\_Sediment\\_Control\\_Handbook.pdf](https://assets.vbt.io/public/files/6975/VA_Resources_Construction/Virginia_DEQ_Erosion_and_Sediment_Control_Handbook.pdf)

4. USEPA has a listing of available stormwater manuals on its website.

<https://search.epa.gov/epasearch/?querytext=stormwater+manuals&areaname=&areacontacts=#/>

5. Guidance For Developing an Off-Site Stormwater Compliance Program in West Virginia, December 2012

[https://dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Documents/WV\\_Mitigation-FeeInLieu-Guidance\\_Final\\_Jan-2013.pdf](https://dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Documents/WV_Mitigation-FeeInLieu-Guidance_Final_Jan-2013.pdf)

**APPENDIX F**  
**WEST VIRGINIA SPILL ALERT SYSTEM**

In the event of a spill or accidental discharge, immediately call (800) 642-3074

# Attachment

D



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west virginia department of environmental protection

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**STATE OF WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT  
601 57th STREET SE  
CHARLESTON, WV 25304-2345  
GENERAL WATER POLLUTION CONTROL PERMIT**

Permit No. WV0116025

Issue Date: XXX XX, 2025  
Effective Date: XXX XX, 2025  
Expiration Date: XXX XX, 2030

Subject: Stormwater Discharges from Municipal Separate Storm Sewer Systems

To Whom It May Concern:

This is to certify that owners and operators of small municipal separate storm sewer systems (MS4s) located in the State of West Virginia who have satisfied the registration requirements and who have agreed to be regulated under the terms and conditions of this general permit are hereby granted coverage under this General WV/NPDES Water Pollution Control Permit to discharge stormwater into waters of the State.

All operators of regulated small MS4s are required to submit a notice of intent (NOI) to be covered by this general permit, unless the small MS4 obtains an individual WV/NPDES permit in accordance with 40 CFR §122.28(b)(3)(iii) or the requirements of the small MS4 permit are waived in accordance with 40 CFR §122.32(c).

The authorized discharges shall be in accordance with the NOI filed with the department, this cover page, and Parts I – VI, as set forth in this general permit.

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## **PART I. COVERAGE UNDER GENERAL PERMIT NO. WV0116025**

### **A. Authorization to Discharge**

The owner or operated of a Small Municipal Separate Storm Sewer System (MS4) covered by this general permit ("Permittee") is authorized to discharge stormwater and certain authorized non-stormwater described in described Part I.F from the regulated Small MS4 to surface waters of the State of West Virginia provided that:

1. The Permittee submits a complete and accurate Notice of Intent (NOI) in accordance with Part I.E and that NOI is accepted by the Department of Environmental Protection (Department);
2. The Permittee submits any permit fees required by the Department;
3. The Permittee complies with the requirements of this general permit; and
4. The Department has not notified the operator that the discharge is ineligible for coverage in accordance with Part I.D.
5. This permit does not relieve entities that cause illicit discharges, including spills, of oil or hazardous substances, from responsibilities and liabilities under State and Federal law and regulations pertaining to those discharges.

### **B. Water Quality Requirements**

Compliance with this general permit constitutes compliance with the standard expressed in 33 USC § 1342(p)(3)(B)(iii) of reducing pollutants to the Maximum Extent Practicable (MEP); demonstrates adequate progress in meeting water quality standards; and satisfies the appropriate water quality requirements of the Clean Water Act, West Virginia Code, and their attendant regulations (including any applicable wasteload allocations in a Total Maximum Daily Load (TMDL)).

1. This permit does not authorize a violation of West Virginia State Water Quality Standards (Title 47 CSR Series 2) and West Virginia Ground Water Quality Standards (Title 47 CSR Series 58).

### **C. MS4 Service Area**

This general permit regulates activities within the Permittee's MS4 Service Area that may affect discharges from the regulated MS4. The MS4 Service Area is the drainage area served by the Permittee's defined MS4 permit boundary and may include drainage areas outside of the MS4 boundary.

Areas draining to a combined sewer system are not within the Permittee's MS4 Service Area.

#### **D. Regulated MS4 Owners and Operators Eligible for Coverage under this General Permit**

Entities eligible to obtain coverage under this general permit are municipalities, counties, transportation facilities, and federal and state-owned facilities who own, operate, or have jurisdiction over an MS4 in the State of West Virginia which are:

1. Entities that have already obtained coverage under WV0116025 based on the 2000 and 2010 Census or, located in an urban area as determined by the 2020 Decennial Census of the United States Census Bureau with a population of at least 50,000;
2. Designated by the Department or the United States Environmental Protection Agency under the Clean Water Act and associated regulations.

#### **E. Duty to Submit a Notice of Intent**

All eligible owners or operators of a regulated Small MS4 must submit an NOI for coverage under this general permit for any stormwater and authorized non-stormwater discharge from the regulated MS4, unless any of following situations apply:

1. Such discharge is covered by another WV/NPDES permit issued by the Department;
2. The Department has exercised its authority under 40 CFR § 122.28(b)(3) to require the MS4 operator apply for an individual WV/NPDES permit; or
3. The Department has waived the requirement to obtain permit coverage pursuant to 40 CFR § 122.32(d) or (e).
4. Jurisdictions eligible for permit coverage may apply for a waiver from permit coverage and may retain permit eligibility, provided the waiver is approved, by complying with the terms and conditions of the waiver or waiver order.
5. The Director retains the option to waive a portion or portions of the permit requirements
6. The Director retains the option to waive permit requirements and instead issue an Order directing the jurisdiction to conduct activities necessary for gathering evidence to support a waiver determination. This option refers to but is not limited to an Order to conduct sampling of MS4 application discharges; to test for specified parameters; and to report test results for evaluation prior to a decision on a waiver application.
7. The Director retains the authority to conduct reviews and terminate waivers at any time during the waived period.
9. Waived jurisdictions must reapply for waiver approval with each permit reissuance.
10. DEP has the duty of reviewing waivers periodically but no less than once every (5) five years.

Operators of MS4s that are applying for initial coverage under this general permit must submit a complete NOI to the Department within 180 days of notice of designation, unless the department grants a later date. Operators of MS4s that are covered by General Permit No. WV0116025 (2014) as



of the effective date of this general permit must submit a new NOI no later than [EFFECTIVE DATE + 90 DAYS], unless permission for a later date has been granted by the Department. Two or more regulated MS4 operators may submit joint NOIs in accordance with 40 CFR § 122.33(b)(1)(i). Refer to Appendix B for NOI submission instructions and information requirements.

#### **F. Authorized Non-Stormwater Discharges**

Unless identified by the Department or Permittee as a significant source of pollutants to waters of the State, the non-stormwater discharge categories listed in Appendix C are allowed to enter into and discharge from the MS4.

#### **G. Continuation of Permit Coverage**

Coverage under General Permit No. WV0116025 shall be continued under the following conditions.

1. The 2014 General Permit No. WV0116025 expired on August 11, 2019. By rule, coverage under the 2014 permit continues until the issuance of a new general permit. Any Permittee that was authorized to discharge under General Permit No. WV0116025 issued in 2014, and that submits a complete NOI on or before [EFFECTIVE DATE + 90 DAYS], is authorized to continue to discharge under the terms of 2014 general permit until such time as the Department either:
  - a. Issues coverage to the Permittee under this general permit; or
  - b. Notifies the Permittee that the discharge is not eligible for coverage under this general permit.
2. Failure to submit an NOI by [EFFECTIVE DATE + 90 DAYS] will result in a condition where the permittee will be operating with no permit coverage.
3. Expiration of This General Permit on [EFFECTIVE DATE + 5 YEARS]. If this general permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 47 CSR 10 and remain in force and effect for those entities that are covered by the general permit on the expiration date.

#### **H. Termination of Permit Coverage**

Notwithstanding Part I.D, the Permittee's coverage under this general permit will terminate upon the occurrence of any of the following conditions.

1. The Permittee is granted coverage for discharges from its regulated MS4 under a new or reissued general permit or an individual WV/NPDES permit;
2. The Permittee notifies the Department that the MS4 municipality or facility has ceased operations or unincorporates;
3. The Department grants a waiver to the permit requirement in accordance with 40 CFR §122.32(a);

4. The Department terminates coverage under this general permit in accordance with 40 CFR § 122.28(b), 47 CSR 10-9, and or Part VI.A.4 of this permit, as applicable.

## **PART II. STORMWATER MANAGEMENT PLAN**

### **A. General Requirements**

The Permittee shall develop, implement, and enforce a Stormwater Management Plan (SWMP) designed to reduce the discharge of pollutants from the regulated MS4 to the Maximum Extent Practicable (MEP) in accordance with this permit, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, West Virginia Code, and their attendant regulations.

The SWMP shall include, at a minimum, the following written components:

1. The roles and responsibilities of each of the Permittee's divisions and departments in the implementation of the requirements of the permit tasked with ensuring that the permit requirements are met;
2. If the Permittee utilizes another entity to implement portions of the MS4 program, including MS4 operators submitting a joint NOI and sharing responsibility for implementing the SWMP, a copy of all written agreements. The description of each party's roles and responsibilities, including any written agreements with third parties, shall be updated as necessary;
3. A list of all waters that receive a discharge from the MS4 owned or operated by the Permittee, including the following information for each such receiving water:
  - a. The names of the receiving surface waters;
  - b. Identification of any impairments in the West Virginia Combined 2018/2020/2022 305(b)/303(d) Integrated Water Quality Monitoring and Assessment Report; and
  - c. Identification of any TMDLs.
4. For each Minimum Control Measure (MCM) in Part III, the following information shall be included:
  - a. Each SWMP requirement stated in Part III;
  - b. A description of the BMPs or strategies that the Permittee anticipates will be implemented to demonstrate compliance with the permit conditions in Part III;
  - c. The standard operating procedures or policies necessary to implement the BMPs;
  - d. The measurable goal by which each BMP or strategy will be evaluated (by reference to the goals stated in the reporting and evaluation sections of Part III); and
  - e. The persons, positions, departments, and/or co-permittees responsible for implementing each

BMP or strategy.

5. A list of documents incorporated by reference, including the version and date of the document being incorporated; and
6. A copy of any Pollution Reduction Plans developed in accordance with Part V.

#### **B. Preparation of New or Revised SWMP**

The following conditions shall govern the preparation of revised SWMPs by existing Permittees or new SWMPs by new Permittees.

1. Existing Permittees. Each Permittee covered by General Permit No. WV0116025 as of the effective date of this general permit must update its SWMP to meet the requirements of this general permit. The updated SWMP may be submitted to the Department for a courtesy review.. The Department may, at its discretion, provide comments and recommendations upon receipt of the updated SWMP. Until such time that the SWMP is updated in accordance with this subsection, the Permittee shall continue to implement the SWMP in effect as of the effective date of this general permit.
2. New Permittees. No later than 180 days following the date of permit coverage, a new Permittee shall submit to the Department a schedule for the development and implementation of each component of the SWMP listed in Part II.A of this general permit. Upon approval by the Department, the Permittee shall comply with the schedule. If the Department provides no response within 60 days of the submission, the Permittee shall comply with the schedule as submitted.
3. Existing and New Permittees. The Permittee shall post the most up-to-date version of the SWMP on the Permittee's website, if available. If the Permittee does not operate a website, a copy of the SWMP shall be provided to any person upon request.

#### **C. Sharing Responsibility**

In accordance with 40 CFR § 122.35, two or more Permittees may rely on one another to satisfy one or more permit obligations, provided the SWMP contains a clear description of the parties' agreement (as stated in Part II.A.2). However, each Permittee remains responsible for compliance with all terms of the general permit.

Each party must confirm the terms of the agreement(s) in writing and retain copies of the agreement(s) for the duration of this general permit, including any automatic extensions of the permit term.

#### **D. Subsequent Review and Revision of the SWMP**

Revisions to the SWMP are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality to the MEP. As such, revisions made in accordance with this general permit as a result of the iterative process do not require modification of this permit. The Permittee shall summarize revisions to SWMP as part of the Annual Report as described in Part IV.B.

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**E. Legal Authority to Implement the SWMP**

The Permittee shall utilize the legal authority provided by the laws and regulations of the State of West Virginia to control discharges to and from the MS4 as required by this general permit and described in the SWMP. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order, or interjurisdictional agreements.

### **PART III. MINIMUM CONTROL MEASURES**

The Permittee shall implement each of the six Minimum Control Measures (MCMs) as described in this Part III within its MS4 Service Area. Permittees are encouraged to work with other MS4 operators to implement these MCMs when appropriate.

#### **A. MCM 1: Public Education and Outreach**

##### **1. Objectives**

The Permittee shall implement a public education and outreach program designed to:

- a. Increase the public's knowledge of how to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;
- b. Increase the public's knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and
- c. Implement a diverse program with strategies that are targeted toward individuals or groups most likely to have significant stormwater impacts.

##### **2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Define High-Priority Stormwater Issues. The Permittee shall identify no fewer than three high-priority stormwater issues to meet the goal of educating the public in accordance with the objectives stated in Part III.A.1. High-priority issues may include, but are not limited to, the following examples: Chesapeake Bay nutrients, pet wastes, local receiving water impairments, TMDLs, high-quality receiving waters, litter control, BMP maintenance, anti-icing and deicing agent bulk storage, planned green infrastructure redevelopment, and illicit discharges from commercial sites. For each high-priority stormwater issue, the SWMP shall document the following:
  - i. The rationale for selection of each high-priority stormwater issue and an explanation of how each education or outreach strategy is intended to have a positive impact on stormwater discharges;
  - ii. The target audience to receive each high-priority stormwater message;
  - iii. The strategies from Table 1 that will be used to communicate each high-priority stormwater message; and
  - iv. The anticipated time periods the messages will be communicated or made available to the public.
- b. Implement Education and Outreach Strategies. The Permittee shall use two or more of the strategies listed in Table 1 per year to communicate to the target audience the high-priority

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stormwater issues identified in accordance with Part III.A.2.a, including how to reduce stormwater pollution.

<b>Table 1</b> <b>Strategies for Public Education and Outreach</b>	
<b>Strategies</b>	<b>Examples<sup>1</sup></b>
Traditional written materials	Informational brochures, newsletters, fact sheets, utility bill inserts, or recreational guides for targeted groups of citizens
Alternative materials	Bumper stickers, refrigerator magnets, t-shirts, or drink koozies
Educational Materials	Educational materials provided from the EPA or WVDEP, or made by other MS4's public interest, or environmental organizations.
Signage	Temporary or permanent signage in public places or facilities, vehicle signage, billboards, or storm drain stenciling
Media materials	Information disseminated through electronic media, radio, televisions, movie theater, newspaper, or GIS story maps
Speaking engagements	Presentations to school, church, industry, trade, special interest, or community groups
Curriculum materials	Materials developed for school-aged children, students at local colleges or universities, or extension classes offered to local citizens
Training materials	Materials developed to disseminate during workshops offered to local citizens, trade organization, or industrial officials
Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education or curriculum requirements, or watershed walks, and ways in which the public can become involved in conservation efforts.
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecosystem restoration projects, TMDL development, voluntary residential low impact development, or other stormwater issues

1. Examples provided for illustrative purposes; not meant to be all-inclusive or limiting.

### 3. Reporting and Evaluation

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 1, the Annual Report shall include the following information for the reporting year:

- a. The high-priority stormwater issues the Permittee addressed in the public education and outreach program;
- b. A summary of the public education and outreach activities conducted for the report year.. This summary shall also include numeric tracking where applicable, of outreach strategies. For example only: number of people who attended meetings or other outreach activities, the number of flyers sent out, the number of surveys completed;

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- c. A description of any changes in high-priority stormwater issues for the upcoming year, including strategies used to communicate high-priority stormwater issues or target audiences for the public education and outreach plan. The Permittee shall provide a rationale for any of these changes.

## **B. MCM 2: Public Involvement and Participation**

### **1. Objectives**

The Permittee shall implement a public involvement and participation program designed to:

- a. Ensure that information about the MS4 program activities is readily available to the public;
- b. Allow the public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding land disturbing activities, or other potential stormwater pollution concerns; and
- b. Provide opportunities for the public to provide comments on the Permittee's SWMP.

### **2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Ensure MS4 Program Information Is Readily Available to the Public. The Permittee shall ensure that information about the MS4 program is readily available to the public. If the Permittee maintains a suitable website, the information may be posted online to a page dedicated to the MS4 program. If the Permittee does not operate a suitable website or determines that the posting of the information online would not be the most effective way to reach its target audience, the Permittee may instead keep publicly available copies of the information in an easily accessible location including, but not limited to, a public library, community center, or local government building, during normal business hours. The SWMP shall include a list of the information made publicly available and the rationale for the selected method of dissemination. Copies of the following will be made available to the public in accordance with this subsection:
  - i. This general permit and the Permittee's coverage letter;
  - ii. The most current SWMP;
  - iii. The Annual Report submitted to the Department for each year of the term covered by this general permit;
  - iv. Documentation of the methods available to the public to provide comments, suggestions, recommendations, or other input on the SWMP and Annual Report, which methods may be consolidated with the complaint and reporting methods referenced in the next subsection (Part III.B.2.a.v); and

- v. Documentation of the methods available to the public to report potential illicit discharges, improper disposal, spills to the MS4, land-disturbing activity complaints, other potential stormwater pollution concerns in accordance with the respective public participation requirements of MCM 3 (Part III.C.2.b.v), MCM 4 (Part III.D.2.f); and MCM 5 (Part III.E.2.i). The Permittee may provide separate public reporting and complaint methods for MCMs 3, 4, and 5, or a single, comprehensive method through which all public reports and complaints may be submitted to the Permittee.
- b. Provide Public Involvement Opportunities. The Permittee shall implement no fewer than three activities per year from two or more of the categories listed in Table 2 to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects. The SWMP shall describe the public involvement opportunities to be implemented by the Permittee, the anticipated time period the activities will occur, and the water quality benefits expected to be obtained by each activity.

<b>Table 2</b> <b>Public Involvement Opportunities</b>	
<b>Strategies</b>	<b>Examples<sup>1</sup></b>
Monitoring	Establish or support citizen monitoring group
Restoration	Stream, watershed, shoreline, or park clean-up day, adopt-a-waterway program, tree plantings, and riparian buffer plantings
Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education or curriculum requirements, or watershed walks
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecosystem restoration projects, TMDL development, voluntary residential low impact development,, or other stormwater issues
Public comment	Issue public notice for comments on SWMP updates or other MS4 program activities (provided a response to comments is prepared)
Disposal or collection events	Household hazardous chemicals collection, vehicle fluids collection
Pollution prevention	Adopt-a-storm drain program, implement a storm drain marking program, promote use of residential stormwater BMPs, implement pet waste stations in public areas, adopt-a-street program

1. Examples provided for illustrative purposes; not meant to be all-inclusive or limiting.

2. Activities that continue for more than one year can be credited for each year.

- c. Public Comment on the New or Updated SWMP. Within 30 days of submitting the new or updated SWMP to the Department in accordance with Part II.B, the Permittee shall publish a public notice that the SWMP is available for review and comment by the public. The notice shall be posted to the Permittee's website if the Permittee maintains a website dedicated to the MS4. If the Permittee does not maintain a website, the notice shall be published in a newspaper of general circulation in the MS4 service area. The notice shall state (i) where the public can obtain a copy of the SWMP; (ii) contact information for a person designated to accept comments on or answer questions about the SWMP; and (iii) a period of no less than 60 days for the public to ask questions or request information (telephone) and submit written comments on the SWMP. The Permittee shall consider and prepare a written response to each written comment received during the comment period. The response to comments shall be



sent to any commenter who provided contact information.

The Permittee may not count its compliance with this public comment and response requirement as an “activity” for the purpose of complying with the public involvement requirements in Part III.B.2.b. However, any subsequent public notice and comment opportunities provided on other elements of the Permittee’s MS4 program may be counted as “activities” for the purpose of Part III.B.2.b.

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 2, the Annual Report shall include the following information for the reporting year:

- a. A summary of all public comments received by the Permittee under Part III.B.2.c and the Permittee’s written responses to each comment. The summary should identify any changes the Permittee made to the SWMP in response to a public comment. Documentation of the public notice issued under Part III.B.2.c shall also be included;
- b. A summary of any stormwater pollution complaints received from the public, excluding natural flooding complaints, and how the Permittee responded;
- c. A link to the Permittee’s dedicated MS4 program website or the location where publicly accessible MS4 documents are maintained;
- d. A description of the public involvement activities implemented by the Permittee. To the extent such information is reasonably available or voluntarily disclosed by the participants, the Permittee shall include (1) an estimate of the number of participants in the activity and (2) a summary of the demographic characteristics of the participants;
- e. An evaluation of whether the public involvement activities implemented during the year were beneficial to improving water quality (to the extent practicable); and
- f. A description of any changes in the Permittee’s public involvement activities for the upcoming year, including the rationale for any such changes.

## **C. MCM 3: Illicit Discharge Detection and Elimination**

### **1. Objectives**

The Permittee shall implement an illicit discharge and detection elimination (IDDE) program designed to:

- a. Appropriately map the regulated MS4; and
- b. Implement measures to effectively identify and eliminate illicit discharges.

### **2. Implementation**

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To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Maintain an MS4 Map. The Permittee shall maintain a map of the regulated MS4. The SWMP shall either (1) include the MS4 map as an attachment or, (2) if the map is maintained primarily in a digital form, identify the format of the digital version and where the relevant files are primarily stored or hosted. . The map shall be updated at least annually to reflect any new or revised relevant information obtained by the Permittee in the previous year. Existing Permittees shall continue to maintain their MS4 maps in accordance with this general permit. New Permittees shall prepare an MS4 map within 2 (Two) years from submission of the NOI. The Permittee's MS4 will be formatted as described below.
  - i. The map shall identify and show the location of the following elements:
    - (1) Known MS4 outfalls;
    - (2) Known connections to the MS4;
    - (3) Receiving waters for discharges from the MS4, with labels for any waters listed as impaired or subject to an approved TMDL;
    - (4) Structural stormwater BMPs owned, operated, or maintained by the Permittee, and which discharge to the MS4;
    - (5) Boundary of the regulated MS4 service area; and
    - (6) Any other relevant information (e.g., land uses) the Permittee elects to include.
  - ii. The map shall be formatted at a legible scale and contain conventional map markings, including:
    - (1) North arrow;
    - (2) Scale bar; and
    - (3) Legend explaining the meaning of all symbols, color codes, or other representations.
  - iii. The Permittee shall maintain a digital boundary of the current MS4 area. These files must be georeferenced. Examples of acceptable boundaries are those used in GIS mapping which include shapefiles, autocad drawings, or other digital boundaries such as KMZ or KML files.
- b. Implement an IDDE Program. The Permittee shall adopt and implement an IDDE program with procedures set forth in the SWMP to investigate, track, and respond to potential illicit discharges. Except as noted below, Permittees shall update their IDDE programs, or develop an IDDE program for new Permittees, in accordance with this general permit to accompany the SWMP submitted to the Department under Part II.B. The IDDE Program shall consist of the following elements:
  - i. Unauthorized Discharge Prohibition. Excluding authorized non-stormwater discharges

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identified in Part I.E and Appendix C, the Permittee shall prohibit non-stormwater discharges into the MS4 by ordinance or other legal mechanism to the extent allowable under Federal, State, or Local law. The ordinance or mechanism shall provide for enforcement actions against persons found to be in violation. An existing Permittee must review and, if necessary, update its IDDE ordinance or mechanism within 12 months of the effective date of this general permit. A new Permittee must adopt an IDDE ordinance by the date stated in its SWMP. The legal mechanism shall be cited or referenced in the SWMP.

- ii. Other Relevant Legal Authorities. The SWMP shall include a description of the legal authorities, policies, standard operating procedures, or other legal mechanisms available to the Permittee to eliminate identified sources of ongoing illicit discharges, including procedures for using legal enforcement authorities.
- iii. Dry Weather Screening of High-Priority Outfalls. The Permittee shall implement a risk-based screening program to assist in detecting and eliminating illicit discharges. The SWMP shall include a schedule and methodology to evaluate at least 20% of the Permittee's MS4 outfalls, or 50 outfalls, whichever is less, each year. The Permittee shall use, as appropriate, mapping, past history of illicit discharges, upstream entities or facilities, public complaints, and available water quality data to determine areas with high potential for illicit discharges and improper disposal. Dry weather screening activities shall be prioritized in these areas. The SWMP shall identify high-priority outfalls and provide the rationale for the prioritization decisions. It also should include a copy of the inspection report form that will be completed for each outfall screening event. The inspection form shall, at a minimum, document the following:
  - (1) The location and/or unique identifier for the outfall;
  - (2) Time since last runoff-producing precipitation or snowmelt event;
  - (3) Whether the outfall is discharging and, if so, a description of the estimated discharge rate and visual characteristics of the discharge (e.g., odor, color, clarity);
  - (4) Any observed indicators of a possible illicit charge, including floatables, deposits, stains, and unusual vegetative conditions (e.g., dying or dead vegetation, excessive vegetative growth); and
  - (5) The inspector's opinion as to whether the observed conditions indicate the potential for an ongoing or unknown past illicit discharge.
- iv. Investigation of Suspected Illicit Discharges. The SWMP shall document procedures the Permittee will follow to investigate suspected discharges. At a minimum, an investigation will be conducted for each known or suspected illicit discharge documented during a dry weather screening event, reported by a member of the public or other third party, or otherwise observed by Permittee's staff. If the Permittee is unable to identify the source of an illicit discharge within six months of beginning the investigation, then the Permittee shall document that the source remains unidentified. If the observed discharge is intermittent, the Permittee shall document that attempts to observe the discharge flowing were unsuccessful. A report shall be generated for each investigation, which shall, at a

minimum, record the following:

- (1) Date the known or suspected illicit discharge was initially observed or report and the source of the information (e.g., dry weather screening report, citizen complaint);
  - (2) Results of the investigation, including the source, if identified;
  - (3) Resolution of the investigation, including whether any remediation or enforcement actions were taken; and
  - (4) Date the investigation was closed.
- v. Public Reports and Complaints. The Permittee shall establish and maintain methods by which the public can report water quality complaints, including potential illicit discharges. The Permittee must publish a phone number, email address (or web-based form), and/or mailing address for the public to submit water quality complaints. The methods of submitting a complaint shall be published on the MS4 section of the Permittee's website if Permittee maintains such a website.

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 3, the Annual Report shall include the following information for the reporting year:

- a. A statement confirming that the MS4 map was updated to reflect any relevant changes since the last Annual Report and, if applicable, a summary of the updates;
- b. A summary of any revisions to the Permittee's prohibition on illicit discharges or other relevant legal authorities during the reporting year;
- c. The methods maintained by the Permittee for the public to report potential illicit discharges or other water quality complaints, and a summary of any water quality complaints received through those methods from the public and the Permittee's response to the same. (The Permittee need not repeat any summaries that are included in the section of the Annual Report for MCM 2 (Part III.B.3));
- d. A summary of the dry weather screening events completed during the reporting year, including the number of outfalls screened and the number that presented evidence of possible illicit discharges;
- e. A summary of illicit discharge investigations completed during the year. The summary must include the number of investigations that determined that an illicit discharge is unlikely to have occurred; the number of investigations that were inconclusive; and the number of investigations for which an illicit discharge was determined likely or confirmed. For each likely or confirmed illicit discharge, the Permittee shall provide a summary of how the incident was resolved, including any remediation or enforcement actions; and
- f. Provide a description of the of the permittees IDDE program evaluation, and a description of

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any changes for the upcoming year as a result of the program evaluation, including the rationale for any such changes..

#### **D. MCM 4: Controlling Runoff from Construction Sites**

##### **1. Objectives**

The Permittee shall implement a program to reduce pollutants in stormwater runoff from construction activities in the MS4 Service Area that result in a land disturbance of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater, unless such activities are exempt from NPDES permitting requirements by Federal or State law ("Regulated Construction Activities").

##### **2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Legal Authority. The Permittee's SWMP shall document that the Permittee has adopted an ordinance, regulation, or other similar enforceable legal authority to regulate land-disturbing activities that meet or exceed the criteria stated in Part III.D. The Permittee must have authority to (1) review and approve Regulated Construction Activities; (2) prohibit Regulated Construction Activities that do not comply with requirements of the program; (3) inspect Regulated Construction Activities; (4) issue stop work orders to operators of non-compliant construction activities; and (5) enforce violations. The Permittee shall implement all requirements of Part III.D to the extent of its legal authority, and the SWMP shall document and explain any provisions of Federal or State law that could materially limit or affect the Permittee's authority to implement any provisions of this part;
- b. Stormwater Pollution Prevention Plan Review and Approval. The Permittee shall require by ordinance, regulation, or similar mechanism that any person proposing to engage in a Regulated Construction Activity submit a proposed Stormwater Pollution Prevention Plan (SWPPP) to the Permittee for review and approval. At a minimum, an approvable SWPPP must satisfy the criteria and standards minimize water quality impacts. The MS4 shall have authority to request additional information from the applicant and require revisions to the SWPPP to ensure compliance with the General Permit requirements and any other local requirements. The Permittee shall not approve a proposed SWPPP for a Regulated Construction Activity until the operator provides documentation that the Department has issued NPDES permit coverage for construction stormwater discharges from the activity by an (1) individual WV/NPDES permit or (2) a general WV/NPDES permit (e.g., WV/NPDES Permit No. WV0115924, WV/NPDES Permit No. WV0116815). If a relevant NPDES stormwater discharge permit issued by the Department satisfies the minimum requirements listed in Appendix C, the Permittee may presume the SWPPP satisfies the requirements of this subsection except any additional local requirements adopted by the Permittee. SWPPP approvals shall be issued in writing by mail, email, web-based system, or other similar method. The Permittee shall prohibit the commencement of any Regulated Construction Activity without a SWPPP approved by the Permittee. The Permittee's procedures for reviewing and approving SWPPPs shall be documented in its SWMP;
- c. Inspections. The Permittee shall develop and implement a program to inspect Regulated

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Construction Activities for compliance with approved SWPPPs. The inspection program procedures shall be incorporated into the SWMP and shall include, at a minimum, the following elements:

- i. Inspection Frequency. Each Regulated Construction Activity shall be inspected at least once during the period of active land disturbance. High-priority construction activities must be inspected at least once per month. The SWMP shall define high-priority construction activities to include (1) projects that have a land-disturbance area greater than 5 acres; (2) projects that drain to waterbody subject to a TMDL; and, as appropriate, (3) any other project types or project locations determined by the Permittee to present an elevated risk of impacts to water quality based on local conditions.
  - ii. Inspection Report Forms. To ensure that Regulated Construction Activity inspections are conducted in a consistent manner, the Permittee shall develop a standardized inspection report form to be completed by the Permittee's inspectors. The inspection report forms shall, at a minimum, include entries for the following items: (1) SWPPP and CGP are maintained onsite; (2) BMPs are installed in accordance with the SWPPP; (3) BMPs are properly maintained; (4) disturbed soils are stabilized in accordance with the SWPPP; (5) documentation is maintained demonstrating that the operator is conducting self-inspections and maintenance on the frequency required by the SWPPP; and (6) documentation that any corrective actions prescribed by the operator's inspector, the Permittee, or the Department have been completed in a timely manner as required. The form shall include a space to document any deficiencies discovered during the inspection.
  - iii. Communication of Inspection Findings to Operators. A copy of each inspection report form (or an abbreviated or modified version thereof documenting the inspector's findings) shall be provided to the owner or operator of the Regulated Construction Activity as soon as practicable, but no later than 7 days. Any pollution event must be reported to the operator immediately upon discovery. The communication shall include an instruction to complete any necessary maintenance or corrective actions within 24 hours.
- d. Compliance and Enforcement. The Permittee shall develop standard compliance and enforcement procedures for Regulated Construction Activity operators that fail to comply with any requirements imposed by the Permittee under this Part III.D (MCM 4). The procedures shall outline the circumstances and measures to be employed to bring operators into compliance, including, as appropriate, (1) notices to correct SWPPP deficiencies per Part III.D.2.c.iii, (2) warning letters, (3) orders, instructions, or other legal mechanism to require that operators take corrective action to remedy significant or repeated noncompliance (including, when appropriate, an order to stop work until the deficiencies are corrected), and (4) directives to minimize or remediate environmental or property damage result resulting from SWPPP noncompliance (e.g., retrieving sediment deposited outside of the construction BMPs). The procedures shall outline an enforcement process for significant and/or chronic noncompliance, including, as appropriate, penalties, corrective actions, legal actions, or referral to other regulatory or law enforcement authority. These procedures shall be incorporated into the Permittee's SWMP. The Permittee shall implement the compliance and enforcement procedures developed under this subsection.

- e. Public Reports and Complaints. The Permittee shall develop as part of its SWMP a program to accept, track, and respond to substantive complaints from the public related to BMP implementation and stormwater discharges from Regulated Construction Activities to the Permittee's MS4. As part of the program, the Permittee shall publish information on its website (if one is maintained) or if no website exists, through other appropriate means advising the public how to report stormwater-related problems at the sites of Regulated Construction Activities, including an email address (or web-based form) and phone number available to receive reports. The Permittee shall log all public reports and complaints in a tracking system, which shall include a (1) summary or copy of the complaint; (2) actions taken to investigate the complaint; and (3) whether any compliance, enforcement, or other actions were taken as a result of the investigation. Permittees may use the example complaint tracking form template in Appendix D for this purpose. The Permittee shall provide a response to any commenter that provided contact information within 30 days of receipt of complaint. However, the Permittee need not provide responses to individual commenters if it elects to post a record of public complaints and their resolutions to its website.
- f. Recordkeeping. With respect to Regulated Construction Activities, the Permittee shall maintain records of (1) SWPPP approvals; (2) SWPPP inspections conducted by or on behalf of the Permittee; (3) enforcement and compliance actions taken by the Permittee; and (4) public reports and complaints and the Permittee's responses thereto.

### 3. Reporting and Evaluation

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 4, the Annual Report shall include the following information for the reporting year:

- a. Any material changes to the relevant legal authorities identified in the SWMP in accordance with Part III.D.2.a, including an explanation of the beneficial or adverse effect the change may have on the Permittee's ability to implement the requirements of Part III.D;
- b. Any material changes in the local requirements for SWPPPs, if any, adopted by the Permittee;
- c. The number of SWPPPs submitted to the Permittee for review and the respective number of approvals and denials issued;
- d. A summary of compliance and enforcement actions taken by the Permittee, including the total number of each type of compliance actions and enforcement actions implemented;
- e. An evaluation of the effect of the Permittee's compliance and enforcement actions have had on facilitating compliance with requirements of this Part III.D by Regulated Construction Activity operators. This evaluation shall be based on a comparison of rates of noncompliance and public reports compared to previous years (with due consideration of circumstances that could affect the number of documented noncompliance incidents, such as increased construction activity, more frequent inspections, or natural variability) and any other appropriate factors. The evaluation shall also document any modifications to the compliance and enforcement processes in the Permittee's SMWP in response to the evaluation.
- f. Attach a copy of the public report and complaint tracker developed in accordance with Part

III.D.2.f.

**E. MCM 5: Controlling Runoff from New Development and Redevelopment**

**1. Objectives**

The Permittee shall implement a post-construction stormwater management program to reduce the discharge of stormwater-based pollutants from development and redevelopment projects in the MS4 Service Area that have a land disturbance area of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater (“Regulated Development Projects,” “Regulated Redevelopment Projects,” or, collectively, “Regulated Projects”).

**2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions:

- a. Legal Authority. The Permittee’s SWMP shall document that the Permittee has adopted an ordinance, regulation, or other similar enforceable legal authority to regulate Regulated Projects that meet or exceed the criteria stated in Part III.D. The Permittee must have authority to (1) review and approve Regulated Projects; (2) prohibit discharges from Regulated Projects that do not comply with requirements of the program; (3) inspect stormwater management facilities for Regulated Projects; and (4) enforce violations. The Permittee shall implement all requirements of Part III.E to the extent of its legal authority, and the SWMP shall document and explain any provisions of Federal or State law that could materially limit or affect the Permittee’s authority to implement any provisions of this part;
- b. Post-Construction Stormwater Management Plan Review and Approval. The Permittee shall require by ordinance, regulation, or similar mechanism that any person proposing to undertake a Regulated Project submit a proposed Post-Construction Stormwater Management Plan (PCSMP) to the Permittee for review and approval. At a minimum, an approvable PCSMP must satisfy the standards listed below in Part III.E.2.d to minimize water quality impacts. The Permittee shall have authority to request additional information from the applicant and require revisions to the PCSMP to ensure compliance with the applicable requirements of this part and any other local requirements. PCSMP approvals shall be issued in writing by mail, email, web-based system, or other similar method. The Permittee shall prohibit the commencement of any Regulated Projects without a PCSMP approved by the Permittee. The Permittee’s procedures for reviewing and approving PCSMP shall be documented in its SWMP;
- c. Post-Construction Development Standards. The Permittee shall adopt post-construction development standards in accordance with this subpart, which shall be documented in its SWMP. The Permittee may adopt one standard exclusively or approve more than one standard as alternatives available for use by developers. The Permittee also may define locations, categories of projects, or other criteria which dictate which standard may be used for a Regulated Development Project. Provided, however, that the SWMP shall clearly state which standard is required or permitted, and a reasonable grandfathering or transition period shall be adopted for any changes to the required standard.



- i. Development Standard 1: Runoff Retention. Regulated Development Projects must be designed to retain a volume of runoff equivalent to 1.0 inch (or greater) multiplied by the total post-construction impervious surface area on the site. The Permittee may allow the runoff retention standard to be lowered to 0.8 inch (or greater) for high-density development (greater than 7 units per acre), transit-oriented development, and projects that have direct or indirect water quality benefits in accordance with criteria identified in the SWMP. The Permittee may reject as incomplete any PCSMP relying on Development Standard 1 that does not include a completed copy of the most current version of Department's Compliance Spreadsheet (Appendix F) (or alternative documentation designated by the Permittee) demonstrating compliance with this standard;
- ii. Development Standard 2: Pollutant Reduction. Regulated Development Projects must be designed to reduce the total average annual load of Total Phosphorus (TP), Nitrates, Nitrites, and Total Suspended Solids (TSS) generated from the total post-construction surface area of the site. PCSMP plans shall use the TP, TSS, Nitrates, and Nitrite removal efficiencies for selected BMPs that have been published by the Chesapeake Bay Program, if available. If the Chesapeake Bay Program has not addressed the planned or installed BMP performance, the Permittee may accept the use of other Federal- or State-approved BMP design guidance or performance standards (e.g. State stormwater handbooks and design guidance manuals) to calculate BMP performance. A non-exclusive list of other Federal- or State-approved BMP design guidance or performance standards can be found in Appendix E. The Permittee may reject as incomplete any PCSMP relying on Development Standard 2 that does not include calculations and other support sufficient to demonstrate compliance with this standard;
- iii. Development Standard 3: Extended Infiltration. Regulated Development Projects must be designed to treat stormwater before releasing it to surface waters by extended or engineered infiltration. Extended filtration practices that are designed to capture and manage up to one inch of rainfall may discharge through an underdrain system. The Permittee may reject as incomplete any PCSMP relying on Development Standard 3 that does not include calculations and other support sufficient to demonstrate compliance with this standard; and/or
- iv. Development Standard 4: Equivalent Alternative. The Permittee may adopt an alternative standard for Regulated Development Projects provided it demonstrates to the Department's satisfaction that adoption of the standard for development projects will result in improved water quality compared to Development Standard 1, 2, or 3. To obtain approval for an equivalent standard, the Permittee must prepare a package including the development standard and supporting technical documentation. The package must be publicly noticed for at least 30 days. The package, any public comments received by the Permittee, and the Permittee's responses thereto shall be submitted to the Department. The Permittee may assume approval of the equivalent standard if the Department does not notify the Permittee within 90 days (1) that the standard is disapproved or (2) that additional information is needed to complete the Department's review.

In addition to satisfying one of the standards stated above, PCSMPs must comply with the general criteria and any other local requirements adopted by the Permittee.

- d. Post-Construction Redevelopment Standards. The Permittee shall adopt post-construction redevelopment standards in accordance with this Part III.E.2.d, which shall be documented in its SWMP. The standards listed below are alternatives, and the Permittee shall approve at least one of the standards for use on Regulated Redevelopment Projects. The Permittee also may define locations, categories of projects, or other criteria which dictate which standard may be used for a Regulated Redevelopment Project. Provided, however, that the SWMP shall clearly state which standard is required or permitted, and a reasonable grandfathering or transition period shall be adopted for any changes to the required standard.
- i. Redevelopment Standard 1: Runoff Retention. Regulated Redevelopment Projects must be designed to retain a volume of runoff equivalent to 0.8 inch (or greater) multiplied by the total post-construction impervious surface area on the site. The Permittee may allow the runoff retention standard to be lowered to 0.5 inch (or greater) for high-density development (greater than 7 units per acre), transit-oriented development, brownfield redevelopment, and projects that have direct or indirect water quality benefits in accordance with criteria identified in the SWMP. The Permittee may reject as incomplete any PCSMP relying on Redevelopment Standard 1 that does not include a completed copy of the most current version of the permittees Compliance Spreadsheet (Appendix E) demonstrating compliance with this standard;
- ii. Redevelopment Standard 2: Pollutant Reduction. Regulated Development Projects must be designed to reduce the total average annual load of Total Phosphorus (TP), Nitrates, Nitrites, and Total Suspended Solids (TSS) generated from the total post-construction surface area of the site. PCSMP plans shall use the TP, TSS, Nitrates, and Nitrite removal efficiencies for selected BMPs that have been published by the Chesapeake Bay Program, if available. If the Chesapeake Bay Program has not addressed the planned or installed BMP performance, the Permittee may accept the use of other Federal- or State-approved BMP design guidance or performance standards (e.g. State stormwater handbooks and design guidance manuals) to calculate BMP performance. A non-exclusive list of other Federal- or State-approved BMP design guidance or performance standards can be found in Appendix E. The Permittee may reject as incomplete any PCSMP relying on Development Standard 2 that does not include calculations and other support sufficient to demonstrate compliance with this standard; and/or
- iii. Redevelopment Standard 3: Extended Infiltration. Regulated Redevelopment Projects must be designed to treat stormwater before releasing it to surface waters by extended or engineered infiltration. Extended filtration practices that are designed to capture and manage up to one inch of rainfall may discharge through an underdrain system. The Permittee may reject as incomplete any PCSMP relying on Redevelopment Standard 3 that does not include calculations and other support sufficient to demonstrate compliance with this standard.
- iv. Redevelopment Standard 4: Impervious Area Reduction. Regulated Redevelopment Projects that produce a net decrease of impervious area within the limits of disturbance must comply with the following standard:

- (1) If the net impervious area is decreased by less than 50%, the post-construction TP

load shall be reduced by at least 20% below the predevelopment TP load; or

- (2) The impervious area is decreased by 50% or more.

The Permittee may reject as incomplete any PCSMP relying on Redevelopment Standard 3 that does not include calculations and other support sufficient to demonstrate compliance with this standard. Redevelopment Standard 4 may not be applied to a Regulated Redevelopment Project that produces a net increase of impervious area within the limits of disturbance.

- v. Redevelopment Standard 5: Equivalent Alternative. The Permittee may adopt an alternative standard for Regulated Redevelopment Projects provided it demonstrates to the Department's satisfaction that adoption of the standard for redevelopment projects will result in improved water quality compared to Redevelopment Standard 1, 2, 3, or 4. To obtain approval for an equivalent standard, the Permittee must prepare a package including the redevelopment standard and supporting technical documentation. The package must be publicly noticed for at least 30 days. The package, any public comments received by the Permittee, and the Permittee's responses thereto shall be submitted to the Department. The Permittee may assume approval of the equivalent standard if the Department does not notify the Permittee within 90 days (1) that the standard is disapproved or (2) that additional information is needed to complete the Department's review.

In addition to satisfying one of the standards listed above, PCSMPs must comply with the general criteria and any other local requirements adopted by the Permittee. However, Regulated Redevelopment Projects that are exclusively limited to maintenance and improvement of existing roadways (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects), sidewalks, and parking lots shall improve existing conditions where feasible but may be exempted from compliance with Redevelopment Standards 1 and 2. Any categories of exempt redevelopment activities shall be identified in the SWMP.

- e. Offsite Compliance Options. The Permittee may allow Regulated Projects to satisfy the applicable development or redevelopment standard, in whole or in part, through offsite compliance options. If the Permittee elects to permit offsite compliance options, the SWMP shall document (1) which offsite compliance options are available for use; (2) any eligibility criteria for the use of offsite compliance options; (3) submission and documentation requirements for project proponents seeking to use offsite compliance options; and (4) procedures for the review and approval of PCSMPs that propose offsite compliance options. The Permittee's offsite compliance program shall be materially consistent with the Department's *Guidance for Developing an Off-Site Stormwater Compliance Program in West Virginia* (Appendix F), including any subsequent Department-issued documents or regulations that may revise or supersede the guidance.
- f. Stormwater Management Facility Inspection and Maintenance. The Permittee shall operate a program to facilitate proper inspection and maintenance of stormwater management facilities constructed to comply with this Permit's development and redevelopment standards (Parts III.E.2.c & III.E.2.d). The program shall be documented in the SWMP and include the following components:

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- i. As-Built Drawings. The Permittee shall require that proponents of Regulated Projects submit certified as-built drawings of all stormwater management facilities required by a PCSMP no later than 90 days after the completion of the development or redevelopment project. The as-built drawings must be appended to Long-Term Maintenance Agreements (Part III.E.2.f.ii).
- ii. Long-Term Maintenance Agreements. The Permittee shall require that proponents of Regulated Projects (other than the Permittee) execute binding agreements for the long-term inspection and maintenance of any stormwater management facilities installed on Regulated Projects. Such agreements shall require the Regulated Project proponent, its successor, or other responsible party to (1) inspect stormwater facilities on an annual basis (unless the Permittee determines that an alternative schedule is appropriate); (2) perform any necessary maintenance within a prescribed period; and (3) provide inspection and maintenance records to the Permittee. Agreements shall be made in favor of the Permittee or a designated party acting on the Permittee's behalf. To the extent allowed by law, the Permittee may require that Long-Term Maintenance Agreements be recorded in the local property records and be made to run with the land.
- iii. Inspections by Permittee. The Permittee shall keep an inventory of stormwater management facilities subject to maintenance agreements. The Permittee shall inspect each stormwater management facility on the inventory at least once every five years. If the inspection identifies any deficiencies, the Permittee shall take reasonable action to enforce its rights under the Long-Term Maintenance Agreement or exercise its compliance and enforcement authority to compel the responsible party to complete any necessary maintenance.
- iv. Legacy Stormwater Management Facilities. For any stormwater management facility maintenance agreements or maintenance plans approved under prior versions of General Permit No. WV0116025, the Permittee shall continue to enforce those agreements and plans in accordance with their respective terms and conditions.
- g. Compliance and Enforcement. The Permittee shall develop standard compliance and enforcement procedures for Regulated Project owners that fail to comply with any requirements imposed by the Permittee under this Part III.E (MCM 5). The procedures shall outline the circumstances and measures to be employed to bring owners into compliance, including, as appropriate, (1) notices to correct deficiencies, (2) warning letters, and (3) orders, instructions, or other legal mechanisms, including those in the Long-Term Maintenance Agreement, to require that owners take corrective action to remedy significant or repeated noncompliance. The procedures shall outline an enforcement process for significant and/or chronic noncompliance, including, as appropriate, penalties, corrective actions, legal actions, or referral to other regulatory or law enforcement authority. These procedures shall be incorporated into the Permittee's SWMP. The Permittee shall implement the compliance and enforcement procedures developed under this subsection.
- i. Public Reports and Complaints. The Permittee shall develop as part of its SWMP a program to accept, track, and respond to substantive complaints from the public related to post-construction stormwater management and stormwater discharges from Regulated Projects to the Permittee's MS4 (excluding natural flooding events). As part of the program,



the Permittee shall publish information on its website (if one is maintained) or through other appropriate means advising the public how to report stormwater-related problems at the sites of Regulated Projects, including an email address (or web-based form) and phone number available to receive reports. The Permittee shall log all public reports and complaints in a tracking system, which shall include a (1) summary or copy of the complaint; (2) actions taken to investigate the complaint; and (3) whether any compliance, enforcement, or other actions were taken as a result of the investigation; and

- j. Recordkeeping. The Permittee shall maintain records of (1) PSCMP approvals; (2) inventory of stormwater management facilities; (3) Long-Term Maintenance Agreements; (4) stormwater management facility inspections conducted by or on behalf of the Permittee; (5) enforcement and compliance actions taken by the Permittee; and (6) public reports and complaints.

### 3. Reporting and Evaluation

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 5, the Annual Report shall include the following information:

- a. Any material changes to the relevant legal authorities identified in the SWMP in accordance with Part III.E.2.a, including an explanation of the beneficial or adverse effect the change may have on the Permittee's ability to implement the requirements of Part III.E;
- b. Any material changes in the local requirements for PCSMPs, if any, adopted by the Permittee;
- c. The number PCSMPs submitted to the Permittee for review and the respective number of approvals and denials issued;
- d. A summary of compliance and enforcement actions taken by the Permittee, including the total number of each type of compliance action and enforcement action implemented;
- e. An evaluation of the development and redevelopment standards approved for use by Permittee. The evaluation shall identify any (1) public complaints, (2) known water quality issues, or (3) observed downstream flooding or channel erosion problems reasonably attributable to post-construction stormwater discharges from Regulated Projects completed during the term of this permit. For any such issues identified during the reporting year, the Permittee shall identify the development or redevelopment standard utilized for the project and determine, if practicable, whether the issue was likely caused by (1) an apparent deficiency in the standard; (2) improper installation or maintenance of the required stormwater controls; or (3) another cause. The report shall document any adaptive changes to the SWMP made in response to the evaluation.
- f. A copy of the public report and complaint tracker developed in accordance with Part III.E.2.i.

## **F. MCM 6: Pollution Prevention & Good Housekeeping for Municipal Operations**

### **1. Objective**

The Permittee shall implement good housekeeping procedures designed to minimize the facility discharge of pollutants from municipal facilities and operations to the MEP.

### **2. Implementation**

To comply with this MCM, the Permittee shall complete each of the following actions, which must be consolidated into a written Pollution Prevention and Good Housekeeping Program included in the SWMP:

- a. Landscape Management Activities. Permittees shall update and/or adopt written procedures for implementing best management practices for each of the landscape management activities listed below to minimize the discharge of pollutants to the MS4. However, if the Permittee does not engage in any of the listed activities, it need not develop written procedures for that activity.
  - i. Use of Fertilizer. The application of fertilizers to municipal properties shall not exceed the application rates established by any applicable nutrient management plan. For areas not covered under nutrient management plans where fertilizer is applied, application rates shall not exceed manufacturer's recommendations;
  - ii. Use of Herbicides and Pesticides. The application of herbicides and pesticides to municipal properties shall not exceed the manufacturer's recommendations;
  - iii. Vegetation Disposal. Landscaping and vegetation management activities on municipal properties shall ensure that leaves, lawn and bush trimming, and other related vegetative debris is not stockpiled or disposed of in areas where it may be washed into the MS4; and
- b. Management of High-Priority Facilities. The Permittee shall identify all "High-Priority Facilities," which means any facilities owned or operated by the Permittee with drainage to the regulated MS4 where one or more of the following activities occur: (i) composting; (ii) equipment storage, cleaning, maintenance, and fueling; (iii) long-term bulk materials storage; (iv) pesticide, herbicide, fertilizer, or other chemicals storage; (v) recycling; (vi) anti-icing and deicing agent bulk storage, handling, and transfer; (vii) solid waste handling and transfer, and (viii) Permittee-owned or -operated vehicle washing, maintenance, and salvage. The Permittee may exclude any facilities that operate under a separate NPDES permit for stormwater discharges or for which the relevant materials or activities are not exposed to rain, snow, snowmelt, or runoff. For each High-Priority Facility, the Permittee shall develop a site-specific Stormwater Pollution Prevention Plan (SWPPP) that includes the following elements:
  - i. Site Description. A site description that includes a site map identifying all stormwater outfalls, direction of stormwater flows, existing source controls, and receiving water bodies;
  - ii. Responsible Personnel. All persons (by name or job title) responsible for implementing

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each requirement of the SWPPP shall be identified;

- iii. Potential Sources of Pollutants to the MS4. All potential pollutants, pollutant sources, and non-stormwater discharges shall be identified in the SWPPP;
  - iv. Pollution Prevention Procedures. The SWPPP shall contain written procedures and practices tailored to the facility that are designed to reduce and prevent pollutant discharges to the MS4;
  - v. Catalogue of Stormwater Controls. All structural control measures, such as stormwater management facilities and other stormwater pollutant source controls that are intended to or have the effect of avoiding or minimizing the discharge of stormwater pollutants to the MS4 shall be identified in the SWPPP;
  - vi. Inspection Procedures and Schedule. The SWPPP must include an inspection schedule mandating that each facility be inspected by qualified personnel on a frequency of no less than once per year. Inspections shall documentation compliance with the SWPPP, including, at a minimum, the following elements: (i) implementation of the Pollution Prevention Procedures; (ii) condition of each stormwater control identified in the SWPPP; and (iii) documentation that maintenance activities required by the SWPPP have been completed. The results of each inspection shall be documented in an inspection report. Any deficiencies identified in an inspection report shall be corrected as soon as practicable;
  - vii. Maintenance Procedures and Schedule. The maintenance requirements, including the maintenance frequency, for each stormwater control shall be identified in the SWPPP;
  - viii. Incident Log. A log of each unauthorized discharge, release, or spill incident at the facility that caused or was reasonably likely to cause a discharge of pollutants to the MS4, to include the following information: (i) date of incident; (ii) material discharged, released, or spilled; (iii) estimated quantity discharged, released, or spilled; and (iv) remediation or other corrective actions;
  - ix. Training. On at least an annual basis, all staff and contractors active at the facility and responsible for high-priority activities shall receive training on the requirements of the SWPPP, with an emphasis on the importance of eliminating unauthorized discharges to the MS4; and
  - x. Recordkeeping. All (i) inspection reports; (ii) maintenance reports; (iii) incident logs; and (iv) training records generated pursuant to the SWPPP shall be kept with the SWPPP.
- c. Construction and Other Land-Disturbing Activities. Through training, inspection, contract terms, and/or other effective means, the Permittee shall adopt measures to require that its employees and contractors comply with all applicable erosion and sediment control and stormwater discharge requirements for land-disturbing activities conducted for or on behalf of the Permittee.
  - d. Employee and Contractor Training. Staff and contractors engaged by the Permittee to conduct any of the activities covered by the Pollution Prevention and Good Housekeeping Program

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shall receive training on the procedures and practices relevant to their respective functions and responsibilities. The training shall be given to new employees and contractors within three months of their engagement. Refresher training shall be provided to each covered employee and contractor each year. For contractors, the Permittee may provide training or require that its contractors certify that employees and subcontractors performing the relevant tasks for the Permittee have received appropriate training in accordance with this Part III.F. In addition to the training requirements referenced elsewhere in this Part III.F, employees and contractors shall receive training on the following topics to the extent they may be relevant and applicable to the employee or contractor's functions for the Permittee:

- i. Proper Chemical and Material Storage and Use. This training shall be provided to employees and contractors whose duties involve the storing and use of chemicals or other materials that may cause pollution in stormwater discharging to the MS4. This includes fuel, oils, grease, strippers, and additional products for operation and maintenance of equipment and of buildings, streets, and the MS4.
- ii. Trash Management. Employees and contractors whose duties include managing solid waste or maintaining public lands (e.g., trash collection in public parks) shall receive training on the importance of keeping trash and litter from being washed into the MS4.
- iii. Fleet Maintenance. Employees and contractors responsible for vehicle fleet storage and maintenance shall receive training on preventing the discharge of pollutants to the MS4 from activities including (i) vehicle cleaning (e.g., discharge of polluted wash water) and (ii) vehicle maintenance (e.g., avoiding spills of fuel, oil, and other chemicals).

### **3. Reporting and Evaluation**

To allow the Department to determine whether the Permittee has successfully implemented the enforceable, measurable goals set forth in this general permit for MCM 6, the Annual Report shall include the following information:

- a. A summary of any written procedures developed or modified to implement the Pollution Prevention and Good Housekeeping Program during the reporting period;
- b. A statement confirming that the Permittee properly implemented the SWPPPs for High-Priority Facilities during the reporting year, except for any deficiencies that are documented in the Annual Report;
- c. A hardcopy, digital file, or link to a digital version of the current SWPPP, including all attachments and updates, for each High-Priority Facility, subject to the following: (i) Portions of the SWPPP that have been updated or revised during the reporting year (e.g., inspection reports) shall be attached to the Annual Report. (ii) Portions of the SWPPP that were previously submitted to the Department and have not been revised during the reporting year may be incorporated by reference into the Annual Report. For example, if the body of the SWPPP has not been revised during the reporting year, then only the inspection reports and other attachments that are updated must be attached to the Annual Report.
- d. A statement identifying any facilities that have been added to or removed from the list of High-Priority Facilities, with an explanation any removed facilities;

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- e. A summary of the inspections or other measures taken by the Permittee (except for training activities, which are reported in accordance with Part III.F.3.e, below) to determine that its employees and contractors complied with applicable erosion and sediment control and stormwater discharge requirements for land-disturbing activities conducted for or on behalf of the Permittee during the reporting year; and
- f. A summary of all employee and contractor training events conducted under this general permit for the reporting year, including the (i) completion date for the training activity; (ii) number of employees who completed the training activity; and (iii) a summary of the content and objectives of the training consistent with the Pollution Prevention and Good Housekeeping Program. However, if a contractor conducts its own training, then documentation that the contractor has certified that the training was conducted.

## **PART IV. MS4 PROGRAM EVALUATION, RECORDKEEPING, AND REPORTING**

### **A. Recordkeeping**

#### **1. Record Retention**

The Permittee shall keep records to verify compliance with this general permit for at least three years beyond the permit expiration date and any continuance as described in Part I.G.

#### **2. Availability of Records**

Upon request, records related to this general permit shall be submitted to the Department and released to the public in accordance with the Freedom of Information Act.

### **B. Annual Reports**

#### **1. Reporting Periods and Submission Deadlines**

An Annual Report shall be submitted to the Department no later than October 1 of each year in an electronic format via the Department's Electronic Submittal System (ESS) (<http://dep.wv.gov/ess>).

Each report shall cover the previous year from July 1 to June 30.

#### **2. General Contents of the Annual Report**

For existing Permittees, each Annual Report shall include the following information:

- a. The Permittee, system name, registration number, and permit number;
- b. The reporting period for which the Annual Report is being submitted;
- c. A signed certification as per 47 CSR 10-4.6;
- d. Each annual reporting item referenced in Part III for the six MCMs (refer to the subsections titled, "Reporting and Evaluation," under each of the six MCMs);
- e. An evaluation of the MS4 program implementation, including a review of each MCM, to determine the MS4 program's effectiveness and whether or not changes to the SWMP are necessary.

#### **3. Modified Annual Reporting Requirements for New Permittees**

For any Permittee receiving initial coverage under this general permit for the discharge of stormwater, the Annual Report shall include the following information:

- a. The general content items referenced above in Parts IV.B.2.a, IV.B.2.a.b, and IV.B.2.a.c;

- b. A status update on each component of SWMP being developed, including an assessment of whether the Permittee has been and/or anticipates being in compliance with the MCM-development schedule in the SWMP (Part II.B.2); and
- c. The general content items referenced above in Parts IV.B.2.d and IV.B.2.e, as modified by this subsection. A new Permittee need not include the reporting items in Parts V.B.2.d and V.B.2.e for any MCM that has not yet been implemented by the Permittee. The Permittee shall include the referenced reporting items in the Annual Report in the next reporting period following the first full year of implementing the MCM. For example, if a new Permittee begins implementing MCM 4 in March 2026, it need not include the reporting items in Parts IV.B.2.d and IV.B.2.e for MCM 4 until the Annual Report due October 1, 2027.

#### **4. Additional Reporting Requirements for Permittees Discharging to TMDL Waters**

For those Permittees with requirements established under Part V, the Annual Report shall include a status report on the implementation of any local TMDL BMP's in accordance with Part V.B. Dischargers to the Chesapeake Bay Watershed shall provide an update to the Pollution Reduction Plan in accordance with Part V.G.

## **PART V. TMDL SPECIAL CONDITIONS**

### **A. Applicability**

This Part V applies to any regulated MS4 that discharges to a waterbody subject to a TMDL that has been approved by EPA. For TMDLs based on biological impairment, the TMDL Implementation shall be based on the stressors for which a wasteload allocation is assigned to the Permittee.

1. Identification of the significant sources of the pollutants of concern discharging to the Permittee's MS4 that are not covered under a separate NPDES permit to the extent known.
2. The BMPs designed to reduce the pollutants of concern in accordance with Parts V.C to V.H, as applicable;
3. A schedule of anticipated actions planned for implementation during this permit term.
4. This permit does not authorize new sources or new discharges of pollutants of concern to impaired waters unless consistent with applicable state law.
5. Impaired waters are those that do not meet applicable water quality standards. Impaired waters are identified on the West Virginia, Section 303(d) list until a TMDL is developed and approved by USEPA.
6. Pollutants of concern are those pollutants for which the water body is listed as impaired. A current list of impaired water bodies and TMDL's for each MS4 entity known on the effective date of this permit is provided on the WVDEP website at the following URL:  
<https://dep.wv.gov/WWE/Programs/stormwater/MS4/Pages/default.aspx>. The website contains maps showing approximate MS4 boundaries along with 303(d) receiving streams. The maps are not the result of surveys.
  - i) Each permittee is required to examine the relevant map from the website and make a determination if the boundaries are sufficiently accurate for the WVDEP to capture the applicable 303(d) data on a watershed scale. If the provided mapping is deemed insufficient by the MS4 entity, the MS4 shall notify the director and provide updated boundaries.
7. The permittee shall summarize impairment pollutant-reduction activities completed during the year in the annual report.
  - a) New permittees shall develop and implement BMPs for areas within the MS4 that drain to impaired waters and describe the BMPs in the annual report.

## B. Implementation for MS4s Discharging into Waters with Approved State and Federal TMDLs

- a) Each discharger to a TMDL water shall propose BMPs to reduce pollutants of concern to the TMDL in the NOI.
- i) Upon approval of the NOI, and updates to the SWMP, permittees shall implement BMPs and each year thereafter, evaluate BMP effectiveness. The Annual Report shall contain the evaluation, along with proposed new BMPs to replace ineffective ones.
- b) Within six (6) months of notification from the Director of the approval of a new state or federal TMDL for which the permittee is identified as a source, permittees must develop and implement BMPs targeting the pollutant of concern and must gauge the effectiveness of selected BMPs in making progress toward achieving wasteload allocations.

## C. Bacterial TMDLs

The Permittee shall select and implement at least three of the strategies listed in Table 3 designed to reduce the load of bacteria to the MS4. Permittee may select and implement an alternative strategy provided the TMDL Implementation explains that it is no less effective than one of the strategies listed in Table 3. Selection of the strategies shall correspond to sources identified in Part V.B.4.

<b>Table 3</b> <b>Strategies for Bacteria Reduction Stormwater Control/Management Strategy</b>	
<b>Source</b>	<b>Strategies<sup>1</sup></b>
Domestic pets (dogs and cats)	<ul style="list-style-type: none"> <li>● Provide signage to pick up dog waste, providing pet waste bags and disposal containers.</li> <li>● Adopt and enforce pet waste ordinances or policies, or leash laws or policies.</li> <li>● Place dog parks away from environmentally sensitive areas.</li> <li>● Maintain dog parks by removing disposed of pet waste bags and cleaning up other sources of bacteria.</li> <li>● Protect riparian buffers and provide unmanicured vegetative buffers along streams to dissuade stream access.</li> </ul>
Urban wildlife	<ul style="list-style-type: none"> <li>● Educate the public on how to reduce food sources accessible to urban wildlife (e.g., manage restaurant dumpsters and grease traps, residential garbage).</li> <li>● Install storm drain inlet or outlet controls.</li> <li>● Clean out storm drains to remove waste from wildlife.</li> <li>● Implement and enforce urban trash management practices.</li> <li>● Implement rooftop disconnection programs or site designs that minimize connections to reduce bacteria from rooftops.</li> <li>● Implement a program for removing animal carcasses from roadways and properly disposing of the same (either through proper storage or through transport to a licensed facility).</li> </ul>
Illicit connections or illicit discharges to the MS4	<ul style="list-style-type: none"> <li>● Implement an enhanced dry weather screening and illicit discharge, detection, and elimination program beyond the requirements of Part III.C to identify and remove illicit connections and identify leaking sanitary sewer lines infiltrating to the MS4 and</li> </ul>



Illicit connections or illicit discharges to the MS4	implement repairs. <ul style="list-style-type: none"> <li>● Implement a program to identify potentially failing septic systems.</li> <li>● Educate the public on how to determine whether their septic system is failing.</li> <li>● Implement septic tank inspection and maintenance program.</li> <li>● Implement an educational program beyond any requirements in Part III.C to explain to citizens why they should not dump materials into the MS4.</li> </ul>
Dry weather urban flows (e.g., irrigation, car washing)	<ul style="list-style-type: none"> <li>● Implement public education programs to reduce dry weather flows from storm sewers related to lawn and park irrigation practices, car washing, powerwashing and other non-stormwater flows.</li> <li>● Provide irrigation controller rebates.</li> <li>● Implement and enforce ordinances or policies related to outdoor water waste.</li> <li>● Inspect commercial trash areas, grease traps, washdown practices, and enforce corresponding ordinances or policies.</li> </ul>
Birds (e.g., Canadian geese, pigeons)	<ul style="list-style-type: none"> <li>● Identify areas with high bird populations and evaluate deterrents, population controls, habitat modifications, and other measures that may reduce bird-associated bacteria loading.</li> <li>● Prohibit feeding of birds.</li> </ul>
Other Sources	<ul style="list-style-type: none"> <li>● Enhance maintenance of stormwater management facilities owned or operated by the Permittee.</li> <li>● Enhance requirements for third parties to maintain stormwater management facilities.</li> <li>● Develop BMPs for locating, transporting, and maintaining portable toilets used on Permittee-owned sites. Educate third parties that use portable toilets on BMPs.</li> <li>● Provide public education on appropriate recreational vehicle dumping practices.</li> </ul>

1. *Examples provided for illustrative purposes; not meant to be all-inclusive or limiting.*

#### **D. Local Sediment, Metals, and Nutrients TMDLs**

The Permittee shall reduce the loads associated with local sediment (including TSS and biological impairments caused by sediment), metal (including, without limitation, iron, aluminum, manganese, lead, and selenium), and nutrient (including phosphorus and nitrogen) TMDLs through implementation of one or more of the practices listed below. This subsection does not apply to the Chesapeake Bay TMDL, which is addressed in Part V.F. However, a BMP implemented or installed for purposes of the Chesapeake Bay TMDL can also be used for a local TMDL, and vice-versa.

1. One or more BMPs approved by the Chesapeake Bay Program. Pollutant load reductions generated by annual practices, such as street and storm drain cleaning, shall only be applied to the compliance year in which the annual practice was implemented.

With each Annual Report, the Permittee shall submit to the Department an update on the progress made toward achieving local TMDL Implementation goals for sediment, metals, and/or nutrients. The Permittee's compliance with its TMDL Implementation will constitute adequate progress toward attaining each applicable wasteload allocation.

#### **E. Polychlorinated Biphenyl (PCB) TMDLs**

The Permittee shall reduce the loads associated with PCBs through implementation of the following measures:

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1. The Permittee shall develop, maintain, or update, as appropriate, an inventory of potentially significant sources of PCBs owned or operated by the Permittee that drain to the MS4. The inventory shall include the following information for each potential source:
  - a. Location of the potential source;
  - b. Whether or not the potential source is from current site activities or activities previously conducted at the site that have been terminated (i.e., legacy activities); and
  - c. A description of any measures, if known, being implemented or to be implemented to prevent exposure to stormwater and the discharge of PCBs from the site.
2. If at any time during the term of this general permit, the Permittee discovers a previously unidentified significant source of PCBs within the MS4 Service Area, the Permittee shall notify the Department in writing within 30 days of discovery.

#### **F. Chloride TMDLs**

The Permittee shall reduce the loads associated with chlorides through implementation of the following measures:

1. No later than 36 months after the permit effective date, the Permittees shall develop an anti-icing and deicing agent education and outreach strategy that identifies target audiences (e.g., big box retailers) for increasing awareness of anti-icing and deicing agent application impacts on receiving waters and encourages implementation of enhanced BMPs for application, handling, and storage of anti-icing and de-icing agents used for snow and ice management.
2. Anti-icing and deicing agent education and outreach strategies shall contain a schedule to implement one or more of the strategies listed in Table 1 (Part III.A) per year to communicate to target audiences the importance of responsible anti-icing and deicing agent application, transport, and storage.
3. The Permittee shall implement an increased SWPPP inspection frequency of at least two times per year for any High-Priority Facility identified under Part III.F where anti-icing and deicing agent bulk handling and storage activities are occurring. One inspection shall occur during winter months when icy conditions are possible (generally, October to March) and the other shall occur during the warmer months when icy conditions are unlikely (generally, May to August). In its Annual Report, the Permittee shall evaluate the effectiveness of its SWPPP for these facilities based on the results of the inspections and any other relevant and available information. If the evaluation identifies any deficiencies in the implementation of the SWPPP or controls that are not performing as intended, it shall revise the SWPPP appropriately.

### **G. Chesapeake Bay TMDL**

West Virginia's plan for the Chesapeake Bay TMDL is to reduce or maintain pollutant levels in stormwater discharges from MS4s.

1. Notwithstanding Parts V.A and V.B., Permittees with stormwater discharges in the Chesapeake Bay drainage area must develop and submit a TMDL Pollution Reduction Plan (PRP) as a separate document from the SWMP. However, as appropriate, the PRP may incorporate by reference sections of the SWMP. The Permittee's PRP must be updated and be consistent with this Part V.F within twelve (12) months of the effective date of this permit. The PRP shall identify BMPs the Permittee will implement to minimize pollutant discharges to the MEP, consistent with the following provisions:
  - a. BMPs required for the PRP include ordinances for construction site operators to utilize effective sediment controls; minimize total area disturbance; phase construction to minimize disturbance at any one time; stockpile and reuse topsoil; compaction control measures; timely re-vegetation; and post-construction stormwater management controls and enforceable maintenance agreements. Ordinances must address the proper application of fertilizers and must provide for measures that reduce the washing of fertilizers off the site during storm events.
  - b. The PRP must address the reduction of impervious surfaces. Whether approving construction plans or replacing parking lots owned by the municipality, the Permittee must require non-pervious surfaces and/or permanent stormwater management systems that minimize the discharge of sediment from all development or redevelopment activity as described in part III.2.E.d.iv.
  - c. Required BMPs include ordinances for illicit connections to the MS4. The Permittee must inspect the drainage system to look for unauthorized connections and illegal dumping of materials into or near the system, where storm events may wash related pollutants into the system.
  - d. The PRP must address leaching from known poorly managed on-site sewage systems draining or discharging to the MS4 by documenting an ordinance or other regulatory mechanism that requires owners of such systems to make timely repairs.
  - e. The PRP must address leaking from sanitary sewer lines into the MS4 system, even when the MS4 Permittee is also the owner or operator of the sewage collection system, through an appropriate ordinance or other regulatory mechanism.
  - f. The PRP must include an ordinance to require pet owners and owners of other domestic animals to follow practices to keep waste from washing into the MS4. This may be done by, for example, requiring dog owners to pick up pet waste, designating geographical areas unsuitable for keeping livestock, or by requiring owners to install systems or barriers to keep waste from the MS4. The Permittee shall work with the West Virginia Department of Agriculture for guidance when developing this ordinance, if questions arise about the definition of "agriculture" to ensure compliance with NPDES exemptions.
  - g. The PRP shall describe a systematic approach for disconnecting roof-drains from the MS4 to

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be implemented by the Permittee. To address potential flooding, the Permittee shall consult with the local floodplain managers and other MS4 entities such as the WV Division of Highways prior to implementing this BMP.

- h. The PRP shall document the Permittee's enforcement strategy in a manner that clearly explains how inspections, violations, corrective actions, and penalties are to be implemented for all ordinances and other regulatory mechanisms implemented in compliance with the PRP.
  - i. The PRP shall document the Permittee's maintenance plan and schedule for the MS4. Open ditch systems shall be inspected and, where practicable, eroded banks on properties owned by the Permittee shall be stabilized. Streets shall be swept or otherwise cleaned of litter, debris, and sediment on a regular schedule. Splash grout and/or concrete systems shall be inspected and repairs made to damaged systems. Buried pipes shall be inspected, clogged pipes cleared, catch basins cleaned of debris. The maintenance schedule shall prioritize areas known by MS4 work crews to be problem areas.
  - j. The PRP shall include a long-term plan for routing and regulating stormwater from developing and redeveloping areas without increasing pollutant loading.
  - k. The PRP shall include a source control plan. New businesses seeking authorization to operate in an area draining to the MS4 must be evaluated by the Permittee for its potential to discharge pollutants to the MS4. Restaurants must be required to effectively manage trash and grease. Auto repair shops must manage oil, grease, and other materials to prevent spills and leaks into the system. Other businesses must be similarly evaluated. Procedures and/or structural controls must be approved by the Permittee and the controls must be inspected by the business operator on a routine basis, as well as by the Permittee on a frequency established in the PRP.
2. Annual Reporting of the PRP's BMP implementation and effectiveness is required. The Permittee shall summarize PRP status in the first report required by the Director. Each subsequent year, a detailed description of the progress made during the year under the PRP shall be submitted with the Annual Report. The progress report shall detail BMPs developed and implemented, state whether timelines established in the PRP have been met, and evaluate BMP effectiveness by enumerating measures such as construction acres developed under phasing approach, the distance (feet) of piping inspected, and so forth.

#### **H. Other TMDLs**

For any TMDL not addressed in Parts V.C to V.F, the Permittee shall include BMPs designed to reduce the discharge of the relevant pollutant from the regulated MS4 to the MEP. The selection of BMPs shall be informed by the TMDL report, including the wasteload allocation assigned to MS4s, and any other related or supporting documents.

## **PART VI. STANDARD NPDES PERMIT CONDITIONS**

### **A. Management Conditions**

#### **1. Duty to Comply**

The Permittee must comply with all conditions of this general permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.

#### **2. Duty to Mitigate**

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

#### **3. Permit Actions**

This permit may be modified, revoked and reissued, suspended, or revoked for cause in accordance with the provisions of Chapter 22-11-12 of the Code of West Virginia. The filing of a request by the Permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

#### **4. Property Rights**

This permit does not convey any property rights of any sort or any exclusive privilege.

#### **5. Signatory Requirements**

All applications, reports, or information submitted to the Director in accordance with the permit shall be signed and certified as required in Title 47, Series 10, Section 4.6 of the West Virginia Legislative Rules.

#### **6. Transfers**

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary.

#### **7. Duty to Provide Information**

The Permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

#### **8. Other Information**

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Where the Permittee becomes aware that it failed to submit any relevant facts in the NOI or submitted incorrect information in an NOI or in any report to the Director, it shall promptly submit such facts or information.

## **9. Inspection and Entry**

The Permittee shall allow the Director, an authorized representative, or an EPA representative, upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
- b. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

## **11. Outlet Markers**

A permanent marker shall be posted as close as practicable to the discharge location of the representative outfall or other outfalls contained in the approved SWMP in accordance with Title 47, Series 11, Section 9 of the West Virginia Legislative Rules.

## **12. Liabilities**

- a. Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.
- b. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- c. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- d. Nothing in this subsection shall be construed to limit or prohibit any other authority the



Director may have under the State Water Pollution Control Act, Chapter 22, Article 11.

## **B. Operation and Maintenance**

### **1. Proper Operation and Maintenance**

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the Permittee only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators, as classified by the WV Bureau of Public Health Laws, W. Va. Code Chapter 16-1, will be required except that in circumstances where the domestic waste treatment facility is receiving any type of industrial waste, the Director may require a more highly skilled operator.

### **2. Need to Halt or Reduce Activity Not a Defense**

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

### **3. Bypass**

#### **a. Definitions**

- i. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and
- ii. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- b. Bypass not exceeding limitations. The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts VI.B.11.3.c and VI.B.11.3.d of this permit

- c. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten (10) days before the date of the bypass. If the Permittee does not know in advance of the need for bypass, notice shall be submitted as required Part VI.D of this permit

#### **d. Prohibition of Bypass**

- i. Bypass is permitted only under the following conditions, and the Director may take

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enforcement action against a Permittee for a bypass, unless;

- (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of engineer equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - (3) The Permittee submitted notices as required under Part VI.B.3.c of this permit.
- ii. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part VI.B.3.d.i of this permit.

#### 4. Upset

- a. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitation if the requirements of Part VI.B.4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset. A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - i. An upset occurred, and that the Permittee can identify the cause(s) of the upset;
  - ii. The permitted facility was at the time being properly operated;
  - iii. The Permittee submitted notice of the upset as required in IV.2.b) of this permit; and
  - iv. The Permittee complied with any remedial measures required under Part VI.A.2 of this permit.
- d. Burden of proof. In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.



## **C. Monitoring and Reporting**

### **1. Monitoring Generally**

Discharge monitoring is not required for compliance purposes by this general permit. If the Permittee chooses to monitor stormwater discharges for informational or screening purposes, they may do so.

## **D. Other Reporting**

### **1. Reporting Spills and Accidental Discharges**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities or penalties established pursuant to Title 47, Series 11, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

Attached is a copy of the West Virginia Spill Alert System for use in complying with Title 47, Series 11, Section 2 of the Legislative rules as they pertain to the reporting of spills and accidental discharges (Appendix F).

### **2. Immediate Reporting**

- a. The Permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Agency's designated spill alert telephone number. A written submission shall be provided within five (5) days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- b. The following shall also be reported immediately:
  - i. Any unanticipated bypass which exceeds any effluent limitation in the permit;
  - ii. Any upset which exceeds any effluent limitation in the permit; and
  - iii. The Permittee complied with any remedial measures required by Part VI.A.2 of this permit.
- c. The Director may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.
- d. Compliance with the requirements of this subsection shall not relieve a person of compliance with Title 47, Series 11, Section 2

#### **4. Reporting Requirements**

- a. Planned changes. The Permittee shall give notice to the Director of any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge. Notice is required when:
  - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Series 10, Title 47; or
  - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under IV.2 of this section.
- b. Anticipated noncompliance. The Permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c. In addition to the above reporting requirements, all existing manufacturing, commercial, and silvicultural discharges must notify the Director in writing as soon as they know or have reason to believe:VI
  - i. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit.
  - ii. That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that pollutant under approved analytical procedure.
  - iii. That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a non-routine or infrequent basis of that toxic pollutant at levels which exceed ten times the detection limit for that pollutant under approved analytical procedure.

#### **4. Other Noncompliance**

The Permittee shall report all instances of noncompliance not reported under the above paragraphs at the time annual reports are submitted. The reports shall contain the information listed in Part VI.D.2.b. Should other applicable noncompliance reporting be required, these terms and conditions will be found in Part VI of this permit.

## **APPENDIX A DEFINITIONS**

Unless the context in which used clearly requires a different meaning, as used in this general permit:

“Annual practice” means a nonstructural best management practice such as street or storm drain cleaning that reduces pollution for one compliance year upon implementation.

“Annual Report” means a document submitted to the Department no later than October 1 of each year in an electronic format via the Department’s Electronic Submittal System that summarizes and evaluates the Permittee’s implementation of this general permit during the reporting year.

“Best management practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, policies, and other management practices to prevent or reduce the pollution of waters of the State of West Virginia. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal or drainage from material storage. BMP's can include structural as well as non-structural practices.

“CFR” means the Code of Federal Regulations.

“Clean Water Act” or “CWA” means Public Law 92-500, as amended by Public Law 95-217, Public Law 97-117 and Public Law 95-576; U.S.C. 1251 et seq.

“Common Plan of Development” is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The “plan” is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions and industrial parks.

“CSR” means the West Virginia Code of State Rules.

“Department” means the West Virginia Department of Environmental Protection.

“Director” means the Director of the Division of Water and Waste Management, West Virginia Department of Environmental Protection, or his/her designated representative.

“Dry Weather” means a period in which there has not been a measurable precipitation or snowmelt event within a twenty-four (24) hour period.

“Dry Weather Screenings” are on-site inspections of storm water outfalls during dry periods for the purpose of locating and evaluating the quality of discharges in an effort to reduce or eliminate pollution.

“EPA” means the United States Environmental Protection Agency.

“Evaluative Process” The use of collected data and best professional judgment to interpret received data, rather than accepting generalized assumptions.

“Existing Permittee” is the owner or operator of a regulated small municipal separate storm sewer that was authorized to discharge under General Permit No. WV0116025 (2014).

“Illicit Discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except (1) discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and (2) non-stormwater discharges listed in Appendix C of this general permit.

“Impervious” means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

“Long-Term Maintenance Agreements” means a formal written agreement or contract between a Permittee and a property owner that obligates the owner and its successors and assigns to inspect and maintain stormwater management facilities installed in accordance with this general permit in perpetuity.

“Maximum Extent Practicable” Each permitted entity shall select appropriate Best Management Practices (BMPs) based on an evaluative process which should include the following: Public input and acceptance, Consideration of the receiving water, Technical feasibility of selected BMP, Cost of implementation, Regulatory compliance, and Effectiveness.

“Minimum Control Measure” or “MCM” means the six programmatic elements of Part III of this general permit that are documented in the Permittee’s Stormwater Management Plan and which are designed to result in the reduction of the discharge of pollutants from the regulated Small MS4. The programmatic elements include: (1) Public Education and Outreach, (2) Public Involvement and Participation, (3) Illicit Detection and Elimination, (4) Construction Site Stormwater Runoff Control Stormwater, (5) Post Construction Stormwater Management, (6) Pollution Prevention and Good Housekeeping.

“Municipal Separate Storm Sewer System” or “MS4” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by any municipality, sewer or sewage board, State agency or Federal agency or other public entity that discharges directly to surface waters of the State of West Virginia that is designed or used for collecting or conveying storm water but which is not a combined sewer or part of a publicly owned treatment works.

“MS4 Service Area” means the drainage area served by a Permittee’s MS4 that is located (i) within the 2020 census urban areas with a population of at least 50,000 as determined by the Bureau of the Census and (ii) areas that have been otherwise designated by the Department or the United States Environmental Protection Agency. For an Existing Permittee, the MS4 Service Area shall also include any portions of the service area defined for Permit No. WV0116025 (2014) that lie outside the boundaries of (i) and (ii).

“New Permittee” is the owner or operator of a small municipal separate storm sewer that was not authorized to discharge under General Permit No. WV0116025 (2014) but who is required to submit a notice of intent to obtain authorization to discharge under this general permit.

“Notice of Intent” or “NOI” means a notification of intent to seek coverage under this general permit to discharge stormwater from a regulated small municipal separate storm sewer permit to waters of the State of West Virginia.

“National Pollutant Discharge Elimination System” or “NPDES” means a provision of the Clean Water Act which regulates the discharge of pollutants into waters of the United States. This federally mandated

permit program regulating point source discharges.

“Operator” means the owner or operator of any facility or activity subject to this general permit. In the context of stormwater associated with a construction project or land-disturbing activity, “operator” means any person associated with the project or activity that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site (i.e., the person is authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from an MS4, “operator” means the municipal or other governmental entity that owns or operates the regulated MS4.

“Outfall” means a point source as defined by 40 CFR § 122.2 at the point where a municipal separate storm sewer discharges to waters of the State of West Virginia and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

“Pollutant of concern” means a pollutant which cause a water body to be placed on the Section 303(d) list of impaired waters and for which a Permittee has been assigned a wasteload allocation in an applicable Total Maximum Daily Load.

“Post-Construction Stormwater Management Plan” or “PCSMP” means a plan developed by the operator of a regulated development or redevelopment project to minimize water quality impacts from stormwater discharges from the site after the completion of construction activities. The PCSMP must satisfy the standards adopted by the Permittee in accordance with this general permit and is subject to review and approval by the Permittee.

“Receiving water” means a surface water of the State of West Virginia into which stormwater is discharged from an outfall.

“Redevelopment,” including brownfield development, means any construction, alteration, or improvement, including, but not limited to, the demolition or building of structures, filling, grading, paving, or excavating, where existing land use is residential, commercial, industrial, or institutional. Ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements are not considered to be redevelopment activities for the purposes of this general permit.

“Regulated Construction Activity” means a construction activity in the MS4 Service Area that results in a land disturbance of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater, unless such activities are exempt from NPDES permitting requirements by Federal or State law.

“Regulated Development Project” means a development project in the MS4 Service Area that has a land disturbance area of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of development or sale that will result in land disturbance of one acre or greater.

“Regulated Redevelopment Project” means a redevelopment project in the MS4 Service Area that has a land disturbance area of (i) one acre or greater or (ii) less than an acre if part of a larger common plan of



development or sale that will result in land disturbance of one acre or greater.

“Regulated Small MS4” or “regulated MS4” means those portions of an MS4 that are (1) located in an urban area as determined by the 2020 Decennial Census of the United States Census Bureau with a population of at least 50,000; (2) designated by the Department or United States Environmental Protection Agency under the Clean Water Act and associated regulations; or (3) covered under General Permit No. WV0116025 (2014) as of the effective date of this general permit. An MS4, or portion thereof, that has been granted a waiver in accordance with 40 CFR §122.32(a) is not a regulated Small MS4.

“Reporting year” means the period from July 1 to June 30 of each year that is covered by an Annual Report submitted within three months of the conclusion of the period. For example, the Annual Report due by October 1, 2028, should cover the reporting year running from July 1, 2027, to June 30, 2028.

“Secretary” means the Secretary of the West Virginia Department of Environmental Protection, or his/her designated representative.

“Small municipal storm sewer system” or “Small MS4” means an MS4 that its not defined as “Large” or “Medium” by 40 CFR § 122.26(b). All MS4s in West Virginia are Small MS4s.

“Stormwater Management Program” or “SWMP” means a document describing the management program covering the duration of this general permit for a MS4 that includes a comprehensive planning process that involves public participation and intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the State law and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

“Stormwater Pollution Prevention Plan” or “SWPPP” means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges and required measures to minimize the water quality impacts from those discharges. In the context of stormwater associated with a construction project or land-disturbing activity, a SWPPP consists of an approved erosion and sediment control plan, approved post-construction stormwater management plan, and other provisions. In the context of stormwater discharges from an MS4, a SWPPP is a site-specific plan for managing stormwater discharges from a high-priority facility owned by the Permittee in accordance with Part III.F.2.b.

“Total Maximum Daily Load” or “TMDL” means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety calculated the pollutant loading that a waterbody can receive and still safely meet water quality standards.

“USC” means the United States Code.

“Wasteload Allocation” or “WLA” means the portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

**APPENDIX B  
NOTICE OF INTENT  
SUBMISSION PROCEDURE  
AND INFORMATION REQUIREMENTS**

**A. Submission Instructions**

Each MS4 operator required to submit a Notice of Intent (NOI) by Part I.C of this general permit must submit its NOI electronically using the Department's Electronic Submission System (ESS). ESS can be accessed at the following link: <http://dep.wv.gov/ess>.

Existing permittees may use their current ESS login to submit the NOI. New permittees must follow the instructions on the ESS website (<http://dep.wv.gov/ess>) to request an ESS login in advance of submitting the NOI.

The information necessary to populate the NOI must be input directly into an electronic form on ESS. The required information is stated in subsection B, below. When all information has been input on the electronic form, the system will give the Permittee the option of signing and submitting the NOI to the Department.

**B. Information Requirements**

Operators must enter the following information into the NOI form on ESS:

1. The name and location of the MS4 (including latitude and longitude coordinates);
2. The name of the owner or operator of the MS4;
3. The mailing address of the owner or operator of the MS4;
4. The type of MS4 (e.g., city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other);
5. The name, title, mailing address, telephone number, and email address for the following individuals:
  - a. The responsible official with authority to sign reports on behalf of the Permittee; and
  - b. The MS4 permit contact.
6. The following receiving waters information:
  - a. The names of the receiving surface waters to which the MS4 system discharges; and
  - b. Whether or not the receiving waters are listed as impaired in the West Virginia Combined 2018/2020/2022 305(b)/303(d) Integrated Water Quality Monitoring and Assessment Report; and



- c. Whether or not the receiving waters are subject to a TMDL.
7. The names of any physically interconnected MS4s to which the MS4 discharges;
8. A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures; and
9. If the two more MS4 operators are submitting a joint NOI, the information referenced below in subsection C.

#### **C. Joint NOIs**

The Department encourages regulated MS4 operators to submit joint NOIs in accordance with 40 CFR § 122.33(b)(1)(i). In addition to the information listed in subsection B, joint NOIs must include the following:

1. The information required by numbers 1 through 8 of subsection B shall be repeated for each MS4 operator participating in the joint NOI; and
2. The NOI shall include a description of the roles and responsibilities of each operator, including a summary of which stormwater minimum control measures each operator will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the MS4(s). Joint NOI's shall include any Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) with the application.

**APPENDIX C  
LIST OF AUTHORIZED  
NON-STORMWATER DISCHARGES**

1. Uncontaminated water line flushing;
2. Landscape irrigation and lawn watering, provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
3. Diverted stream flows;
4. Rising groundwaters;
5. Uncontaminated groundwater infiltration, as defined at 40 CFR § 35.2005(20);
6. Uncontaminated pumped groundwater;
7. Discharges from potable water sources managed in a manner to avoid instream impact;
8. Foundation or footer drains where flows are not contaminated with process materials;
9. Air conditioning condensation;
10. Springs;
11. Water from crawl space pumps;
12. Individual residential vehicle washing, or discharges from fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaner;
13. Flows from riparian habitats and wetlands;
14. Dechlorinated freshwater swimming pool discharges managed in a manner to avoid instream impact;
15. Street and pavement wash waters that do not contain cleaning additives or are otherwise managed in a manner to avoid instream impact;
16. Routine external building washdown provided no soaps, solvents, or detergents are used, external building surfaces do not contain hazardous substances, and the wash water is filtered, settled, or similarly treated prior to discharge;
17. Discharges or flows from emergency/unplanned firefighting activities including the immediate discharge of materials determined by fire department personnel or emergency management officials to be necessary to protect life or property, provided the Permittee takes or ensures that the responsible party takes all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This authorization does not transfer liability for a spill from the party responsible for the spill to the MS4 operator or relieve the party responsible for a spill from any reporting requirements imposed by Federal, State, or Local law.;

18. Discharges from flows of water for fire prevention or firefighting training activities managed in a manner to avoid instream impact;
19. Discharges authorized by a separate National Pollutant Discharge Elimination System (NPDES) permit;

**APPENDIX D**  
**STORMWATER PUBLIC COMPLAINT TRACKER TEMPLATE\***

Public Report or Complaint					Investigation and Resolution		
Incident ID	Date Received	Reported By	Summary of Complaint / Report	Assigned To	Summary of Findings / Resolution	Closure Date	

*\*Provided as an example for the convenience of Permittees; use of this template is not required.*

## APPENDIX E POST-CONSTRUCTION STORMWATER RESOURCES

### **Sediment and Erosion Control BMP manuals:**

1. Erosion and Sediment Control BMP manual — WV DEP

[https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/ESC\\_BMP.aspx](https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/ESC_BMP.aspx)

2. Maryland Soil Erosion and Sediment Control BMP manual;

[https://mde.maryland.gov/programs/water/stormwatermanagementprogram/pages/stormwater\\_design.aspx](https://mde.maryland.gov/programs/water/stormwatermanagementprogram/pages/stormwater_design.aspx)

3. Virginia Erosion and Sediment Control Handbook;

[https://assets.vbt.io/public/files/6975/VA\\_Resources\\_Construction/Virginia\\_DEQ\\_Erosion\\_and\\_Sediment\\_Control\\_Handbook.pdf](https://assets.vbt.io/public/files/6975/VA_Resources_Construction/Virginia_DEQ_Erosion_and_Sediment_Control_Handbook.pdf)

4. USEPA has a listing of available stormwater manuals on its website.

<https://search.epa.gov/epasearch/?querytext=stormwater+manuals&areaname=&areacontacts=&areasearchurl=&typeofsearch=epa&resulttemplate=2col.ftl#/>

5. West Virginia Department of Transportation, Division of Highways, Erosion and Sediment Control Manual, March 1, 2003

<https://transportation.wv.gov/highways/engineering/files/Erosion/Erosion2003.pdf>

6. Guidance For Developing an Off-Site Stormwater Compliance Program in West Virginia, December 2012

[https://dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Documents/WV\\_Mitigation-FeeInLieu-Guidance\\_Final\\_Jan-2013.pdf](https://dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Documents/WV_Mitigation-FeeInLieu-Guidance_Final_Jan-2013.pdf)

**APPENDIX F**  
**WEST VIRGINIA SPILL ALERT SYSTEM**

In the event of a spill or accidental discharge, immediately call (800) 642-3074

DRAFT

# Attachment

E



DWWM  
Attention: Billy Shirley  
601 57<sup>th</sup> ST SE  
Charleston, WV 25304  
Billy.T.Shirley@wv.gov (304) 926-0499 extension 43893  
Please title Comments or Requests for Public Hearing: MS4 WV0116025

The Director of the Division of Water and Waste Management (DWWM) shall consider all comments prior to acting on the proposed permit.

Comments should include the name, address, and telephone number of the writer and a concise statement of the nature of the issues raised. Commenters are asked to list the permit number WV0116025 on their comments. Commenters may further participate in the final decision by requesting a public hearing be held for the purpose of addressing the items listed in this fact sheet for change, omission, or addition to the General Permit. The Director shall hold a public hearing whenever a finding is made, on the basis of requests, that there is a significant degree of public interest on issues relevant to the proposed permit.

If information received during the public comment period appears to raise substantial new questions, the Director may reopen the public comment period.

The draft permit and Fact Sheet may be reviewed at:

<https://dep.wv.gov/WWE/Programs/stormwater/MS4/Pages/default.aspx>, or, may be inspected, by appointment, at the Division of Water and Waste Management Public Information Office, at 601 57th Street SE, Charleston, WV, between 8:30 a.m. and 4:30 p.m. on business days.

Copies of the proposed permit and Fact Sheet or further information may be obtained upon request to Billy Shirley whose contact information is listed above.

## **5. REMAND RULE**

The federal rule, 40 CFR 122.28(d), allows WV to pick one of two options for ensuring the GP meets federal requirements.

Under the comprehensive one-step approach, the GP document itself would include all required permit terms and conditions.

Under a two-step approach, the GP is issued, then the permittees submit their Stormwater Management Programs to the permitting authority, which if approved, become conditions of the permit.

In the past, WV has followed the two-step approach. In this draft permit WV has chosen the comprehensive one-step approach. As a result, the language in this draft permit is not simply an update to the language in the 2014 GP. Therefore, this fact sheet does not highlight specific updated or changed language of the permit as the entirety of this draft GP has been modified from the 2014 General Permit.

### **The Comprehensive One-Step Approach**

Comprehensive General Permit – For this type of general permit, the permitting authority issues a small MS4 general permit that includes the full set of requirements necessary to meet the MS4 permit standard “to reduce pollutant discharges from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. The general permit contains all requirements, and no additional requirements are established after permit issuance, as is the case with the “Two-Step General Permit” described below. For this reason, to provide coverage to eligible small MS4s, the permitting authority can use a traditional general permit NOI as described in § 122.28(b)(2)(ii),

and does not need to require additional information from each MS4 operator concerning how they will comply with the permit, for instance the best management practices (BMPs) that will be implemented and the measurable goals for each control measure, as a prerequisite to authorizing the MS4 to discharge under the general permit.

Coverage, and authorization to discharge under this proposed Draft General Permit occur once the NOI has been approved.

### **Differences from the Two-Step Approach**

As stated above, WV has used the two-step approach in the past. WVDEP would like to emphasize that the most significant change in the permitting process is that the SWMP's will no longer go through the approval process with the DEP. SWMP's may still be sent to the DEP for a courtesy review and suggestions, but this review does not constitute an approved SWMP.

Another significant difference from the Two-Step process is that modifications to any part of the MS4 program that is not a part of the NOI, do not require approval from the DEP.

## **6. BACKGROUND**

Stormwater is the surface runoff that results from rain and snowmelt. Urban development alters natural infiltration capabilities of the land and generates a host of pollutants associated with urban activities that increase runoff volumes and pollutant loadings discharged to receiving waterbodies. Urban development increases impervious surfaces in a watershed when farmland, forests, and meadowlands with natural infiltration qualities are converted to parking lots, buildings, streets, and driveways that have little or no absorption characteristics.

Small municipal separate storm sewer systems (MS4s) found in West Virginia discharge polluted stormwater to local rivers and streams. This general permit is proposed to minimize the volume and pollutant loadings of these discharges. Federal regulations require West Virginia to permit stormwater discharges from small MS4s and to require permittees to implement best management practices (BMP) through an iterative process focused on six minimum control measures.

West Virginia issued the original GP Number WV0116025 on March 7, 2003, it was reissued on June 22, 2009, and reissued again on July 11, 2014. The draft permit subject to this Fact Sheet is intended to supersede the 2014 GP.

### **6.a. NPDES Permitting Process**

Beginning in 2011, the Division of Water and Waste Management (DWWM), which is the Division of state government charged with implementation of NPDES stormwater permitting began processing permit applications using an online platform, called the Electronic Submission System (ESS). Several factors served as driving forces for the change from paper to electronic processing, not the least of which was the DWWM's focus on public participation. Through a portal called the Public Query, ESS offers everyone the means for viewing NPDES applications

deemed Administratively Complete. Hereinafter, this Fact Sheet will refer to the system utilized by DWWM as *ESS*.

By improving the the ESS system, DWWM is striving toward compliance with the EPA's eReporting Rule which is discussed in detail at:

[Federal Register :: National Pollutant Discharge Elimination System \(NPDES\) Electronic Reporting Rule.](#)

This GP will expire five years after issuance, which will be past the December 21, 2025 deadline when DWWM must be in full compliance with the Rule. Applicants should therefore consider the fact that the ESS forms might change, based on EPA requirements.

#### **6.b. General Permits**

DWWM is utilizing a general WV/NPDES permit to authorize stormwater discharges from small MS4s. Under 47CSR10-13.6 of the WV Legislative Rules, a general permit can be used to regulate either separate storm sewer stormwater discharges or a category or other discharges if the sources all:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require the same or similar monitoring; and
- In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

#### **6.c. Maximum Extent Practicable (MEP)**

The Clean Water Act (CWA §402(p)(3)(B).) states that MS4 permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants ."

It is recognized that "pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process" (Federal Register, Volume 64, No. 235, page 68754, December 8, 1999.).

The draft permit requires each permittee to develop, implement, assess, and enforce a Stormwater Management Program, which outlines how the permittee intends to comply with the terms and conditions specified in the permit.

#### **6.d. Waivers from Permit Coverage**

The draft GP allows for permit coverage waivers for certain small MS4s. Jurisdictions eligible for permit coverage may apply for a waiver from permit coverage and may retain permit eligibility, provided the waiver is approved, by complying with the terms and conditions of the waiver or waiver order.

There are two options to obtain a waiver from permit coverage:

1. Jurisdictions with storm sewer systems that serve less than 1,000 people must:

- ▶ Demonstrate that its stormwater discharges are not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4,
- ▶ Determine if its stormwater discharges to impaired waters, and if so that stormwater controls are not needed for pollutants of concern in the discharges, based on EPA approved or established wasteload allocations, as required by a Total Maximum Daily Load (TMDL).

2. Jurisdictions with storm sewer systems that serve less than 10,000 but greater than 1,000 must:

- ▶ Submit an evaluation of receiving waters and show stormwater controls are not needed, based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or an equivalent analysis; and
- ▶ Show that future discharges from the small MS4 do not have the potential to result in exceedances of water quality standards.

The Director retains the option to waive a portion or portions of the permit requirements.

The Director retains the option to either waive permit requirements or issue an Order directing the jurisdiction to conduct activities necessary for gathering evidence to support a waiver determination. This option refers to but is not limited to an Order to conduct sampling of MS4 discharges; to test for specified parameters; and to report test results for evaluation prior to a decision on a waiver application.

The Director retains the authority to conduct reviews and terminate waivers at any time during the waived period.

Waived jurisdictions must reapply for waiver approval with each permit reissuance.

DWWM has the duty of reviewing waivers periodically but no less than once every (5) five years.

Routinely, DWWM issues an Order to applicants who do not submit the determinations/evaluations required for waiver approvals. The orders frequently contain a monitoring plan, which if followed, may serve to support the request.

## **7. CONTACT INFORMATION**

The DWWM's MS4 program relies almost exclusively on Email to relay mass updates and other important information to Permittees. The DWWM recognizes that over the term of the General Permit, the staff and contact information for each permittee is subject to change. It is the responsibility of each permittee to provide either a permanent Email address that will be monitored or updated Email addresses as the staff responsible for the MS4 changes. This information should be sent to the DWWM's MS4 Coordinator.

## **8. SECTION BY SECTION RATIONALE**

### **PART I**

Part I of the GP explains the coverage offered to those owners/operators who qualify for the permit and who submit a registration and obtain authorization to discharge. Eligibility for coverage and waivers from coverage are contained in the opening sections. Limitations on coverage are then described. As explained earlier in this Fact Sheet, stormwater discharges are the subject of the permit, however other non-stormwater discharges are also authorized provided it's been determined that they are not substantial contributors of pollutants to the small MS4 applying for coverage. These discharges are listed in Appendix C of the permit.

DWWM recommends that stormwater management programs include public education and outreach activities directed at reducing these discharges even if they are not substantial contributors of pollutants to your system.

This permit does not relieve entities that cause illicit discharges, including spills, of oil or hazardous substances, from responsibilities and liabilities under State and Federal law and regulations pertaining to those discharges.

### **B. Water Quality Requirements**

- 1.** This permit does not authorize a violation of West Virginia State Water Quality Standards (Title 47 CSR Series 2) and West Virginia Ground Water Quality Standards (Title 47 CSR Series 58).

This added statement emphasizes that the MS4 permit does not grant permission to violate West Virginia's water quality standards (Title 47 CSR Series 2) or ground water quality standards (Title 47 CSR Series 58).

- (Title 47 CSR Series 2) - These standards outline the criteria for protecting the state's surface waters, ensuring they are suitable for designated uses like drinking water, recreation, and aquatic life.
- (Title 47 CSR Series 58) - These standards focus on protecting the quality of the state's groundwater.

## **PART II - A**

### **ESS Applications**

NOIs must be submitted electronically at: <https://apps.dep.wv.gov/eplogin.cfm> which can also be found by following these steps: go to [dep.wv.gov](http://dep.wv.gov); Electronic Submission System. Permittees that do not have an existing login may request one from this same website.

Under the proposed GP, existing permittees will have 90 days from the effective date to submit their NOI through the ESS.

Obtaining Coverage – New MS4s will have 180 days to submit their NOI from the date of receiving notification from DWWM that permit coverage is required.

Multiple permittees may apply for coverage under a single application, which should clearly define the roles and responsibilities of each of the co-permittees.

## **PART II - B**

### **B.1. Preparation of New or Revised SWMP**

“Existing Permittees. Each Permittee covered by General Permit No. WV0116025 as of the effective date of this general permit must update its SWMP to meet the requirements of this general permit. The updated SWMP may be submitted to the Department for a courtesy review. The Department may, in its discretion, provide comments and recommendations within 60 days of receipt of the updated SWMP. Until such time that the SWMP is updated in accordance with this subsection, the Permittee shall continue to implement the SWMP in effect as of the effective date of this general permit.”

West Virginia is now entering the fourth MS4 permitting cycle. Most permittees should already have a SWMP in place and operating under that SWMP. DEP would like to make it clear that these SWMP's should remain in full effect while updates are made to meet the requirements of this Draft General Permit. Updates to the SWMP do not require DEP approval and should be implemented as these changes are made.

## **PART II - D Subsequent Review and Revision of the SWMP**

“Revisions to the SWMP are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality to the MEP. As such, revisions made in accordance with this general permit as a result of the iterative process do not require modification of this permit. The Permittee shall summarize revisions to SWMP as part of the Annual Report as described in Part IV.B.”



This section is included in this fact sheet to make it clear that modifications to the SWMP do not require DEP approval. Changes to the SWMP are expected to improve upon existing BMP's or change BMP's to more effective ones to meet the MEP. These changes may happen at any point in the year and shall be highlighted in the annual report.

### **PART III - D**

This section contains the Minimum Control Measures. Once the draft permit is effective, West Virginia will be in its 4<sup>th</sup> permit cycle, so existing permittees should already have SWMPs for each measure or be well on their way to developing strong programs.

This portion of the draft permit contains the requirements for the SWMP. It requires permittees to develop and implement Best Management Practices (BMPs) for six Minimum Control Measures. The EPA's NPDES approach for this type of permit is called the "iterative approach", which means that new permittees would begin building their Stormwater Management Programs shortly after approval, and over time conduct assessments to evaluate the effectiveness of the measures they've initially put in place. Ineffective controls are to be replaced or enhanced.

An important component of any SWMP is public participation. Permittees must engage their area residents/public in planning and development efforts to seek out the most effective measures for their communities for inclusion in the SWMP.

Permittees must have methods for enforcing their regulatory mechanisms/ordinances. Enforcement is a crucial component of the SWMP and permittees are expected to review these mechanisms on a regular basis to identify whether improvements are needed and revise accordingly. Regulatory mechanisms/ordinances that are found to be ineffective must be revised by seeking public input and by following the procedures established in local law. The Annual Report must provide clear descriptions of the procedures and time frames for revision.

DWWM is developing an online Annual Report form for permittees to use as an evaluation tool. By completing the form, permittees must examine their original plans and goals and answer whether those were met. If not, changes are appropriate. At the time of public noticing the draft permit, the Annual Report form is not currently available on ESS, however efforts have already started for automation. Permittees will be notified when the electronic Annual Report form is ready for use. Until the new electronic form is available, permittees should continue to use the same Annual Report form used in the past.

The six Minimum Control Measures are:

**Public Education and Outreach** – Permittees must identify target audiences and reach out to residents, the public, businesses, industries, elected officials, policy makers and others to educate these audiences about pollution prevention methods.

**Public Involvement and Participation** – Permittees must provide opportunities for the public to take part in stormwater pollution prevention efforts and provide for public notice and comment on aspects of the stormwater program.

**Illicit Discharge Detection and Elimination** – Discharges from MS4s should be composed of stormwater and/or non-polluting allowable non-stormwater discharges. Under this measure, permittees develop/update storm sewer system maps, conduct field screening activities, and other research approaches to find and eliminate sources of pollution. Examples are unauthorized sanitary sewer connections and improper dumping such as used oil poured into storm drains.

**Controlling Runoff from Construction Sites** – Permittees must implement programs to control sediment and other pollutants in stormwater discharges from construction sites when one or more acres of land are disturbed. The SWPPP's associated with each construction site incorporates the site plans, E&S plans, and post-construction SW plans.

**Controlling Runoff from New Development and Redevelopment**– When areas are redeveloped and new ones developed, pollution control measures are required after construction. This measure spells out the practices permittees should use to accomplish reductions. Permittees are required to ensure long-term maintenance of post-construction BMPs by maintaining an ordinance or other regulatory mechanism and verifying that inspections and any necessary repairs of BMPs are being performed.

**Pollution Prevention & Good Housekeeping for Municipal Operations** – For permittees with activities and facilities with the potential for pollution, this measure requires good housekeeping practices such as inspections, operating procedures such as proper storage of oils, salt, or other materials, and clean-up of areas that may pollute stormwater such as streets or maintenance facilities. Employees must receive initial and annual training in pollution reduction procedures, especially for facilities or activities with the potential to pollute stormwater. Monitoring may be appropriate for discharges from certain activities. When monitoring indicates there are no or very low pollutant concentrations in the discharges, permittees may apply for a Low Concentration Waiver. If approved, the permittee would then be expected to submit (within the annual report) a certification there hasn't been any significant changes in the activity or the BMPs in the area that drains to the outlet with waived sampling.

## **Discharge Compliance with Water Quality Standards**

Full compliance with all the terms and conditions of this permit is considered an acceptable effort to reduce stormwater pollutants from the small MS4 to the maximum extent practicable. The Clean Water Act 301(b)(1)(C) provides that all NPDES permittees must achieve water quality standards. If a discharge has the reasonable potential to cause or contribute to a violation of water quality standards in the receiving water, additional controls are required. In 1987 Congress added the following provision in § 402(p)(3)(B) requiring State permitting authorities to require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or State determines appropriate for the control of such pollutants. Therefore, in addition to the six MCMs, this permit requires permittees to address discharges to impaired waters and/or waters subject to state or federal TMDLs. The Phase II Final Rule, published in the Federal Register on December 8, 1999, 64

F.R. 68722, required NPDES permit coverage for stormwater discharges from both small MS4s and smaller construction sites.

## **PART V. TMDL SPECIAL CONDITIONS**

### **303(d) Impaired Water and TMDLs**

When DWWM investigates and finds that a water body is polluted or impaired, a process takes place for listing the water body under section 303(d) of the Clean Water Act. Permittees are expected to reduce pollution in an effort to improve the health of the water body but sometimes a cleanup plan is needed and designed, with public input. The cleanup plan is called Total Maximum Daily Load or TMDL. The TMDL identifies pollutant sources for the water body and determines how much of a given pollutant the water body can contain while still meeting water quality standards. The TMDL may also allocate the overall allowable load to the various sources; loads assigned to point sources are called waste load allocations (WLAs) and loads assigned to nonpoint sources are called load allocations (LAs). Sometimes an MS4 is named as a source of the pollutant and either given a specific (individual) WLA or is included in an aggregate WLA assigned to a group of sources.

EPA found the 2014 permit to be over burdensome on permittees because it instructed them to research and find out whether their stormwater outfalls discharged to 303(d) listed or TMDL waters when this should be done by the permit issuing authority. In addition to being burdensome, EPA found leaving it to the permittee to search for the information could lead to inconsistent and sometimes inaccurate information.

For this permit term, a list of list of 303(d) and TMDL waters in the area of each existing permittee is provided for them on the WVDEP website. For the convenience of the permittees and the public, maps of the approximate MS4 boundaries are overlaid on 303(d) / TMDL maps. These maps are not intended to represent the MS4 legal boundary. The draft permit requires the submittal of a MS4 boundary in a digital format. When a stream is listed as impaired in the future or when a TMDL is developed, DWWM will notify the affected permittee who must implement appropriate BMPs to reduce the pollutant of concern. The Annual Report must summarize the permittee's activities for the previous year and outline the coming year's plans for full implementation of pollution reduction plans for newly assigned 303(d) listings and/or TMDLs. The BMPs must be in place six months from the notification date.

At the time DWWM notifies potential new permittees of their designation as new MS4s, the 303(d)/TMDL lists, if any, shall be provided and any new listings will be furnished to new permittees just like existing permittees. The same implementation schedule applies to new and existing permittees, with full implementation within six months of notification.

### **Evaluation**

In keeping with the iterative nature of the NPDES MS4 requirements, permittees must develop programs, then assess and evaluate their programs and practices to identify areas of improvement, which are to be amended, as necessary. To provide consistency to all the WV MS4 permittees, DWWM proposes in the draft GP to require this evaluation within the scope of the annual report. The questions guide the permittee toward a comprehensive report of the previous year's activities. The annual report will require permittees to identify their BMPs and will elicit responses from the permittees as to whether or not their chosen BMPs were effective. Any negative responses shall guide permittees to modify the SWMP and replace the ineffective BMPs.

DWWM is developing an online Annual Report form for permittees to use as an evaluation tool. By completing the form, permittees must examine their original plans and goals outlined in the SWMP and answer whether those were met. If goals and milestones were not met, changes are required. Until the new electronic form is available, permittees should continue to use the same Annual Report form used in the past.

Attachment

E - Summary



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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304  
Phone: (304) 926-0495 / Fax: 304-926-0463

Harold D. Ward, Cabinet Secretary  
dep.wv.gov

September 8, 2025

RE: WV Permit No. WV0116025  
Response to Public Comments

Dear Citizen,

The West Virginia Department of Environmental Protection's (WVDEP) Division of Water and Waste Management (DWWM) would like to take this opportunity to thank those individuals and organizations who submitted written comments on the General West Virginia/National Pollutant Discharge System (WV/NPDES) Permit for Stormwater Discharges from small Municipal Separate Storm Sewer Systems Permit No. WV0116025.

DWWM published a Class II legal advertisement in newspapers across the State where MS4's are located; announcing the WVDEP's desire to reissue the general permit for stormwater associated with small Municipal Separate Storm Sewer Systems. The original public notice period for the draft of the proposed small MS4 general permit was from April 17, 2025 through May 17, 2025, but was extended 30 days until June 17th, 2025

This responsiveness summary contains the issues and concerns that were identified in the written comments received during the comment period. WVDEP received numerous comments and they are numbered in the order from beginning to the end of the permit..

Comments will appear first, with the WVDEP's response following.

Promoting a healthy environment.

1. One commenter noted that on page 3, the reference to Appendix E as “Post-Construction Stormwater Resources” is misleading, as most of the references listed are erosion and sediment controls.

**The agency concurs with the comment and changed the table of contents on page 3 and Appendix E on page 51. The language has been changed to “Erosion and Sediment Control resources”**

2. Multiple commenters suggested change to the language on page 4, Part I. C. MS4 Service Area, and also to the definition of MS4 Service Area in Appendix A. The assertion was that the language and definition of MS4 Service Area could require MS4’s to operate outside of their municipal jurisdictions.

**The DWWM concurs with these comments and the language in the permit has been revised on both page 4 and the definition.**

3. Two comments were made from the same commenter on page 7, Part II A. General requirements, regarding Maximum Extent Practicable.

”The Commission/District requests confirmation that compliance for purposes of this Draft MS4 Permit will only be measured against a permittee's compliance with the terms and conditions of the MS4 Permit itself.”

**The Fact Sheet states “The draft permit requires each permittee to develop, implement, assess, and enforce a Stormwater Management Program, which outlines how the permittee intends to comply with the terms and conditions specified in the permit.”**

“the Commission/District is seeking confirmation that it will be held to the same compliance standard as any other MS4, which is compliance with the General Permit only, and that it will not be subjected to a sliding scale discretionary compliance standard based on any perceived stormwater control abilities specific to the Commission/District.”

**The Fact Sheet states “It is recognized that "pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process" (Federal Register, Volume 64, No. 235, page 68754, December 8, 1999.).**

4. Multiple commenters noted that in various locations in the permit there was language that required the submission of the SWMP to WVDEP, the first of which was on page 12, Part II B.c.

**This MS4 General Permit follows the EPA one step approach. Under this process Permittees are not required to submit the SWMP for approval but may submit a SWMP for a courtesy review. The DWWM has removed reference language to SWMP submittal.**



5. One commenter made the following comment regarding the language on page 18, Part III D.2.c.i “ *Inspection Frequency. Each Regulated Construction Activity shall be inspected at least once during the period of active land disturbance. High-priority construction activities must be inspected at least once per month. The SWMP shall define high-priority construction activities to include (1) projects that have a land-disturbance area greater than 5 acres; (2) projects that drain to waterbody subject to a TMDL; and, as appropriate, (3) any other project types or project locations determined by the Permittee to present an elevated risk of impacts to water quality based on local conditions*”

“The Commission/District requests that this provision be modified to require the inspection of high priority construction activities at least once per quarter.”

**The DWWM asserts that due to the nature of the high priority construction activities involved, the inspection frequency should remain at least once per month.**

6. One commenter noted that on page 18, Part III D.2.c.ii “Inspection Report Forms,” the language “ ... and (6) documentation that any corrective actions prescribed by the operator’s inspector, the Permittee, or the Department have been completed in a timely manner as required. The form shall include a space to document any deficiencies discovered during the inspection.” essentially requires the MS4 to take place of a WVDEP inspector as it relates to a construction site’s compliance with its WVDEP-issued stormwater construction permit.”

**The DWWM concurs with the commenter, that obligating the permittee to monitor conditions prescribed by The Department is outside the scope of MS4 requirements. Therefore the language has been revised to remove “or the Department” from Part III D.2.c.II.**

7. One commenter highlighted various typographical errors and omissions throughout the permit.

**The DWWM has made the various changes and added or changed the language proposed by the commenter throughout the permit.**

8. Multiple commenters noted that on page 21 and 22 reference was made to an appendix containing the latest version of the departments Compliance Spreadsheet.

**The DWWM concurs with this comment. There was not an appendix containing the Compliance Spreadsheet. In place of the references to an appendix, the URL/ Website address for the Compliance Spreadsheet has been provided where these appendix references occurred.**

9. Multiple comments were made on page 23, Part III E.2.f.ii. Long Term Maintenance Agreements.

One commenter noted in the sentence “Such agreements shall require the Regulated Project proponent, its successor,..” the word proponent be changed to “owner or operator.”

**The DWWM concurs with this comment and the language in the permit has been revised.**

Another commenter stated “We have been utilizing the building departments project design Building Permit approval as the enforcement mechanism instead of a maintenance agreement and have had success by doing so. The reasoning is the LID structure was required for the design and must stay intact and functioning as per the approval. It is a commonsense approach that has been successful thus far. If the structure is desired to be removed then another structure, etc. of some sort would have to be approved via a Building Permit.”

**The DWWM asserts that a long-term maintenance agreement is an integral part of the general permit and disagrees that a change to the permit should be made.**

10. On page 31 one commenter made the following comment and suggested adding the following underlined language to Part V.A. TMDL Applicability:

“This section states that Part V applies to ‘any regulated MS4 that discharges to a waterbody subject to a TMDL that has been approved by EPA.’ Many TMDLs do not identify MS4 discharges as a significant source of the pollutant of concern and therefore assign no wasteload allocations to MS4’s. The proposed Small MS4 Permit should clarify that permittees do not need WVMWQA to implement BMPs to address pollutants that are not discharged from the MS4. Accordingly, suggests that the first sentence of Part V.A. be revised as follows: ‘This Part V applies to any regulated MS4 that discharges to a waterbody subject to a TMDL that has been approved by EPA, provided the TMDL allocates an individual or aggregate wasteload to the Permittee’”

**In the absence of monitoring, the selection of BMP’s should address the reduction of pollutants listed in the TMDL if activities within the MS4 may have the potential to discharge the pollutant of concern. The language located on Page 31, Part V.A. of the general permit adequately addresses this comment.**

**Page 31, V.A.** *“This Part V applies to any regulated MS4 that discharges to a waterbody subject to a TMDL that has been approved by EPA. For TMDLs based on biological impairment, the TMDL Implementation shall be based on the stressors for which a wasteload allocation is assigned to the Permittee. The SWMP must include the following measures:”*

11. Two commenters made comments on Page 32 Part VB.a) and a)i. The commenters were concerned with requirements for submission of BMPs in the Notice of Intent (NOI) as noted in the permit text below. The commenters noted that the correct document for BMP’s should be the SWMP, and not the NOI.

- a) *Each discharger to a TMDL water shall propose BMPs to reduce pollutants of concern to the TMDL in the NOI.*
- i) *Upon approval of the NOI, and updates to the SWMP, permittees shall implement BMPs and each year thereafter, evaluate BMP effectiveness. The Annual Report shall contain the evaluation, along with proposed new BMPs to replace ineffective ones.*

**The DWWM agrees with the comments and recommendations and the language has been revised in the permit to remove the requirement for BMP's in the NOI and corrected the language to state that BMP's shall be listed in the SWMP.**

12. One commenter made the following comment and suggested adding the italicized language below to the permit on page 33, Part V.D. Local Sediment, Metals and Nutrients TMDLs'

"This section states that permittees should implement one or more BMPs approved by the Chesapeake Bay Program to address pollutants identified in relevant TMDLs. Although WVMQWA appreciates that the department has made that option available, it is also important to recognize sediment, metals, and nutrients are often discharged from construction sites, development activities and other land uses. The Chesapeake Bay TMDL requirements in part V.G are directed at the same activities. To allow permittees greater flexibility to adopt the most effective pollutant reduction strategy to address those sources, WVMWQA suggests that the Department add a second compliance option under part V.d, as Follows:

*'2. Implement any BMP listed in Part V.G.1.'''*

**The Language for the Chesapeake Bay TMDL and PRP has been removed from the permit which included Part V.G.1., therefore this text will not be added to the permit.**

13. Eight comments were made on the section regarding the Chesapeake Bay TMDL and associated PRP language that was part of the permit on page 35.

**These comments will not be addressed because the Chesapeake Bay TMDL PRP language has been removed from this General Permit.**

14. One commenter made a suggestion regarding language change in section H Other TMDL's which is on page 39. *"BMP's shall be informed by the TMDL report"* "Should the word 'informed' be changed to determined, or something?"

**The referenced section with that language has been removed.**

15. The following comment was made regarding Part VI. Standard NPDES Permit Conditions, page 35.

"Many sections of the appendix in Part IV do not apply to this permit."

**The NPDES Federal general permit requires all appropriate citations from the regulations. No changes have been made.**

16. One commenter noted on Page 36, Part Vi. A.11. Outlet Markers. "The statement references 'approved SWMP', suggesting WVDEP approves SWMP's in this General Permit. Also, are there Permit conditions for a "representative outfall" in this Permit? Per Part IV Appendix C on page 44 - Monitoring and Reporting - 'Discharge monitoring is not required for compliance purposes by this general permit. If the Permittee chooses to monitor stormwater discharges for informational or screening purposes, they may do so.' Please clarify."

**This permit does not require monitoring for compliance, however the EPA requires that a representative outfall must be designated and an outlet marker placed as close as practicable to the location.**

17. One commenter had a concern with the language on page 39 Part VI. D.2.a. Immediate Reporting. *“A written submission shall be provided within five (5) days of the time the Permittee becomes aware of the circumstances.”* “We currently contact the Spill hotline and Work with DEP inspectors on these illicit Discharges. We also document these on our GIS system. Requiring a written submission seems just additionally burdensome and should not be required.”

**Federal regulations require the 5 day written notification 40 CFR 122.41(l)(6)(i) therefore the permit will not be changed.**

18. One commenter had a concern with page 46, Appendix B, section B 6. 7. 8 and 9. “Lines 6 a, b, c and 7, 8, and 9 appear to be more information than needed for submitting an NOI(I).”.

6. *The following receiving waters information:*

a. *The names of the receiving surface waters to which the MS4 system discharges; and*

b. *Whether or not the receiving waters are listed as impaired in the West Virginia Combined 2018/2020/2022 305(b)/303(d) Integrated Water Quality Monitoring and Assessment Report; and*

c. *Whether or not the receiving waters are subject to a TMDL.*

7. *The names of any physically interconnected MS4s to which the MS4 discharges;*

8. *A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures; and*

9. *If the two more MS4 operators are submitting a joint NOI, the information referenced below in subsection C.*

**The DWWM recognizes that the Notice of Intent requirements have increased from the previous iterations. This is a result of changing from a Two Step permitting process to the One Step permitting process. It is in this NOI where the agency will receive critical information describing the MS4. Item 6. is required by the EPA. Items 7. 8. and 9. contain data and binding agreements essential for approving the NOI. Therefore the DWWM disagrees with the comment.**

19. One commenter noted on page 51, Appendix E that two of the URL's were not correct.

2. “Maryland Soil erosion and Sediment control BMP Manual” and 4. “USEPA has a listing of available stormwater manuals on its website”.

**The URLs have been updated**

20. One commenter inquired “If we understand correctly the overall permit, other than the Chesapeake Bay Area, is to be handled to the MEP. If there is any part that is other than the MEP please clarify.”

**The MEP standard shall apply to all MS4’s registered under this General Permit. The language in the Fact Sheet has been revised.**

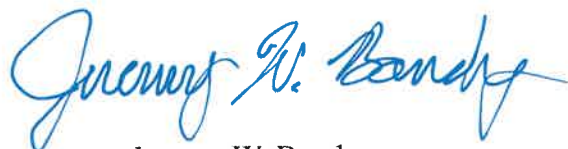
21. One commenter requested “The Commission/Districts requests that WVDEP revise its Fact Sheet to remove any reference to meeting the pollution reduction goals by the end of 2025”.

**This comment relates to the PRP language that has been removed from the Permit and the Fact Sheet.**

After careful review of all comments, the Division will issue this General Permit on September 8, 2025. Notice is hereby given of your right to appeal the terms and conditions of the permit of which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after issuance of this General Permit.

Thank you for your interest and comments on the Municipal Separate Storm Sewer Systems General Permit. If you have any further questions or concerns, please do not hesitate to contact Samuel “Jeff” Smith of my staff at 304-926-0499 ext. 43764 or by email at [samuel.g.smtih@wv.gov](mailto:samuel.g.smtih@wv.gov).

Sincerely,



Jeremy W. Bandy  
Director

JWB/sgs

Enclosure