

## **Response to Comments and Summary of Revisions To the Draft Multi-Sector General Permit**

From December 3, 2018 to January 11, 2019, the Rhode Island Department of Environmental Management (DEM) solicited public comments on the Draft Rhode Island Pollutant Discharge Elimination System (RIPDES) Multi-Sector General Permit (MSGP) for Storm Water Discharge Associated with Industrial Activity. A Public Hearing was also held on January 10, 2019 at the DEM, 235 Promenade Street, Providence Rhode Island to receive oral comments. No oral comments were received during the public hearing. In response to the written comments received during the comment period, DEM prepared the following "Response to Comments" that describes and responds to comments made on the draft MSGP. Specifically, the Response to Comments addresses the following written comments: CDIM Engineering, Inc. (January 11, 2019); Manchester Street LLC (January 11, 2019); Narragansett Bay Commission (January 10, 2019); Ramboll (January 10, 2019) and Woodard & Curran, Inc. (January 10, 2019).

### **NO EXPOSURE, NO DISCHARGE CERTIFICATIONS**

#### **Request for Clarification on Submission of No Exposure Certifications**

***COMMENT 1 Woodard & Curran*** I.E. Please clarify whether facilities who have submitted a No Exposure Certification (NEC) to DEM and continue to meet the eligibility criteria for no exposure will be required to submit a new NEC prior to the five-year anniversary date of the facilities' previous submittal.

***RESPONSE 1:*** *Although, as indicated in Part I.E. of the MSGP, the five-year No Exposure re-certification period continues to be the RIPDES requirement, because there is an electronic tool which is now available DEM expects that all facilities re-certify their condition of No Exposure using the electronic tool after the effective date of the permit. Use of this tool will help facilities determine their RIPDES status for the facility (i.e. active permit, expired permit, no exposure exempted, no discharge exempted). No change in the permit is required.*

#### **Request to delete the Requirement for No Discharge Certification**

***COMMENT 2: Woodard & Curran*** I.F., VII.B., Appendix C: DEM is proposing a new requirement that facilities with no discharge of industrial stormwater to waters of the state or with discharges to combined sewers submit a No Discharge Certification (NDC). We suggest eliminating this provision altogether for the following reasons:

1. Facilities with no discharge as described in Part I.F. of the draft MSGP are not subject to the RIPDES regulations and are not eligible or required to obtain coverage under the MSGP.
2. Implementation of this requirement would be problematic since it would apply to facilities that have not previously been subject to MSGP requirements and that are not likely to be monitoring MSGP requirements or amendments.
3. Since the facilities that would be newly-regulated under this provision are not likely monitoring the MSGP, they may not be aware of the proposed requirement and may not have an opportunity to comment. If this provision remains, we recommend additional outreach by DEM to these facilities

(i.e., all Rhode Island facilities within regulated MSGP SIC Codes and sectors) to make them aware of the requirement and to give them the opportunity to comment.

***RESPONSE 2:*** *Currently facilities which are considered to be engaging in "industrial activity" in accordance to Title 250 RICR-150-10-1 Rule 1.4.A.111, are required to seek permit coverage for their stormwater discharges or submit a No Exposure Certification when there is "no exposure" of industrial materials and activities to rain, snow, snowmelt and/or runoff. In cases when stormwater runoff is retained on-site or discharges to a combined sewer system, RIPDES, the general public and sometimes the facility itself, has no system to determine the reason why these facilities do not have a RIPDES permit or a No Exposure Certification. The claim of No Discharge relies on a self-assessment to determine that the facility does not need a permit or a No Exposure Certification. DEM has no record of this self-assessment and, therefore, no record as to why the facility claiming "no discharge" does not have a RIPDES permit or a no exposure certification. The No Discharge Certification was included in the MSGP to help facilities determine and document their claim of No Discharge, DEM believes that providing the option to complete and submit a No Discharge certification and track those submissions will minimize unwarranted efforts in compliance, enforcement and legal actions. DEM will be providing additional information on how to access the information provided by facilities.*

*In addition, Public Notice of the proposed MSGP in the Providence Journal meets DEM's Public Notice regulatory requirements, however, DEM recognizes the need and intends to implement outreach measures to contact facilities with No Discharge.*

*The language in Part I.F. of the permit was changed to clarify that the submission of a No Discharge Certification is optional.*

**I.F. No Discharge Notice of Non-Applicability.** Operators of facilities engineered and constructed to ~~contain have contained the maximum historic precipitation event discharges of stormwater associated with industrial activity~~; located in basins or other physical locations so that there will be no discharge of industrial stormwater to waters of the State; or ~~facilities with where the~~ industrial stormwater ~~that~~ discharges to a Combined Sewer Overflow (CSO) system, ~~must-should~~ claim no discharge. Operators of facilities with No Discharge ~~must should~~ submit a RIPDES No Discharge Certification (NDC) to the Director by hard copy, unless an electronic reporting tool is available.

***COMMENT 3:*** *NBC Section I.F., Page 8 No Discharge Notice of Non-Applicability- The NBC has concerns regarding this section allowing industrial facilities with industrial stormwater that discharge to a Combined Sewer Overflow (CSO) system to claim no discharge, exempting them from obtaining a permit or meeting permit requirements. The NBC owns many combined sewer areas within its district, and this provision would encourage facilities located in these areas to discharge potentially contaminated stormwater which could eventually discharge through CSOs, effectively making the NBC responsible for these discharges. The NBC is requesting that the regulation be updated to specify that all "No Discharge Certifications" issued must be copied to the local Sewer Authority and the facility must adopt and adhere to stormwater Best Management Practices and must adhere to the Stormwater Management, Design and Installation Rules (250-RICR-150-10-8), following guidance from the Rhode Island Storm water Design and Installation Standards Manual*

***RESPONSE 3:*** *In accordance with 40 CFR 122.26(a)(7) stormwater discharges to combined sewer systems are not subject to the industrial stormwater permitting provisions and, therefore, permitting of stormwater discharges associated with industrial activity which discharge to Combined Sewer Systems cannot be permitted under the MSGP. The requirement to submit a No Discharge*

*Certification was added to assist facilities and the public (including NBC) in determining why these facilities operate without a RIPDES stormwater permit (please see response to previous comment).*

### **Request to Clarify Definition for Maximum Historic Precipitation Event for No Discharge Certification**

***COMMENT 4: Ramboll*** Proposed I. F. No Discharge Notice of Non-Applicability The maximum historic precipitation *event* is not defined by timeline. Does the regulation imply the facility must review all historic rainfall *events* from recorded history?

***RESPONSE 4:*** *A facility is eligible for the No Discharge Certification when there are no discharges of stormwater associated with industrial activity from the facility or if the industrial stormwater discharges to a combined sewer system. The permit language for this part has been changed, the term “maximum historic precipitation event” has been deleted (see clarified permit language from previous response).*

### **EFFLUENT LIMITS**

#### **Request to Modify the Water Quality Based Effluent Limitation Quarterly Sweeping Requirement**

***COMMENT 5:***

***NBC*** Section II.B.2.a., Page 14 Discharges to Water Quality Impaired Waters, Sweep impervious surfaces (i.e., roads, parking lots) at a minimum frequency of once per quarter. The NBC objects to this requirement. NBC applies sand/salt to its facilities during winter months to mitigate icing and reduce the risk of injury to its employees and the public. It would not be practical to sweep its facilities shortly after applying sand/salt, and then repeating this process of applying/sweeping sand and salt many times over the winter months. The NBC is amenable to sweeping its facilities as is practical to prevent solids from discharging through its storm system. In addition, it should be noted that stormwater that discharges to properly designed and maintained catch basins, or other structures designed to collect solids, should be exempt from this requirement since the structure is designed to capture these materials and prevent their discharge.

***Manchester Street Station*** II.B.2.a Quarterly sweeping and Quarterly catch basin inspections: We believe that sweeping during winter months would be difficult with ice/snow conditions. This would also remove treatment from surface’s intended to make safer conditions for employees.

***Woodard & Curran*** II.B.2.a. This section establishes specific control measures that are required if a facility discharges to an impaired waterbody based on the impairment. For example, facilities discharging to waterbodies impaired for a variety of specified pollutants are required, among other measures, to sweep impervious surfaces at least quarterly. We recommend revising this section to indicate that these controls are required in cases where the pollutant(s) causing the impairment are detected in a facility’s discharge. For instance, many industrial facilities sweep paved areas once or twice per year. If the pollutants causing the impairment are not detected in the facility’s discharge, it seems unreasonable to require such facilities to change their existing controls. In addition, if a requirement for quarterly sweeping remains, we recommend changing this language to require

sweeping “four times per year, approximately once each quarter, weather permitting” since it is sometimes impractical to sweep during the winter months when there is snow/ice and paved surfaces are being intentionally sanded/salted for safety.

***RESPONSE 5:*** *The following permit language has been added to clarify that quarterly sweeping of paved areas is required unless safety concerns due to extended periods of snow/ice cover make sweeping impracticable in which case sweeping shall be completed as soon as conditions allow, and the permittee shall document the reason for not sweeping quarterly.*

II.B.2.a.

\* \* \*

- Sweep impervious surfaces (i.e., roads, parking lots) at a minimum frequency of once per quarter, **unless safety concerns due to extended periods of snow/ice cover make sweeping impracticable, in which case sweeping shall be completed as soon as conditions allow it. If the permittee is unable to sweep quarterly, the permittee must document and include in the SWMP records, the reasons why quarterly sweeping was not completed.** The permittee must increase the sweeping frequency and use more efficient sweeping technologies when necessary;

### **Request to Delete the Water Quality Based Effluent Limitation Use of Controls to Prevent Animals from Feeding/Nesting/Roosting Requirement**

***COMMENT 6:*** *NBC* Section II.B.2.a., Page 15 Use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility. The NBC requests that this requirement be removed from the proposed regulation. While NBC makes every reasonable effort to prevent birds from roosting/nesting near the treatment tanks at our facilities, gulls and other birds are commonplace at wastewater treatment facilities and are nearly impossible to prevent from visiting our plants. In addition, as DEM is well aware, two former landfills that surround our Bucklin Point facility have been converted to nature areas, complete with osprey nesting sites. NBC and other industrial facilities should not be responsible for controlling the local wildlife population.

***RESPONSE 6:*** *Appropriate best management practices can prevent stormwater contamination from dumpsters, composting materials, food waste, or animal products and reduce elevated pathogens levels in stormwater. The intent of the permit is to require the use of all reasonable methods to deter rodents, birds, and other animals from feeding/nesting/roosting at the facility (where their waste may contribute to stormwater contamination). It does not prescribe the specific methods to be implemented. The controls selected should focus on deterring nuisance animals and birds that would be associated with conditions at industrial facilities. DEM recognizes that if NBC is using every reasonable method, it satisfies this requirement. At any given facility, there may be different or additional controls necessary, due to site-specific conditions. The permit was changed to clarify that*

II.B.2.a.

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- Use all **known, available and** reasonable methods to **prevent deter** rodents, birds, and other animals from feeding/nesting/roosting at the facility;

**Request to Modify the Water Quality Based Effluent Limitation Inspection to identify and Eliminate Sewer Cross Connections Requirement**

***COMMENT 7:*** NBC Section II.B.2.a., Page 15 Inspect catch basins and other stormwater BMPs once per quarter and perform at least one annual dry weather inspection of the storm water system to identify and eliminate sewer cross-connections. While NBC is agreeable to inspect once per quarter, the annual dry weather inspection to identify and eliminate sewer cross connections is unreasonable and unnecessary. After an initial dry inspection to identify and eliminate cross-connections, there would be no need to conduct these annual cross-connection inspections thereafter. NBC construction activity would be the only possible means for a cross-connection to occur and all construction activities are closely monitored to prevent this from happening. Therefore, NBC requests the annual cross-connection monitoring requirement be eliminated from the proposed regulations.

***RESPONSE 7:*** *The intent of this requirement is for facilities to inspect their stormwater infrastructure once, during dry weather conditions, to identify any unacceptable flows with indication of illicit discharges for their elimination. This requirement is limited to the stormwater infrastructure, located at the facility with the goal of eliminating illicit discharges. The permit was changed to clarify that*

II.B.2.a.

\* \* \*

- Inspect catch basins and other stormwater BMPs once per quarter and perform at least one ~~annual~~ dry weather inspection of the stormwater system to identify and eliminate sewer cross-connections.

***COMMENT 8: Manchester Street Station*** II.B.2.a Quarterly catch basin inspections should apply only to catch basin that are the last structure/device discharging directly into a waterbody.

***RESPONSE 8:*** *Inspecting all catch basins will ensure that the entire stormwater system is effective in removing pollutants. The previous MSGP required quarterly routine facility inspections, that included inspections of the stormwater infrastructure. No change to the permit is required.*

**Request to Correct References and Numbering**

***COMMENT 9:*** NBC General comments: Section II.A.3., Page 13 Numeric Effluent Limitations Based On Effluent Limitation Guidelines, If the facility is in an industrial category subject to one of the effluent limitations guidelines identified in Table VI-1 (see Part VI.A.2.a.), the permittee must meet the effluent limits referenced in Table 11-1 below. The NBC believes both the effluent limitations guidelines table and section are erroneously referenced; "Table VI-1 (see Part VI.A.2.a.)" should be replaced with "Table VI-2 (see Part VI.B.2.a.)" Table VI-2, found in section VI.B.2.a, is entitled, "Required Monitoring for Effluent Limits Based on Effluent Limitations Guidelines." It appears Table VI-2 should also be referenced in section VI.B.2.b.

***RESPONSE 9:*** *The aforementioned references and numbering in the permit have been corrected.*

## CORRECTIVE ACTIONS

### Request to Clarify Language for Benchmarks Exceedances

#### COMMENT 10:

*CDIM* Section III.A.1.a Level One Corrective Actions: The following language is ambiguous: "receipt of sampling results that indicate a benchmark exceedance." It is assumed the intent is for permittees to begin their Level One Corrective Actions after the first year of benchmark monitoring (4 sampling events) has been completed, when annual average discharge concentrations are calculated. Consider revising the language for clarity and to be consistent with the language for Level Two (Section III.A.2) and Level Three (Section III.A.3) Corrective Actions, i.e., "following the completion of the first year of benchmark monitoring."

Additionally, the specified timeframe of 14 days is insufficient for high quality implementation of Level One Corrective Actions. Permittees should be granted more time to thoroughly review their Storm Water Management Plan (SWMP), conduct a facility inspection and investigate pollutant sources, and implement revised SWMP and BMPs. Consider extending the timeframe for Level One Corrective Actions to ensure permittees can sufficiently address their findings.

*Ramboll*: Part III.A.1 Level One Corrective actions must be implemented 14 days of receipt of sampling results that indicate a benchmark exceedance after entering Level One?

*Woodard & Curran* III.A. Part III.A.1.a describes the steps that must be taken "within 14 days of receipt of sampling results that indicate a benchmark exceedance." Should this be revised to say it is required "within 14 days of receipt of the fourth benchmark sample result indicating that the average of the four results exceeds an applicable benchmark?"

*RESPONSE 10*: Language was added to clarify that the requirement applies following the completion of the first year of benchmark monitoring. Language in Part III.A.1.a.3 of the MSGP is now consistent with language in Part III.B.3.b.

\* \* \*

III.A.1.a. Following the completion of the first year of benchmark(s) monitoring if ~~of sampling results that indicate a benchmark exceedance the permittee must:~~ the average of the four required monitoring events exceeds an applicable benchmark the permittee must complete the corrective actions described in Parts III.A.1.a.1., III.A.1.a.2. and III.A.1.a.3. within fourteen (14) calendar days of receipt of the fourth monitoring results. If it is infeasible to complete the corrective action within 14 calendar days, the permittee must document why it is infeasible to complete the corrective action within the 14-day timeframe. The permittee must also identify the schedule for completing the work, which must be done as soon as practicable after the 14-day timeframe but no longer than 45 calendar days after discovery.

### Request to Clarify "Non-Industrial Pollutant Source"

*COMMENT 11*: *Woodard & Curran* III.A.3.b.2. Please clarify the term "non-industrial pollutant source" as used in this section. For example, would the following be considered non-industrial

pollutant sources when located at an industrial facility: structural components of a building such as steel beams, metal roofs, gutters, etc.; galvanized metal fencing; rooftop HVAC equipment?

***RESPONSE 11:*** *Non-industrial pollutant sources are sources not directly connected to the industrial activity, when necessary, determinations will be made on a case by case basis. No change to the permit is necessary.*

### **Request to Clarify Requirements for Non-Exceedance of Benchmarks following Implementation of Corrective Actions**

***COMMENT 12:*** *CDIM Section III.A. General Comment: The Draft MSGP does not directly address permittees who complete corrective actions based on benchmark exceedances and, in the following year, meet all benchmarks. Would the permittee have met the monitoring requirements for the permit term per Section VI.B.1.c, and no longer be required to collect discharge samples, regardless of which level of Corrective Actions were required? Please clarify.*

***RESPONSE 12:*** *As indicated in Part VI.B.1.c. of the MSGP if the average of the benchmark monitoring results for the year following the implementation of corrective actions do not exceed the benchmark triggering the corrective action, the permittee will be considered to have fulfilled the monitoring requirements for that parameter for the permit term, regardless of which correction action level they are at. No change to the permit is necessary.*

### **Request to Modify Calculations of Benchmark(s) Average**

***COMMENT 13:*** *Ramboll: Part III.A.1 Discussion of facilities which have more than one outfall requiring monitoring is not included. Ramboll suggests RIDEM average all outfalls per sampling event over four sampling events such that if the benchmark average is exceeded facility-wide (not by outfall), the facility enters into Level One, and corrective actions may be implemented on the individual outfalls whose average exceeded the benchmark concentration.*

***RESPONSE 13:*** *The requirements for calculating benchmark(s) averages are outfall specific, activities and exposure of materials can vary significantly within a facility. Using the information from individual outfalls will help permittees target areas and develop controls that target sources. Part VI.A.1 of the MSGP allows for permittees to claim "substantially identical outfalls" if the facility has two or more outfalls that discharge substantially identical effluents, based on the similarities of the general industrial activities and control measures, exposed materials that may significantly contribute pollutants to stormwater, and runoff coefficients of their drainage areas. The permittee may monitor the effluent of just one of the substantially identical outfalls and report the results as applying to the substantially identical outfall(s). Note: Per Part VI.B.2.b, the substantially identical outfall monitoring exemption does not apply to numeric effluent limit monitoring. If the event triggering corrective action is linked to an outfall that represents other substantially identical outfalls, the permittee must assess the need for corrective action for each outfall represented by the outfall that triggered the review or corrective action. Any necessary changes to control measures that affect these other outfalls must also be made before the next storm event if possible, or as soon as practicable following that storm event. No change to the permit is necessary.*

### **Request for Clarification of Natural Background**

***COMMENT 14:*** *Ramboll: Part III.A.1 Does "natural background" include non-industrial sources of pollution such as zinc from galvanized roofs?*

***RESPONSE 14:*** Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural Background does not include anthropogenic sources such as zinc from galvanized roofs. No change to the permit is necessary.

### **Request to Clarify Corrective Actions Level/Status**

***COMMENT 15:*** Ramboll Part III General Comment on Corrective Actions: There does not appear to be a description of corrective action status if the facility reduces the pollutant(s) to below its benchmark concentration after entering a corrective action level. What is the criteria for a facility in a corrective action level to be removed from a correction action level? If a facility is removed from a corrective action level but then exceeds a corrective action criteria in a subsequent year, does the facility re-enter the corrective action level status at Level One?

***RESPONSE 15:*** Facilities will not be removed from a corrective action level. If the average of the benchmark monitoring results, for the year following the implementation of corrective actions, does not exceed the benchmark triggering further corrective action, the permittee will be considered to have fulfilled the monitoring requirements for that parameter for the permit term. No change to the permit is necessary.

### **QUARTERLY VISUAL ASSESMENT**

#### **Request to Modify Quarterly Visual Assessment Frequency to be Consistent with Benchmark(s) and Impairment(s) Monitoring**

***COMMENT 16:*** Woodard & Curran IV.B and VI. RIDEM is proposing a benchmark and impaired waters monitoring frequency of twice per six-month interval (January 1 – June 30 and July 1 – December 31) with at least 30 days between monitoring events. We understand that this is intended to provide more flexibility to industrial dischargers due to the difficulty obtaining stormwater samples during the winter months, in particular during the first calendar quarter. This monitoring frequency could be very beneficial to permittees; however, the draft MSGP still includes a requirement for performing stormwater sampling each calendar quarter for visual assessment. Therefore, permittees still have the burden of collecting stormwater samples during the winter months. In addition, the MSGP includes a requirement for one of the quarterly monitoring events to capture snow melt, which can be very difficult to achieve. Providing a benchmark sampling frequency of “twice per 6-month interval” is only beneficial if the quarterly visual assessment monitoring frequency is also changed to “twice per 6-month interval” and the requirement to capture snowmelt for at least one quarterly sample is eliminated. We recommend that RIDEM change the quarterly visual assessment monitoring frequency to be consistent with benchmark and impaired waters monitoring frequency (twice per 6-month interval with at least 30 days between monitoring events), and that the requirement for at least one quarterly visual assessment monitoring event to capture snowmelt (Part IV.B.3.) be changed to optional.

***RESPONSE 16:*** The monitoring period requirements of Part IV.B.1 of the permit were changed to be consistent with benchmarks monitoring period requirements and monitoring of snowmelt is optional.

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IV.B.1. Quarterly Visual Assessment Procedures. **Twice within the January 1-June 30 monitoring period and twice within the July 1-December 31 monitoring period ~~Once each~~ quarter** for the entire permit term, a stormwater sample from each outfall must be collected (except as noted in Part IV.B.3.) and a visual assessment of each of these samples must be conducted. These samples are not required to be collected consistent with 40 CFR Part 136 procedures but should be collected in such a manner that the samples are representative of the stormwater discharge. **Each visual assessment of stormwater inspection must be conducted no less than thirty (30) days following the preceding visual assessment of stormwater inspection.**

IV.B.3. Exceptions to Quarterly Visual Assessments

\* \* \*

Areas Subject to Snow. In areas subject to snow, **at least** one quarterly visual assessment **may ~~must~~** capture snowmelt discharge, as described in Part VI.A.3., taking into account the exception described above for climates with irregular stormwater runoff.

### **Request to Modify Procedures for Visual Assessment**

#### **COMMENT 17:**

*CDIM* Section IV.B.1. Quarterly Visual Assessment and Section VIA4, Monitoring Procedures: The requirement to perform sampling or visual assessment within 30 minutes of discharge start time is very constrictive, especially for permittees with numerous discharge locations to be monitored. Moderate expansion of the timeframe would provide more opportunities for monitoring to be conducted, increasing permittee adherence to MSGP requirements, and would not likely significantly affect the results of the monitoring.

*NBC* Section IV.B.1., Page 22 Quarterly Visual Assessment of Stormwater Discharges, Quarterly Visual Assessment Procedures- Restrictions on when visual sampling can be performed (i.e., 72 hours from the previous discharge and within 30 minutes of discharge) make complying with the permit very difficult, especially during unusually rainy or dry quarters and for facilities with multiple monitoring locations. The NBC is requesting that these restrictions be relaxed by allowing for collection of samples after 24 hours from the previous discharge and within the first 3 hours of the start of discharge.

**RESPONSE 17:** *Although the concentration of pollutants discharged in stormwater at any one time is dependent on many complex variables, the largest concentration of pollutants would be expected to discharge earlier in the storm event and taper off as discharges continue. DEM changes in quarterly visual assessment monitoring period, as described in response to Comment 16., and already existing language provide sufficient flexibility for permittees to comply with the requirements of Part IV.B.1.*

### **SWMP REQUIREMENTS**

#### **Request to Clarify SWMP Requirement Summary of Sampling Data**

**COMMENT 18:** *Woodard & Curran* V.F.4.h. This section requires permittees to include a summary of existing stormwater sampling data but does not specify a time period to include. We suggest

changing this language to require a summary of sampling data collected during the previous permit term for existing dischargers (consistent with the EPA MSGP Section 5.2.3.5). This section also requires permittees to include a summary of stormwater sampling data collected during the term of this permit. As this data will not be available when SWMPs are initially prepared and will be reported electronically using NeTDMR during the term of the permit, we suggest removing this language (consistent with the EPA MSGP Section 5.2.3.5).

***RESPONSE 18:*** *The language in the permit was changed to be consistent with EPA’s 2015 MSGP language.*

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V.F.4.h. Sampling Data. The permittee must provide a summary ~~of existing storm water discharge sampling data taken at the facility of all stormwater discharge sampling data collected at the facility~~ during the previous permit term. ~~All storm water sampling data collected during the term of this permit must also be summarized and included in this part of the SWMP.~~ New dischargers and new sources must provide a summary of any available stormwater runoff data they may have.

### **Request to Clarify when Permittees are to Update the Publicly Available SWMP**

***COMMENT 19:*** *Woodard & Curran V.G.* This section requires that, if the SWMP is revised during the calendar year, a copy of the updated SWMP be provided at the URL identified in the facility’s NOI or uploaded by reopening the NOI, within 45 days after conducting the final routine inspection for the year. We suggest establishing a due date for all facilities for clarity (such as January 30, consistent with the deadline for submitting the annual report).

***RESPONSE 19:*** *Language in Part V.H.1 was added to clarify that the SWMP must be amended as necessary, by January 30th.*

\* \* \*

V.H.1. If the permittee provides a URL in the NOI where the SWMP can be found, and the permittee maintains the current SWMP at this URL, the permittee will have complied with the public availability requirements. To remain current, the permittee must post any SWMP modifications, records and other reporting elements required for the previous year at the same URL as the main body of the SWMP. The SWMP update shall be no later than ~~January 30th 45 days after conducting the final routine facility inspection for the year required in Part IV.A., as necessary.~~ If the permittee did not provide a SWMP URL in the NOI, the permittee may reopen the NOI at any time subsequent to the original NOI submittal to add a URL where the current SWMP can be found. The permittee is not required to post any confidential business CBI or restricted information (as defined in Appendix A) (such information may be redacted), but the permittee must clearly identify those portions of the SWMP that are being withheld from public access. CBI may not be withheld from those staff cleared for CBI review within RIDEM or EPA.

V.H.2. If the permittee uploads a copy of the current SWMP in the NOI, the permittee will have complied with the public availability requirements. To remain current, the permittee must electronically submit to NeT any SWMP modifications, records and other reporting elements required for the previous year. The SWMP update shall be no later than ~~January 30<sup>th</sup> 45 days after conducting following~~ the final routine facility inspection for

the year ~~required in Part IV.A~~. If the permittee did not electronically submit a copy of the SWMP in the NOI, the permittee may reopen the NOI at any time subsequent to the original NOI submittal to electronically submit a current SWMP. The permittee is not required to post any confidential business CBI or restricted information (as defined in Appendix A) (such information may be redacted), but the permittee must clearly identify those portions of the SWMP that are being withheld from public access. CBI may not be withheld from those staff cleared for CBI review within RIDEM or EPA.

### **Request to Delete Electronic Availability of SWMP**

***COMMENT 20:*** NBC Section V.H.1., Page 30 If the permittee provides a URL in the NOI where the SWMP can be found, and the permittee maintains the current SWMP at this URL, the permittee will have complied with the public availability requirements. The NBC objects to the requirement to post the SWMP, inspection, analytical and physical data on its website. This requirement is contradictory to work previously required by DEM and EPA to assess and mitigate vulnerability of our facilities to terrorist attacks (the VSA T program). NBC storm water plans detail locations of treatment tanks, buildings, pipes, chemical and fuel storage tanks, etc. and this information should not be posted on-line since it will increase our vulnerability to terrorism. In addition, posting of this information on-line will unnecessarily expose the NBC to third party lawsuits, as while the plans may be acceptable to DEM, other third party groups may disagree. The NBC requests that this requirement be eliminated, as the SWMP will remain on file with RID EM.

***RESPONSE 20:*** NBC storm water plans detail locations of treatment tanks, buildings, pipes, chemical and fuel storage tanks, etc., is information already available to the public. Language in the permit includes “restricted information”, and consistent with EPA’s 2015 MSGP the definition of this term was added to Appendix A. Please note effluent data and monitoring reports are not “restricted information”. The definition of “Restricted Information” was added to Appendix A of the MSGP for clarification.

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V.H.1 .... The permittee is not required to post any confidential business CBI or restricted information as defined in Appendix A (such information may be redacted), but the permittee must clearly identify those portions of the SWMP that are being withheld from public access. CBI may not be withheld from those staff cleared for CBI review within RIDEM or EPA.

### Appendix A

\* \* \*

**Restricted Information** - for the purposes of this permit, information that is privileged or that is otherwise protected from disclosure pursuant to applicable statutes, Executive Orders, or regulations. Such information includes but is not limited to: classified national security information, protected critical infrastructure information, sensitive security information, and proprietary business information.

## **MONITORING REQUIREMENTS**

### **Request to Modify Sampling Monitoring Procedures**

***COMMENT 21:*** *CDIM*. Section VI.A.3., Measurable Storm Events: The requirement that a monitoring event must follow the preceding monitoring event by at least 30 days seems arbitrary and provides an unnecessary obstacle to permittees in MSGP compliance. The requirement for monitoring events to be conducted following a 72-hour period of no measurable rainfall is sufficient to ensure that samples collected are representative of discharge from a facility and not skewed due to facility surfaces being "cleaned" by recent rainfall. Additionally, the quarterly visual assessments (Section IV. B) are not subject to the same 30 day gap requirement despite serving an analogous purpose. Removal of this 30 day time gap would facilitate compliance with the increased monitoring requirements in the Draft MSGP.

*NBC* Section VI.A.3., Page 32 Monitoring Procedures, Measurable Storm Events- The requirement for each monitoring event to follow the preceding monitoring event by at least 30 days will make satisfying sampling requirements difficult, especially during dry quarters. NBC requests this requirement be modified to allow for a time period of at least one week between monitoring events.

***RESPONSE 21:*** *The thirty (30) day interval between sampling events, allows RIDEM to provide flexibility in the monitoring (twice monitoring per six-month interval) while still potentially capturing substantially different seasonal variabilities in activities and precipitation. No change to the permit is required.*

### **Request to Modify Sampling Monitoring Procedures**

***COMMENT 22:*** *NBC* Section VI.A.4., Page 32 Monitoring Procedures, Sample Type- The restriction that sampling be performed within 30 minutes of discharge makes complying with the permit very difficult. The NBC recommends modifying this requirement to allow collection of samples within the first 3 hours of discharge (see NBC comment in Section IV.B.1).

***RESPONSE 22:*** *DEM changes in benchmark monitoring period, and already existing language provide sufficient flexibility for permittees to comply with this requirement. Part VI.A.4. allows permittees to collect samples beyond the first 30 minutes of discharge, as long as the permittee can document why it was not possible to collect the sample within the 30 minute timeframe. No change to the permit is necessary.*

### **Request to Clarify Reporting Year for Inspections and Monitoring**

***COMMENT 23:*** *CDIM* 1. General Comment: Section VI.A. 7 states that, depending on when a permittee obtains coverage under the MSGP, their first semiannual monitoring period may be either January 1 to June 30 or July 1 to December 31. However, Section VII.D states that all permittees must submit their Annual Report, which includes a summary of the previous calendar year's monitoring, by January 30. Please clarify whether the storm water monitoring year is intended to coincide with the calendar year for all permittees, or if a permittee's monitoring year is determined by their initial semiannual monitoring period, which would result in two different monitoring years (January to December and July to June).

***RESPONSE 23:*** Annual Reports are to summarize the results of the previous calendar year regardless of when the permittee starts monitoring. The language in Part VII.D. of the MSGP was changed to clarify that the annual report is to include information for the previous calendar year.

\* \* \*

VI.A.7. **Monitoring Periods.** Monitoring requirements in this permit begin **January 1, 2020** or the first six-month monitoring interval following ~~either the effective date of the permit or~~ the date of discharge authorization, whichever date comes later. For example, if the permittee obtains permit coverage on ~~March 30~~**June 2, 2020**~~19~~, then the first monitoring interval is July 1 - December 31, 2020. This monitoring schedule may be modified in accordance with Part VI.A.6. if the revised schedule is documented with the SWMP and provided to RIDEM with the first monitoring report. If the facility's monitoring is required twice per 6-month interval (e.g., benchmark monitoring), the permittee must monitor at least twice in each of the 6-month intervals (January 1 – June 30, July 1 – December 31) for a minimum of one year. Each monitoring event must be conducted during a measurable storm event that follows the preceding monitoring event by at least thirty (30) days.

~~For example, if the permittee obtains permit coverage on June 2, 2019, then the first monitoring interval is July 1 – December 31, 2019. This monitoring schedule may be modified in accordance with Part VI.A.6. if the revised schedule is documented with the SWMP and provided to RIDEM with the first monitoring report.~~

### **Request to Delete Continued (with Reduced Frequency) Benchmark(s) Monitoring when Benchmark(s) are not exceeded for one year.**

***COMMENT 24: Woodard & Curran*** VI.B.1.c. This section of the draft MSGP indicates that permittees may discontinue monitoring for benchmark pollutants after one year of samples, if the average of the 4 monitoring values does not exceed the benchmarks. Information presented during RIDEM workshops indicated that permittees would be required to continue monitoring once per year, even after having obtained results below the benchmark concentrations after the first year. **If RIDEM intends to require continued monitoring, the current draft MSGP does not reflect this. If this requirement is added to the draft MSGP, we suggest that additional time be allowed for comment.** In addition, if this requirement is added to the draft MSGP, please consider how this potentially impacts the tiered corrective action requirements proposed in Section III.A. For example, level one, two, and three corrective actions are based on benchmark exceedances during year one, two, and three. What would be required if a permittee met the benchmark concentrations after year one, but then exceeded in year two, three, four, or five? Would the monitoring frequency revert from once per year back to four times? If so, when would the change in monitoring frequency begin? Would any corrective actions be required if there was a one-time exceedance of a benchmark based on an annual sample? The current draft permit language does not account for the various scenarios that could occur.

***RESPONSE 24:*** RIDEM had incorrectly indicated, during the MSGP workshops, that annual monitoring would apply if the average of 4 monitoring values does not exceed the benchmarks. As indicated in Part VI.B.1.c. of the permit, if the average of the 4 monitoring values for any parameter does not exceed the benchmark, the permittee has fulfilled the monitoring requirements for that parameter and is no longer required to monitor for that parameter and outfall for the permit term. As

a result, no further benchmark monitoring is required in subsequent years (i.e., years 2, 3, 4, or 5). No change to Part VI.B.1.c is required, however, Part VI.B.1.d has been updated, as indicated below, to clarify that, if exceedances are solely due to natural background, further sampling is not required.

\* \* \*

VI.B.1.d. Data exceeding benchmarks. After collection of one year of samples, if the average of the 4 monitoring values for any parameter exceeds the benchmark value, the permittee must implement corrective actions, in accordance with Part III.A., unless the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background in accordance with Part VI.B.1.e. If the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background ~~in accordance to VI.B.1.e.~~, the permittee ~~may discontinue sampling in accordance to VI.B.1.e~~ ~~must continue monitoring once per year.~~

### **Request for Clarifications**

**COMMENT 25:** *Woodard & Curran* VI.B.3. Regarding required monitoring for discharges to impaired waters:

1. Part VI.B.3 references VI.B.3.b.i. and VI.B.3.b.ii.; however, these sections do not exist in the draft MSGP.
2. Part VI.B.3.a. references annual monitoring, but Part VI.b.3.b.1. references monitoring twice during the first six-month interval and twice during the second six-month interval following the effective date of the permit. Please clarify the required frequency of monitoring.
3. Part VI.B.3.b.1. describes required monitoring for impaired waters without an approved TMDL but does not describe discontinuation of monitoring in cases where the pollutant is not present. Please clarify whether the language in Part VI.B.3.a. regarding discontinuation of monitoring applies to all impaired waters (i.e., those with and/or without an approved TMDL).  
VI.B.3.b.2. describes required monitoring for impaired waters with an approved TMDL and indicates that, if pollutants are detected in any of the samples collected during the first year, the permittee must continue monitoring throughout the permit term. Please clarify the required frequency of this continued monitoring (i.e., once per year, twice per six-month interval), and whether monitoring may be discontinued if the pollutant(s) are not detected in the second year of the permit term, or third year, etc.

**RESPONSE 25:** *Part VI.B.3 was re-formatted to correct numbering errors and clarify the permit requirements.*

*Regardless of whether a TMDL has been completed: Permittees must monitor discharges to impaired waters, twice within the period of January 1-June 30 and twice within the period of July 1-December 31, for the pollutant causing the impairment. If after the first year of monitoring the pollutant causing impairment is not present and not expected to be present in the discharge, or it is present but the permittee has determined that its presence is caused solely by natural background sources the permittee must notify RIDEM. This notification must be included in the monitoring report following the second semi-annual monitoring period (i.e., cover letter), after which the permittee may discontinue monitoring, unless the TMDL or other water quality determination has specific instructions to the contrary.*

*If after the first year of monitoring the pollutant causing impairment is present and its presence is not caused solely by natural background sources, the permittee must continue sampling for the pollutant*

*detected following the same monitoring frequency for the remainder of the permit term, unless the Director informs the permittee otherwise.*

~~VI.B.3. Discharges to Impaired Waters Monitoring. Permittees must monitor for all pollutants for which the waterbody is impaired as follows: will be subject to the requirements of VI.B.3.b.i. and VI.B.3.b.ii. if TMDLs have not been completed for all of the listed impairments.~~

VI.B.3.a. ~~Permittees Required to Monitor Discharges to Impaired Waters.~~ If the facility discharges to an impaired water, the permittee must monitor for all pollutants for which the waterbody is impaired and for which a standard analytical method exists (see 40 CFR Part 136).

~~If the pollutant for which the water is impaired is not present in the first year and not expected to be present in the discharge, or it is present but the permittee has determined that its presence is caused solely by natural background sources, the permittee should include a notification to this effect in the monitoring report following the first year of sampling, after which the permittee may discontinue annual monitoring. To support a determination that the pollutant's presence is caused solely by natural background sources, the permittee must keep the following documentation with the SWMP records, in accordance to Part V.I.:~~

- ~~• An explanation of why the permittee believes that the presence of the pollutant causing the impairment in the discharge is not related to the activities at the facility; and~~
- ~~• Data and/or studies that tie the presence of the pollutant causing the impairment in the discharge to natural background sources in the watershed.~~

~~Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the site, or pollutants in run-on from neighboring sources which are not naturally occurring.~~

If the pollutant for which the waterbody is impaired is suspended solids, turbidity or sediment /sedimentation, the permittee must monitor for Total Suspended Solids (TSS). If the pollutant for which the waterbody is impaired is expressed in the form of an indicator or surrogate pollutant, the permittee must monitor for that indicator or surrogate pollutant. No monitoring is required when a waterbody's biological communities are impaired but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment, or when a waterbody's impairment is related to hydrologic modifications, impaired hydrology, or temperature.

VI.B.3.b. ~~Discharges to Impaired Waters Monitoring Schedule.~~ Beginning January 1, 2020 or the first full six-month interval following the date of authorization (as described in Part VI.A.7.), whichever date comes later, the permittee must monitor at least twice in each of the 6-month intervals (January 1 – June 30, July 1 – December 31), for the pollutant causing the impairment, unless the Director informs the permittee otherwise. The permittee must conduct monitoring at each outfall (except substantially identical outfalls) discharging stormwater to

impaired waters with and/or without an EPA approved or established TMDL or other water quality determination.

~~VI.B.3.b.1. Discharges to impaired waters without an EPA approved or established TMDL or other water quality determination: Beginning in the first full six-month interval following the effective date of the permit (as described in Part VI.A.7.) or the date of discharge authorization, whichever date comes later, the permittee must monitor twice within the period of January 1-June 30 and twice within the period of July 1-December 31 for the pollutant causing the impairment. The permittee must conduct monitoring at each outfall (except substantially identical outfalls) discharging stormwater to impaired waters without an EPA approved or established TMDL or other water quality determination.~~

~~VI.B.3.b.2. Discharges to impaired waters with an EPA approved or established TMDL or other water quality determination: For stormwater discharges to waters for which there is an EPA approved or established TMDL or other water quality determination, the permittee must monitor twice within the period of January 1-June 30 and twice within the period of July 1-December 31 for the pollutant for which the TMDL was written or the other water quality determination was made, unless the Director informs the permittee otherwise. Following the first year of monitoring:~~

- ~~• If the TMDL or other water quality determination pollutant is not detected in any of the first year samples, the permittee may discontinue further sampling, unless the TMDL or other water quality determination has specific instructions to the contrary, in which case the permittee must follow those instructions. The permittee must keep records of this finding onsite with the SWMP.~~

- ~~• If the permittee detects the presence of the pollutant causing the impairment in the stormwater discharge for any of the samples collected in the first year, the permittee must continue monitoring throughout the term of this permit, unless the TMDL or other water quality determination has specific instructions to the contrary, in which case the permittee must follow those instructions.~~

~~VI.B.3.c. After 2 consecutive monitoring periods (i.e., 12 consecutive months), if the pollutant for which the water is impaired is not present and not expected to be present in the discharge, or it is present but the permittee has determined that its presence is caused solely by natural background sources, the permittee must include a notification to this effect in the monitoring report following the second monitoring period first year of sampling (i.e., cover letter to the monitoring report). After notifying the Department, the permittee may discontinue annual monitoring unless a TMDL or other water quality determination has specific instructions to the contrary, in which case the permittee must follow those instructions.~~

~~To support a determination that the pollutant's presence is caused solely by natural background sources, the permittee must keep the following documentation with the SWMP records, in accordance to Part V.I.:~~

- An explanation of why the permittee believes that the presence of the pollutant causing the impairment in the discharge is not related to the activities at the facility; and
- Data and/or studies that tie the presence of the pollutant causing the impairment in the discharge to natural background sources in the watershed.

Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the site, or pollutants in run-on from neighboring sources which are not naturally occurring.

- VI.B.3.d. If after one year of monitoring, the pollutant for which the water is impaired is detected and its presence is not caused solely by natural background sources, the permittee must continue monitoring for the pollutant detected for the remainder of the permit term or until the pollutant for which the water is impaired is not detected for 2 consecutive monitoring periods (i.e., 12 consecutive months), unless the Director informs the permittee otherwise.

**Request to Delete and/or Modify Monitoring of Pollutant(s) Causing Impairment for Facilities that met this Requirement in Previous Permit. See Previous Response for language clarifying impaired waters monitoring)**

**COMMENT 26: NBC**

Section VI.B.3.a., Page 36 Discharges to Impaired Waters Monitoring, Permittees Required to Monitor Discharges to Impaired Waters, If the facility discharges to an impaired water, the permittee must monitor for all pollutants for which the waterbody is impaired and for which a standard analytical method exists. If the pollutant for which the water is impaired is not present in the first year and not expected to be present in the discharge, or it is present but the permittee has determined that its presence is caused solely by natural background sources, the permittee should include a notification to this effect in the monitoring report following the first year of sampling, after which the permittee may discontinue annual monitoring. Prior DEM stormwater permit requirements have previously mandated this sampling requirement. If the facility has already documented that the pollutant for which the water is impaired is not present or is present but caused solely by natural background sources, the facility should be exempt from this monitoring requirement in the new permit. RIDEM's previous permit directives to permittees to discontinue sampling in locations in compliance with water quality regulations based on annual monitoring data results should be upheld and not required again by the new permit.

Section VI.B.3.b.1, Page 37 Impaired Waters Monitoring Schedule- The NBC objects to the increase of impaired waters monitoring from once to four times per year in locations where compliance has previously been demonstrated (see corresponding comments on Section VI.B.3.a. above). The NBC recommends that redundant sampling of stormwater discharges which have previously demonstrated no detrimental impact to receiving waters should not be required.

Section VI.B.3.b.2., Page 37 Impaired Waters Monitoring Schedule, If the permittee detects the presence of the pollutant causing the impairment in the storm water discharge for any of the samples collected in the first year, the permittee must continue monitoring throughout the term of this permit.

Should compliance not occur during the first year of sampling, the NBC finds four sampling events per year throughout the life of the permit to be overly burdensome for facilities which have identified and corrected the cause of the evaluated pollutant. NBC's stormwater discharges are negligible compared to the millions of gallons of treated wastewater discharged from its facilities every day, and NBC's resources during rain events are needed to ensure our treatment plants operate properly, not focus on these diminutive discharges. The NBC recommends decreasing impaired waters sampling frequency to annually after the facility demonstrates one full year of compliant samples

***RESPONSE 26:*** *Since previous monitoring may have occurred over five years ago, it is important for all permittees subject to impaired waters monitoring to do the monitoring in the first year of permit coverage so that pollutant loading for impaired waters can be determined. This monitoring may used to determine if there have been changes, whether known, planned or not, that affect the quality of the discharges. If the pollutant causing impairment is not detected for 2 consecutive monitoring periods (i.e., 12 consecutive calendar months), monitoring of the pollutant may be discontinued for the permit term (see response to comment #25).*

*Given that storm water discharges are variable in intensity and duration and the concentration of pollutants discharged at any one time is dependent on many complex variables, deciding if sampling is to be discontinued based on one sample is insufficient.*

### **Request for Various Clarifications**

***COMMENT 27: Woodard & Curran***

II.A.2.c. Please clarify the meaning of the asterisk (\*) in the bulleted list in this section.

VII.D. This section lists the information required to be included in the annual report. Since all benchmark monitoring data will be reported in NeTDMR, we suggest removing the requirement to include a summary of the past year's benchmark monitoring data in the annual report.

***RESPONSE 27:*** *The MSGP was corrected and the asterisk deleted. The requirement for a benchmark monitoring summary is limited to dates and exceedances that will allow for review of the information for determining compliance with monitoring and corrective actions requirements.*