

PAG-13
AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR STORMWATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

COMMENT RESPONSE DOCUMENT
MAY 2016



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF CLEAN WATER

TABLE OF CONTENTS

INTRODUCTION.....	2
LIST OF COMMENTERS.....	2
COMMENTS AND RESPONSES	5
Topic – NOI Instructions	5
Topic – Co-Applicants and Co-Permittees.....	11
Topic – General Permit Errors and Discrepancies	14
Topic – Authorized Discharges.....	18
Topic – General Permit Definitions.....	29
Topic – Fees and Annual Reports	38
Topic – Immediate Reporting and Notification.....	43
Topic – Minimum Control Measures (MCMs).....	52
Topic – Draft MS4 Requirements Table	60
Topic – Pollutant Control Measures (Appendices A, B and C)	67
Topic – Pollutant Reduction Plans (Appendices D and E).....	74
Topic – General PAG-13 Comments.....	107
Topic – Waivers.....	124
Topic – Stormwater Ordinances	126
Topic – Funding and Resources.....	138
Topic – Training and Outreach	141

**PAG-13 General Permit
Comment Response Document**

INTRODUCTION

The Department of Environmental Protection (DEP) published notice of the availability of a draft NPDES General Permit for Stormwater Discharges from Small MS4s (PAG-13 General Permit) in the *Pennsylvania Bulletin* on May 30, 2015 [45 Pa.B. 2674]. A 60-day comment period was provided, and interested parties were directed to submit comments to DEP's eComment system and/or DEP's MS4 resource email account, RA-EPPAMS4@pa.gov. During the comment period DEP received multiple requests for an extension to the comment period. DEP published notice of an extension to the comment period in the *Pennsylvania Bulletin* on August 15, 2015 [45 Pa.B. 4840]. The comment period ended on August 31, 2015. DEP received comments and questions from 64 different individuals and organizations during the comment period (note – some individuals and organizations provided comments on behalf of multiple clients or partners). The purpose of this document is to present DEP's responses to these comments, explain how the comments were considered in finalizing the PAG-13 General Permit, as applicable, and answer all questions posed.

LIST OF COMMENTERS

The names of individuals who submitted comments to DEP are identified below (in no particular order). DEP will summarize each comment in this document and identify the commenter(s) by number, corresponding to the list below.

- (1) Joan N. McVaugh, Franklin Township, PO Box 118, 20 Municipal Lane, Kemblesville, PA 19347.
- (2) Felicia S. Dell, AICP, York County Planning Commission, 28 East Market Street, York, PA 17401-1580.
- (3) Kurt M. Schroeder, P.E., Gilmore & Associates, Inc., 65 East Butler Avenue, Suite 100, New Britain, PA 18901 on behalf of Bristol and Tullytown Boroughs.
- (4) Samantha L. Brinker, Gilmore & Associates, Inc., 65 East Butler Avenue, Suite 100, New Britain, PA 18901 on behalf of Doylestown and New Hope Boroughs.
- (5) James P. Dougherty, P. E., Gilmore & Associates, Inc., 65 East Butler Avenue, Suite 100, New Britain, PA 18901 on behalf of Hatboro Borough.
- (6) Douglas C. Rossino, P.E., Gilmore & Associates, Inc., 65 East Butler Avenue, Suite 100, New Britain, PA 18901 on behalf of Perkasio Borough and Upper Makefield Township.
- (7) April M. Barkasi, P.E., Cedarville Engineering Group, LLC, 1033 South Hanover Street, Suite 300, North Coventry, PA 19465 on behalf of the City of Coatesville, South Coatesville Borough, and East Brandywine, East Vincent, Newlin, West Norriton and Westtown Townships.
- (8) Ashley Sowers, County of Berks Planning Commission, Berks County Services Center, 633 Court Street, 14th Floor, Reading, PA 19601-4309.
- (9) Andrew M. Stottlemyer, Borough of Chambersburg, 100 South 2nd Street, Chambersburg, PA 17201-2512.
- (10) Pennsylvania Campaign for Clean Water, 1315 Walnut Street, Suite 1650, Philadelphia, PA 19107.
- (11) Stephen M. Fromnick, The County of Chester, Department of Facilities & Parks, 313 West Market Street, Suite 5402, PO Box 2748, West Chester, PA 19380-0991.
- (12) Choose Clean Water Coalition, 706 Giddings Avenue, Suite 1-B, Annapolis, MD 21401.
- (13) Mary Lou Lowrie, P.E., Gilmore & Associates, Inc., 184 West Main Street, Suite 300, Trappe, PA 19426.
- (14) Daniel J. Flint, P.E., Lower Allen Township, 2233 Gettysburg Road, Camp Hill, PA 17011.
- (15) Jeremy Miller, Hampden Township, 230 South Sporting Hill Road, Mechanicsburg, PA 17013.

**PAG-13 General Permit
Comment Response Document**

- (16) Sylvia House, Antrim Township, 10655 Antrim Church Road, PO Box 130, Greencastle PA 17225.
- (17) Rick Smith, East Goshen Township, 1580 Paoli Pike, West Chester, PA 19380.
- (18) Ramesh Belani, 2682 Jean Drive, Hatfield, PA 19440.
- (19) Eric Jespersen, 48 Christman Road, Drums PA 18222.
- (20) Neil Carlson, Vandemark & Lynch, Inc., 4305 Miller Road, Wilmington, DE 19802.
- (21) Kirk Stoner, AICP, Cumberland County Planning Department, 18 North Hanover Street, 3rd Floor, Carlisle, PA 17013.
- (22) Michael J. Fox, Pennsylvania Stormwater Coalition, c/o Montgomery Township, 1001 Stump Road, Montgomeryville, PA 18936-9605.
- (23) Janet L. Bowers, P.G., The County of Chester, Government Services Center, 601 Westtown Road, Suite 260, PO Box 2747, West Chester, PA 19380-0990.
- (24) Geoffrey Thompson, Borough of Collegeville, 491 East Main Street, Collegeville, PA 19426-2645.
- (25) Mark Mattucci, Gilmore & Associates, Inc., 184 West Main Street, Suite 300, Trappe, PA 19426 on behalf of Salford Township.
- (26) Eileen M. Nelson, P.E., Stantec, 1060 Andrew Drive, Suite 140, West Chester, PA 19380.
- (27) Michael T. LaSala, LandStudies, Inc., 315 North Street, Lititz, PA 17543.
- (28) Maya K. van Rossum, Delaware Riverkeeper Network, 925 Canal Street, Suite 3701, Bristol, PA 19007.
- (29) Kerry Bumbaugh, Quincy Township, 11359 Anthony Highway, Waynesboro, PA 17268.
- (30) Vicki Aycock, Dawood Engineering, Inc., 2020 Good Hope Road, Enola, PA 17025.
- (31) Jamie Anderson, Eastern Delaware County Stormwater Collaborative.
- (32) Gary Milbrand, P.E., CFM, York Township, 190 Oak Road, Dallastown, Pennsylvania 17313.
- (33) Mary E. Flagg, East Vincent Township, 262 Ridge Road, Spring City, PA 19475.
- (34) Julie Seeds, Middle Paxton Township, 10 Elizabeth Avenue, Dauphin, PA 17018.
- (35) Kurt Hausammann Jr., AICP, County of Lycoming Planning and Community Development, 48 West Third Street, Williamsport, PA 17701.
- (36) Anne W. Klepfer, Borough of Schwenksville, 140 Main Street, Schwenksville, PA 19473.
- (37) Jennifer A. Prunoske, P.E., CPESC, Hanover Engineering Associates Inc., 20 C Snyder Lane, Ephrata, PA 17522-9101.
- (38) Derek Rinaldo, C.S. Davidson, Inc., 38 N Duke St, York, PA 17401.
- (39) Ryan Berner, Gateway Engineers, 400 Holiday Drive, Suite 300, Pittsburgh, PA 15220.
- (40) Michael A. Cotter, Borough of West Chester, 401 East Gay Street, West Chester, PA 19380.
- (41) Erin Letavic, Herbert, Rowland & Grubic, Inc., 369 East Park Drive, Harrisburg, PA 17111.

**PAG-13 General Permit
Comment Response Document**

- (42) Jeffrey W. McClintock, P.E., CFM, Caln Township, 253 Municipal Drive, PO Box 72149, Thorndale, PA 19372-0149.
- (43) Daniel H. Daley, P.E., Edward B. Walsh & Associates, Inc., Lionville Professional Center, 125 Dowlin Forge Road, Exton, PA 19341 on behalf of Uwchlan, East Caln, West Bradford, West Caln and West Pikeland Townships and Malvern Borough.
- (44) David J. Biloon, P.E., Herbert E. MacCombie, Jr., P.E. Consulting Engineers & Surveyors, Inc., 1000 Palmers Mill Road, Media, PA 19063.
- (45) Bruce W. Jones, P.E., Pennoni Associates Inc., One Drexel Plaza, 3001 Market Street, Suite 200, Philadelphia, PA 19104 on behalf of the Municipality of Norristown, Swarthmore, Royersford, Kennett Square and West Conshohocken Boroughs and Lower Merion, Marple, Springfield, Upper Chichester, Valley, Concord, East Goshen, Limerick and Aston Townships.
- (46) Michele A. Fountain, P.E., CKS Engineers, Inc., 88 South Main Street, Doylestown, PA 18901.
- (47) Gwen A. Jonik, Upper Uwchlan Township, 140 Pottstown Pike, Chester Springs, PA 19425.
- (48) Liz Deardorff and Brian Hazelwood, American Rivers, 1845 Market St., Suite 206 Camp Hill, PA 17011.
- (49) Jared C. Hockenberry, P.E., GHD Inc., 1240 North Mountain Road, Harrisburg, PA 17112.
- (50) Sean S. Heaney, U.S. Department of Defense, Department of the Navy, Navy Region Mid-Atlantic, 1510 Gilbert Street, Norfolk, VA 23511-2737.
- (51) Richard N. Roman, P.E., Pennsylvania Department of Transportation, Bureau of Maintenance and Operations, 400 North Street, 6th Floor, Harrisburg, PA 17120.
- (52) Pennsylvania Builders Association, 2509 North Front Street, Harrisburg, PA 17110.
- (53) John Walliser, Pennsylvania Environmental Council, 2124 Penn Avenue, Pittsburgh, PA 15222.
- (54) Mario L. Canales, P.E., Pickering, Corts, & Summerson, Inc., 642 Newtown-Yardley Road, Suite 300, Newtown, PA 18940 on behalf of Doylestown and Wrightstown Townships and Hulmeville, Langhorne Manor and Newtown Boroughs.
- (55) Michael D. Helbing, Citizens for Pennsylvania's Future, 8 West Market Street, Suite 901, Wilkes-Barre, PA 18701.
- (56) David M. Sanko, Pennsylvania State Association of Township Supervisors, 4855 Woodland Drive, Enola, PA 17025.
- (57) Cindy J. Conrad, Colebrookdale Township, 765 West Philadelphia Avenue, Boyerstown, PA 19512.
- (58) Mary R. Bird, Schuylkill Township, 111 Valley Park Road, Phoenixville, PA 19460-5766.
- (59) Robert T. Umstead, Borough of Trappe, 525 West Main Street, Trappe, PA 19426.
- (60) Mimi Gleason, West Whiteland Township, 101 Commerce Drive, Exton, PA 19341.
- (61) Lisa M. Ochsenhirt, Esq., Wet Weather Partnership, PO Box 51, Richmond, VA 23218.
- (62) Joan Keefer, Borough of Jonestown, 295 South Mill Street, PO Box 446, Jonestown, PA 17038.
- (63) Karen Feather, Lebanon County Clean Water Alliance, Center for Municipal and Corporate Sustainability, Lebanon Valley College, 101 North College Avenue, Annville, PA 17003.
- (64) Sara B. Laganelli, Lower Oxford Township, 220 Township Road, Oxford, PA 19363.

COMMENTS AND RESPONSES

The number associated with each commenter is identified in parentheses following the comment. Comments are organized by topics. NOTE – the term “2013 PAG-13 General Permit” refers to the PAG-13 General Permit that became effective on March 16, 2013. The term “2018 PAG-13 General Permit” refers to the PAG-13 General Permit that will become effective on March 16, 2018.

Topic – NOI Instructions

- 1. Comment:** Page 7 of NOI Instructions - Requires downstream-most outfall to be numbered according to a DEP system. Note that most MS4s have located and provided identifiers to Outfalls (with a numbering system) on MS4 maps and in GIS systems years ago, and that nos. 001-100 have all been used as ID numbers on other structures. Why is DEP dictating this, and why now? Clarify what is meant by “each surface water body” in each MS4 – every unnamed tributary, every named waterway, or only where a waterway exits the MS4/UA, etc.? Some streams have many tributaries/branches...should the farthest downstream outfall to each and every one be called out? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: DEP’s outfall numbering system for sewage, industrial waste and industrial stormwater NPDES permits over the past 30+ years has been a three-digit format starting with “001”. DEP’s data system, eFACTS, was designed to accommodate this business practice. The request for MS4s to number their outfalls accordingly should have been included in prior versions of the PAG-13 General Permit, but was not. DEP understands that numbering systems are now in place that may not conform to DEP’s preference. The NOI Instructions to PAG-13 have been updated to indicate that it is DEP’s preference, but not a requirement, to report outfall numbers in the three-digit format. However, please be aware that there may be discrepancies between the data shown in GIS-based applications such as eMapPA and that shown on an MS4’s maps. For example, if an MS4 applicant reports an outfall number of “MS4-1” on the NOI, DEP will not be able to record this number in eFACTS and may instead report it as “001”. eFACTS’ outfall numbering allows for up to 5 numbers for MS4s, but no letters or special characters.

For the second part of this comment, DEP is asking as part of the NOI for MS4s to 1) identify every surface water that receives at least one stormwater discharge from the MS4 (regardless of whether the outfall / surface water is located within the urbanized area) and 2) report the outfall that is located furthest downstream on that surface water. For example, an MS4 has 10 outfalls. Five outfalls discharge to Stream A and five outfalls discharge to Stream B. The MS4 should list both Streams A and B on the NOI, and identify the number of the outfall that is furthest downstream on both streams.

- 2. Comment:** The MS4 should be allowed to use an outfall identification system that best suits its needs. Potential options could be numerically as proposed, grid systems, receiving drainage area systems and in the case of multi-municipal or Authority permits, a municipal identifier within the id system. Re-numbering of outfalls may result in a disconnect of 10+ years of past inspection data. If new outfalls are permitted or added below some and above others it would be undesirable to renumber all outfalls for record keeping purposes. For some municipalities several hundred outfalls may exist. The department must be prepared to accept supplemental information with the NOI. **(32)**

Response: See response to Comment No. 1.

- 3. Comment:** The outfall numbering, second bullet point, first sentence on page 7 requires the furthest downstream outfall to be numbered 001 while the paragraph directly below states that the furthest upstream outfall should be numbered 001. This should be clarified. Most municipalities have previously numbered all their outfalls, some not utilizing the requested numbering scheme. It would seem that re-numbering all the outfalls in a municipality would serve no purpose at this point. **(54)**

Response: See response to Comment No. 1.

**PAG-13 General Permit
Comment Response Document**

4. **Comment:** Page 7. The second bullet point states, “the applicant should report “050” for Clear Creek.” Does that mean that the creek gets an ID number or does it mean that the MS4 must state that they have 50 outfalls to Clear Creek in the annual report? **(46)**

Response: The referenced sentence has been clarified. In this example, for Clear Creek the applicant would report “050” in the column for “Outfall No.”.

5. **Comment:** The outfall IDs must correspond to the outfall numbers on the applicant’s map. Many MS4 have been using a numbering system for their outfalls and collection system for a number of years. To require that they re-number their entire system is unreasonable. **(46)**

Response: See response to Comment No. 1.

6. **Comment:** Page 7. Stormwater Discharge Information. The permit instruction does not include a definition of “Outfalls”. As this is a basis of the regulatory compliance, and may be the initial permit package for new permittees, this is a critical definition. **(7)**

Response: The definition of “Outfall” is part of the PAG-13 General Permit and has been added to the NOI Instructions.

7. **Comment:** Surface Water Information, second bullet: “furthest downstream outfall to each surface water body” is a confusing shorthand phrase. Perhaps it should read “furthest downstream outfall before entering each surface water body.” **(23)**

Response: It is believed that the example provided in the NOI Instructions is clear. The language “before entering” as suggested by the comment may add confusion.

8. **Comment:** Page 6 – MAPS: Instructions identify that “The maps must identify all MS4 outfalls,...”. The word all implies the MS4’s must map systems including ones that are not in their control. Private or systems that fall under another permit should be exempt from being mapped. The map requires the inclusion of “Surface Waters.” The definition of surface waters includes “intermittent streams.” Intermittent stream is defined as “A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water, which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.” A substrate is defined as “the area of the stream base on which an aquatic organism lives.” Intermittent streams do not appear to be mapped within any statewide coverage. It is unrealistic to require municipalities to map intermittent streams. It is suggested that a state wide water coverage be developed and provided before intermittent streams should be required to be mapped. **(32)**

Response: Under MCM #3 of the 2018 PAG-13 General Permit, an MS4 permittee must map the entire storm sewer collection system regardless of ownership. If, for example, stormwater from a municipally-owned road is discharged to private property, then flows in a swale on private property, and discharges to a stream from an outfall on private property, the entire conveyance beginning with the road and ending with the outfall must be mapped. Existing permittees must include a copy of the map with the NOI for the 2018 PAG-13 General Permit, due by September 16, 2017. New permittees and those MS4s with waivers must submit a topographic map if a detailed map of the collection system is not available.

Intermittent streams are often captured by the [National Hydrography Dataset \(NHD\)](#). MS4s should, at a minimum, identify intermittent streams in the NHD on their maps. Field reconnaissance is also expected as part of mapping efforts since other topographic features such as swales and ditches are considered part of the MS4, by definition. Such reconnaissance may identify intermittent streams not found in the NHD.

**PAG-13 General Permit
Comment Response Document**

9. **Comment:** Regarding the numbering system, our mapping has been completed and the numbering is not in accordance with the criteria listed. It is suggested that the numbering criteria be left to the Permittee; otherwise, to require changes to the numbering system at this time will not only incur costs that are unnecessary, it may also lead to confusion in tracking of the system. **(42)**

Response: See response to Comment No. 1.

10. **Comment:** Mapping for municipalities have been completed for some time and renumbering the outfalls will be cumbersome and create confusion for past tracking. It is recommended that the numbering procedures be considered guidance and implement if feasible for the municipalities. **(43)**

Response: See response to Comment No. 1.

11. **Comment:** What is the purpose of the required outfall numbering format? Most municipalities have been utilizing their existing outfall labeling formats for several years and have already provided this information to the Department. (NOI Instructions) **(45)**

Response: See response to Comment No. 1.

12. **Comment:** How accurate are latitude and longitude required to be for the most downstream outfalls? (NOI Instructions) **(45)**

Response: Provide the latitude and longitude coordinates at the geographic center of the outfall or end of pipe where the discharge occurs. Indicate the Horizontal Reference Datum used to determine the coordinates by checking the box for North American Datum of 1927 ("NAD of 1927"), North American Datum of 1983 ("NAD of 1983"), World Geodetic System of 1984 ("WGS of 1984") or "Unknown". Report the degrees, minutes, and seconds in the NOI form to the significant figures reported by the GPS or method being used to establish the location.

13. **Comment:** Regarding the need to have latitude and longitude associated with each outfall, it would be helpful to understand the reasoning for this. This proposed requirement seems more like a want than a need, let alone the cost to obtain this information is not small. **(42)**

Response: Identifying the locations of MS4 outfalls is of critical importance for the development of maps and implementing the MS4's stormwater management program.

14. **Comment:** Surface Water Information - Do you want a list of all of the outfalls with the latitude and longitude coordinates? **(17)**

Response: The NOI requests a list of the furthest downstream outfall to each surface water body receiving stormwater discharges from the MS4, with latitude and longitude coordinates.

15. **Comment:** Page 9 – Existing Permits: The section should identify the time period the list should cover (i.e. since the last NOI, last PAG 13 permit issuance etc.). The list also includes the wording "... Any other environmental permits" this is implied that it's PaDEP or EPA. This should be specified and the list should be broadened to remove this item. **(32)**

Response: Clarification has been added to the NOI and NOI Instructions that the MS4 applicant is to list environmental permits issued within the last five years by DEP or EPA.

**PAG-13 General Permit
Comment Response Document**

16. Comment: Some clarity is needed for “list all permits that have been issued to the MS4 applicant.” Would this include NPDES Permits for Stormwater Discharges Associated with Construction Activity? **(9)**

Response: Yes, if DEP issued the NPDES permit. If DEP did not issue the NPDES permit, then it does not need to be listed.

17. Comment: Stormwater Management Program – Existing Permits. (page 9) It should be clarified who the permitting authority is for the NPDES, WQM and earth disturbance permits. Is it intended to include local or CCD permits? Is it intended for only those active permits or all of the permits since the previous NOI submission? What is meant by “any other environmental permits”? **(46)**

Response: Environmental permits means permits issued under the following EPA programs (see 40 CFR § 122.21): Hazardous Waste Management program under RCRA, UIC program under SDWA, NPDES program under CWA, Prevention of Significant Deterioration (PSD) program under the Clean Air Act, Nonattainment program under the Clean Air Act, National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act, Ocean dumping permits under the Marine Protection Research and Sanctuaries Act, Dredge or fill permits under section 404 of CWA, and other relevant environmental permits, including State permits. Also see responses to Comment Nos. 15 and 16.

18. Comment: Existing permits - Why do we need to provide DEP with information that they already have in their files. How far back to I have to go 5 years, 10 years? Obviously, the easiest way to address this is to file a right to know request with DEP for this information. **(17)**

Response: 40 CFR § 122.21(f)(6) requires this information from all applicants of NPDES permits.

19. Comment: Regarding existing permits, it would be helpful to understand the reasoning for this since PADEP already has this information. This proposed requirement seems more like a want than a need as well. Further, there is no timeline associated with the information requested. This would not be a small task if we are to attempt to obtain a copy of all the general permits, emergency permits, Act 537 approvals, etc. that have been issued to the Township, let alone the cost to obtain this information is not small. **(42)**

Response: See response to Comment No. 18.

20. Comment: Compliance History - Why do we need to provide DEP with information that they already have in their files? How far back to I have to go 5 years, 10 years? Obviously, the easiest way to address this is to file a right to know request with DEP for this information. **(17)**

Response: See response to Comment No. 18.

21. Comment: Is an MOU with CCD required from all MS4s? If CCD is responsible for inspections for NDPEs permits, why is an MOU required? If CCD does what is required by law, why is an MOU required? If an MS4 performs regular inspections of active construction sites and the CCD continues to do what is required by law, then an MOU seems unnecessary. If an MS4 wants to depend on CCD for inspections, then a checkbox indicating this should be added and only then should an MOU be required. **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: In the final PAG-13 General Permit, an MOU between the permittee and applicable county conservation district (CCD) is not required.

**PAG-13 General Permit
Comment Response Document**

- 22. Comment:** “Authorized Stormwater Discharges” – pg 4 “DEP proposes to also add clarification concerning GP coverage for [outfalls]. ...DEP is authorizing stormwater discharges from all outfalls identified in the NOI.” Note, the only outfalls identified in the NOI are the downstream most outfalls to each waterway. What about the rest? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: DEP agrees that there was a discrepancy in the draft PAG-13 General Permit package. To address this, DEP has removed the sentence, “The stormwater discharge points (outfalls) identified in the NOI for General Permit coverage are authorized under this General Permit” from the final PAG-13 General Permit.

- 23. Comment:** Page 6. Site Information. The Urbanized Area definition should include the appropriate census bureau reference as applicable under this PAG-13 application. Hence, 2000 vs. 2010. **(7)**

Response: The urbanized area (UA) Name(s) required in the NOI under Site Information should be reported as the UA name(s) identified for your municipality under the 2010 census information (see www.census.gov). For example, “Scranton, PA Urbanized Area” or “Philadelphia, PA—NJ—DE—MD Urbanized Area.”

- 24. Comment:** Page 6. Site Information. “Maps” should be clarified to very distinctly define whether the mapping of infrastructure for only the MS4 system is required, or if the infrastructure within the drainage area leading to the MS4, but potentially outside of the MS4, is included and is inclusive or exclusive of UA considerations. **(7)**

Response: See response to Comment No. 8.

- 25. Comment:** Page 9 of the NOI Instructions. Stormwater Management Program. The second paragraph requests the information regarding the applicability of Act 167 and the timing if there is a municipally approved Act 167 Ordinance. There should be a provision to allow a recently adopted Act 167 Ordinance to comply with the regulations, without certification, determination, or modification requirements if adopted within seven (7) years. **(7)**

Response: DEP is providing municipal permittees over 6 years to make the necessary revisions to stormwater management ordinances. The final PAG-13 General Permit requires the submission of an ordinance that is consistent with DEP’s 2022 Model Stormwater Management Ordinance (3800-PM-BCW0100j) with an Annual MS4 Status Report by September 30, 2022 (existing permittees) or following the fourth (4th) year of General Permit coverage (new permittees). DEP believes that ordinances should be reviewed and updated periodically, and updates should be expected over time given the evolving nature of stormwater management policy. Also see response to Comment No. 526.

- 26. Comment:** A link to Chapter 93 is recommended to be added to part 8 on page 2 of the NOI instructions. **(9)**

Response: A link has been added to Chapter 93 in the Surface Water Information section of the NOI Instructions.

- 27. Comment:** Page 7 – MS4 Requirements: Municipalities may have different streams with different impairments. If the department needs the permittee to reiterate the information found in the requirements table, it makes more sense to include a table of the streams identified in the requirements table for the MS4 and then identify each requirement by stream instead of lumping all drainage areas of the municipality together. **(32)**

Response: The Surface Water Information section of the NOI may include more surface waters than the MS4 Requirements Table. The MS4 Requirements Table is not intended to be a comprehensive inventory of all surface waters receiving stormwater discharges from MS4s; it only identifies those surface waters with impairments. For example, an MS4 has stormwater discharges to Stream A, Stream B, and Stream C. Stream A is impaired and appears in the MS4 Requirements Table for that MS4. Stream B is not impaired and does not appear in the Table. Stream C is not impaired and does not appear in the Table, but Stream C flows into

**PAG-13 General Permit
Comment Response Document**

Stream D which is impaired and appears in the Table. The NOI requests that the applicant list Streams A, B and C and the furthest downstream outfall to each stream.

28. Comment: Direction should be given for unlabeled surface waters. **(32)**

Response: The following language has been added to the NOI Instructions: "If the stream does not have an official name according to the Geographic Names Information System (GNIS), use the term "unnamed tributary to XXX", where XXX is the first downstream surface water with an official name."

29. Comment: It is not clear if the required map must contain all MS4 owned surface waters, storm water collections system, roads, inlets, pipe, etc. or all private and MS4-owned facilities. For example, it states, "... the entire storm sewer collection system", when I believe the MS4 collection system is what is required to be shown. The word "MS4" should be used before each identifying feature. **(46)**

Response: See response to Comment No. 8.

30. Comment: How does DEP expect a municipality to show every swale on a map? The magnitude of the number of swales is too large to show on a map. **(46)**

Response: DEP expects that MS4 permittees will make concerted efforts to identify and map all features described in the PAG-13 General Permit. DEP understands that refinements to the details of the map will occur over time.

31. Comment: The sixth bullet point states that the permittee is to specify if there is a WLA for the identified stream. If the answer is yes, because of nutrients or sediment, then the permittee can't use the General Permit NOI, as stated in No. 16 on page 3. This should be explained in this section. **(46)**

Response: Clarification has been added to this section.

32. Comment: Page 8 – The "NOTE" on top of the page makes reference to a "TMDL Plan". Is a TMDL plan the same as a PRP? These two plans should be clarified. **(46)**

Response: A TMDL Plan is not a PRP. A TMDL Plan is different from a PRP in that specific pollutant reduction requirements can be determined from the TMDL. A PRP is developed in situations where there is no TMDL or otherwise, as for the Chesapeake Bay TMDL, pollutant reduction requirements are not defined. An MS4 that is required to develop a TMDL Plan will not be able to use the PAG-13 General Permit – the MS4 must apply for an individual permit.

Topic – Co-Applicants and Co-Permittees

- 33. Comment:** If a co-permittee determines it cannot comply and must submit an individual NOI, how will that affect the other co-permittees? What if the non-complying co-permittee is the “joint client”? **(2)**

Response: As a first step, MS4 co-permittees should collectively determine whether or not they continue to be eligible and can comply with the 2018 PAG-13 General Permit. If it is determined that the co-permittees will not be eligible or cannot comply, then the co-permittees could collectively submit an application for an individual permit.

It is possible that one co-permittee could determine that it is no longer eligible for or will not be able to comply with the 2018 PAG-13 General Permit. For example, a new discharge from the co-permittee’s MS4 is to surface waters designated by DEP as “High Quality.” There are two options: 1) the co-permittee that is no longer eligible could break out from the co-permittee group and file an individual permit application or 2) the co-permittees could collectively file an individual permit application.

If the co-permittee that is ineligible for continued PAG-13 coverage is also considered the “joint client” representing the co-permittees, and the remaining co-permittees are eligible and wish to continue PAG-13 coverage, the NOI for the remaining co-permittees would need to reflect a new joint client.

- 34. Comment:** Co-applicants (4th paragraph, page 4) – This paragraph states that “if a regional stormwater authority is created to administer stormwater management programs through multiple municipalities, the authority may apply on behalf of its municipalities using a single NOI form.” This section does not state whether the authority would become the permittee. However, page 2 of the Draft PAG-13 PRP Instructions (Section II. Required PRP Elements, Paragraph A. Public Participation, Bullet #4) references a “municipal authority that is the permittee.” Language should be added to the Co-Applicants section of the PAG NOI Instructions to clarify whether a regional authority applying for the permit on behalf of its municipalities results in the regional authority being the permittee or whether the participating municipalities would each be issued a permit. **(2)**

Response: If a regional stormwater authority applies for NPDES permit coverage on behalf of multiple entities, DEP’s intent would be to issue permit coverage to the regional stormwater authority. Language has been added to the PAG-13 NOI Instructions for clarification.

- 35. Comment:** Stormwater Management Program – MCM Implementation (last paragraph, page 8) – This paragraph states that “the permittee is ultimately responsible for compliance with each of the MCMs.” To interpret this statement, the clarifications noted in comment #3 regarding a regional stormwater authority are necessary. As the instructions are currently written, it is unclear if the participants in a S/W Authority would continue to be co-permittees and whether the S/W Authority would also become a co-permittee or if the S/W Authority itself would become the permittee. If a Regional Stormwater Authority is the permittee, would compliance with the MCMs be allowed to be on a regional basis as opposed to an individual municipal basis? Again, clarification is needed. **(2)**

Response: If DEP issues a permit to a single entity such as a regional stormwater authority, the authority is the permittee and is, overall, responsible for permit compliance. Implementation of the MCMs would need to be done throughout the regional MS4 area. For example, the regional authority could demonstrate compliance with MCM #1 by 1) developing, implementing and maintaining a regional Public Education and Outreach Program, 2) developing and maintaining regional target audience group lists, 3) publishing a newsletter (for example) that is distributed throughout the regional MS4 area, and 4) advertising and holding a public meeting inside the regional MS4 area and including educational materials with water, sewer and refuse bills throughout the area (for example). For MCM #3, a regional map could be developed and outfalls throughout the regional MS4 area could be “pooled” to meet requirements for outfall field screening. In other words, permittee compliance for a regional stormwater authority would be similar as for a municipal permittee, but the area of responsibility for implementing the stormwater management program would potentially cross municipal boundaries.

**PAG-13 General Permit
Comment Response Document**

- 36. Comment:** DEP supports joint permit efforts as a way to reduce costs and streamline permit compliance efforts. DEP should consider implementing strategies that would better align the deadlines and requirements of existing and future PAG-13 permittees. The existing MS4 municipalities in Cumberland County have differing permit effective dates and deadlines which complicates coordination efforts should municipalities choose to work together. Future MS4 municipalities have expressed interest in working together and recognize that coordinated permit effective dates, requirements and expiration dates are needed as a foundation for their collaborative efforts. **(21)**

Response: DEP is requiring that all MS4s that have or wish to have PAG-13 coverage submit an NOI for new or continued coverage by September 16, 2017 (i.e., must be received by DEP on or before this date), regardless of the expiration date of coverage identified on page 1 of the 2013 General Permit issued by DEP. For example, if an MS4 received a physical PAG-13 General Permit document from DEP in which "August 30, 2019" is identified as the expiration date of coverage on page 1, that MS4 will still need to submit an NOI to continue (renew) coverage by September 16, 2017 (or otherwise submit an application for an individual permit). The reason is that all MS4s that have existing PAG-13 coverage will be covered by the 2018 PAG-13 General Permit as of the effective date of the reissued PAG-13 General Permit, i.e., March 16, 2018, and DEP has determined that a new NOI is needed at least 180 days prior to the expiration date of the 2013 PAG-13 General Permit in order for an MS4 to demonstrate its ability to comply with the 2018 General Permit. This action will put all MS4s operating under PAG-13 on the same schedule, with the same annual reporting requirements. For the next permitting cycle, DEP will not specify an expiration date of coverage on page 1 of PAG-13 General Permits, as the annual report will be the MS4's ongoing notice of intent for continued coverage. Therefore, MS4s should have no obstacles from a permit administration perspective in working collaboratively.

- 37. Comment:** It is understood that DEP encourages joint permits, regional solutions, and collaborative efforts to achieve MS4 compliance in the most cost-effective manner possible. Stormwater is a regional issue, and regional solutions must be sought that cross municipal boundary lines, particularly in the highly fragmented landscape of Pennsylvania's municipal government system. Joint permits and other regional efforts not only provide MS4s with an opportunity to maximize local solutions and achieve economies of scale, but they also reduce DEP's burden in regulating many separate permits. However, the program and its various requirements, instructions and reporting forms were generally designed for single permittees. In order to better encourage joint permits and regional solutions, DEP should provide improved guidance for joint MS4 permittees. The more clear it is how MS4 requirements, forms and processes can be adapted for use by joint permittees, the more likely that additional joint permits will be developed by local partners in the next permit cycle. **(35)**

Response: DEP has attempted in the NOI Instructions to describe how co-applicants can complete the PAG-13 NOI and submit NOIs from multiple applicants in one package. Specific details are needed in order to better address this comment. DEP would welcome detailed comments on how to improve the NOI for co-applicants at any time.

- 38. Comment:** In order to better facilitate the formation of joint permits, we strongly recommend that DEP create a mechanism for extensions of existing permits to better align the deadlines and requirements for all potential partners. MS4s were issued permits for the current cycle on various dates in 2013 and 2014. Because all permits expire five years from the effective date, expiration dates of existing permits are likewise staggered. MS4s must apply for new permits 180 days in advance of the expiration of their current permit coverage. This misalignment of expiration dates and deadlines has created a barrier to collaborative efforts. To date, DEP's response to this question has been that if a group of MS4s wishes to enter into a joint permit, they must do so on the timeline of the permittee with the earliest deadline. This is unrealistic because the permittees with later deadlines are highly unlikely to voluntarily speed up their permit obligations and associated costs in order to work with the others. **(35)**

Response: See response to Comment No. 36. In addition, DEP can at any time amend permits in order to facilitate collaborative efforts.

**PAG-13 General Permit
Comment Response Document**

39. Comment: The example of our ten Lycoming County MS4s keenly illustrates this issue. Currently within Lycoming County, there are ten MS4 entities holding three permits with staggered expiration dates. They are, in chronological order: March 15, 2018 (South Williamsport Borough's PAG-13), July 31, 2018 (Duboisstown Borough's PAG-13), and March 31, 2019 (a joint permit held by eight Williamsport-area MS4s). For these ten entities to enter into a joint permit together, the group of eight would have to take a series of costly actions a year ahead of their current schedule, including submission of the permit application and completion of the CBPRP. Frankly, this is a deal-breaker, as the joint permittees have no strong incentive to accelerate their regulatory burden in order to bring new partners into the joint permit. To add another layer of complexity, it appears that new MS4s will be required to apply for a permit 180 days prior to expiration of the current statewide General Permit (which expires March 15, 2018). Several potential new MS4s in Lycoming County have been identified in the Draft Table. So we would have to coordinate at least four different staggered deadlines for our MS4 entities in Lycoming County in order to have one joint permit for our county's MS4s. Politically, this will be nearly impossible to achieve. MS4s that are in the process of entering into a relationship with neighboring MS4s to create a joint permit will need sufficient time to work through this challenging political process.

DEP has not provided any specific rationale for the timing of when permits were issued in the last cycle. (We speculate that it was simply faster and easier for staff to issue the permits for the PAG-13s, while it took more time and effort to issue the more complicated joint individual permit, in our case.) The coincidental timing of this past action should not stand as an unsurmountable barrier to the formation of future joint permits and regional efforts. If DEP is serious about encouraging regional efforts, this issue needs to be addressed conclusively and well in advance of any regulatory deadlines associated with the next permit cycle. We understand that extending the current permits will require some negotiation with EPA. Lycoming County has a regionalism success story that we would be glad to share in order to help EPA understand that any harm caused by a modest delay in issuance of some new permits would be eclipsed by the benefit of capitalizing on opportunities for collaborative work to improve water quality.

We also strongly recommend that to avoid this issue in the future, all new and renewed permits in the next cycle be given the same expiration date across the Commonwealth. **(35)**

Response: See response to Comment No. 36. The timing of prior permitting actions is not a barrier to encouraging regional efforts.

Topic – General Permit Errors and Discrepancies

40. Comment: Paragraph 2 (page 1) – The first sentence references “submission of an Annual Status Report in accordance with Part C of the General Permit.” This is contradictory to paragraph 8. under The Authority Granted by this General Permit (page 5) which states the Annual Status Report shall be “in accordance with Part A III.D of the General Permit.” Also, the last sentence references submitting “an application for an individual permit within 9 days of publication of the final General Permit...” This is inconsistent with paragraphs 5 and 8 under The Authority Granted by this General Permit (page 5), which states that such submission shall be “within 90 days of publication.” It is recommended that these discrepancies be corrected. It is further recommended that DEP consider deleting either paragraph 2 on page 1 or paragraph 8 on page 5 since they are identical, except for the noted discrepancies. **(2)**

Response: Thank you for your comment. DEP has made the suggested corrections.

41. Comment: Paragraph 5 (page 1) – As written, it appears that the term (OPTIONAL) at the beginning of this paragraph would enable the permittee to decide whether they want to achieve the pollutant loading reductions as specific in Appendix D or E by the compliance date. Is this DEP’s intent? If that is the case, it appears that the Requirements Table, which assigns obligations for both Appendices, would in essence serve as guidance rather than requirements. **(2)**

Response: Use of the term (OPTIONAL) is intended for DEP use only (note that the permit was revised to indicate “(NOT APPLICABLE)”). If Appendices D and/or E apply to a specific MS4 permittee, DEP will include the applicable language, otherwise it will be removed.

42. Comment: On page 1 of proposed General Permit, the requirement that permittees achieve pollutant loading reductions for sediment and total phosphorus is listed as “optional” under item 5. This should be changed to say: “required where applicable”. **(53)**

Response: See response to Comment No. 41.

43. Comment: Under The Authority Granted by this General Permit is Subject to the Following Conditions. Paragraph 1 (page 4) states that the permittee is to discharge under this new General Permit if the previous General Permit expires. This contradicts 25 Pa. Code Chapter 92a.7.b and 92a.7.c, as well as Part A I.B of this General Permit. Recommend deleting this paragraph as Part A I.B includes the Pa. Code coverage NPDES permit duration / continuation of expiring permits. **(2)**

Response: When a permittee submits a timely application for the reissuance of an individual NPDES permit and DEP is unable to reissue the permit prior to the expiration date, the terms and conditions of the expired individual permit are automatically continued. The same applies to coverage under a statewide general NPDES permit when DEP extends the term of the general permit (which DEP did for the PAG-13 General Permit from 2008 to 2013). However, when DEP reissues a statewide general permit, all persons with coverage under the general permit become bound by the terms and conditions of the reissued general permit on the effective date of that general permit (regardless of the coverage date identified on page 1 of the physical permit package received by the permittee). The “old” general permit expires and can no longer be used for NPDES permit coverage.

This was a common misunderstanding by MS4s following DEP’s reissuance of the PAG-13 General Permit that became effective in March 2013. Many MS4s believed that they were still operating under the original PAG-13 General Permit issued in 2003 and extended until 2013 because they had not received a physical permit document in the mail from DEP. Actually, the original 2003 PAG-13 General Permit ceased to exist once the reissued PAG-13 took effect in March 2013, and MS4s were bound to the terms and conditions of the reissued PAG-13.

The 2018 PAG-13 General Permit includes language in paragraph 1 under “THE AUTHORITY GRANTED BY THIS GENERAL PERMIT IS SUBJECT TO THE FOLLOWING CONDITIONS:” that attempts to clarify that upon the effective date of the 2018 PAG-13 General Permit, MS4s with existing PAG-13 coverage must comply with

**PAG-13 General Permit
Comment Response Document**

the 2018 PAG-13 General Permit immediately with the exception of activities that are triggered when DEP issues approval of coverage (i.e., a physical permit document). The reason DEP issues approvals of coverage is to confirm that the MS4 is eligible to continue operating under the reissued PAG-13 General Permit in lieu of an individual permit. In the interim period until an MS4 receives the approval of coverage, the MS4 must comply with the general permit except where noted in the permit, or otherwise the MS4 may submit an application for an individual permit. In the event DEP determines that the MS4 is not eligible for continued coverage, DEP will notify the MS4 in writing that it must apply for an individual permit within 90 days. If the MS4 fails to submit an application within 90 days, coverage under the general permit is automatically terminated.

- 44. Comment:** Paragraph 5 (page 5) uses the terms “renewed, reissued or amended General Permit,” while paragraph 8 (page 5) and paragraph 2 (page 1) uses the terms “renewed or amended General Permit.” Will an annual report for year 5 of the permit serve as an NOI for the new, renewed, reissued or amended General Permit? If so, recommend deleting paragraph 2 on page 1 and paragraph 5 on page 5. Paragraph 8 should cover the intended requirements; there is no need for redundancy. Also, it should be noted as to how municipalities will know when the final renewed or amended General Permit is available. [Paragraph 5 states that the Draft will be published in the Pennsylvania Bulletin, but it doesn’t mention anything about the Final version.] **(2)**

Response: It is acknowledged that there is some redundancy between the paragraphs noted; however, page 1 constitutes the approval of coverage to operate under the PAG-13 General Permit (i.e., this page is not part of the actual General Permit although it is presented in the same document) and paragraphs 5 and 8 on page 5 are part of the General Permit. Paragraph 5 discusses permittee obligations in response to DEP’s publication of a renewed, reissued or amended General Permit. Paragraph 8 discusses permittee obligations concerning Annual MS4 Status Reports. The text, “The permittee shall be responsible for complying with the final renewed or amended General Permit. If the permittee is unable to comply with the renewed or amended General Permit, the permittee must submit an application for an individual NPDES permit within 90 days of publication of the final General Permit” has been removed from paragraph 8 because it is redundant with paragraph 5.

- 45. Comment:** Paragraph D.1 (page 11) and Paragraph D, Duty to Reapply (page 15) – It appears that the Annual Report template reference should be 3800-FM-BPNPSM0491, not 3800-FM-BPNPSM0100k as stated. **(2)**

Response: Corrections made. Note that the document ID numbers of all documents in the PAG-13 General Permit package have been changed from “BPNPSM” to “BCW” to reflect the change in the Bureau of Point and Non-Point Source Management’s name to the Bureau of Clean Water.

- 46. Comment:** Paragraph D.5, Other Non-Compliance (page 12) – Reference is made to paragraph C.4. However, there is no paragraph C.4 under paragraph C. It appears that the reference should instead be to paragraph D.4. **(2)**

Response: Thank you for your comment. DEP has made the suggested correction.

- 47. Comment:** BPNPSM0100a. NOI Instructions. Discharges authorized listed in the “NOI Instructions” and “BPNPSM0100d Permit Authorization to Discharge” are not the same. “NOI Instructions” is missing #8 (non-contaminated hydrostatic test waters...) **(23)**

Response: Thank you for your comment. DEP has made the correction by adding non-contaminated hydrostatic test waters to NOI Instructions.

- 48. Comment:** Page 3 – DISCHARGES AUTHORIZED BY THIS GENERAL PERMIT: Item 8 is not included in the NOI instructions and should be removed from permit or added to the NOI instructions. **(32)**

Response: See response to Comment No. 47.

**PAG-13 General Permit
Comment Response Document**

49. Comment: The list of Discharges Authorized by This General Permit on page 2 of the NOI is different than the list of authorized discharges outlined on page 3 of the NPDES Permit. The list of Discharges Not Authorized by This General Permit on page 2 of the NOI is also different from the list on pages 3 and 4 of the Permit. **(54)**

Response: See response to Comment No. 47. The list of Discharges Not Authorized by This General Permit is the same between the NOI Instructions and the PAG-13 General Permit.

50. Comment: Part C I.B.1.d. "Posters" is listed twice. **(23)**

Response: Thank you for your comment. DEP has made the suggested correction.

51. Comment: Permit Page 24 – II Pollutant Control Measures and Pollutant Reduction Plans (PCM & PRP): Opening paragraph refers to a web link that is broken. Referenced requirements table not provided for review. **(32)**

Response: The website URL was given as www.dep.state.pa.us/MS4. The correct link should be www.dep.pa.gov/MS4. Correction made.

52. Comment: Permit Page 15, Section III.E – incorrect spelling of the word "institution" on the first line of the section. **(38)**

Response: Thank you for your comment. DEP has made the suggested correction.

53. Comment: Page numbers start at Page 1 again, which appears to be Page 3. **(41)**

Response: It is unclear what is meant by this comment. Page numbering in the draft PAG-13 General Permit is sequential from page 1 through page 31.

54. Comment: Part B- Other responsibilities D. I could not find form 3800-FM-BPNPSM0100k in the draft permit package **(17)**

Response: The reference has been corrected to form number 3800-FM-BPNPSM0491.

55. Comment: Part A III.D.2 and 3 should be combined and conflicting information clarified. **(23)**

Response: Part A III.D.2 establishes the requirement to submit an NOI fee annually to DEP by September 30. Part A III.D.2 has been clarified to indicate that a check or money order for \$500 is due by September 30 each year. Part A III.D.3 indicates that if DEP establishes an electronic system for development and submission of annual reports and submission of NOI fees, the permittee shall use the electronic system following receipt of written notification from DEP. The electronic system is not in place as yet, but is expected to be within the next few years.

56. Comment: III. OTHER REQUIREMENTS C. Add "only when that discharge is suspected of being a source of pollution." to the end of the sentence. **(46)**

Response: Under 25 Pa. Code § 92a.61(j), "The Department may require that the permittee perform additional sampling for limited periods for the purpose of TMDL development, or for other reasons that the Department determines are appropriate." It is possible, therefore, that DEP could require sampling and analysis of municipal stormwater for reasons other than illicit discharge detection during the term of coverage under the PAG-13 General Permit, although such monitoring would not be typical.

**PAG-13 General Permit
Comment Response Document**

57. Comment: Permit Page 12, Section III.C – incorrect spelling of the word “invasion” on second line of the section. **(41)**

Response: The word “invasion” appears only once in the PAG-13 General Permit, in Part B III.C, and it is spelled correctly.

58. Comment: Permit Page 12, Section III.E – incorrect spelling of the word “institution” on the first line of the section. **(41)**

Response: See response to Comment No. 52.

Topic – Authorized Discharges

59. Comment: On page 4 of the PAG-13 Fact Sheet, "dechlorinated swimming pool discharges is noted as to been removed as a permitted discharge. Why is the issue with dechlorinated water? Can the DEP please explain how a homeowner is to dispose of dechlorinated pool water? Is this water now a hazardous waste? Without public sewer within the Township, this will create and extreme hardship for residents. Have local sewer authorities been consulted regarding their acceptance of this water? **(1)**

Response: Residential and community swimming pools contain a variety of pollutants, regardless of whether or not chlorine is used for disinfection. High concentrations of Nitrate-Nitrogen, Total Dissolved Solids (TDS), Phosphorus and other pollutants have been detected in pool water in numerous studies. Salt water pools in particular contain very high concentrations of TDS. Bromine may be introduced instead of chlorine for disinfection. Cyanuric acid may be added to help stabilize chlorine levels. Chemicals are added to pools for pH adjustment and other purposes to balance pool chemistry. Releasing pool water into storm sewers exposes aquatic life to swimming pool pollutants.

By allowing "dechlorinated swimming pool discharges" as an authorized non-stormwater discharge in the 2013 PAG-13 General Permit, DEP overlooked its longstanding policy for managing swimming pool water; this water should be managed by either 1) discharging into a sanitary sewer system if permission is granted to do so or 2) draining pools for on-site irrigation and infiltration, ensuring that the water is released at a rate to prevent flow into streams and storm sewers. See DEP's Fact Sheet, "[Swimming Pool Water Discharge Guidelines](#)" (3850-FS-DEP4251). In general, homeowners and communities with pools have yards and lawns where pool water can be infiltrated without causing runoff into storm sewers or streams.

With the 2018 PAG-13 General Permit, DEP is conforming to its policy. In doing so, DEP is not stating that swimming pool water is hazardous waste, but rather it should not be discharged to surface waters via storm sewers. DEP expects that MS4 permittees will educate the public on swimming pool water management and, by September 30, 2022 (existing permittees) or following the fourth (4th) year of General Permit coverage (new permittees), update appropriate ordinance(s) or SOP(s) to implement this requirement.

60. Comment: What about de-chlorinated water from swimming pools. Why can't that be discharged. **(17)**

Response: See response to Comment No. 59.

61. Comment: Swimming pool water – Not sure I want this in my sanitary system. What happens to pool owners with an on-lot sewer system. **(17)**

Response: The pool should be drained into an area that will promote infiltration without runoff. Also see response to Comment No. 59.

62. Comment: The proposed prohibition to allowing discharge de-chlorinated swimming pool water is of concern in that it is conflict with the EPA requirements for IDDE. If, as drafted, it is recommended that the discharge be directed to the sanitary sewer, it will overtax a system that already has significant capacity issues due to Rainfall Derived Infiltration and Inflow. **(26)**

Response: DEP has elected to impose a more stringent requirement in conformance with its policy on swimming pool discharges. Also see response to Comment No. 59.

63. Comment: If dechlorinated swimming pool water can no longer be discharged to the MS4, where should this water be discharged? Is this for small home pools, individual home in ground pools, or large swim clubs? If it is to be sent into the sanitary sewer system, this then creates more strain on an already overtaxed sanitary sewer system. According to EPA's Stormwater Phase II Final Rule on IDD&E dechlorinated swimming pool water is not considered to be an Illicit Discharge. **(31)**

**PAG-13 General Permit
Comment Response Document**

Response: See responses to Comment Nos. 59 and 62.

64. Comment: Dechlorinated swimming pool discharges should be reinstated as an allowable discharge. **(32)**

Response: See response to Comment No. 59.

65. Comment: The draft permit says swimming pool discharges are to be through the sanitary sewer, it is no longer a permitted discharge. How does DEP propose this to be monitored? **(37)**

Response: DEP expects that municipal ordinances or SOPs be updated by September 30, 2022 (existing permittees) or the fourth (4th) year following General Permit coverage (new permittees) and that the public is educated on acceptable swimming pool drainage options. Monitoring is to be done under Minimum Control Measure #3, BMP #4, i.e., outfall field screening as part of the MS4's IDD&E program.

66. Comment: It is noted that dechlorinated swimming pool discharges has been omitted from the authorized discharge listing. It is not practical, nor does the Township want to encourage, disposal of pool water to the sewer system. This major change in the administration of the MS4 program will shift undue, and unreimbursed, costs to the Municipal Authority. Further, this could violate the various WWTP treatment agreements depending on how they are worded. It is recommended "dechlorinated swimming pool discharges (clean, no filter backwash)" be included in the authorized discharges in the new permit. **(42)**

Response: See response to Comment No. 59.

67. Comment: Dechlorinated swimming pool discharges have been removed from the authorized non-stormwater discharges. DEP's policy of recommending dechlorinated swimming pool water to discharge into the sanitary sewer systems is not feasible for the following reasons:

- Large expense of treating sanitary sewer.
- Inundating the conveyance systems including pump stations.
- Practicability of connecting swimming pool discharges into the sanitary sewer system.

We recommend the dechlorinated swimming pool remain as an authorized non-stormwater discharge. **(43)**

Response: DEP believes swimming pool water can be managed through on-site irrigation and infiltration in most cases without causing runoff and is generally the preferred option. Also see response to Comment No. 59.

68. Comment: If dechlorinated swimming pool water can no longer be discharged to the MS4, where should this water be discharged? Is this for small home pools, individual home in ground pools, or large swim clubs? If it is to be sent into the sanitary sewer system, this then creates more strain on an already overtaxed sanitary sewer system. According to EPAs Stormwater Phase II Final Rule on IDD&E, dechlorinated swimming pool water is not considered to be an Illicit Discharge. **(45)**

Response: See responses to Comment Nos. 59 and 62.

69. Comment: We request DEP provide the regulated community with scientific data that supports the changes made to discharges that will not be allowable under the PAG-13 General Permit. Non-contaminated water from geothermal systems is now an authorized discharge, as is water from residential car washing – as long as cleaning agents are not used. However, de-chlorinated swimming pool discharges will no longer be included on the list and must be discharged to a sanitary sewer. **(52)**

**PAG-13 General Permit
Comment Response Document**

Response: The literature is replete with scientific studies illustrating the human health risks associated with swimming pools. Some of these studies have focused on the potential for the propagation of pathogens in disinfected pool water, e.g., *Cryptosporidium*. Others have examined disinfection by-products (DBPs); for example, one recent study confirmed the findings of a 1980 study that found that swimming pool water is mutagenic and may pose carcinogenic risks from chlorinated and brominated DBPs (Richardson et al. 2010. What's in the Pool? A Comprehensive Identification of Disinfection By-Products and Assessment of Mutagenicity of Chlorinated and Brominated Swimming Pool Water. *Environmental Health Perspectives*, 118(11): 1523-1530). DEP does not regulate the quality of swimming pool water, but it does regulate the quality of Pennsylvania's surface waters to protect human health and aquatic life, and the discharges to those waters. The human health risks discussed above may also pose risks to aquatic life. In addition, other research has concluded that elevated concentrations of inorganic compounds are present in most swimming pool waters that would not generally impact human health but could have impacts on aquatic life.

As noted in the comment, residential car wash water is an authorized non-stormwater discharge under the 2018 PAG-13 General Permit, as long as cleaning agents are not used. The 2013 PAG-13 General Permit did not have the qualification on cleaning agents. Soaps and synthetic detergents can be toxic to aquatic life and should not be discharged to surface waters. Abel (1974) found that invertebrates, especially in their juvenile stages, are extremely sensitive to detergents: concentrations below 0.1 mg/l interfere with growth and development in some species (Abel, P.D. 1974. Toxicity of Synthetic Detergents to Fish and Aquatic Invertebrates. *Journal of Fish Biology*, 6(3): 279-298).

For both swimming pool water and residential car wash discharges, the issue is primarily one of scale. Any single uncontrolled swimming pool draining or residential car wash activity might be inconsequential with respect to its contribution of pollutant loading to an MS4 and downstream surface waters. However, if you were to extrapolate this to the scale of an entire urbanized area, pollutant loadings may be significant. This was the finding of the City of Federal Way, Washington, which determined that hundreds and in some cases thousands of pounds of pollutants were being discharged to its MS4 over the course of a year from residential car washing (Smith, Daniel J., Shilley, Hollie. 2009. Residential Car Washwater Monitoring Study. City of Federal Way, Washington, Public Works, Surface Water Management).

- 70. Comment:** Waste water treatment plant operators have expressed concern about the suggested option of discharging swimming pool water into their systems because abnormal discharges can affect their plants' functions. It is unclear whether dechlorinated discharges and residential vehicle wash water are permitted. **(63)**

Response: Dechlorinated pool water discharges (or any pool water discharge) and residential vehicle wash waters containing cleaning agents are not authorized non-stormwater discharges under the PAG-13 General Permit, and MS4s have until September 30, 2022 (existing permittees) or following the fourth (4th) year of General Permit coverage (new permittees) to update ordinances and SOPs accordingly. Also see response to Comment No. 67.

- 71. Comment:** The list of discharges authorized by the new General Permit does not specifically include dechlorinated pool discharges. This type of discharge was previously permitted. Are dechlorinated pool discharges intentionally prohibited under the new permit? **(63)**

Response: Yes, as are all swimming pool discharges to storm sewers.

- 72. Comment:** On page 3 of the PAG-13, DISCHARGES AUTHORIZED BY THIS GENERAL PERMIT - #7 residential car washing is only authorized where cleaning agents are not utilized. How does DEP propose that this requirement be enforced? Would municipalities be required to update their already approved Act 167 Ordinance revisions to match this list? **(1)**

Response: Yes, MS4s will need to update ordinances or SOPs by September 30, 2022 (existing permittees) or by the 4th Annual MS4 Status Report due following approval of coverage (new permittees).

**PAG-13 General Permit
Comment Response Document**

73. Comment: Page 2. Discharges Authorized by this General Permit, number 7. Residential vehicle wash water where cleaning agents are not utilized. The term “cleaning agent” must be defined to understand the enforcement implications for residential car washing. **(7)**

Response: A definition of “cleaning agent” has been added to the 2018 PAG-13 General Permit: “any product, substance or chemical other than water that is used to clean the exterior surface of vehicles.”

DEP strongly encourages Pennsylvania’s residents to use commercial car washes to wash vehicles, or otherwise wash vehicles at locations where the wash water will not drain into storm sewers or surface waters. The use of water alone to wash vehicles contributes pollutants to surface waters if the wash water is allowed to drain into a storm sewer. Pollutants such as petroleum hydrocarbons, oil and grease, suspended solids (i.e., dirt) and even heavy metals are known to be generally present in residential car wash water. DEP’s policy on the matter is explained in its Fact Sheet, “[Management of Cleaning Wastewater](#)” (3800-FS-DEP1944). DEP recognizes that in some cases it may be difficult to avoid discharges to storm sewers, such as car washing by residents in cities. “Where no other alternative exists, it may be acceptable to discharge to storm sewers if cleaning agents are not used and the discharge is infrequent.” DEP believes that most residents would not think it is acceptable to park their vehicle in or along a stream to wash it, and need education to understand they are essentially doing the same when allowing wash water to enter a storm sewer.

DEP is particularly concerned about cleaning agents entering storm sewers because of the potential for toxic pollutants (e.g., “emerging contaminants”) to be present in such agents, even those with manufacturer claims or third party certifications that the agents are “non-toxic”, “biodegradable” or “environmentally safe.”

74. Comment: On page 3 of the PAG-13, number 7 under Discharges Authorized by this General Permit states that residential car washing is only authorized where cleaning agents are not utilized. How do you propose the permittee/municipality enforce their residents to wash their cars without cleaning agents? In addition, several other authorized discharges have been removed from the list including irrigation water and landscape drainage, water from lawn watering, flows from riparian habitats and wetlands and dechlorinated swimming pool discharges (clean, no filter backwash). Would municipalities be required to do Ordinance revisions to match this list? **(8)**

Response: DEP expects that MS4s will educate their residents as part of its MCM #1 responsibilities and, within 5 years of the effective date of the 2018 PAG-13 General Permit, update ordinance(s) or SOP(s) to implement this requirement. Monitoring is to be done under Minimum Control Measure #3, BMP #4, i.e., outfall field screening as part of the MS4’s IDD&E program, with corresponding enforcement.

Yes, ordinance or SOP revisions should match the list of authorized non-stormwater discharges contained in the 2018 PAG-13 General Permit.

75. Comment: Clarification is needed, the updated Discharges Authorized by this General Permit: Note 7 – Residential (i.e. not commercial) vehicles wash water where cleaning agents are not utilized. What is being defined as “cleaning agents”? Standard soaps or carwash liquids used by residents? If yes, then how is this supposed to be policed? **(37)**

Response: See responses to Comment Nos. 73 and 74.

76. Comment: Page 3, Item 7: This would appear to prohibit normal washing of vehicles at a person’s home. This would be an onerous and controversial burden on homeowners. It would also create an extreme enforcement burden on municipalities. The current permit language should be retained. **(14)**

Response: Residential vehicle washing with cleaning agents is acceptable where the wash water would not flow into storm sewers. Residential vehicle washing without cleaning agents is also acceptable, even if the wash water enters storm sewers. Also see response to Comment No. 74.

**PAG-13 General Permit
Comment Response Document**

77. Comment: Residential car washing – Need evidence to support this causes a significant impact. **(17)**

Response: See response to Comment No. 69.

78. Comment: Item 7: It has been my experience that most residential vehicle washing occurs during nights and weekends. Enforcement of this provision will be somewhat problematic. It would be a preference that residential car washing be an allowed discharge and the MS4 continue to educate the public on proper techniques. Another possible option would be to prohibit the sale of vehicle washing/cleaning agents that contain phosphorus. **(32)**

Response: DEP does not expect permittees to “police” residential neighborhoods to assure that residential car wash water containing cleaning agents is not flowing into storm sewers. However, 1) updating the ordinance or SOP, 2) publicizing the ordinance or SOP update and 3) providing consistent education to the public through MCM #1 is expected. Enforcement should occur using the same procedures for eliminating illicit discharges as set forth in the MS4’s written IDD&E program (MCM #3, BMP #1). Dry weather discharges containing foam or sheens would be an indicator of possible illicit discharges of vehicle wash water with cleaning agents.

79. Comment: Item 7: regarding residential vehicle wash. The inclusion of “where cleaning agents are not utilized” is problematic from many directions. I am not aware of many vehicle owners, regardless of where they live, who wash their vehicles with only water. For the Permittee to be responsible for the specific cleaning agent permissible to wash their vehicles with is impractical. Further, enforcement of what cleaning agents to use should not be a local regulation; rather, if PADEP/EPA want to mandate a certain cleaning agent or group of cleaning agents, it should come from that level. **(42)**

Response: See responses to Comment Nos. 73, 74 and 78.

80. Comment: Requiring municipalities to enforce the prohibition of vehicle wash water with cleaning agents into a MS4 system is extremely difficult and cumbersome for municipalities. Municipalities can encourage residents to wash vehicles in lawn areas or in areas that do not discharge to an MS4 system via our public education and outreach programs but the enforceability of this requirement (vehicle wash water that contain cleaning agent) will be near impossible. While we understand the potential implications of the cleaning agents to the watershed, we question whether this is a significant contributor to the stream impairments. Also, there are many locations / properties (such as a townhouse community) where residents will not have an area to wash their vehicle without discharging the runoff to the MS4 (lack of lawn area). We recommend the language be revised to encourage the practice of eliminating cleaning agents or washing a vehicle in a lawn area but do not make it mandatory. **(43)**

Response: See responses to Comment Nos. 73, 74 and 78.

81. Comment: Discharges Authorized (page 3); Item #7 – Residential vehicle wash water is now authorized, but only if cleaning agents are not utilized. This is somewhat vague; the permit should provide a definition of “cleaning agents”. **(53)**

Response: See response to Comment No. 73.

82. Comment: Discharges from residential vehicle wash water must not contain cleaning agents. The commenter believes it is impossible for any MS4 to keep individual homes from discharging vehicle wash water that contains cleaners. This is not a common requirement in other states. The commenter recommends that DEP delete “where cleaning agents are not utilized” from subparagraph 7. **(61)**

Response: See responses to Comment Nos. 73, 74 and 78.

**PAG-13 General Permit
Comment Response Document**

83. Comment: Residential vehicle wash water (where cleaning agents are not utilized) is a permitted discharge. The current permit does not specifically prohibit the discharge of residential vehicle wash water containing cleaning agents. Will DEP consider environmentally-safe (i.e. biodegradable) soaps and detergents a prohibited cleaning agent? **(63)**

Response: See response to Comment No. 73.

84. Comment: Can someone wash down their building or sidewalk with water? **(17)**

Response: Yes; however, if cleaning agents are used the wash water should be directed to a vegetated area or to sanitary sewers rather than storm sewers.

85. Comment: This comment is being submitted in reference to the following - [Discharges Authorized By This General Permit - #2 - Discharges from potable water sources including water line flushing and fire hydrant flushing, if such discharges do not contain detectable concentrations of Total Residual Chlorine (TRC).] Detectable concentrations of TRC are expected to be associated with potable water discharges originating from water distribution systems. Therefore, the qualifying statement "if such discharges do not contain detectable concentration of Total Residual Chlorine (TRC)" should be eliminated. **(30)**

Response: Accidental releases of potable water have caused numerous fish kills across Pennsylvania because of the presence of residual chlorine in the water. Total Residual Chlorine (TRC) has water quality standards in 25 Pa. Code Chapter 93 of 0.011 mg/L as a four-day average (chronic) and 0.019 mg/L as a one-hour average (acute). Conversely, the maximum residual disinfectant level goal (MRDLG) for chlorine and chloramines under the Safe Drinking Water Act is 4 mg/L. In other words, one objective for drinking water suppliers is to maintain a residual level of chlorine in the distribution system to control microorganisms, but while such water may be safe for human consumption, it is not safe for aquatic life in Pennsylvania's streams. In some cases potable water is "superchlorinated" to levels of up to or exceeding 100 mg/L in order to flush potable water lines. These levels of chlorine could have devastating consequences to surface waters.

86. Comment: Discharges from potable water sources and hydrostatic test water discharges are limited to those that "do not contain detectable concentrations" of total residual chlorine (TRC). This suggests an unreasonable requirement to sample and test water from a fire hydrant flushing before allowing it to discharge to the MS4. The commenter recommends that DEP delete this text from subparagraphs 2 and 8. **(61)**

Response: Water suppliers and companies performing flushing and hydrostatic testing will have plans or standard operating procedures in place to conduct the flushing and testing. Those plans must consider the ultimate disposition of the flush and test water. If the flushwater is to be directed into storm sewers, a means to dechlorinate the water must be implemented and on-site testing should be done by the water supplier to verify that no measurable chlorine is present in the discharge. Hydrostatic test water discharges require NPDES permit coverage; most of these discharges are covered by the PAG-10 General Permit. Under the PAG-10 General Permit, monitoring of TRC is necessary by the discharger to demonstrate compliance with NPDES permit limitations. DEP is identifying hydrostatic test water discharges in the PAG-13 General Permit to clarify that such discharges (with NPDES permit coverage) are not considered illicit discharges for the purpose of MCM #3.

87. Comment: If a pipeline company uses public water to test how do they remove the TRC? **(17)**

Response: DEP recommends an alternative to discharging water line flushings, fire hydrant flushings and hydrostatic test waters to storm sewers; if possible, such discharges should be directed to a well-vegetated area and allowed to infiltrate. If this is not possible and discharge to storm sewers is considered the only option, there are multiple methods to dechlorinate water, including but not limited to dechlorination mats and bags, dechlorinating diffusers (which can connect to fire hydrants), and tablets.

**PAG-13 General Permit
Comment Response Document**

88. Comment: If a water company is required to have a TRC to meet drinking water requirements they are no longer permitted to flush water lines. If this conflicts with other state laws or regulations what happens? **(17)**

Response: The PAG-13 General Permit does not prohibit flushing water lines. However, the PAG-13 General Permit does not authorize potable water containing TRC to be discharged to an MS4.

89. Comment: Frankly I think we are being over protective and putting more burden than necessary on local governments and contractors also if water, in a water line, is potable then there should be no problem with discharging the water from water line directly into the stream when needing to flush or discharge for any reason. **(29)**

Response: See responses to Comment Nos. 85 and 86.

90. Comment: Page 2, "Discharges Authorized by the General Permit". Item 2: regarding discharges from potable water sources, it should be clarified as to who and how this will be determined for enforcement purposes. **(42)**

Response: If the MS4 permittee is aware of the planned flushing or testing, the permittee should notify the company performing the flushing or testing that it may not discharge to storm sewers unless measures are taken to dechlorinate the water. Otherwise, enforcement should be in accordance with the permittee's written IDD&E Plan under MCM #3 of the PAG-13 General Permit. For hydrostatic test water discharges, the permittee should inquire whether the discharger has NPDES permit coverage.

91. Comment: Define non-contaminated flows in terms of irrigation water, water from lawn maintenance, landscape drainage, etc. If water from stream, well or public water supply, is it assumed to be non-contaminated? **(37)**

Response: DEP does not expect that sampling of the non-stormwater discharges identified in the comment be performed by the discharger or MS4 permittee prior to allowing a discharge into storm sewers. DEP expects that the MS4 will educate its residents and businesses on the impacts such discharges can have on surface waters, particularly those known to contain chlorine or other pollutants. Where the term "non-contaminated" is used to describe authorized non-stormwater discharges, assumptions can be made based on the awareness of the person(s) engaging in the activity rather than physical sample collection and analysis. For example, if a landscape maintenance company is aware that there is a landscape drainage system connecting to a storm sewer, the company should also be aware that some of the water applied to the landscape will discharge to the storm sewer. The company should not then apply pesticides to the landscape, otherwise it would constitute an illicit discharge because it can be reasonably assumed that such landscape drainage would no longer be "non-contaminated."

92. Comment: Items 3-6: regarding "non-contaminated", this word should be eliminated or it should state testing not required by Permittee to determine compliance. It is preferred the burden not be placed on the Permittee. **(42)**

Response: See response to Comment No. 91.

93. Comment: Discharges from irrigation water, pumped ground water, HVAC condensation, and hydrostatic test water must be "non-contaminated"—an undefined term. This unfairly exposes a permittee to potential liability for allowing discharges that may or may not be considered contaminated depending on the viewpoint of the permittee, DEP, EPA, or a third party. The commenter recommends that DEP delete "non-contaminated" from subparagraphs 3, 5, 6, and 8. **(61)**

Response: See response to Comment No. 91. In addition, it is noted that EPA uses the term "uncontaminated," which in DEP's interpretation has the same meaning as "non-contaminated", to describe certain authorized non-storm water discharges at 40 CFR § 122.34(b)(3)(iii).

**PAG-13 General Permit
Comment Response Document**

94. Comment: On page 1 of the draft permit, “Discharges Authorized by this General Permit”, the underlined wording below should either be removed or language should be added stating that the permittee will NOT be required to conduct any testing relative to these requirements.

- a.) Item 2. Potable discharges are allowed if such discharges do not contain detectable concentrations of Total Residual Chlorine.
- b.) Item 5. Non-contaminated pumped ground water is allowed.
- c.) Item 6. Non-contaminated HVAC condensate is allowed.
- d.) Item 7. Residential vehicle wash water is allowed where cleaning agents are not utilized. **(60)**

Response: See responses to Comment Nos. 73, 85 and 91.

95. Comment: Page 3. Discharges Not Authorized by this General Permit, number 19. The reference to industrial discharges must be clarified due to the requirement for industrial stormwater to be regulated under federal law versus the requirements of Appendix A Pollutant Control Measures for Waters Impaired by Metals and/or pH Associated with Acid Mine Drainage (AMD), and Appendix C. Pollutant Control Measures for Waters Impaired by Priority Organic Compounds. The implication is that the municipality holds some accountability in the regulations of industrial discharge and that DEP “may” only require the owner or operator of the industrial site to comply with the current regulations. We assert that the regulatory responsibility of industrial discharges, stormwater or point source, is under the authority of the DEP under the federal statute. **(7)**

Response: In Pennsylvania, the quality of industrial stormwater is regulated by DEP under the federal Clean Water Act and Pennsylvania’s Clean Streams Law. If an industrial facility is considered by EPA to be a point source by virtue of its stormwater discharges falling under the definition of “stormwater discharge associated with industrial activity” (40 CFR § 122.26(b)(14)), the facility must apply for and obtain an NPDES permit. If a facility’s discharges do not fall under EPA’s regulatory definition, the facility may nonetheless be required by DEP to obtain a permit under the Clean Streams Law if DEP determines that its discharges cause or contribute to pollution.

Industrial stormwater may be discharged directly to surface waters or to storm sewers. An NPDES permit issued to the operator of the industrial facility may authorize stormwater discharges to an MS4. If during the course of implementation of IDD&E activities under MCM #3 the MS4 permittee discovers an illicit discharge that originates from an industrial facility, the permittee has a responsibility to enforce local ordinances regardless of whether the facility has an NPDES permit or not. The industrial facility must comply with local ordinances and its NPDES permit. The MS4 and DEP are co-regulators in this situation.

96. Comment: The Draft Permit properly excludes Small MS4s that have been assigned wasteload allocations (WLAs) for nutrients or sediment in total maximum daily load (TMDL) reports, which contribute to water quality impairments and thus require the additional safeguards afforded by the individual permit process. (“Discharges Not Authorized by this General Permit” #16, Draft Permit at 4.) **(10)**

Response: DEP agrees with this comment.

97. Comment: No. 16 states that if the MS4 is assigned a WLA where the pollutants of concern are nutrients and/or sediment... that the MS4 can’t apply for a General Permit. This does not list total suspended solids (TSS). Some TMDL WLAs are due to TSS and our regional office has made specific comments regarding proposed BMPs in the Design Details Plan, stating to the MS4 that TSS and sediment are not the same. Definitions for TSS, sediment and siltation should be included in the NOI. **(46)**

Response: DEP had used the term “Total Suspended Solids” (TSS) as a cause of impairment in the past, prior to 1998. DEP then began using the term “siltation” in place of TSS. The terms siltation, TSS and sediment have the same meaning under DEP’s stream listing methodology, and use of the term TSS will eventually be phased out. The PAG-13 General Permit has been updated to clarify that sediment, siltation and TSS are different terms for the same cause of impairment.

**PAG-13 General Permit
Comment Response Document**

98. Comment: Rewrite last paragraph (of Authorized Non-Stormwater Discharges section in fact sheet) - Do we need to send an update map? Last sentence is very confusing. **(17)**

Response: The submission of an updated map is not required by the General Permit for instances where new outfalls are identified; however, under MCM #3, the permittee has a responsibility to maintain and update its maps when new information is discovered.

99. Comment: DISCHARGES NOT AUTHORIZED BY THIS GENERAL PERMIT, #17. The section reads: "The following discharges are NOT eligible to be covered by this General Permit: The regulated small MS4 discharges to waters impaired for nutrients and/or sediment without an EPA-approved TMDL or otherwise discharges to the Chesapeake Bay watershed, is identified in DEP's "MS4 Requirements Table", and has not developed and submitted a Pollutant Reduction Plan (PRP) with the NOI to reduce pollutant loading for the cause(s) of impairment." It may be appropriate to bullet point the two conditions (1. Discharge without an approved TMDL and 2. Discharge to Chesapeake Bay, identified in "MS4 requirements table," and has not developed a PRP) explained in the statement. The statement could be misread that if you discharge to the Chesapeake Bay (and there is no approved TMDL), you cannot gain coverage under the general permit. **(27)**

Response: An attempt was made to clarify this paragraph relating to eligibility criteria for 2018 PAG-13 General Permit coverage. In essence, if an MS4 is identified on the MS4 Requirements Table as needing to comply with either Appendix D or Appendix E, a PRP must be submitted with the NOI otherwise coverage under the General Permit cannot be authorized.

100. Comment: Page 2 – DISCHARGES AUTHORIZED BY THIS GENERAL PERMIT, Item 2: Flow from street sweeping/vacuuming activities should be included in this list. Some sweeping/vacuuming equipment require the spraying of water onto the streets or paved area to effectively remove the pollutants that this program is trying to keep from getting into the waterways. It may be implied by the wording that it is acceptable but would be more acceptable if it was specifically included. **(32)**

Response: Based on its review of available information on this issue, DEP would not encourage the use of street sweepers that use water, as it does not appear to be beneficial to the sweeping operation. Some indoor warehouse "scrubbers" do operate with water, but, according to available information, street sweepers have not been adapted to handle the amount of debris encountered on a street. However, in the event such sweepers are used, the discharges are authorized to the extent that potable water not containing TRC is discharged.

101. Comment: Lawn water should be reinstated as an allowable discharge. **(32)**

Response: Water from lawn maintenance was listed in No. 3 of the list of authorized non-stormwater discharges in the draft PAG-13 General Permit and was retained in the final General Permit.

102. Comment: Clarification is needed regarding discharges not authorized by General Permit Condition 7 – Other point sources within the MS4 require issuance of an Individual Permit, and issuance of both an Individual and General Permit for the facility would constitute an undue administrative burden on DEP, can examples of what is being referred to be provided? **(37)**

Response: This eligibility criterion for PAG-13 General Permit coverage is contained in DEP's regulations at 25 Pa. Code § 92a.54(e)(7). An example would be a major sewage treatment facility operated by a municipality. The sewage effluent discharge is covered by an individual NPDES permit. The individual permit also authorizes the discharge of stormwater from the facility, which is considered industrial stormwater according to federal regulations. DEP does not issue an individual permit for the sewage effluent and authorize separate industrial stormwater coverage under a general permit; both types of discharges are covered by the individual permit.

**PAG-13 General Permit
Comment Response Document**

103. Comment: Under Discharges NOT Authorized by a General Permit – It is suggested that the portion of the last sentence of the paragraph above the heading be revised as follows, “Discharges that would meet one or more of the criteria listed below will require an Individual Permit be issued” and placed below the heading. The existing sentence below the heading is actually a repetition of the heading. **(44)**

Response: The paragraph above the “Discharges Not Authorized By This General Permit” section discusses the permittee’s obligation to apply for an individual permit if a new outfall does not meet the eligibility criteria. DEP believes the language should remain as drafted.

104. Comment: Discharges from construction activities – It appears that under Item 20 on page 3, that all construction activity must be covered by an Individual Permit. A municipality can be responsible for administering an Erosion & Sedimentation Control Program for sites under 1 acre to sanction discharges from construction activity. It is suggested that language be included to positively state this responsibility. It also appears the Note between #15 & #16 does not apply to those items and should be associated with Item #20. **(44)**

Response: By including the following sentence in the section for “Discharges Not Authorized By This General Permit”, DEP is stating that the PAG-13 General Permit cannot be used to cover construction stormwater discharges: “Stormwater discharges associated with construction activity as defined in 40 CFR § 122.26(b)(14)(x) or 40 CFR § 122.26(b)(15).” Construction stormwater can be covered under a separate NPDES General Permit (PAG-02) or an individual permit, but not PAG-13.

The note contained between criteria 15 and 16 in the NOI Instructions is as follows:

“NOTE – Any MS4 that is not relying on DEP’s Chapter 102 program for stormwater associated with construction activities and post-construction stormwater management must submit an individual permit application.”

This note was placed following No. 15 to clarify that when an applicant is implementing a local or tribal Qualifying Local Program (QLP) pursuant to 40 CFR 122.44(s) and NOT relying on DEP’s Chapter 102 program, the applicant is not eligible for PAG-13 General Permit coverage.

105. Comment: Discharges Not Authorized (pages 3-4); Item #10 – The language of this item is also vague and should be further defined. For example, what is meant by “significant adverse environmental impact”? How does the Department determine that the discharge has caused an impairment? What is the timeframe for this determination? **(53)**

Response: These criteria are contained in DEP’s regulations (see 25 Pa. Code § 92a.54) and are for discretionary use by DEP. DEP has not developed general definitions to clarify the regulatory language.

106. Comment: Authorized and Unauthorized Discharges Should Be Properly Defined. With regard to authorized discharges, Draft PAG-13 allows certain non-stormwater discharges “as long as such discharges do not cause or contribute to pollution as defined in Pennsylvania’s Clean Streams Law.” (p. 3) In the commenters’s experience, MS4 permits typically allow certain non-stormwater discharges unless the permittee determines they are significant contributors of pollutants to the MS4. This common approach is much more reasonable, and does not require that the permittee determine for each non-stormwater discharge whether it will cause or contribute to pollution. The commenter recommends that DEP revise the text under DISCHARGES AUTHORIZED BY THIS GENERAL PERMIT to allow certain non-stormwater discharges “as long as such discharges have not been identified by the permittee as being significant contributors of pollutants to the small MS4.” **(61)**

Response: DEP does not expect that MS4 permittees will determine for each authorized non-stormwater discharge whether it will cause or contribute to pollution. The eight categories of non-stormwater discharges listed under “Discharges Authorized By This General Permit” are identified by DEP as discharges that generally should not cause or contribute to pollution and are therefore acceptable for discharge to the MS4. If however the

**PAG-13 General Permit
Comment Response Document**

MS4 is aware of circumstances that would cause or contribute to pollution as a result of a non-stormwater discharge, that discharge is no longer authorized under the General Permit. For example, if the MS4 permittee becomes aware of the presence of toxic pollutants within foundation drainage of an industrial site that flows into the MS4, the permittee can no longer assume that the drainage is non-contaminated. Thereafter it must be treated as an illicit discharge.

107. Comment: With regard to unauthorized discharges, Draft PAG-13 includes twenty (20) different reasons why a discharge may not be authorized by the permit. Not only is the sheer number of potential exclusions unusual, but several are vague. While acknowledging that several are included in the current permit, the following should be corrected in the new PAG-13:

(2) A discharge is not authorized if a discharger “is not, or will not be, in compliance” with the GP. The commenter questions how anyone would know upon application whether at some point in the future someone may argue the MS4 is not in compliance with the permit. The commenter has not seen this kind of term used in other states. The commenter recommends that DEP delete subparagraph 2.

(3) A discharge is not authorized if “the applicant has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit, schedule of compliance or order issued by GP.” The commenter submits that this is too subjective. What does it mean to show a lack of intention to comply with a regulation, permit, etc.? How would DEP even begin to assess a permittee’s intentions? The commenter recommends that DEP delete subparagraph 3.

(7) A discharge is not authorized if “[o]ther point sources within the MS4” need an individual permit (IP) and issuing a GP for the “facility” would be an undue burden. The meaning of this subparagraph is unclear. Unrelated point sources should have no impact on MS4 coverage. In addition, the term “facility” is undefined. The commenter recommends that DEP delete subparagraph 7.

(9) and (10) A discharge is not authorized if it is hazardous to human health or the environment or if it has “been determined by DEP to have caused impairment to the receiving waters.” These standards are very broadly written, extremely vague, and are highly subjective. The commenter questions how a permittee would know when it submits its NOI whether DEP views its discharges as potentially problematic. The commenter recommends that DEP delete subparagraphs 9-10. **(61)**

Response: The eligibility criteria identified in this comment are derived from 25 Pa. Code § 92a.54. See also response to Comment No. 105.

Topic – General Permit Definitions

108. Comment: Within Part C, Section II, and throughout the appendices, reference is made to outfalls that discharge "directly or indirectly" to impaired waters. A definition of "indirectly" should be provided. **(1)**

Response: In the draft PAG-13 General Permit, DEP used the term "directly" to mean a discharge that immediately enters impaired waters and the term "indirectly" to mean a discharge that enters impaired waters eventually downstream, though not immediate, within the 5-mile buffer used for the MS4 Requirements Table. To reduce confusion, DEP has removed these terms from the final PAG-13 General Permit. The MS4 Requirements Table will govern the Pollutant Control Measure (PCM) and Pollutant Reduction Plan (PRP) activities for the permit term starting in March 2018, with no further interpretation necessary.

109. Comment: Opening paragraph states "MS4 permittees with at least one direct or indirect stormwater discharge to receiving waters considered impaired for nutrients (nitrogen or phosphorus)..." DEP needs to define the term "Indirect" for municipalities to assess the requirements for the applicability of the Outfalls and the MS4 system for this PRP. **(7)**

Response: See response to Comment No. 108.

110. Comment: Within Part C, Section II, and throughout the appendices, reference is made to outfalls that discharge "directly or indirectly" to impaired waters. A definition of "indirectly" should be provided. **(8)**

Response: See response to Comment No. 108.

111. Comment: Part C II.B.2. (and throughout the permit) "discharges...indirectly to waters impaired..." needs clarification. In the Fact Sheet there is mention of "upstream" as only one example of "indirect." How far upstream? How else should "indirect" be interpreted accurately? This term cannot be correctly interpreted by permittees without more guidance from DEP. **(23)**

Response: See response to Comment No. 108.

112. Comment: Within Part C, Section II, and throughout the appendices, reference is made to outfalls that discharge "directly or indirectly" to impaired waters. Definitions of "direct discharge" and "indirect discharge" should be added to Part A, Section II. **(60)**

Response: See response to Comment No. 108.

113. Comment: Clarification is requested for "discharges... indirectly to waters impaired...". This indirect reference is also noted in Appendix E of the permit document. **(43)**

Response: See response to Comment No. 108.

114. Comment: The Draft Permit contains "surface waters" (included in Definitions), "w(W)aters of the Commonwealth" (included in Definitions), "surface waters of the Commonwealth", and "waters of the United States." Please clarify and create consistency. "Surface waters of the Commonwealth" is used eight times and this term combines two of the defined terms that are very different, creating confusion as to how to interpret an essential term in the Draft Permit, particularly as it is the term used in the "Scope" of the permit (NOI Instructions). **(23)**

Response: DEP has, with one exception, eliminated the following terms from the final PAG-13 General Permit: "receiving waters", "waters of the Commonwealth", and "waters of the United States". (The one exception is that

**PAG-13 General Permit
Comment Response Document**

the term “waters of the Commonwealth” is used in Part A III.D.4, Unanticipated Non-Compliance or Potential Pollution Reporting, to reflect the requirements of 25 Pa. Code § 91.33(a)). In removing the term “waters of the Commonwealth” from the majority of the PAG-13 General Permit but retaining the term “surface waters”, DEP is making it clear that stormwater discharges directly to groundwater are not covered by the PAG-13 General Permit. Removing “waters of the Commonwealth” where it appeared in the draft PAG-13 General Permit was also considered important by DEP because an MS4, by itself, is considered waters of the Commonwealth under Pennsylvania’s Clean Streams Law. The MS4 is not, however, considered to be surface waters as defined in DEP’s regulations at 25 Pa. Code § 92a.2. (See also response to Comment No. 172).

The definition of “outfall” in the final PAG-13 General Permit has been modified to pertain only to discharges to surface waters of the Commonwealth. When developing maps under the PAG-13 General Permit, MS4 permittees must include all outfalls that discharge or have the potential to discharge to surface waters. For example, the outlet of a storm pipe into a meadow is not considered an outfall because the meadow is not a surface water. If, however, stormwater flow from the meadow eventually discharges to surface waters, the point of discharge is an outfall, and all of the conveyances upstream are components of the MS4. Stormwater that is directed into an injection well, sinkhole or other direct conveyance to groundwater does not need to meet the requirements of the PAG-13 General Permit, and therefore does not need to be mapped; however, 1) DEP recommends that it be included on maps and as a point of interest in conducting MCM #3 activities, and 2) DEP may require a separate permit for such discharges under the authority of 25 Pa. Code § 91.51.

115. Comment: Finally, a comment on the definition of “outfall” – this was changed from “surface waters of the Commonwealth” in previous permit to “waters of the Commonwealth” in next permit. I think this should be “surface waters.” I think the definition of “waters of the Commonwealth” is too broad, and it includes storm pipes. Thought DEP interpretation of “outfall” was where the MS4 collection system discharges to a surface water (i.e., not pipes or another conveyance)? **(13)**

Response: See response to Comment No. 114.

116. Comment: I don’t see the point of “surface waters of the Commonwealth.” Is this some hybrid of surface waters and waters of the Commonwealth? It’s also not defined (that I was able to find) in the DRAFT documents. **(13)**

Response: See response to Comment No. 114.

117. Comment: Receiving water(s) is not defined in the permit and this will cause confusion. Please add this term to the Definitions section and ensure consistency with other definitions and terms in the permit. **(23)**

Response: See response to Comment No. 114.

118. Comment: A definition of intermittent stream should be added. **(32)**

Response: DEP’s definition of intermittent stream at 25 Pa. Code § 92a.2 has been added to the final PAG-13 General Permit.

119. Comment: A definition of swale should be added. **(32), (46)**

Response: DEP does not have a definition of swale in its Chapter 92a regulations. Where a term is not defined in the PAG-13 General Permit, please refer to the dictionary definition of the term.

120. Comment: Clarification is needed regarding the surface waters that include wetlands – are they referring to jurisdictional wetlands or areas that qualify as wetlands after the typical 5-year time period? **(37)**

**PAG-13 General Permit
Comment Response Document**

Response: The definition of “surface waters” includes “wetlands,” but excludes constructed wetlands used as part of a wastewater treatment process. Wetlands included in the surface waters definition includes all other wetlands as they are defined in DEP regulations at 25 Pa. Code § 105.451 and the referenced *Corps of Engineers Wetland Delineation Manual*. DEP knows of no reason to distinguish between natural wetlands and five-year post-constructed (non-wastewater treatment) wetlands.

121. Comment: Clarification is needed regarding springs being considered surface waters – if a pipe captures and conveys a spring from upland areas to the stream would each pipe connecting to that main conveyance be considered a discharge to a surface water? **(37)**

Response: DEP considers an outfall to be the point where a municipal separate storm sewer discharges stormwater to surface waters. While springs are part of the definition of surface waters in DEP’s regulations, a connection to a pipe with spring flow would not, under DEP’s interpretation and for purposes of MS4 program implementation, be considered an outfall. An outfall would be designated at the point where the discharge “daylights” to (enters) surface waters.

122. Comment: Waters of the Commonwealth means any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water or parts thereof, whether natural or artificial within or on the boundaries of this Commonwealth. Clarification is needed regarding the waters of the Commonwealth:

- a. Rivulets – what is the DEP definition of a rivulet – it needs to be defined with criteria for sizes, flows, etc. Including rivulets as a water of the Commonwealth is a concern for municipalities.
- b. Impoundments – what is the DEP definition/criteria. Any stormwater facility is an impoundment. Poorly graded areas can hold water – this is a HUGE problem – every plan creating a stormwater facility in compliance with the SWM ordinances could be creating new MS4 outfalls under this definition.
- c. Ditches – need to be defined – swales are already included as waters – why include ditches.
- d. Storm sewers are included in the definition of waters of the Commonwealth – so any connecting pipe from an inlet typing into a stormwater mainline would be a discharge to waters of the Commonwealth and therefore an MS4 outfall? **(37)**

Response: Where a term is not defined in the PAG-13 General Permit or in DEP’s regulations such as “rivulets”, “ditches” and “impoundments”, please refer to the dictionary definition of the term. Also, see response to Comment No. 121.

123. Comment: The definition of “surface waters of the Commonwealth” should be defined. **(46)**

Response: See response to Comment No. 114.

124. Comment: The definition of waters of the Commonwealth is too generic and too broad. We recommend the definition be revised for all MS4s and specifically for MCM #3 to include those stream segments listed in Chapter 93 and tributaries to those segments. **(46)**

Response: See response to Comment No. 114.

125. Comment: II. POLLUTION CONTROL MEASURES AND POLLUTION REDUCTION PLANS. The term “surface waters” is used in this section. The definition of surface waters should be included. **(46)**

Response: See response to Comment No. 114.

126. Comment: “Waters of the Commonwealth” is defined as, “Any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water ponds, springs and all other bodies

**PAG-13 General Permit
Comment Response Document**

or channels or conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.” The PAG-13 General Permit regulates discharges to surface waters in Pennsylvania consistent with federal NPDES permit programs under the Clean Water Act which do not regulate any type of groundwater or subsurface connections. What is DEP’s statutory or regulatory authority to regulate MS4 discharges to groundwater or ditches? DEP should delete all terms that appear to extend the PAG-13 General Permit authority including the term “waters of the Commonwealth.” (52)

Response: See response to Comment No. 114. In addition, if DEP determines that stormwater discharges to groundwater or other “waters of the Commonwealth” cause or contribute to pollution, DEP has statutory authority under Pennsylvania’s Clean Streams Law to require a permit. DEP has elected to exclude all discharges except for those to surface waters from the scope of the PAG-13 General Permit, although a different type of permit may be required if a finding of potential pollution is made.

127. Comment: It is clear from the draft permit Authorization to Discharge section (pgs 1 – 6), that the PAG-13 regulates discharges of stormwater, and various listed non-stormwater discharges, from small MS4s to surface waters. This is consistent with the federal NPDES permit program under the Clean Water Act which regulates discharges to “waters of the United States.” Note that the EPA and Army Corps definition of “waters of the United States” was recently clarified, reaffirming that neither shallow subsurface connections nor any type of groundwater, shallow or deep, are themselves “waters of the United States.” 80 Fed. Reg. 37,054 – 37,127 (Jun. 28, 2015) (to be codified at 33 C.F.R. pt. 328). However, “waters of the Commonwealth” appears to also include groundwater and this term is used in the definition of “outfall.” A couple Minimum Control Measures and Pollutant Control Measures place requirements on outfalls which could then appear to regulate stormwater discharges to groundwater which would be contrary to what is previously stated in the draft PAG-13 and authorities under the NPDES permit program. Recommendation: Remove water terms that appear to extend the authorities of the PAG-13 to MS4 discharges to groundwater. The authority to issue this permit is the Clean Water Act and the current definition of “waters of the Commonwealth” appears to go beyond the recently issued EPA and Army Corps definition of “waters of the United States.” (50)

Response: See response to Comment No. 126.

128. Comment: In Definitions (Part A, Section II), the definitions of “Outfall,” “Waters of the Commonwealth” and “Surface Waters” are broad and unclear. What is the difference between (a) a flowing stream, (b) an intermittent stream and (c) a swale that carries stormwater during a rain event? It would help to revise the definitions to make clear that (c) a swale is not considered “Waters of the Commonwealth.” (60)

Response: Both a flowing (perennial) stream and an intermittent stream are considered surface waters under DEP’s regulations at 25 Pa. Code § 92a.2. A swale is not considered a surface water, but is considered “waters of the Commonwealth” under Pennsylvania’s Clean Streams Law. A swale may also be part of the MS4, i.e., a conveyance for stormwater to surface waters. For the scenario where a stormwater discharge is to a swale, the outfall would be where the flow enters surface waters.

129. Comment: The PA Bulletin Notice specifically calls for comments about: “In addition to any other comments, the Department is specifically soliciting comments on use of the terms “surface waters,” “surface waters of the Commonwealth” and “waters of the Commonwealth” in the draft PAG-13 General Permit. We find it alarming that the Department asked for comments on the use of the terms “surface waters,” “surface waters of the Commonwealth” and “waters of the Commonwealth” in the notice of the draft PAG-13 in the Pennsylvania Bulletin. As clearly cited in the definitions section of the Draft Permit, both “surface waters” and “waters of the Commonwealth are defined by Pennsylvania law. See. 25 Pa Code § 92a.2 and 35 P.S. § 691.1. However, “surface waters of the Commonwealth” is not defined in the Draft Permit. If this term is defined by law, then that definition would determine its use. We note some ambiguity throughout the Draft Permit, for which the Department should clarify whether ‘receiving waters’ or ‘impaired waters,’ etc., especially at outfalls or discharges, is intended to reference “surface waters” or “waters of the Commonwealth.” We ask the Department to ensure references to these legal terms are applied appropriately and with consistency. (10)

**PAG-13 General Permit
Comment Response Document**

Response: See response to comment No. 114. Note that the intent of the Bulletin notice was to solicit input on the use of the terms not the substance of the terms. There was no intent to change the definitions, but instead to propose consideration of regulating discharges to “waters of the Commonwealth” rather than to “surface waters.” Such a change would have broadened the scope of the General Permit, and is not being proposed; the final permit will control discharges to surface waters, not all waters of the Commonwealth.

130. Comment: Additionally, as part of the draft PAG-13 permit, the Pennsylvania Department of Environmental Protection (PADEP) is specifically soliciting comment on the use of the terms “surface waters,” “surface waters of the Commonwealth” and “waters of the Commonwealth.” DRN’s on these terms comments relate these terms with the U.S. Environmental Protection Agency (USEPA) and U.S. Army Corp of Engineer’s proposed rules entitled: Clean Water Rule: Definition of “Waters of the United States, <http://www2.epa.gov/sites/production/files/2015-06/documents/epa-hq-ow-2011-0880-20862.pdf>). DRN urges PADEP to expand the definitions of the terms “surface waters,” “surface waters of the Commonwealth” and “waters of the Commonwealth” to mirror those under USEPA’s federal proposal. Under the proposal waters of the United States more precisely defined, more predictably determined, and easier for businesses and industry to understand. Streams and wetlands form the foundation of our nation’s water resources. Clean water upstream means cleaner water flowing into rivers, lakes, bays, and coastal waters. Again, PADEP should adopt these expanded definitions of the waters of the Commonwealth to become more inclusive and protect more of the natural resources of Pennsylvania. **(28)**

Response: See response to Comment No. 114.

131. Comment: MS4 Requirements Table (page 8) – It appears that the Table would also need to be revised to address MS4 changes due to census and/or DEP designation criteria. To address this issue, recommend adding the following words to the last sentence of the definition “and/or updated MS4 designations.” **(2)**

Response: DEP agrees that the Table will be updated to reflect the latest universe of MS4s in Pennsylvania based on designation criteria. However, once the Table is finalized by DEP for the 2018 PAG-13 General Permit, DEP will not (with the exception of correcting errors) undertake large efforts to update it until it is preparing for the 2023 PAG-13 General Permit. In other words, updates will not generally be made to account for new designations during the middle of the General Permit term.

132. Comment: The new definition of “MS4 Requirements Table” is problematic for Chester County. Appendices A through E each reference the MS4 Requirements Table. But counties are not listed in that Table. DEP should either state that since counties are not included in the table, they do not need to submit Appendices A through E. Otherwise DEP should include counties in the table. Furthermore, the phrase “discharges...indirectly to waters impaired...” needs to be clarified. In the Fact Sheet there is mention of “upstream” as only one example of “indirect.” How far upstream? How else should “indirect” be interpreted accurately? DEP should provide guidance or else this term could be misinterpreted. **(11)**

Response: DEP does not intend to identify counties that have NPDES permits in the MS4 Requirements Table. DEP has created a MS4 Requirements Table for non-municipal entities, but without counties. Counties are encouraged to work with municipalities in a collaborative way to address, where appropriate, PAG-13 General Permit appendix requirements. Also see response to Comment No. 108.

133. Comment: Page 9, definition of Outfall – We strongly suggest that the District revise this definition to include language that would define an outfall as the end of the municipal system or the last discharge location for an MS4 system prior to private property or another regulated MS4 within which flow will reach Waters of the Commonwealth. In conflict with prior guidance of the Department, permittees are now being told that they are responsible to follow their water all the way to the stream discharge point regardless over what (or who’s) land that may be. In many cases, performing an outfall inspection at the stream will not reveal pollution as obviously as performing an inspection at the end of a municipal pipe or swale. Additionally, if a permittee can prove that no pollution is entering the Waters of the Commonwealth from their system, then they should be satisfying the

**PAG-13 General Permit
Comment Response Document**

MCM 3 inspection requirements. Pollution contributed by others, after municipal discharge would still be detected through MCM 5 PCSM inspections and enforceable through the illicit discharge ordinance. **(38)**

Response: For the purpose of the PAG-13 General Permit, an outfall is the point of discharge immediately prior to entering surface waters, regardless of property ownership. If an MS4 wishes to isolate its impacts from others, it may establish "observation points."

For example, consider a storm sewer that flows into a post-construction sedimentation pond on property owned by a homeowner's association. The pond has an outlet into surface waters. The outlet is an outfall that must be shown on the MS4's map. However, an observation point could be established by the permittee at a manhole, for example, upstream from the sedimentation pond. This observation point must be identified on the map, and can be used to meet compliance with MCM #3. The PAG-13 General Permit has been updated to allow for the use of observation points to comply with MCM #3. Note that the observation point would need to provide the permittee with suitable access to inspect the quality of stormwater flowing through the pipe or other conveyance.

134. Comment: Permit Page 6, outfall definition – Suggest replacing the second instance of "point" with the word "location". **(41)**

Response: The definition for outfall used in the PAG-13 General Permit is derived from 40 CFR § 122.26(b)(9), except that "surface waters" is used in lieu of "waters of the United States."

135. Comment: Paragraph after item 7: there is a new phrase introduced, "stormwater discharge points". This takes us back to the root of a lot of misunderstandings with the original permit that have continued on through this current permit. The definition of Outfall continues to be a misunderstood term by almost everyone. Please allow me to explain one of Caln Township's specific cases that led to a Notice of Violation in 2009:

1. A private basin on private property drains to a yard swale.
2. This yard swale is collected by a private inlet.
3. This private inlet is tied into a storm system in the Township right-of-way.
4. The storm system drains along a Township road, then ties into a PennDOT storm system. The PennDOT storm system outlets into a swale on private property.
5. The swale drains to Amtrak (Federal) property.
6. The swale drains into a storm system that drains into a PennDOT system.
7. The PennDOT system runs along a state right-of-way.
8. The PennDOT system outlets into a water way (Valley Run)

I mentioned this item to PADEP staff on numerous occasions and, in fact, we met with PADEP as a result of a Notice of Violation issued to the Township in 2009. A response letter was issued to PADEP regarding this issue in June 2009, clarifying the Township's position that the ultimate outlet of this system is a private discharge, not an "outfall." The "outfall" of the Township's MS4 occurs at item 4 above, not item 8. To date, the Township has not received any correspondence from PADEP to the contrary. In fact, the Township received our PAG-13 permit renewal on June 17, 2013 that supports the Township's position. **(42)**

Response: DEP agrees that the outlet into Valley Run (#8) is not Caln Township's outfall, but rather PennDOT's outfall. Assuming that the private basin, yard swale, and storm system described in #1 - #3 are part of the municipality's MS4 for the purpose of the PAG-13 General Permit, these features should be mapped. The location where the municipal storm sewer ties into the PennDOT storm system could be considered an "observation point" for the purpose of outfall field screening.

136. Comment: A definition for "outfall" is highly recommended and it would be helpful if examples were provided. Examples may include a single roof drain discharging directly to a stream, a sump pump discharging directly to a stream, a storm pipe that discharges overland approximately 50' from a stream, etc. **(9)**

**PAG-13 General Permit
Comment Response Document**

Response: A definition of outfall has been provided in the PAG-13 General Permit. See also response to Comment No. 121.

The MS4 regulated under the PAG-13 General Permit includes conveyances or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that, among other things, are owned or operated by a state, city, town, borough, county, parish, district, association, or other public body.

The outlets of roof drains, sump pumps and pipes discharging directly from private property to surface waters would not be considered outfalls because those features are not part of the MS4. However, if stormwater from a publicly-owned street (which is part of the MS4) drains into private property or into a private drainage system, the entire conveyance, beginning with the street and ending with the outfall must be mapped.

137. Comment: A definition has been added for “Non-Municipal Permittee means a regulated small MS4 that is not a municipality, e.g., military bases, large hospital or prison complexes, and highways and other thoroughfares.” Counties should be categorized as a Non-Municipal Permittee instead of as a municipality as they are facility-based and not geographic in nature. For example, Chester County’s permitted outfalls include those at a prison which based on the above definition, would be a Non-Municipal source. **(11)**

Response: The definition of municipality in the Chapter 92a regulations includes counties.

138. Comment: A definition for Standard Operating Procedure has been added. This term is used in MCM #2 BMP #2 which states “prior to adoption of any Stormwater Management Ordinance (for municipalities) or Standard Operating Procedure (SOP) (for non-municipal entities) required by this General Permit...” Similar language is found under MCM #3 BMP #5. For reasons which have been conveyed to DEP on multiple occasions, Chester County does not have regulatory authority to enact certain ordinances. Therefore, in order to comply with the current Permit, Chester County has enacted Standard Operating Procedures. As currently written, the County will not be able to use Standard Operating Procedures in the future unless reclassified as a Non-Municipal Permittee. DEP should either classify counties as Non-Municipal Permittee or broaden the definition of Standard Operating Procedure such that others can use them. **(11)**

Response: The final PAG-13 General Permit states that where a permittee lacks the authority to enact ordinances, an SOP may be used.

139. Comment: Suggest using the exact language from the applicable definition in the CFR, Pennsylvania Statute or PA Code. By adding words you open yourself up to changes in interpretation. In the alternative remove the citation. **(17)**

Response: Efforts have been made throughout the PAG-13 General Permit to use regulatory and statutory definitions where available.

140. Comment: First, the definition of “Point Source” in Part A, Effluent Limitations, Reporting and Recordkeeping Requirements, Part II, Definitions, clearly excludes from regulation as a point source “...return flows from irrigated agriculture or agricultural storm water runoff.” Municipal government is not responsible for this water and should not become responsible for this water simply because the return flow or agricultural storm water runoff enters a roadside ditch that may or may not be considered part of the municipally owned separate storm sewer system. These roadside ditches are almost universally designed to accept drainage from the roadway itself and to prevent adjacent property drainage from entering the roadway both for the express purpose of enhancing the safety of those using the roadway from flooding and icing. The proposed PAG-13 should specifically recognize that such agricultural drainage can be “parsed” from the total volume of water being carried by such drainage channels as is contemplated by the proposed PAG-13 and corresponding provision of the expected Individual MS4 Permit. **(22)**

**PAG-13 General Permit
Comment Response Document**

Response: In the context of Pollutant Reduction Plans, parsing provides an opportunity for an MS4 permittee to eliminate areas within the storm sewershed that do not drain to the MS4 and areas that are already covered by an NPDES permit for the control of stormwater. If agricultural stormwater runoff enters an MS4, and the runoff is not from the production area of a Concentrated Animal Feeding Operation (which should be covered by an NPDES permit), the source of the stormwater runoff may not be parsed out. In such cases and where the MS4 permittee must develop a Pollutant Reduction Plan, DEP would encourage the permittee to work cooperatively with the agricultural operator to determine if project(s) can be undertaken that will be of benefit to both the operator and the MS4.

141. Comment: Page 2, 3rd paragraph. What is meant by “new” discharge? Please clarify. **(23)**

Response: An MS4 that does not presently have PAG-13 General Permit coverage is considered a new discharge; a new discharge cannot use the PAG-13 General Permit to meet state or federal requirements to obtain permit coverage until a complete NOI is submitted and the MS4 applicant has received a signed copy of the Approval of Coverage.

142. Comment: Part A. II Definitions section: Pollutant Control Measure (PCM) should be included, as it is more than BMPs and BMP is defined. **(23)**

Response: Part C II, in essence, defines PCMs as “BMPs and other strategies that are in addition to the permittee's SWMP identified in Part C I of this General Permit.”

143. Comment: Definitions – There are many provisions or terms that do not appear to be clearly defined, are either difficult to understand or could possibly be interpreted differently, especially by anyone who may not be fully conversant with the program. For example: Since the “Site”, “Client” and “Owner” – “Operator” information does not apply to Municipalities, as alluded to in the definition of “Site Location Address”, it is suggested that the definitions and the application form itself be modified to clearly indicate the information that is “Not Applicable for a Municipality.” Also, the application does not have a place to identify the “Owner or Operator”, it only provides for the “Organization” and “Client” information. Maybe consideration should be given to either providing separate forms or areas within this form which are specifically designated for Municipal Use or Non-Municipal Uses. **(44)**

Response: It is believed that the NOI Instructions provide sufficient clarity on how to complete the NOI form. If however there are questions, applicants should contact DEP's Bureau of Clean Water at 717-787-8184, or the regional office of DEP where the NOI will be submitted.

144. Comment: With regard to PCBs and the required Pollution Reduction Plan, to what extent are municipalities required to identify sources in their communities. Most sources of PCBs in suburban communities are from old transformers on the rail lines. Will more guidance be coming as to this pollutant? Also will SEPTA, AMTRAK, and other rail lines be required to obtain an MS4 permit to control their pollution runoff? **(45)**

Response: If the MS4 Requirements Table specifies that the permittee must comply with Appendix C, the development of a source inventory for PCBs (or other priority organic compounds) is applicable. DEP does not expect that the permittee take responsibility for PCB remediation. DEP is uncertain at this time whether SEPTA, AMTRAK and other rail lines will be required to obtain NPDES permit coverage.

145. Comment: The definition for dry weather has been shortened from the existing General Permit from 72 hours to 48 hours. The reason for shortening this time period should be stated. **(46)**

Response: The 2013 PAG-13 General Permit uses 48 hours in the definition of dry weather.

**PAG-13 General Permit
Comment Response Document**

146. Comment: Two of DEP's Definitions Should Be Revised or Deleted. Part II of Draft PAG-13 includes two definitions that should be revised or deleted before the GP is issued. The commenter is particularly concerned about DEP's decision to define "MEP" in the GP. The commenter recognizes that the term is defined in the existing permit, however, reissuing the permit with this definition, which includes a complicated and confusing compliance standard mixing elements of federal and state law, is potentially very problematic for small MS4s in Pennsylvania. The commenter requests that DEP consider revising or deleting the following definitions:

- Illicit discharge (p. 7) -- Definition includes discharge "(or seepage)" to an MS4 that is not entirely stormwater. Seepage is not typically included in a discussion of IDDE, nor is it an aspect of the federal definition of "illicit discharge." The commenter recommends that DEP delete "(or seepage)" from this definition.
- MEP (p. 8) -- MEP is defined as a standard that requires permittees to "optimize reductions... on a location-by-location basis by minimizing pollutant loads...and maximizing technically achievable and cost effective water quality improvements." The Clean Water Act does not define MEP, nor has EPA. In fact, EPA purposefully refrained from setting practicability standards for MS4 permits in the Phase II Rule. EPA expected MS4s would decide their own MEP based on "such factors as conditions of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan" and other factors perhaps including "MS4 size, climate, implementation schedules, current ability to finance the program" etc. 64 Fed. Reg. at 68754. The commenter urges the Department to delete the definition of MEP from PAG-13. **(61)**

Response: The definition of illicit discharge has been revised to remove the language, "(or seepage)." It is noted however that non-stormwater discharges into the MS4, if not authorized by the PAG-13 General Permit, are illicit, regardless of the method by which the discharges enter the system. In addition, DEP agrees that the term "maximum extent practicable" does not require a definition in the PAG-13 General Permit, and has therefore been removed.

147. Comment: The inclusion of roadways in the definition of MS4s raises concern about the impact of stormwater from state-owned roads. Local municipalities should not bear the additional costs of managing stormwater from state-owned roads. **(63)**

Response: The Pennsylvania Department of Transportation (PennDOT) has its own NPDES permit for stormwater discharges from its state roadways. Stormwater from an MS4 may flow into PennDOT's system, and stormwater collected on PennDOT's roadways may flow into an MS4. The situation is similar in some ways to an industrial site or non-municipal MS4 within a municipal MS4's urbanized area or storm sewer watershed that has its own NPDES permit for stormwater discharges. The municipal MS4 may parse out the area associated with the stormwater discharges covered by a separate NPDES permit for the purpose of PAG-13 General Permit compliance, relating to the quality of stormwater. However, managing the quantity of stormwater frequently requires collaboration between such entities.

148. Comment: The term "Municipal separate storm sewer" includes roadways that are by inference State owned and maintained (i.e. by PA Dept. of Transportation). In many instances, municipal governments are prohibited from any management of said roadways, and Stormwater flows are often exacerbated by the State owned roadways; therefore some exclusion or a PA DOT component of compliance of the MS4 regulations seems to be implied that exempts the local municipality for liability and responsibility for stormwater flows along and across such roadways. **(63)**

Response: See response to Comment No. 147.

Topic – Fees and Annual Reports

149. Comment: Part A., Sections III.D.2. & 3. appear to conflict and/or are unclear with respect to payment of fees. Subsection 2 indicates the fees shall be submitted to DEP's central office address, while Subsection 3 states that the report and fee shall be submitted electronically, upon written notification by DEP. It's unclear whether DEP is providing the electronic fee payment as an option, in which case Subsection 3 should say, "The permittee may submit the.. .fee..." instead of "shall". In any event, the statements should be made clearer as to DEP's ultimate intent. In addition, Part A.III.D.3 states that annual status reports should be sent electronically to DEP. To whom at DEP must the reports be sent? Shall they be sent via email? **(1), (8)**

Response: The Annual MS4 Status Report ("annual report") must be submitted to the DEP regional office that approved permit coverage by September 30 each year; for existing permittees, the first annual report under the 2018 PAG-13 General Permit must be submitted to the DEP regional office by September 30, 2018. For new permittees, the first annual report is due by September 30 following the first year of General Permit coverage.

The annual installment of the NOI fee ("annual fee") must be submitted to DEP's Central Office by September 30. For existing permittees, the first annual fee under the 2018 PAG-13 General Permit must be submitted to DEP's Central Office by September 30, 2018. For new permittees, the first fee is due by September 30 following the first year of General Permit coverage. The reason that the annual fee is not submitted with the annual report to the DEP regional office is that at this time DEP's Central Office handles all annual fee processing for the NPDES program. A paper invoice will be issued to all MS4s covered by the PAG-13 General Permit approximately three months in advance of the annual fee due date; the first invoice will be issued on or about July 1, 2018.

DEP is currently working with a contractor to establish an electronic annual reporting system for MS4s. DEP is uncertain at this time when it will be released for use by MS4s. When a release date has been established, DEP will notify all MS4s in writing that it is available and MS4s must start using it for annual reporting. The electronic system may or may not include a method to process annual fees, but if DEP's written notification indicates that electronic fee processing is also available, then this system must also be used. In the meantime, until DEP notifies MS4s of the availability of the electronic annual report and fee systems and that the systems must be used, MS4s would continue reporting on paper and mailing paper checks or money orders to satisfy fee requirements.

150. Comment: NOI Filing Fee (1st paragraph top of page 4) – It seems unusual for the Annual Status Report to be sent to the regional office and the check sent to the main office. A simpler and cleaner process would result from having the annual check accompany the Annual Status Report. **(2)**

Response: See response to Comment No. 149.

151. Comment: Part A., Sections III.D.2. & 3. (on page 8) conflict with respect to payment of fees. Subsection 2 indicates the fees shall be submitted to DEP's central office address, while Subsection 3 states that the report and fee shall be submitted electronically, upon written notification by DEP. **(60)**

Response: See response to Comment No. 149.

152. Comment: Page 11 – D.2 Reporting requirements: It does not make sense to submit the annual report to one address and a fee to another. Suggest revision to send both report and associated fees to the same address. **(32)**

Response: See response to Comment No. 149.

153. Comment: Page 4 of NOI Instructions – New fee imposed. Note that where this fee goes is confusing in the DRAFT documentation. Per NOI instructions a \$500 fee goes to Harrisburg, whereas the annual report goes to

**PAG-13 General Permit
Comment Response Document**

regional office. Per Fact Sheet bottom of page 5: "Annual MS4 Status report must be submitted to the appropriate DEP regional office...at the same time the Annual Report is due a fee ...of \$500 is due and must be submitted to DEP's Central Office. DEP will generally transmit an invoice for payment three months in advance of the payment due date." However, the Fact Sheet also states (page 1 bottom) that the \$500 fee is to be submitted with an annual report. Will the \$500 be collected once for the first five years and never again (NOIs are being eliminated)? **(3), (4), (5), (6), (24), (36), (40), (47), (57), (58), (59)**

Response: The first installment payment of the NOI fee for PAG-13 General Permit coverage is \$500 and is due on or before September 16, 2017, which is the due date for the NOI (180 days prior to the March 15, 2018 expiration date of the 2013 PAG-13 General Permit). The next installment payment is \$500 and is due September 30, 2018 (existing permittees) or September 30 following the first year of General Permit coverage (new permittees). Thereafter, for as long as the MS4 is covered by the 2018 PAG-13 General Permit, an annual installment payment of \$500 is due by September 30. See also response to Comment No. 149.

154. Comment: Part A, Paragraph III.D.3 (page 8) states that the permittee shall submit the Annual MS4 Status Report and fee to DEP electronically upon receipt written notification from DEP. This statement appears to contradict Paragraph III.D.1 which states that the Annual MS4 Status Report shall be submitted to the regional office by September 30 of each year and Paragraph III.D.2 which states that one copy of the Annual MS4 Status Report and NOI installment fee of \$200 shall be submitted to the DEP Central Office. It should be clarified if the permittee is only required to submit the Annual Status Report and fee electronically when notified in writing. Does DEP anticipate sending written notifications requiring electronic submissions to each permittee annually or will this be a selective/random occurrence? **(63)**

Response: See response to Comment No. 149. Also, the annual fee is \$500 rather than \$200. If DEP issues written notifications that an electronic system is available and must be used for annual reporting and/or processing annual fees, the notification would be issued once and not repeatedly, although failure to begin using the electronic system would prompt DEP to pursue additional notifications in the form of enforcement actions.

155. Comment: NOI Filing Fee (2nd paragraph, page 4) – The last sentence deals with permittee compliance with the modified or reissued General Permit. How will permittees know when the PAG has been modified or reissued? For example, will it be published in the PA Bulletin? It is important that this information be included in the instructions. **(2)**

Response: Yes, when the PAG-13 General Permit is modified or reissued, DEP will publish notice of the proposed (draft) and final General Permit in the Pennsylvania Bulletin. In addition, following publication of the final modified or reissued General Permit, DEP will issue a letter (or email) to each MS4 to explain what has changed in the modified or reissued General Permit and provide an opportunity to apply for an individual permit.

156. Comment: The commenter wants to commend the Department for considering fee structures which encourage regional planning/efforts. **(2)**

Response: DEP is allowing co-permittees to submit one combined Annual MS4 Status Report and \$500 annual fee in order to encourage coordinated efforts by MS4s.

157. Comment: Page 11, Item D.2: The MS4 Permit Program is already an unfunded mandate from PaDEP and USEPA. Municipalities are forced to fund the program with no financial assistance from either of those agencies. DEP should not be making this problem worse and using the permit as a revenue-generating opportunity by charging fees to fund DEP operations at the expense of the municipalities that are already paying for the program. **(14)**

Response: DEP must establish fees that are commensurate with the level of effort involved with administering the NPDES program, including costs for reviewing NPDES permit applications and conducting compliance monitoring activities.

**PAG-13 General Permit
Comment Response Document**

158. Comment: Regarding Part B, Section III D 2. The fact there is a permit fee makes the municipality seem like a potential or actual perpetrator rather than a partner in providing and promoting clean water. The permit fee should be waived. **(19)**

Response: See response to Comment No. 157.

159. Comment: The NOI filing fee is an unnecessary burden to municipalities and the Department should consider eliminating it completely. **(34), (62), (64)**

Response: See response to Comment No. 157.

160. Comment: The Fact Sheet notes that September 30 will be the due date for all MS4 permittees to submit their Annual Reports – is this for everyone or are the annual reports based on the actual dates that their 2013 municipal permit coverages were issued? **(37)**

Response: All MS4 permittees will be required to submit annual reports and annual fees by September 30. All permittees who are currently operating under the 2013 PAG-13 General Permit will be covered under the 2018 PAG-13 General Permit on March 16, 2018, regardless of whether or not the permittee has received a physical permit document and coverage approval letter in the mail. The first annual report and annual fee under the 2018 PAG-13 General Permit for existing permittees will be due September 30, 2018. This annual report will address activities completed by the permittee from the end of the previous periodic reporting period until June 30, 2018. Thereafter, the reporting period will be July 1 – June 30 each year, with the annual report and fee due September 30, regardless of the effective date of coverage identified on page 1 of the physical permit document.

161. Comment: Page 7 Section D. Reporting Requirements - Items No. 1 a. & b. The permittee shall submit a complete Annual MS4 Status Report using DEP's annual report template (3800-FM-BPNPSM0491) to the DEP regional office that issued General Permit coverage approval by September 30 of each year.

a. The first annual report submitted to DEP under this General Permit shall have a reporting period starting from the end of the latest annual or progress report (under the previous General Permit) to June 30 following approval of coverage under this General Permit.

b. Following the first annual report, the reporting period shall thereafter be July 1 – June 30.

Does this supersede actual permit approval dates, or will all permittees be required to submit on the same day? We feel there is a benefit to having staggered submittal dates dependent upon actual permit approval dates. This allows for a more manageable process for consultants preparing and submitting required documents (NOI, Annual Reports, etc.) on behalf of their clients as opposed to one date for all permittees to submit. In addition the large influx of documents to DEP will be burdensome creating longer review and approval timelines for permittees. **(39)**

Response: DEP understands that from a consulting perspective, staggered annual report due dates are desirable in order to spread out the work. DEP however has found that it has generally caused confusion amongst MS4 permittees and DEP staff. DEP has many other reporting processes where all reports are due on the same date (e.g., Chapter 94 annual reports, annual reports required for PAG-04, PAG-05, PAG-06, and PAG-10, etc.), and DEP has found that this process has worked well for permittees and DEP.

162. Comment: Clarification is needed regarding the annual reporting period referenced of July 1 through June 30, which must be submitted by September 30 of each year? Is this reporting set for everyone (the same) or dependent on the actual municipal permit dates? **(37)**

**PAG-13 General Permit
Comment Response Document**

Response: See response to Comment No. 160.

163. Comment: PAGE 8 Section D. Reporting Requirements - Item No. 2. In addition to the Annual MS4 Status Report submitted to the DEP regional office, one copy of the Annual MS4 Status Report shall be submitted to DEP's Central Office by September 30. A fee in the amount of \$200.00, which is an installment of the NOI fee, shall be submitted with the copy of the Annual Report to DEP's Central Office, made payable to "Commonwealth of Pennsylvania." The fee and Annual Report shall be submitted to the Harrisburg office. What is the justification for the fee? If the General Permit NOI requires a \$500 payment and the \$200 per Annual Report is an installment fee, this would exceed the fee for NOI submission of a general permit for a renewal permittee. (5x\$200 = \$1,000) **(39)**

Response: See responses to Comment Nos. 154 and 157.

164. Comment: Section D.2 on page 8 requires a fee of \$200 to be submitted with the Annual Status Report by September 30th of each year. The Section states that this is an installment of the NOI fee. This makes no sense, as the NOI fee is described in other places as a one-time fee of \$500. The information published in the PA Bulletin relative to PAG-13 describes an initial fee of \$500 and a fee of \$500 to be submitted with each annual report. DEP should provide clarification. **(60)**

Response: See responses to Comment Nos. 153 and 160.

165. Comment: General question – Will a draft Annual MS4 Status Report be available for review concurrent with the development of the new permit? It will be helpful to see the level of detail needed with the next report as applies to the MCMs and PRPs to plan for necessary level of effort for the permittee. **(41)**

Response: The Annual MS4 Status Report (3800-FM-BPNPSM0491) is currently available through DEP's eLibrary website (www.elibrary.dep.state.pa.us). DEP did not include this report with the PAG-13 General Permit package because it is to be used by permittees covered by both the PAG-13 General Permit and individual permits. For MS4s covered by PAG-13, this report will serve as an MS4 permittee's ongoing notice of intent for continued coverage under PAG-13 General Permit. DEP does plan to update this report as a result of new data requirements imposed by EPA's NPDES Electronic Reporting Rule ("eReporting Rule"). DEP is in the process of reviewing these data requirements, when updates are made to the report, an announcement will be posted on DEP's MS4 website, www.dep.pa.gov/MS4. MS4s are welcome to comment on the report at any time.

166. Comment: A draft Annual Report Form has not yet been provided for review. Is this form being revised, and if so, could it be shared for public comment as well? The Annual Report Form is a crucial document that permittees use to organize their recordkeeping and better understand their obligations. **(35)**

Response: See response to Comment No. 165.

167. Comment: Regarding the NOI Filing Fee, it would be helpful to understand why there is a 10-day dating requirement for the check. This timing may not fall correctly on a public meeting schedule and could cause logistical issues with processing. I would suggest that the check be made payable to the Commonwealth of Pennsylvania and not require a timeframe that the check date must fall within. **(42)**

Response: The 10-day requirement for checks and money orders has been removed from the NOI Instructions.

168. Comment: The Department's move to require that most municipalities submit their next NPDES permit application as an individual permit application is an additional \$4,500 unfunded mandate on many of the Commonwealth's already financially overburdened municipalities. Specifically, the section "Discharges Not

**PAG-13 General Permit
Comment Response Document**

Authorized by this General Permit” includes the two items which will likely require that most municipalities must file an individual permit:

- i. #16. The regulated small MS4 is assigned a wasteload allocation (WLA), individually or in aggregate, in a Total Maximum Daily Load (TMDL) approved by the U.S. Environmental Protection Agency (EPA), where the pollutant(s) of concern are nutrients (i.e., nitrogen and/or phosphorus) and/or sediment (i.e., siltation), and the MS4 is identified in the “MS4 Requirements Table” (see www.dep.pa.gov/MS4).
- ii. #17. The regulated small MS4 discharges to waters impaired for nutrients and/or sediment without an EPA-approved TMDL or otherwise discharges to the Chesapeake Bay watershed, is identified in DEP’s “MS4 Requirements Table”, and has not developed and submitted a Pollutant Reduction Plan (PRP) with the NOI to reduce pollutant loading for the cause(s) of impairment.

Even though the Department will be generating more review work for its internal staff and any contracted employees, we feel that the total revenue collected by the Department far exceeds the potential cost likely to be incurred by the Department for said reviews. We therefore suggest that the application fee be lowered substantially. **(56)**

Response: DEP’s permit application and annual fees for individual MS4 NPDES permits are established by regulation, i.e., 25 Pa. Code §§ 92a.26(d) and 92a.62(d). See also the response to Comment No. 157.

169. Comment: Page 11 – D.3 Reporting requirements: Submission of a fee electronically may or may not be an option for the municipality. Electronic submission should include the option to provide an attachment or supplemental data by report line item. **(32)**

Response: If DEP is able to develop an electronic fee system, DEP would hope to provide a number of options such as credit card and ACH payments. DEP’s electronic annual reporting system, when released, should include the option to submit attachments and supplemental information.

170. Comment: Throughout the draft documents, it appears that DEP continues to require hard (paper) copies of all MS4 materials submitted to DEP, and also requires that permittees retain certain files, plans and forms in paper copy. We urge DEP to “go paperless” to the maximum extent possible and allow permittees who choose to do so to retain electronic records and submit electronic materials to DEP. This will reduce the consumption of paper and reduce the space required to house paper files. The creation of web-based reporting forms feeding into a DEP database would also increase efficiency and accuracy of reporting and recordkeeping. **(35)**

Response: DEP agrees with this comment and an electronic system is under development.

171. Comment: We support the Department’s requirement that all PAG-13 permittees submit a MS4 Annual Status Report. In order to provide more opportunity for citizen involvement, we request that the Department post the most recent annual report for each Small MS4 online. **(10)**

Response: When an electronic system is in place, DEP will plan to make MS4 annual reports available through its website.

Topic – Immediate Reporting and Notification

172. Comment: Is DEP having staff members available 24 hours a day to accommodate the requirement that municipalities contact DEP within 24 hours of an accidental spill of a non-MS4 permitted contaminant? DEP staff available over the weekends? **(37)**

Response: There are three regulations that govern the reporting of pollution incidents to DEP:

- 25 Pa. Code § 91.33(a) (DEP regulation) requires a person who is in charge of a substance or who owns premises, facilities, vehicles or vessels from which a substance is discharged to immediately notify DEP by telephone of the location and nature of the danger if, because of an accident or other activity or incident, a substance that would endanger downstream users or would otherwise result in or create a danger of pollution is discharged to waters of the Commonwealth.
- 25 Pa. Code § 92a.41(b) (DEP regulation) clarifies that an NPDES permittee must comply with 25 Pa. Code § 91.33 and that immediately means that oral notification is required as soon as possible, but no later than 4 hours after the permittee becomes aware of the incident causing or threatening pollution. A written submission must be provided within 5 days of the time the permittee becomes aware of the incident causing or threatening pollution.
- 40 CFR 122.41(l)(6) (EPA regulation) requires that an NPDES permittee must orally report any (permit) non-compliance which may endanger health or the environment within 24 hours from the time the permittee becomes aware of the circumstances. A written submission must be provided within 5 days of the time the permittee becomes aware of the circumstances.

All three regulations are referenced in the PAG-13 General Permit. However, the DEP regulations are most applicable to MS4s, with respect to illicit discharges. MS4 permittees are regulators of illicit discharges, but MS4 permittees have an added responsibility of needing to comply with immediate reporting requirements (no greater than 4 hours) when it becomes aware of an illicit discharge into the MS4 that would cause or threaten pollution. It is possible that the person who discharged a polluting substance into the MS4 was aware of the discharge and notified the MS4 permittee and DEP. It is also possible that the person responsible for a substance is unaware of the discharge, and the MS4 permittee discovers it, perhaps through a complaint. As noted in DEP's Fact Sheet, [Reporting Requirements for Spills and Pollution Incidents Under Pennsylvania's Clean Streams Law](#), DEP recommends to always exercise caution and contact DEP whenever there is a potential for a spill or discharge of polluting substances to waters of the Commonwealth.

MCM #3, BMP #4 of the PAG-13 General Permit has been clarified to indicate that the MS4 permittee has a responsibility to immediately report illicit discharges which would endanger users downstream from the discharge, or would otherwise result in pollution or create a danger of pollution or would damage property. DEP does not define a threshold of which illicit discharges would rise to the level of immediate reporting.

MS4 permittees can notify DEP 24 hours per day, 365 days per year, through its regional emergency contact phone numbers:

- Southeast Regional Office – 484-250-5900
- Northeast Regional Office – 570-826-2511
- Southcentral Regional Office – 866-825-0208
- Northcentral Regional Office – 570-327-3636
- Southwest Regional Office – 412-442-4000
- Northwest Regional Office – 814-332-6945 or 800-373-3398.

Other phone numbers may be used to orally notify DEP (e.g., a permittee may call the MS4 inspector that the permittee is familiar with). Note that DEP generally expects that permittees will talk with a live person about the incident rather than leave a message.

**PAG-13 General Permit
Comment Response Document**

173. Comment: Regarding reporting requirements, it is unclear what types of incidents would require immediate notification to the Department, and which types of incidents require reporting within 24 hours. Will penalties be immediately assessed for failure to report within the required period of time, similar to a sanitary sewer overflow? (Part A, III.D.4(a,b)) **(45)**

Response: In general, the 24-hour reporting requirement contained in EPA's regulations is applicable to permit non-compliance that would endanger health or the environment only. The more applicable requirement for MS4 permittees is immediate reporting for illicit discharges. The operator of a sewage collection system with sanitary sewer overflows (SSOs) must immediately report such SSOs to DEP after occurrence. If however the SSOs also enter the MS4 and the MS4 permittee becomes aware of the incident, the MS4 permittee has a responsibility to also immediately report it to DEP. Also, see response to Comment No. 172.

174. Comment: III. MONITORING, REPORTING AND RECORDKEEPING D.4. (page 11) this section states that the permittee shall immediately report any incident causing or threatening pollution. It does not state where or to whom the incident shall be reported. We recommend an email address be set up at the local DEP office to receive such oral and written reports as required by this new General Permit. **(46)**

Response: DEP's regulations require oral notification; see response to Comment No. 172 for emergency contact phone numbers.

175. Comment: PAGE 8 #4 Section D. Reporting Requirements – Item No. 4 a. (i) Immediate Reporting – The permittee shall immediately report any incident causing or threatening pollution in accordance with the requirements of 25 PA Code §§ 91.33 and 92a.41(b). (i) If, because of an accident, other activity or incident a toxic substance or another substance which would endanger users downstream from the discharge, or would otherwise result in pollution or create a danger of pollution or would damage property, the permittee shall immediately notify DEP by telephone of the location and nature of the danger. Oral notification to the Department is required as soon as possible, but not later than 4 hours after the permittee becomes aware of the incident causing or threatening pollution.

This seems unrealistic. To identify the pollution (if not obvious) would require testing of the water for certain pollutants. Typically there is at least a day of lag time between when a sample is submitted to a lab, and results are received. In addition it would be a rare circumstance that the permittee would remember to notify DEP within 4 hours of identifying the pollution. (39)

Response: DEP's regulations require immediate oral notification to DEP for incidents causing or threatening pollution – no later than 4 hours from the time the permittee becomes aware of the incident. If pollution is not obvious and sampling and analysis of the discharge is considered necessary, the MS4 permittee would need to wait until the analysis is complete to determine whether the discharge is or has caused or threatened pollution. DEP expects that staff carrying out IDD&E responsibilities and other staff who may field complaints of illicit discharges from the public will be trained to notify DEP, when appropriate.

176. Comment: Part A.III.D.4 (ii) & (iii). This part requires the permittee to immediately notify downstream users of the waters of the Commonwealth in the event of a release of a toxic substance or other substance which would endanger downstream users or property, immediately take steps necessary to prevent injury to property and downstream users; and within 15 days from the incident, remove residual substances from the ground and from the affected waters of the Commonwealth. Discussion under comment 1 applies. In addition, removing residual substances from groundwater, if groundwater was affected, would most likely not be possible within the stated time. **(50)**

Response: The PAG-13 General Permit includes the regulatory requirements contained in 25 Pa. Code §§ 91.33 and 92a.41(b). See also response to Comment No. 172.

**PAG-13 General Permit
Comment Response Document**

177. Comment: Clarification is needed about the difference between discharges which may endanger health or the environment and those which cause or threaten pollution. It is unclear whether there will continue to be an exemption from reporting discharges below a specific gallon size. Contact information for reporting incidents needs to be provided, as well as the format for the written report. **(63)**

Response: DEP's regulations at 25 Pa. Code § 91.33 do not contain exemptions. See response to Comment No. 172 for emergency contact phone numbers. The written report that is required within 5 days of immediate notification (unless waived by DEP) can be found on DEP's website ([Non-Compliance Reporting Form, 3800-FM-BPNPSM0440](#)) (hyperlink provided).

178. Comment: III – D-4 - Unanticipated Non-Compliance or Potential Pollution Reporting - In the specific instance of Annville Twp. One branch of the municipal Stormwater system has historically been the receiver of an NPDES discharge from a local paving/cement producer. Since this specific NPDES discharge contains sediment (lime/cement dust and truck washings) under their NPDES permit, incident reporting is part of their obligation, but will be part of the MS4 incident reporting, as well. If historically, PA DEP has assessed no "environmental harm," then the municipality has no obligation to report such incidents from this source. **(63)**

Response: Incident reporting is the responsibility of both the person responsible for the discharge of a polluting substance into a storm sewer system and the MS4 permittee. DEP does not expect that an industrial stormwater discharge that is covered by an NPDES permit, which discharges to an MS4, will trigger the need for incident reporting by either the industrial or MS4 permittee if such discharges are compliant with the terms and conditions of the NPDES permit. Where it is discovered that a discharge is not compliant (e.g., if an accidental spill occurs at the industrial site), DEP expects that the incident is reported by both permittees. DEP would not recommend that MS4 permittees pre-determine the harm a particular type of discharge would cause.

179. Comment: Part A, Paragraph III.D.4.a (page 8) states that the permittee shall immediately notify DEP to report any incident causing or threatening pollution. Contact information for reporting such incidents to the DEP regional or central office should be provided. **(63)**

Response: See response to Comment No. 172.

180. Comment: Part A, Paragraph III.D.4.b (page 8) states that the permittee shall orally report any non-compliance which may endanger health or the environment within 24 hours and shall also provide a written report of the non-compliance within 5 days of the time when the permittee becomes aware of the non-compliance. Contact information for reporting such non-compliance to the DEP regional or central office should be provided. **(63)**

Response: See response to Comment No. 172.

181. Comment: The difference between "non-compliance which may endanger health or the environment" as described in Paragraph III.D.4.b and an "incident causing or threatening pollution" as described in Paragraph III.D.4.a should be explained. **(63)**

Response: See responses to Comment Nos. 172 and 173.

182. Comment: Permit Page 11 – D.4.a.1& D.4.b Reporting Requirements: Specifically identify the number, email or department that should be notified at PaDEP of any accident, activity or incident which would endanger downstream users. Submission addresses should be identified for required reporting. **(32)**

Response: See response to Comment No. 172.

**PAG-13 General Permit
Comment Response Document**

183. Comment: Part A - Monitoring, Reporting and Recordkeeping D. Reporting requirements. 4.a(iii) This obligates the municipality to clean up any spill. A municipality with a rail line going thru it is responsible for cleaning up after a train wreck with crude oil spill? 4.b.(ii) Does this apply in the event of an auto accident reported under 4.a.(i)? **(17)**

Response: If the MS4 permittee is directly responsible for the discharge of a polluting substance, the permittee would be obligated under the PAG-13 General Permit and DEP's regulations to abate the spill. However, if the permittee is not directly responsible, DEP would expect that the person responsible for the substance entering the MS4 in the first place to perform remediation as necessary. The provision is listed in the PAG-13 General Permit for the situation where the MS4 permittee is directly responsible for a pollution incident.

184. Comment: Caln Township issues an illicit discharge notice to the water company whenever a water break occurs and water discharges into the MS4 and/or stream/waterway. It would be helpful, and less bureaucratic, if PADEP would provide an exclusion for Permittees from being held responsible under the MS4 permit for these types of unforeseen issues since the water company is required to report these incidents to PADEP regardless of the Township's involvement. **(42)**

Response: The PAG-13 General Permit holds the MS4 permittee responsible for immediately notifying DEP of incidents causing or threatening pollution, as a result of discharges into the MS4 from any source. Remediation following pollution incidents is not, however, the responsibility of the MS4 permittee unless the permittee itself is the source of the polluting discharge.

185. Comment: The new requirement that the Permittee be responsible to remediate an issue is problematic. What if the issue is on private property and the Municipality has no easement or other rights to enter? Neither the Township nor the Township Solicitor hold the same opinion as one of the presenters at the MS4 workshops earlier this year who claims municipalities have an unequivocal right to enter a property. **(42)**

Response: A responsible party's obligation to "remove from the ground and from the affected waters of this Commonwealth to the extent required by this title the residual substances contained thereon or therein" under 25 Pa. Code § 91.33(b) is not qualified by property ownership. Also, if a municipal MS4 has enacted an ordinance consistent with DEP's model stormwater ordinance, it will have the authority, upon presentation of proper credentials, to enter at reasonable times upon any property within the municipality to inspect the condition of the stormwater structures and facilities. Also see responses to Comment Nos. 183 and 184.

186. Comment: The requirement that the Permittee report an automobile accident immediately is not practical given the Permittee representative will likely not be on site when the accident occurs nor is it practical to believe this requirement is easily coordinated with the emergency services personnel. **(42)**

Response: See response to Comment No. 172.

187. Comment: MS4s are required to notify DEP when new or existing outfalls are located. It does not state if the notification should be to the local office or to Harrisburg. It also does not state what department should receive the notification. **(46)**

Response: The final PAG-13 General Permit contains three types of notification requirements with respect to outfalls or other physical alterations or additions to the MS4:

- For existing MS4s that are required to submit map(s) with the NOI, the permittee must document the discovery of existing but previously unknown outfalls in the subsequent Annual MS4 Status Report (i.e., the first report due after the discovery is made). In other words, if a map is submitted to DEP with 10 outfalls but an eleventh outfall is discovered after General Permit coverage is approved, the permittee must document the discovery on the next annual report that is due. (The draft PAG-03 General Permit would have required notification to DEP for existing outfalls within 90 days of discovery.)

**PAG-13 General Permit
Comment Response Document**

- For new outfalls that are proposed, the permittee must provide written notification to DEP at least 60 days prior to commencing a discharge IF the permittee determines that the proposed discharge will be eligible for PAG-13 General Permit coverage. If the permittee determines that the proposed discharge would be ineligible, the permittee must submit an application for an individual NPDES permit and obtain the individual permit prior to commencing a discharge. For example, if a new outfall is proposed to a surface water that was recently reclassified from “Cold Water Fishery” to “High Quality – Cold Water Fishery”, the permittee would need to submit an individual permit application. (The draft PAG-03 General Permit would have required notification to DEP for new outfalls at least 180 days prior to commencing a discharge; DEP has modified this to 60 days under the flexibility afforded under 40 CFR § 122.21(c)(1).)
- For other physical alterations or additions to the MS4, permittees are required to provide DEP with advance notice of the changes only when: 1) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b) (Note – this criterion does not generally apply to MS4s), or 2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This language is required language for all NPDES permits. (The draft PAG-03 General Permit would have required advance notice for any alteration or addition that could in any way affect the quality or quantity of stormwater discharged. This is the requirement contained in the 2013 PAG-13 General Permit.)

Permittees must notify the DEP office that approved permit coverage in writing when new outfalls are proposed or the MS4 determines that other physical alterations or additions could significantly change the nature or increase the quantity of pollutants discharge. The identification of previously unknown but existing outfalls is to be included in the subsequent annual report submitted to the DEP office that approved permit coverage. The General Permit has been clarified accordingly.

188. Comment: With regard to Part B.I.C.4. All physical alterations are permitted in some manner and will be constructed and inspected accordingly. Any new or replacements will be included in the inventory that are required. Why must advanced notice be given to DEP? **(1)**

Response: Advanced notice for physical alterations or additions is a requirement for all NPDES permits, in accordance with EPA regulations.

189. Comment: Paragraph C.4 (page 13) requires the permittee to give DEP advance notice of “any planned physical alterations or additions...which COULD in ANY way affect the quality and/or quantity...” and references 40 CFR § 122.4(1). However, 40 CFR § 122.4(1) requires notification of only changes that could significantly change the polluted discharge. It appears that most, if not all, alterations/additions could have the potential to affect water quality/quantity, either positively or negatively. It is not realistic to require notification to be made of any alteration/addition that could, in any way, impact water quality/quantity no matter how significant. Recommend replacing the words “in any way” with “significantly.” **(2)**

Response: See response to Comment No. 187; the reference language has been changed in the final PAG-13 General Permit.

190. Comment: Part B.I.C.4 states that the permittee shall give advance notice to DEP of any planned physical alterations (e.g., storm sewer replacements) or additions (e.g., new discharges) to the regulated small MS4 which could, in any way, affect the quality and/or quantity of stormwater discharged from the regulated small MS4. The following questions pertain to this provision: In the event that a developer proposes to connect a new private storm sewer into an MS4, must the developer give notice to DEP or is it the responsibility of the permittee? If the municipality proposes an alteration to an MS4 that will improve the quality of the stormwater, must the municipality still provide advanced notice to DEP about the proposed alteration? How should the permittee interpret the term “quantity”? Is the term referring to rate, volume or both? How must the permittee provide advanced notice to DEP? Must the municipality simply send an email to the appropriate DEP

**PAG-13 General Permit
Comment Response Document**

representative, or must the municipality send to DEP all plans, details, specifications, calculations, etc. related to the proposed project that will result in an alteration of the MS4? Can you please define advance notice? **(8)**

Response: Advanced notice is only required when the MS4, in its judgment, makes an alteration or addition that could significantly change the nature or increase the quantity of pollutants discharged. In general, rate and volume of stormwater will not significantly change as a result of new development projects greater than one acre because of the Chapter 102 regulations. For non-Chapter 102 regulated projects, an MS4 permittee could make a determination that a significant change in rate or volume could occur that could negatively impact rates of stream bank erosion, or a significant increase in sediment pollutant loading could occur; in such cases advanced notice would apply. The MS4 permittee would be responsible for the notification. In general, the term “quantity” can be interpreted as the mass of a pollutant or the rate or volume of stormwater flow. Advanced notice should be in the form of a letter submitted to the DEP office that approved permit coverage. Plans, details, specifications, calculations, etc. are not necessary unless later requested by DEP. Advance notice is not defined in the federal regulations but may be interpreted as meaning that DEP is made aware of the proposal before construction commences.

191. Comment: The commenter feels as though submitting notification to DEP within 90 days of identification of a new outfall location is unreasonable. Due to the complexity of the system and accessibility to certain reaches of the stream, we feel as though notifying DEP at the time of the annual reporting is more reasonable and practical. **(9)**

Response: See response to Comment No. 187.

192. Comment: The commenter feels as though submitting notification to DEP within 90 days of identification for a new proposed outfall is unreasonable. We feel as though notifying DEP at the time of the annual reporting is more reasonable and practical. **(9)**

Response: See response to Comment No. 187.

193. Comment: Part B.I.C.4. How should the advance notice for a new discharge be given to DEP and to whom? Oral? Written? **23)**

Response: See response to Comment No. 187.

194. Comment: Clarification is needed regarding the requirement that: In the event new stormwater outfalls are proposed, the permittee must submit written notification to DEP at least 180 days prior to commencing a discharge, unless such discharges would meet one (1) or more of the criteria specified in “Discharges Not Authorized by this General Permit” section, in which case, an Individual Permit Application must be submitted at least 180 days prior to commencing a discharge. Is the municipality responsible for notifying DEP for a private project that is proposed to be dedicated to municipality after completion? If yes, this processing conflicts with the MPC timeline for project approval. **(37)**

Response: If a private project will result in a new outfall that will be part of the MS4, written notification is required at least 60 days in advance (or an individual permit application must be submitted); if the private project will, in the MS4’s judgment, significantly change the nature or increase the quantity of pollutants discharged in stormwater, written notice is required before the project commences. See also the response to Comment No. 187.

195. Comment: PAGE 10 Section D. Duty to Provide Information – Item No. 4. The permittee shall give advance notice to DEP of any planned physical alterations (e.g., storm sewer replacements) or additions (e.g., new discharges) to the regulated small MS4 which could, in any way, affect the quality and/or quantity of stormwater discharged from the regulated small MS4. (40 CFR §122.41(I).) Does this include any storm water conveyance

**PAG-13 General Permit
Comment Response Document**

addition such as a curb cut, or drainage ditch? If so this maybe an unrealistic requirement, and should perhaps be limited to additions such new storm sewer pipe, structures, and BMPs. **(39)**

Response: See response to Comment No. 187.

196. Comment: Addition of an Item: It may be more practical to allow for an exception be made/stated that should a new subdivision project proceed to dedication of their roadways and associated storm drainage, no advance notice needs to be provided to the PADEP. Rather, it is suggested that all items added to the MS4 during the course of the permit shall be added to the outfall mapping and submitted at time of annual reporting. **(42)**

Response: See response to Comment No. 187.

197. Comment: Comment: 90-day notification period for supplementing the NOI regarding the identification of additional existing outfalls is short and will be cumbersome for both the Municipality and PA DEP. We recommend the permit be modified to update the NOI with the annual reports. **(43)**

Response: See response to Comment No. 187.

198. Comment: Comment: Clarification is requested for notifications to DEP for new stormwater outfalls. For example, if a developer is proposing a new outfall as part of a development (whether it is a NPDES permit site or not), will the municipality be required to notify DEP? Will the notification require an approval process? **(43)**

Response: See response to Comment No. 187. By submitting notification the permittee has fulfilled its obligation under the General Permit and may proceed (after waiting at least 60 days for new outfalls) unless DEP notifies the permittee otherwise in writing.

199. Comment: Approval of Proposed Outfalls – Under the provisions of Authorized Discharges, the “permittee is required to notify DEP of any proposed stormwater outfall 180 days prior to commencing a discharge.” Inasmuch as, a discharge from a site larger than 1 acre would be required to obtain an NPDES permit, it would seem that DEP would already be aware of a proposed discharge, such that the permittee would not have to be burdened with that requirement. A discharge from a site that is less than 1 acre would be approved by the municipality. Accordingly, it would appear that allowing all “new” outfalls to be added to the outfall maps on a yearly basis at the time the Annual Reports are filed would be more efficient than requiring periodic notifications throughout the year. **(44)**

Response: See response to Comment No. 187.

200. Comment: Municipalities are frequently completing storm sewer repair and replacement projects. Providing advance notice to the Department regarding physical alterations to the storm sewer system is an unrealistic expectation. (Part B, I.C.4) **(45)**

Response: See responses to Comment Nos. 187 and 190.

201. Comment: The permittee is required to submit written notification to DEP at least 180 days prior to commencing a discharge where a new stormwater outfall is proposed. This time period is too long, in that it would require a permittee to wait 6 months before using a new outfall, where some developments and grading permits that require new outfalls take a month or two to design and approve and construct. **(46)**

Response: See response to Comment No. 187.

**PAG-13 General Permit
Comment Response Document**

202. Comment: The draft PAG-13 permit requires a 180-day notice to DEP when a new stormwater outfall is proposed and a 90-day notice of any existing outfalls that are identified during the permit period. The requirement to notify DEP six months prior to any proposed discharge adds unnecessary delays for land developments projects. Since this requirement appears to be regulatory and not enforceable in a permitting requirement, we recommend DEP clarify any changes may be also reported in the required annual report. **(52)**

Response: See response to Comment No. 187.

203. Comment: The paragraph on page 1 of the draft permit at the end of the “Discharges Authorized...” Section states “In the event that existing outfalls are identified during the term of the permit coverage, DEP shall be given written notification within 90 days...” and “In the event new stormwater outfalls are proposed, the permittee shall submit written notification to DEP at least 180 days prior to commencing a discharge...” We consider these requirements to be an undue and unreasonable burden. In many cases new discharges will be part of proposed Land Development. It is unreasonable to impose a 180 day delay on construction of approved Land Development features reporting outfalls that are not yet constructed may lead to maps that have outfalls shown that may never exist. Rather, both of the activities noted above should simply be required to be reported as part of the annual report. **(60)**

Response: See response to Comment No. 187.

204. Comment: Part B – Management Requirements C.4. We need to provide notice to DEP if we replace a storm sewer pipe or rebuild and inlet? What is a “discharge”? Suggest changing “discharges” to outfalls. Terminology should be consistent through-out the permit. Do we need to submit an updated map to DEP? **(17)**

Response: See responses to Comment Nos. 187 and 190.

205. Comment: Permit Second Page 1, line 19 – reference to new identified outfalls. Currently, new identified outfalls, whether existing and newly found or newly constructed, are identified in the annual report and the updated map is utilized by the permittee. What is the purpose of submitting a new NOI? Can an outfall table be submitted with the annual report for the file to keep the outfall list up to date in lieu of a complete NOI? Can there be an abbreviated NOI for just this situation? **(41)**

Response: The annual report serves as the ongoing Notice of Intent (NOI) that the MS4 permittee wishes to continue operating under the PAG-13 General Permit. The annual report will be used by permittees to report newly identified outfalls.

206. Comment: Page 13. Regarding Management Requirements, specifically C.4, if the Municipality replaces a culvert and either a General Permit or an Emergency Permit is secured, PADEP is aware of the change. Similarly, if the Municipality is simply changing out an inlet top due to proactive maintenance, the MS4 permit should not be required to notify PADEP’s MS4 program. Unless there is a reason that is not apparent at the moment, this seems like more of a paperwork exercise than providing value to water quality. **(42)**

Response: See responses to Comment Nos. 187 and 190.

207. Comment: Part B - STANDARD CONDITIONS – I. MANAGEMENT REQUIREMENTS, D. Duty to Mitigate. In reference to “adversely affecting human health or the environment”, the aforementioned “III – D-4 - Unanticipated Non-Compliance or Potential Pollution Reporting” seems to be only applicable when such a determination is made. **(63)**

Response: The referenced provision in Part B I.D is contained in EPA regulations and is required for all NPDES permits. It means that NPDES permittees must take proactive measures where appropriate to prevent

**PAG-13 General Permit
Comment Response Document**

discharges that are reasonably likely to adversely affect health or the environment. The provision for “Unanticipated Non-Compliance or Potential Pollution Reporting” in Part A III.D.4 addresses the reporting requirements when a pollution incident occurs.

208. Comment: Page 2 of NOI Instructions – Permit is for existing outfalls; new outfalls require DEP notification. Note that for municipalities, a majority of new outfalls most likely occurs when roads are accepted for dedication. The 180-day before time frame does not work in this scenario, as a municipality has no way to know when dedication will occur. What is “written Notification to DEP” – an NOI? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: See response to Comment No. 187.

209. Comment: Page 2 – DISCHARGES AUTHORIZED BY THIS GENERAL PERMIT: The text says “In the event existing outfalls are identified during the term of General Permit coverage that were not specified in the NOI, the permittee must submit written notification to DEP within 90 days of identification to supplement the original NOI.” This text does not specify the instructions for submitting additional information. **(32)**

Response: See response to Comment No. 187.

210. Comment: Page 2 – DISCHARGES AUTHORIZED BY THIS GENERAL PERMIT: As development or redevelopment occurs additional outfalls will be proposed, moved or removed. The text proposes written notification prior to commencing a new discharge. The 180 day time period is too long. Furthermore, the guidance does not provide instructions for submitting notification or what is required. I recommend that additional, new, relocated or removed outfalls should be allowed to be submitted with the annual report along with revised maps. This would save on the time and paperwork associated in submitting several submissions per year for both the permittee and DEP. **(32)**

Response: See response to Comment No. 187.

211. Comment: PARAGRAPH UNDER ITEM 7. The stormwater discharge points (outfalls) identified in the NOI for General Permit coverage are authorized under this General Permit. In the event existing outfalls are identified during the term of General Permit coverage that were not specified in the NOI, the permittee shall submit written notification to DEP within 90 days of identification to supplement the original NOI. In the event new stormwater outfalls are proposed, the permittee shall submit written notification to DEP at least 180 days prior to commencing a discharge, unless such discharges would meet one or more of the criteria specified in the “Discharges Not Authorized By This General Permit” section, in which case an individual permit application must be submitted at least 180 days prior to commencing a discharge. There may be instances of emergency stormwater infrastructure upgrades including the installment of a new outfall/discharge point. Can an exception be made in the event of this type of situation? Perhaps documentation of the emergency be submitted with the untimely notification of a new outfall being installed. **(39)**

Response: If such a situation were to occur, DEP encourages you to contact the office that approved permit coverage to explain the situation. DEP could consider allowing less than 60 days for the notification of a new outfall, on a case by case basis.

Topic – Minimum Control Measures (MCMs)

Note – page numbers referenced by commenters in this section refer to pages of the draft PAG-13 General Permit.

212. Comment: Paragraph B.2.b, MCM #2 / BMP #2 (page 17). The two paragraphs under BMP #2 appear to be somewhat redundant and should be combined for purposes of clarity. **(2)**

Response: The redundancy has been eliminated from the final PAG-13 General Permit.

213. Comment: MCM #2. What is adequate public notice? “Public notice” in local government generally means placing a legal ad in a local newspaper. A typical ad cost about \$100. What does “given notice in advance” mean? Terminology should be consistent through-out the permit. Do the minutes of the meeting satisfy the requirement to “document and report instances to cooperation and participation”? **(17)**

Response: The final PAG-13 General Permit requires the permittee to provide notice to the public; provide opportunities for public comment; document and evaluate the public comments; and document the permittee’s responses to the comments prior to finalizing ordinances and SOPs. For municipalities, public notice should be consistent with the procedures used for notifying the public of upcoming public meetings and other important events. For non-municipal entities, circulation of newsletters or similar methods is recommended.

214. Comment: As stated above, it appears that a PRP is the only plan or report required by Part C of this General Permit. The only other report required by this General Permit appears to be the Annual Status Report and it is not required under Section C. It is suggested that the language “report and/or plan required by Part C of this General Permit” be replaced with text that specifically lists the Part C reports and/or plans for which public involvement is required for purposes of clarity. **(2)**

Response: Pollutant Reduction Plans (PRPs) have specific public notice requirements for initial submissions as written in the PRP Instructions (3800-PM-BCW0100k) and in Appendices D and E of the PAG-13 General Permit (for modifications to PRPs). To improve clarity, DEP has added PRPs to the list of documents that must undergo public participation to MCM #2, BMP #2 in the General Permit.

215. Comment: In Appendices D and E of the Draft Permit, the Department explicitly includes most of the Stipulation’s public participation requirements for “modifications to” PRPs. Draft Permit at 30-31. For initial submissions of PRPs, the commenter interprets BMP #2 of Minimum Control Measure #2 of the Draft Permit to require the same public participation process. See Draft Permit at 17. The language of that section of the permit, however, is not as explicit as the language in Appendices D and E. For example, MCM #2 does not make explicit the requirement that the draft PRP be made available to the public for a minimum of 30 days or that the Small MS4’s submission to the Department include a copy of the permittee’s record of having considered any timely comments. To ensure clarity, we recommend that the Department explicitly incorporate the language about the public participation process for modified PRPs from Appendices D and E into the requirements for initial submissions of PRPs contained in MCM #2. **(55)**

Response: See response to Comment No. 214.

216. Comment: The Stipulation requires publication of draft PRPs “at least forty-five days prior to the deadline for making the submission to the Department.” Stipulation ¶ 4(C)(i). This requirement does not appear in the Draft Permit. It is important that the permittee have time – after the 30-day public comment period – to consider and adequately respond to comments received by the public. This requirement should be incorporated into both BMP #2 of MCM #2 and Appendices D and E. **(55)**

Response: DEP has updated Appendices D and E and the PRP Instructions to include a requirement that the public notice of the proposed PRP must be published at least 45 days prior to the submission deadline.

**PAG-13 General Permit
Comment Response Document**

217. Comment: MCM #3. Does this testing need to be done in accordance with the 40 CFR requirements on Page 10 of the draft permit? **(17)**

Response: Yes, if analytical testing is deemed to be necessary under MCM #3, the General Permit requires the analysis to comply with 40 CFR § 122.41(j)(1) (representative sampling), 40 CFR § 122.41(j)(3) (recording of results), 40 CFR § 122.41(j)(4) (test procedures) and 40 CFR §§ 122.41(j)(4), 122.41(e), and 122.41(i)(3) (quality assurance and control).

218. Comment: MCM #3. Does DEP want paper copies of our existing ordinances? **(17)**

Response: Under MCM #3, BMP #5 of the final PAG-13 General Permit, a copy of a municipality's Stormwater Management Ordinance that is consistent with DEP's 2022 Stormwater Management Ordinance (3800-PM-BCW0100j) must be attached to the Annual MS4 Status Report that is due by September 30, 2022 (existing permittees) or following the fourth (4th) year of General Permit coverage (new permittees). A paper copy is required unless an electronic system is available at that time.

219. Comment: Regarding Part C, Section I B 3 b. and c. The mapping requirements should specify a standard version of the stream data, municipal boundary and the watershed boundary to be utilized. If all permittees utilize the same dataset their maps will be more compatible. The watershed boundary will preferably be a derivative of the 2-foot contour data from the PAMAP Program, which would facilitate more accurate calculations of the various storm-sheds needed in the PRP computations. **(19)**

Response: It is anticipated that DEP will publish a model map to its MS4 website (www.dep.pa.gov/MS4) to assist MS4 permittees in constructing their maps. In the interim, the following are recommendations on GIS layers available through the [Pennsylvania Spatial Data Access \(PASDA\) website](#) (hyperlinks provided) for use in constructing maps:

- [Municipal Boundaries](#)
- [County Boundaries](#)
- [Streams Chapter 93 Designated Use](#)
- [Streams Chapter 93 Existing Use](#)

In addition, DEP recommends that the Smallsheds layer be used, which is a layer within the Statewide data download on [Penn State's Mapshed website](#).

220. Comment: Regarding Part C, Section I B 3 d (4). Reporting tools should be automated and on templates suitable for mobile data collection, and a basic version should be developed and provided by DEP; the option for other digital reporting tools should also be available to encourage continued innovation. Making digital reporting tools available would enable a single statewide database to catalog and analyze problems and resolution. Continuing to require paper reporting is counterproductive and backward-looking. Surely a digital approach can be developed by 2018. **(19)**

Response: DEP is working with Penn State to develop an electronic annual reporting system. It is possible that this system will be available prior to the effective date of the 2018 PAG-13 General Permit. Part of the annual report is a BMP inventory. DEP would like to enable MS4s in the future to use mobile applications to interface with the reporting system to locate BMPs and define attributes.

221. Comment: Permit Page 19 – I.B.3.d.4 Stormwater Management Program (SWMP), MCM#3: There is a reference to an attached outfall inspection form (or equivalent). The form is not attached. This form or its equivalent should only be required if a flow/sheen/odor is present. If an outfall inspection reveals no notable observations, an abbreviated form should be allowed. It should be identified if an electronic inspection

**PAG-13 General Permit
Comment Response Document**

application, program or database is acceptable. The next sentence states “Adequate written documentation shall be maintained to justify a determination that an outfall flow is not illicit.” Provisions should be allowed to maintain inspection information in an application, program or database. **(32)**

Response: The 2018 PAG-13 General Permit requires that outfall inspections be documented on the MS4 Outfall Field Screening Report (3800-FM-BCW0521), or equivalent (see Part C I.B.3.d.(4)). This form is similar to the Outfall Reconnaissance Inventory / Sample Collection Field Sheet that was part of the 2013 PAG-13 General Permit. The form is available through DEP’s eLibrary and MS4 websites and will be attached to DEP’s written approval of permit coverage. The form is to be used to document inspections, whether or not dry weather flow or illicit discharges are detected, and must be made available to DEP upon request. The form must be signed by the inspector and maintained on file along with any sample results. An electronic database can be used to supplement the paper copy of the form and is recommended to help prioritize future outfall field screenings.

222. Comment: MCM #3 Illicit Discharge Detection and Elimination – BMP #4. PAGE 16 & 17 Section D. BMP #4 starting at 3rd paragraph. Along with the concentration parameters/action levels, further guidance regarding scenarios for collecting lab samples and what to test for should be provided in order to reduce the lab fees associated with numerous testing parameters for each sample. Otherwise the permittee may need to have several unnecessary tests done for each outfall that is suspected of carrying illicit discharge which can be costly. **(39)**

Response: The final PAG-13 General Permit does not contain action levels. The official draft PAG-13 General Permit also did not contain action levels. A pre-draft version of PAG-13 General Permit, posted to DEP’s website, did contain action levels. DEP plans to develop a model IDD&E plan and/or guidance on this topic in the future.

The PAG-13 General Permit requires the collection of samples if a dry weather discharge contains a color or an odor, there is an observed change in the receiving surface waters as a result of the discharge, or floating solids, scum, sheen or substances that result in deposits are observed in the discharge. The General Permit does not specify what parameters to analyze under different circumstances. The permittee’s written IDD&E program under MCM #3, BMP #1 should include specific sample collection procedures. EPA guidance on illicit discharges can be consulted and/or the permittee is welcome to contact DEP for assistance.

223. Comment: Permit Page 17, MCM #3, BMP #5, fifth paragraph – “Notice must be provided to DEP within 60 days following the approval of any waiver or variance by the permittee that allows an exception to non-stormwater discharge provisions of the ordinance.” Can DEP provide an example of the application of this provision, perhaps in an FAQ, and provide the type of content desired in the notice? To what DEP office should the notice be sent? **(41)**

Response: The Annual MS4 Status Report will be the mechanism by which MS4 permittees will notify DEP of waivers or variances to the non-stormwater discharge provisions of municipal ordinances or non-municipal SOPs. The Annual MS4 Status Report will be modified prior to 2018 to reflect this requirement. It is anticipated that the annual report will request the name(s) of the persons receiving the waiver or variance, the type of non-stormwater discharge that was waived from meeting ordinance or SOP requirements, and a written justification.

224. Comment: Maps – Is DEP going to issue a typical, model outfall map to be used as a guide? **(44)**

Response: Yes. A model map is in preparation and will be posted to DEP’s MS4 website when complete.

**PAG-13 General Permit
Comment Response Document**

225. Comment: Mapping and BMP Inventory Requirements Should Be Reasonable. Consistent with the MEP compliance standard, the commenter submits that it is unreasonable to expect a permittee to map or inventory ALL outfalls or BMPs in its system. Specifically:

- Part I.B.3.b (IDDE) (p. 18) requires that a permittee map “location of all outfalls...” The commenter recommends that this be limited to known outfalls only, consistent with federal regulations.
- Part I.B.5.f (Post-construction) (p. 23) requires that a permittee keep a list of all BMPs installed since the start of permit coverage. The inventory must include BMPs that may cause or contribute to WQS violations. The commenter has two concerns with this requirement. First, it should be limited to a list of known BMPs. Second, it is unclear how and why a permittee would identify a BMP as causing/contributing to a water quality violation. The commenter recommends that the requirement be to inventory known BMPs, without regard to the potential for WQS violations. **(61)**

Response: DEP expects that only known outfalls will be mapped by the permittee. When a previously unknown outfall is discovered, the permittee must notify DEP through the annual report and the outfall should then be added to the map. In addition, the language requiring the BMP Inventory to include PCSM BMPs that may cause or contribute to a violation of water quality standards has been removed from the final PAG-13 General Permit.

226. Comment: The requirement to conduct outfall field screening has raised concerns about additional costs, since municipalities will most likely need to hire outside experts to conduct such tests. **(63)**

Response: Outfall field screening has been an essential component of MCM #3 since the inception of the MS4 permit program. DEP believes that in-house expertise can be developed within MS4 permittee organizations to implement most or all of the MS4's stormwater management program.

227. Comment: It has been implied at PaDEP training that the outfall locations are where stormwater discharges connect to the surface Waters of the Commonwealth. This guidance may suit an urban setting, but for a suburban setting like York Township, the outfall location should be the most downstream point of discharge from the municipally owned system. If the purpose of the outfall inspection program is to identify illicit discharges, they need to be checked as close to the source as reasonable. For York Township, there are DEP defined outfalls that are several hundred feet downstream of the municipally owned system and if there is an illicit discharge it will not be identified as it will infiltrate before it reaches the Waters of the Commonwealth. The residual chemicals in these potential illicit discharges may get picked up and transported to the Waters of the Commonwealth during storm events. **(32)**

Response: See response to Comment No. 133.

228. Comment: MCM #4. Under this MCM we must use DEP program for issuing NPDES Permits. In some counties DEP has delegated this authority to CCD. Why must each municipality enter into a separate agreement with the CCD? There are only 67 counties. Suggest DEP review their agreements with each CCD. If DEP determines that their agreements are acceptable, what can't the municipality agree to comply with their program? This would reduce the legal costs to municipalities and CCDs **(17)**

Response: A Memorandum of Understanding (MOU) or other written agreement between the MS4 permittee and the applicable county conservation district (CCD) is not required in the final PAG-13 General Permit. DEP encourages MOUs to the extent that different activities can be clearly defined for the benefit of both parties carrying out activities under the General Permit.

229. Comment: Suggest DEP identify what conservation districts have an “acceptable delegation agreement” in order to eliminate the time and expense to the conservation district and municipalities of drafting and implement such an agreement. **(17)**

**PAG-13 General Permit
Comment Response Document**

Response: DEP may post a model MOU to its MS4 website, and may also post a list of current CCD delegated responsibilities under the Chapter 102 program to assist MS4 applicants and permittees.

230. Comment: It is unrealistic to make a municipality responsible for oversight and compliance if any other entity fails to implement any of the terms and conditions of the General Permit. Refer to III.F.2 on page 26. For example, the Township should not be responsible, under any circumstance, for items that are under the jurisdiction of the local Conservation District. **(1)**

Response: See response to Comment No. 228.

231. Comment: Part C.III.F.1 states that the permittee is responsible for meeting all terms and conditions of this General Permit regardless of its delegations to other entities. As written in Part C.I.B.5 the first paragraph states that the permittee must rely on DEP's program for issuing NPDES permits. How is the permittee still supposed to be responsible for meeting all the terms and conditions of programs that are the jurisdiction of the Conservation District and DEP? **(8)**

Response: See response to Comment No. 228.

232. Comment: Part C. III. F.1 - How is the permittee still supposed to be responsible for meeting all the terms and conditions of programs that are the jurisdiction of the Conservation District and DEP? MCM#5 the first paragraph states that the permittee must rely on DEP's program for issuing NPDES permits. Please address this conflicting direction. **(1)**

Response: See response to Comment No. 228.

233. Comment: On Page 22, BMP #6, it would seem that the Conservation District should be the entity to track and monitor annual inspection for the sites 1 acre or larger that required a NPDES permit. Many of the inventory requirements are very burdensome for sites less than one acre, which appear to now be included. For example, for small on lot infiltration beds that would be associated with a new single family dwelling, how is the municipality expected to obtain a report from a private property entity that details the inspection and maintenance performed. **(1)**

Response: The MCM #5, BMP #6 General Permit requirement has not changed (except that it is now identified as BMP #3). The 2013 PAG-13 General Permit (see 3800-PM-BPNPSM0100g) requires that the permittee assure operation and maintenance of BMPs installed to meet requirements of NPDES Permits for Stormwater Discharges Associated with Construction Activities (i.e., Chapter 102 NPDES permits), which includes projects less than one acre that are part of a larger common plan of development.

Note that some MS4s will voluntarily choose to apply erosion/sedimentation and post construction stormwater management requirements to individual sites of less than one acre that are not part of a larger common plan of development in order to credit their pollutant reductions to Pollutant Reduction Plan obligations. A method to assure the operation and maintenance of those best management practices will be required in order for that credit to be maintained.

234. Comment: Pages 18-20. Regarding reliance on the DEP's statewide program for issuing NPDES permits for stormwater discharges...The permit is written such that the permittee believes there are no requirements for these sections if relying on the County Conservation District. I have heard that regardless of reliance on the County Conservation District, permittees need to conduct their own inspections on construction sites, and maintain an inventory of construction sites within the limits of the urbanized area. Clarity should be provided in the permit if this is the case otherwise the requirements will go un-noticed and potentially result in a compliance violation. **(39)**

**PAG-13 General Permit
Comment Response Document**

Response: DEP has removed all provisions of MCMs #4 and #5 that relate to responsibilities of DEP and/or delegated CCDs under the statewide Chapter 102 program from the final PAG-13 General Permit.

235. Comment: Section I.B.5 – Minimum Control Measure #5 – Post-Construction Stormwater Management in New Development and Redevelopment. In both BMP #1 and BMP #5, reference is made to the PA Stormwater BMP Manual, as amended and updated. The commenter supports and encourages review and update of the BMP manual to incorporate new technologies and practices. **(53)**

Response: Revisions to the PA Stormwater BMP Manual are underway.

236. Comment: With regard to the use of the term “adequate,” be advised that municipalities must follow the PA MPC or other applicable municipal code requirements when adopting an Ordinance, which will determine what is “adequate” for them. Also, it appears that the only plan required by Part C is a PRP and the requirements for public involvement are very clear in the PRP instructions and Appendix D/E. However, in the case of an SOP for non-municipal entities, there may not be any applicable requirements. Is it DEP’s intent to let such permittees determine what is “adequate” from the standpoint of public notice and opportunities for public review? **(2)**

Response: Under MCM #2, a non-municipal permittee must provide notice to the public for SOPs; provide opportunities for public comment; document and evaluate the public comments; and document the permittee’s responses to the comments prior to finalizing the documents (the same as for ordinances). Non-municipal permittees do not need to meet notice requirements of the municipal planning code and therefore have additional flexibility in meeting the public notice requirements. Ultimately DEP will take a common sense approach in verifying the adequacy of public notice of SOPs; if for example an SOP addressing prohibited discharges to storm sewers is circulated for review amongst office professionals but not to maintenance staff, DEP would consider it inadequate public notice.

237. Comment: Permit Page 21, MCM #5, BMP #4 – The 2012 permit language included a reference of March 10, 2003 as the starting date of the post-construction stormwater BMP inventory. The draft permit language refers to the start of the NPDES permit coverage in the first full sentence on the referenced page. Does the inventory start with BMPs installed from the first day the permittee was covered under an MS4 permit? **(41)**

Response: The final PAG-13 General Permit requires that the inventory must include all PCSM BMPs installed since March 10, 2003 that discharge directly to the regulated small MS4.

238. Comment: Regarding Part C, Section I B 4 c. Aren’t there some standard E&S control programs that should be referenced? Conservation Districts are an extremely important partner in many locales. **(19)**

Response: See response to Comment No. 228.

239. Comment: Regarding Part C, Section I B 5 f. BMP Inventory will be most useful if it is part of a statewide program and database. Paper records of latitude and longitude and BMP characteristics are simply unacceptable in this day and age; DEP should be planning for and leading development of a database and base map that offer progress in the movement from estimates to measurement. If we still require paper maps and paper records rather than creating avenues to a comprehensive digital public record and analysis, this program will continue to miss goals and rely on “guesstimates”. It is past time to create a comprehensive water base map and database that can actually reflect stormwater systems as part of the surface water network. **(19)**

Response: DEP is working with Pennsylvania State University on an electronic annual reporting system that will contain a BMP inventory, but this inventory is anticipated for non-Chapter 102 projects. PCSM type projects may or may not be part of this electronic statewide inventory, depending on other information technology initiatives.

**PAG-13 General Permit
Comment Response Document**

240. Comment: Permit Page 22 – I.B.5.f Stormwater Management Program (SWMP), MCM#5: The provision requires permittee to track “projects less than one acre that are part of a larger common plan or sale.” It should be specified that if a NPDES permit is not required as part of the larger project or sale the tracking should not be required. **(32)**

Response: The requirement is to ensure the operation and maintenance of all PCSM BMPs that are installed in to meet the requirements of NPDES Chapter 102 permits. A Chapter 102 permit is required for disturbances of greater than or equal to one acre, and for projects less than one acre that are part of a larger common plan of development.

241. Comment: In many cases, unless a landowner is cooperative, does DEP expect a municipality to exercise 'eminent domain' in order to install a BMP? Refer to item III.A on page 25. **(1)**

Response: No. The referenced language is used by DEP in NPDES permits for sewage and industrial waste facilities. DEP has determined that the language is not necessary for MS4s, and therefore has removed the language from the final PAG-13 General Permit.

242. Comment: Page 25, Item III.A: This would appear to require municipalities to obtain, by eminent domain if necessary, access rights to all existing MS4 outfalls. This would create an extreme burden, financially and legally, on municipalities. It also requires this work to be done in order for the permit to be valid, which is not a practical schedule. This item should be removed. **(14)**

Response: See response to Comment No. 241.

243. Comment: Standard reporting forms for IDD&E inspections as well as forms to fulfill MCM #6 are recommended. Permittees should be able to use versions of inspection forms that contain information as seen fit, however samples of standard forms would be helpful. **(9)**

Response: The MS4 Outfall Field Screening Report (3800-FM-BCW0521) form, or equivalent, must be used by MS4s to document outfall screening inspections. The form will be attached to written approvals of coverage issued by DEP, and is available on DEP's eLibrary and MS4 website. [DEP's website](#) (hyperlink provided) also includes a model operation and maintenance inventory and plan for MCM #6.

244. Comment: Also, it is pointed out that Part C III.B (page 25), dealing with requirements for screenings and other solids requires permittees to comply with 25 Pa. Code Chapters 287, 288, 289, 291, 295, 297 and 299; some of which require reporting, SOPs, reports, etc. Are the requirements under these Chapters considered requirements of this Permit by reference and, as such, subject to the public notice/review/input/feedback requirements of Part C, Section I.B.2 and 2.b? It is recommended that this be clarified in an effort to eliminate confusion and not require legal interpretation of this General Permit. **(2)**

Response: Those regulations apply regardless of the existence of an MS4 permit. While DEP does not expect that waste management plans be publicly noticed under MCM #2, DEP nevertheless encourages MS4s to include consideration of waste management issues as part of its public education and involvement efforts. DEP has posted [guidance for the use and disposal of street sweeping debris and antiskid](#) (hyperlink provided) on its website.

245. Comment: DEP can and should provide leadership in the intent and goal of increasing water quality with a forward vision that includes the use of technologies and the increasing precision and cost savings they offer. **(19)**

Response: DEP shares your vision on the use of technology to improve precision and cost savings, and believes eventually such technology will be in use.

**PAG-13 General Permit
Comment Response Document**

246. Comment: Permit Page 13, Section I.A – The last sentence is inconsistent with past DEP guidance, verbal and/or written, that said that “progress” on the BMPs in the SWMP need to be made with each annual report, with the goal that all BMPs are completely implemented by the end of the five-year permit term. Are permittees going to be required to comply with each entire BMP requirement by the end of the permit year, or will they continue to have five years to demonstrate full implementation of the SWMP. This is with the assumption that the SWMP will be periodically updated as new regulations and better BMPs are adopted. **(41)**

Response: Due to a variety of factors, DEP has said in the past that MS4s need to make incremental progress over this permit term. Starting in 2018, DEP expects compliance with the NPDES permit. DEP will use enforcement discretion as deemed appropriate.

**PAG-13 General Permit
Comment Response Document**

Topic – Draft MS4 Requirements Table

NOTE – DEP published a draft of the MS4 Requirements Table (“Table”) on its website, www.dep.pa.gov/MS4, prior to publishing notice of the Draft PAG-13 General Permit in the *Pennsylvania Bulletin*. DEP has received numerous comments and requests for updates to the Table prior to, during, and after the public comment period for PAG-13. **DEP continues to solicit comments on the Table.** DEP will remove the term “Draft” from the Table upon publishing the final PAG-13 General Permit; however, DEP will continue to fix errors that are brought to our attention.

In this Comment Response document, DEP is not presenting comments related to specific requests for modification to the Table (e.g., “Please remove Stony Creek from Smith Township”). Such requests are reviewed and acted upon by DEP and the commenters are directly notified of DEP’s decision. If you have not received a response to a specific question on the Table or request to modify the Table, please contact DEP at RA-EPPAMS4@pa.gov.

This document includes comments received during the public comment period concerning the use of the Table as it relates to implementation of the PAG-13 General Permit. Also, in certain cases, this document includes comments on specific information in the Table where the response may be used to illustrate a general point.

247. Comment: With regard to the Draft Requirements Table, the 'five mile radius' seems arbitrary, very broad, and overlapping, resulting in duplication of effort over and over. A municipality should only be responsible for its own geographic limits. **(1)**

Response: DEP believes that the 5-mile radius represents a distance at which the stormwater flows from an upstream municipality may be significant and are capable of contributing to downstream impairments, including but not limited to rate/volume (erosion) related impairments. DEP views the 5-mile radius as reasonable considering that most TMDLs assign responsibility for contributions to downstream impairments to a far greater extent, i.e., 10 or more miles is common.

248. Comment: How was the 5-mile buffer determined? This seems excessive, arbitrary and is not acceptable unless DEP can offer scientific and hydrologic justification for this distance. The only streams that should “count” are those within the MS4 municipal boundary or to which a regulated outfall of the MS4 directly discharges to. Also, how is this justifiable when any of the streams between the MS4 and the impaired stream within this 5-mile buffer are not impaired? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: Contributions to downstream impairments do not of course stop at municipal boundaries. Attaining (i.e., unimpaired) stream segments may exist between the municipality and the impaired stream listed in the MS4 Requirements table; however, downstream impairments are often the cumulative result of upstream sources. See also response to Comment No. 247.

249. Comment: Please clarify the following issues regarding the GIS analysis that the Draft Requirements Table is based on:

- Why was 5 miles selected as the width of the buffer instead of some other distance?
- Why is it 5 miles “as the crow flies” instead of along the centerline of the stream?
- Can we infer from this that a municipality whose most downstream outfall is 5 miles or more away from the point at which a stream segment becomes impaired is not considered to cause or contribute to the impairment? **(20)**

Response: Of the many possible approaches to establishing a protocol for constructing the MS4 Requirements Table, DEP had to select one. A 5-mile buffer around the urbanized area along with topographic interpolation was deemed an approach that could be implemented with relative ease for Pennsylvania’s 1,000+ MS4s.

**PAG-13 General Permit
Comment Response Document**

DEP does not have all MS4 outfall data in a database to use for this analysis, so it is possible that DEP was too conservative in its assessment. This is why MS4s are encouraged to review the Table and provide DEP with feedback, well before the NOI due date of September 16, 2017.

It is possible that the flow path of surface waters within the 5-mile buffer exceeds 5 miles. It is also possible that the flow path of surface waters within the buffer is less than 5 miles, relative to downstream outfalls. DEP will consider alternative approaches in the future, but as discussed in response to Comment No. 247, is comfortable that the existing approach is no more stringent than would be done through the TMDL development process.

In general, it is not safe to assume that a discharge that is more than 5 miles upstream from an impairment does not cause or contribute to the impairment. For the purposes of the PAG-13 General Permit, however, if an impairment exists downstream, outside the 5-mile buffer, then the impaired stream should not be identified on the MS4 Requirements Table and the permittee would not be expected to implement one or more of the General Permit appendices for that impairment.

250. Comment: We question the validity of the five mile buffer determination and in turn requiring a municipality to prepare a pollutant reduction plan for a stream that the MS4 does not directly discharge to. We recommend that in the event an MS4's direct receiving waters do not share impairments with the stream under which they are being regulated, then the permittee should be exempt preparing a pollutant reduction plan for a stream that the MS4 does not directly discharge to. **(38)**

Response: See response to Comment No. 247.

251. Comment: It is strongly recommended that the 5-mile buffer around each municipality's urbanized area used to determine the data within the table be reduced to only those streams within the municipal boundary's urbanized area. In addition, we recommend that no time limit be established for the municipalities' review of the information contained in the MS4 Requirements Table as it will take significant effort for the municipal engineers to evaluate this data and determine conclusions as to the accuracy of the information contained in the table. **(43)**

Response: DEP will continue to accept comments on the MS4 Requirements Table. See also response to Comment No. 247.

252. Comment: Integrated Water Quality Monitoring & Assessment Report – Impaired Receiving Waters: this definition notes that, "...discharges (either directly or within 5 miles downstream) from an MS4..." The question is: what is the justification for the 5 mile limit? **(44)**

Response: See response to Comment No. 247.

253. Comment: The table utilizes a 5 mile buffer around the municipalities. Scientific justification for this distance must be provided. The length is excessive, especially for municipalities that discharge to attaining streams but must still provide PRPs because they are within 5 miles of an impaired water. **(54)**

Response: See responses to Comment Nos. 247 and 248.

254. Comment: The process of identifying a 5-mile radius around the boundary of each permittee seems overly excessive. Since the permit deals with stormwater, perhaps focusing on a physical boundary such as the drainage area of each stream. **(39)**

Response: See response to Comment No. 247. Also, drainage areas were considered in DEP's analysis. For example, if the stormwater from an urbanized area drains toward an attaining (unimpaired) stream, with no downstream impairments within a 5-mile radius, the MS4 and stream were not selected for the MS4 Requirements Table.

**PAG-13 General Permit
Comment Response Document**

255. Comment: This is a very helpful Table for the traditional MS4s. Pennsylvania also has a number of non-traditional MS4s (universities, federal facilities, etc.) that have requirements under the PAG-13 or an individual MS4 permit. Inclusion of the non-traditional MS4 in the Table or a similar Table would be helpful for them. Recommendation: include non-traditional MS4 in a MS4 Requirements Table. **(50)**

Response: A separate table of requirements for non-traditional MS4s will be generated in the near future and be posted to DEP's website.

256. Comment: The table categorizes traditional MS4s and lists responsibilities applicable for each permittee based on the need for a PAG-13 or an individual MS4 permit. Will DEP provide a similar Table for nontraditional/non-municipal MS4s that also must meet requirements under the PAG-13 or an individual MS4 permit? It is unclear whether the expectations for non-traditional MS4 permittees will be different than municipal MS4s or if they will also be required to develop pollution reduction plans. **(52)**

Response: See response to Comment No. 255.

257. Comment: The Draft MS4 Requirements Table does not include county responsibilities. Due to the county obligation to follow municipal land development authority/ordinances, the lack of county enforcement authority for development/stormwater systems, and the unique local government system in Pennsylvania, it is obvious that the typically small county owned acreage inside the UA is much like any other land owner within the municipal boundaries and subject to municipal stormwater ordinances/land development ordinances. If waivers were granted, county resources could instead be directed to assisting municipalities with pollutant reduction efforts, including impaired stream restoration, which would be more beneficial. The cost of county MS4 administration compared to the resulting amount of pollutant reductions does not make sense. Also, MCMs 4 and 5 are generally not applicable to counties. It is recommended that DEP consider granting automatic county MS4 waivers. **(2)**

Response: DEP does not intend to include counties in the MS4 Requirements Table. Waivers from the need for permit coverage will not, however, be automatic for counties.

258. Comment: The Draft MS4 Requirements Table does not include county responsibilities. Cumberland County owns property that will be included in the 2010 UA. The CCPD would recommend that counties owning land in the UA, including Cumberland, be granted automatic waivers from 2018 PAG-13 coverage. Typically counties own small parcels of land in the UA with limited stormwater management facilities that are already governed by municipal stormwater regulations. The pollutant reduction impact from such properties is minimal while the burden of compliance is high. The resources needed for county PAG-13 compliance could be redirected to encourage and support municipal PAG-13 compliance. Tasks such as mapping and public education could be effectively conducted by counties for permit compliance benefits of participating municipalities. **(21)**

Response: See response to Comment No. 257.

259. Comment: The Department's publication of an MS4 Requirements Table will make it easier for Small MS4s to understand the requirements that apply to them. We encourage the Department to further develop this information into a map that can be accessed by citizens and municipalities to quickly determine the requirements that apply to them. **(10)**

Response: DEP may develop an interactive web application to allow regulated entities to see the information contained in the MS4 Requirements Table by clicking on a map.

**PAG-13 General Permit
Comment Response Document**

260. Comment: The Department's publication of guidelines for parsing TMDL-assigned wasteload allocations should help to provide more consistent and reasonable estimates of "parsing" of WLAs. Although we support the Department's efforts to standardize the parsing process, we continue to caution against the overuse or misuse of parsing. Parsing out areas that contribute significantly to stream impairments can result in a failure to address the source of impairment. We ask the Department to make clear to permittees that, if an MS4 decides to parse an area that is later modified (either through redevelopment or addition of BMPs) to reduce polluted runoff, the MS4 will not receive any credit for those reductions. MS4 municipalities should be educated about the proper use of parsing and selecting the design and location of BMPs to ensure meaningful reductions in pollution from stormwater runoff. **(10)**

Response: A note is contained in DEP's Pollutant Reduction Plan Instructions (3800-PM-BCW0100k) as follows: "If parsing is done, BMPs implemented within the parsed area will not count toward achieving pollutant reduction objectives."

261. Comment: East Goshen currently has an individual MS4 permit (PAI130520) yet the Draft MS4 Requirement Table indicates that it will not need an Individual Permit. In the "Other Causes(s) of Impairment" column the cause of the siltation impairment is listed as "Cause unknown". Editorial comment: "DEP has identified the impairment to the stream, but the cause of the impairment is unknown. The Township is now required to spend public money in attempt to eliminate an unknown cause." **(17)**

Response: Previous versions of the MS4 Requirements Table did not take into account discharges to Special Protection (SP) waters (i.e., High Quality (HQ) or Exceptional Value (EV)). In those versions, if an MS4 had an individual permit but a TMDL Plan was not required, the Table did not indicate that an individual permit was necessary. The latest version of the MS4 Requirements Table, posted to [DEP's website](#) (hyperlink provided), includes a consideration of SP waters. Consequently, because East Goshen discharges to SP waters, an individual permit is required (and is reflected in the latest version of the Table). A PRP will be required as part of the individual permit application (Appendix E). The causes of impairment to the surface waters that East Goshen discharges to are "siltation" and "unknown". Because siltation is determined to be one of the causes of impairment, the PRP is required.

262. Comment: In reference to parsing computations: Without similar localized stormshed calculations from DOT for state roads and Turnpike Commission for their facilities, and reductions of the resultant "stormshed of municipal responsibility," there will either be erroneous calculations or inappropriate burden on municipalities (or DOT) for others' loads. This program would be more manageable and water quality increased with better mapping guidance to allow real computations and specific partnerships among municipal and state entities in areas of known (measured/monitored) water quality problems. **(19)**

Response: MS4 permittees have the option to work collaboratively with PennDOT or the PA Turnpike Commission ("state entities") or parse out the state entities' area of responsibility within the MS4 permittee's storm sewershed when developing maps and Pollutant Reduction Plans and TMDL Plans. If the state entity implements BMPs within its area of responsibility, the MS4 permittee may use such BMPs to meet pollutant load reduction requirements; if the state entities' area is parsed, the MS4 permittee may not use BMPs implemented by the state entities toward its requirements. This rationale applies to the area controlled by any entity within the storm sewershed with its own NPDES permit for municipal or industrial stormwater.

263. Comment: Our understanding is that the DEP has not been requiring MS4s to address TMDLs for pathogens. The Christina River Basin Bacteria TMDL should be removed from the MS4 Chart. **(20)**

Response: DEP has removed the Christina River Basin Bacteria TMDL from the latest version of the MS4 Requirements Table. Instead of developing a TMDL Plan, MS4s would need to comply with Appendix B of the PAG-13 General Permit.

**PAG-13 General Permit
Comment Response Document**

264. Comment: Birmingham Township has no WLA for nutrients listed in the Christina TMDL Document. The requirement to implement a nutrient TMDL Plan should be changed to a requirement to implement Pollution Reduction Plan in accordance with Appendix E. **(20)**

Response: DEP has revised the Christina River Basin Nutrient TMDL requirements in the latest version of the MS4 Requirements Table.

265. Comment: Lower Frankford Township is included on the Draft MS4 Requirements Table and should be removed. The municipality has a population of 1,734 and does not appear to be located in the UA of the county. **(21)**

Response: DEP has identified several municipalities that may have urbanized areas according to census information solely due to digital errors in establishing urbanized area boundaries. DEP is considering the submission of a request to EPA to review these errors and if there is agreement, those municipalities would be removed from the Table (and DEP would not expect submission of an NOI or application for permit coverage). DEP will notify any municipalities in writing if a determination is made to this effect.

266. Comment: It is understood that the DEP Online Table of municipal water quality responsibilities will be used by DEP to determine which listed impairments and TMDLs must be addressed by each municipality in their 2018 MS4 permit. Determining the accuracy of the TMDLs and impairments that should be listed for each municipality is a complicated task due to unusual circumstances that exist in the geographic boundaries of how/where TMDLs are individually written to be applied, irregular shape and extent of the 2010 Urbanized Area boundary (e.g., may include only portions but not all of many municipalities and watersheds), geographic limits of the MS4 system and contributing drainage area, and location of regulated outfalls. CCWRA requests that DEP continue to work with each municipality BEYOND JULY 29 2015 due date for these comments to ensure the Online Table is corrected based on each municipality's geographic and regulatory circumstances. **(23)**

Response: DEP will continue to work with any entity to ensure that the MS4 Requirements Table correctly reflects the requirements of the permit.

267. Comment: Christina Basin High-Flow Sediment and Nutrient TMDLs – Based on multiple discussions with PADEP staff and extensive research and analysis of the TMDL reports and data, it is our understanding that the Christina Sediment and the Christina DO/Nutrient TMDL MS4 pollution reduction requirements are only applicable to the regulated MS4 outfalls that:

- a. Belong to an MS4 that was assigned a Christina sediment and/or nutrient wasteload allocation AND
- b. Discharge into a Christina TMDL subbasin for which a TMDL reduction was calculated for the pollutant(s) for which the assigned wasteload allocation(s) was for, AND
- c. Discharge to a stream that was shown as impaired in 1996/1998 (as shown in the TMDL report(s)) by the pollutant(s) that the assigned wasteload allocation was for.

Response: MS4s that need to develop a TMDL Plan (as listed in the MS4 Requirements Table) will develop those plans to address BMPs that will be implemented within the drainage area (i.e., storm sewershed) of the outfall(s) that discharge to the waters covered by the TMDL. The specific outfall(s) will not generally be identified in the TMDL; however, the municipality may have a specific/individual or bulk/aggregate wasteload allocation, which would apply to the drainage area of all outfalls discharging to the TMDL waters. With that in mind, DEP agrees with the description of the extent to which the Christina Basin High-Flow Sediment and Nutrient TMDLs apply.

268. Comment: The attached map presents the Christina TMDL subbasins and combined 1996/1998 sediment/nutrient impaired streams as shown in the Christina sediment and nutrient TMDL reports; this map provides a useful generalized representation of where USEPA intended these TMDLs to be implemented. Therefore, DEP will need to work closely with each MS4 in the Christina Basin to ensure that the Online DEP

**PAG-13 General Permit
Comment Response Document**

MS4 Requirements Table accurately reflects the Christina TMDL responsibilities/obligations and only lists those obligations for those MS4s with outfalls that fit the circumstances listed in the bullets above. **(23)**

Response: DEP will continue to work with any party to ensure that the MS4 Requirements Table accurately reflects MS4 discharges to impaired surface waters.

269. Comment: Christina Basin Bacteria TMDL – we understand that a previous version of the Online DEP MS4 Requirements Table may have also listed the Christina Bacteria TMDL among the obligations for certain MS4(s), but appears to have since been removed. We concur that this TMDL should NOT be listed for any MS4 because DEP has previously determined that it is not required to be implemented by any MS4. **(23)**

Response: DEP is not requiring a TMDL Plan where an MS4 discharges to waters impaired by bacteria and there is a TMDL; instead, DEP is requiring specific BMPs identified in Appendix B of the PAG-13 General Permit.

270. Comment: Piatt Township (Lycoming County) is listed on the draft table; however, this township is no longer located in the “urbanized area.” We believe that Piatt Township should be removed from the draft table. **(35)**

Response: See response to Comment No. 265.

271. Comment: Non-municipal MS4s (such as the Pennsylvania College of Technology) are not listed on this table. It is unclear whether expectations for these permittees will be different and whether they will be required to develop PRPs. **(35)**

Response: See response to Comment No. 255.

272. Comment: Bastress Township is a rural township that has a delineated “urbanized area” of approximately 200 linear feet crossing over its municipal boundary line and containing only a handful of homes along a rural road. The GIS Supervisor in our department has contacted representatives from the US Census Bureau to determine the Bureau’s process for delineating urbanized areas. It appears that the process is done by a computer model and that there is room for error. The County GIS department strongly encourages this township be re-evaluated for removal from the draft table or for granting of a waiver. **(35)**

Response: See response to Comment No. 265.

273. Comment: In the draft table, all of Lycoming County’s MS4s are listed as “No” in the column “individual permit requirement” (pages 98-99). However, eight of the ten current MS4 permittees in Lycoming County hold an individual permit because it was required by DEP for the current permit round. Clarification is required as to whether this is an error in the table, or if these permittees are now eligible to obtain PAG-13 permits in the next permit cycle. **(35)**

Response: See response to Comment No. 261. In the event that an individual permit was required by DEP in a previous permit term, although there were no discharges to SP waters and a TMDL Plan is not required for future permit coverage, a permittee may submit an NOI for PAG-13 General Permit coverage if it believes it is eligible. In the MS4 Requirements Table, those permittees with an existing individual permit and a single code of “IP” in the “Reason” column may fit into this category.

274. Comment: For some of the “impaired” streams listed in Lycoming County, the draft table does not show a requirement (example: Grafius Run, Loyalsock Township). It is not clear if a PRP is required, since the stream is listed but a requirement is not. **(35)**

**PAG-13 General Permit
Comment Response Document**

Response: If a stream is impaired for pollutants other than nutrients, sediment, priority organics, bacteria, metals or pH, the MS4 is not responsible for implementing any of the PAG-13 General Permit appendices; the cause of the impairment may be displayed in the "Other Cause(s) of Impairment" column of the MS4 Requirements Table for informational purposes only.

275. Comment: The West Branch of the Susquehanna River is listed as impaired for PCBs with an unknown/unspecified cause. At the MS4 Workshops held by DEP earlier this year, it was stated that there are no proven BMPs available to remedy PCB pollution. The source of the PCBs could be unrelated to urban stormwater, or it could be further upstream than the urbanized area or outside of Lycoming County entirely. There is simply not enough supportive documentation, or an effective BMP available, to develop a useful pollutant reduction plan for PCBs for the West Branch. Until a BMP has been developed and the cause is determined, this pollutant cannot be addressed. Therefore, we request that the permit requirements be designed so that in situations like this, the requirement for a PRP for this impairment is waived. **(35)**

Response: A PRP is not required for streams impaired by PCBs; Appendix C of the PAG-13 General Permit outlines the Pollutant Control Measures (PCMs) for impairments due to priority organic compounds such as PCBs.

276. Comment: Many of the impairments listed on this table are lacking complete information as found in other official sources. For example, the siltation for Fairfield Township is caused by Small Residential Runoff, but the siltation for Piatt Township is Ag Siltation. Pennsylvania holds the responsibility for regulation of agriculture and its associated pollutants; in fact, by state law, agricultural industries are exempt from certain local ordinances. We recommend that any pollutants not originating from urban sources be removed from the list of impairments requiring PRPs, as MS4s generally have little to no control over agricultural sources. **(35)**

Response: The source listing, as contained in DEP's [Integrated Water Quality Monitoring and Assessment Report](#) ("Integrated Report"), is not a comprehensive or exhaustive list, nor is it meant to identify source sector responsibility for pollutant reduction requirements. For example, TMDLs do not ignore nutrient inputs from sewage treatment facilities when addressing a stream listed as impaired for nutrients from agriculture.

Topic – Pollutant Control Measures (Appendices A, B and C)

277. Comment: Appendix A. Metals (comment also applies to Appendices B and C):

- A.2. "...submit...proposed action(s) it plans to take during the permit term to control known sources." No details or guidance of what extent source control efforts are required should the permittee find a source (for instance, reduction of a significant source vs. insignificant source). What are DEP's expectations under MEP?
- "regardless of whether there is an approved TMDL"...please clarify how this is to be interpreted. Will the MS4 be required to follow requirements within the TMDL, and implement those requirements through the PCM process? Does one supersede the other? **(23)**

Response: In implementing the Pollutant Control Measures (PCMs) contained in Appendices A, B and C of the PAG-13 General, DEP expects that MS4 permittees will make reasonable efforts to establish an inventory of known and suspected sources of the pollutants of concern, identify the basis of the determination (i.e., how does the permittee know versus suspect a source exists), identify the responsible party (if known), and report any corrective action the permittee has taken or plans to take for known sources. DEP also expects that suspected sources will be investigated, and that all of these PCM activities will be documented through Annual MS4 Status Reports.

These PCMs are in some ways an extension of permittee responsibilities under MCM #3 of the General Permit, except that sources of specific pollutants of concern are to be investigated. DEP expects that the permittee will enforce its stormwater management ordinance(s) concerning illicit discharges, but DEP does not expect that the permittee will be in a position to always ensure the source is remediated. The final PAG-13 General Permit clarifies this by indicating that the inventory must include "any corrective action the permittee has taken or plans to take for known sources."

For example, if there is an abandoned industrial site that is causing PCB contamination in storm water runoff into the MS4, DEP expects that the source be identified but does not expect that the permittee take responsibility for remediating the source. However, if the permittee determines it can take action to remediate a source, let DEP know what that action is. If for example the permittee partners with a watershed organization to passively treat abandoned mine drainage into an MS4, this is a corrective action that should be reported. If the permittee determines it is unable to do anything to remediate the source, this is an acceptable position in many cases.

The language, "regardless of whether there is an approved TMDL" in Appendices A, B and C means that if there is a TMDL, DEP will consider the MS4 permittee to have done its part to implement the TMDL if the permittee implements the PCMs.

278. Comment: Is AMD from underground mines considered anthropogenic (caused or produced by humans)? If so, is the mine considered a conveyance of stormwater? Permittee should not be responsible for AMD remediation, but perhaps a watershed/multi-community approach would be more appropriate. **(39)**

Response: Abandoned mine drainage (AMD) from underground mines is considered anthropogenic. The permittee is not responsible for AMD remediation under the PAG-13 General Permit. See also response to Comment No. 277.

279. Comment: Appendix A (Pollutant Control Measures (PCMs) for Metals). Appendix A appears to be primarily a track-down program for industrial dischargers of metals to the MS4. Requiring this kind of a program is not typical for small MS4s. Usually permits for Phase II MS4s focus on the six minimum control measures, which, on their own, are sufficiently difficult to implement given the size of these systems. EPA's Phase II MS4 regulations do not include an industrial component for small MS4s. If DEP persists in requiring this type of a program, the last requirement in subsection D ("permittee shall document the progress of its investigations, source control efforts and BMPs to control sources of metals and/or acidity in" annual reports) is problematic. The commenter questions why a track down program would require a permittee to implement control efforts and BMPs. This could be a major problem for municipal permittees given that industrial dischargers are likely to be privately owned and operated (creates issues regarding access, conducting activities on private property, etc.). If DEP

**PAG-13 General Permit
Comment Response Document**

mandates PCMs for metals, the commenter recommends that DEP revise Appendix A to limit requirements to mapping and inventorying sources and reporting potential sources to DEP. Parenthetically, the first annual status report must include proposed actions the MS4 will take during permit term to control sources. If investigations of likely sources take place over three years, requiring that a permittee develop proposed actions within the first year creates a timing issue. The commenter notes that the same issue exists in Appendix B (PCMs for Pathogens) (p. 28) and Appendix C (PCMs for Organics) (p.29). **(61)**

Response: See response to Comment No. 277.

280. Comment: The first sentence of Appendix B, item C. is very rigid and unrealistic. Municipalities do not always have the power to absolutely eliminate the source of an illicit/illegal discharge of sewage. Many municipalities do not have enforcement jurisdiction over sewage issues, as is the case for Franklin Township - the County Health Department and PA DEP does. Even with a prohibitive stormwater ordinance, and local jurisdiction over sewage, municipalities have to begin by sending letters and threatening fines, they can't just go in and eliminate discharges. Language such as "a MS4 shall make every effort within its power to eliminate all illicit and illegal discharges of sewage" should be used. Additionally as stated near the end of the second sentence, these actions are not "remedial responses" which to some degree implies the municipality is responsible for the discharge itself, but rather they would be enforcement responses. **(1)**

Response: Every municipal MS4 permittee must have an ordinance that prohibits non-stormwater discharges (not otherwise authorized), including sewage. DEP understands that municipalities must take measures similar to those of DEP or county health departments when it comes to eliminating unauthorized sewage discharges, and it may take some time to eliminate the connection to an MS4. The referenced provision has been revised to state, "The permittee shall enforce ordinances that prohibit illicit and illegal discharges of sewage to the MS4." In addition, the language "remedial responses" has been modified to "correction action", which includes actions taken to enforce ordinances.

281. Comment: Under Appendix B – Other than paragraph D., it appears that Appendix B is entirely redundant to actions required in MCM #3. **(2)**

Response: Appendix B expands upon MCM #3 by requiring a map of the storm sewershed that discharges into waters impaired by pathogens and an inventory of suspected and known sources of pathogens.

282. Comment: PERMIT APPENDIX B - What does "discharges ... indirectly" mean? This is vague and open-ended. Where is justification for this? **(3), (4), (5), (6), (24), (36), (40), (47), (57), (58), (59)**

Response: See response to Comment No. 108.

283. Comment: How does MS4 develop an inventory of suspected and known sources of bacteria? What are sources? Note that wild and domestic animal waste = fecal coliform AKA bacteria, and there is no way to track or remove this. Is DEP looking for locations where all domestic animals and/or livestock are housed? Is DEP looking for locations of all on-site septic systems in the watershed? Note that MS4 likely does not have this information, nor whether these systems are functioning. What is basis of determination for "suspected"? What is basis of determination for "known"? What if the MS4 has no suspected or known sources of bacteria? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: DEP is not requiring investigatory sampling as part of Appendices A, B and C; sampling is only required in response to a suspected illicit discharge in accordance with MCM #3 of the PAG-13 General Permit. Yet investigatory sampling is one method that could assist MS4 permittees in determining where sources of pathogens may exist. For Appendix B, DEP does not expect the MS4 to develop an inventory of all locations where domestic animals and/or livestock are housed. However, if there are livestock within the storm sewershed, this could be noted as a known or suspected source. If the livestock operation is complying with all relevant stormwater management ordinances, note this as part of the inventory, and DEP would not expect to

**PAG-13 General Permit
Comment Response Document**

the permittee to do anything further. DEP is not expecting an inventory of every on-lot septic system within the storm watershed, but if there is an area of known or suspected malfunctioning on-lot systems, it should be included in the inventory, along with the steps that are or will be taken to eliminate this problem (e.g., an Act 537 Plan amendment is being developed to serve the area with public sewers). DEP will consider developing model inventories to implement the PCMs in Appendices A, B and C and post this information on its website.

284. Comment: Letter C. DEP is the regulating authority for sewage permits in Pennsylvania. Therefore DEP should be notified of the illicit discharge and should take over the enforcement authority from the Municipality for human waste bacteria discharge. **(7)**

Response: DEP delegates some responsibilities to local sewage enforcement officers (see 25 Pa. Code Chapters 71, 72 and 73). In addition, municipal MS4 permittees must have ordinance(s) prohibiting illegal sewage discharges to the MS4 and, under Appendix B of the PAG-13 General Permit, must enforce the ordinance as it pertains to illegal sewage discharges. The MS4 permittee is required to report the actions it takes or plans to take to correct such discharges in Annual MS4 Status Reports and as part of the source inventory of Appendix B. The MS4 permittee may also notify DEP of such discharges, and must do so when the permittee determines that the discharges endanger health or the environment (see 25 Pa. Code § 91.33(a)), but ultimately DEP will expect that the MS4 permittee will correct the problem to the extent afforded under applicable law, regulation and ordinance.

285. Comment: Letter D. The Municipality does not have the authority to regulate agricultural runoff (specifically the source of pathogens being animal waste) and therefore cannot be held responsible for reducing those discharges within three (3) years or any other time period. DEP should consider requiring all agricultural operators to apply for and comply with the NPDES regulations under this language. **(7)**

Response: See responses to Comment Nos. 277 and 283.

286. Comment: Appendix B. Pathogens:

- What if suspected sources are wildlife direct discharges to surface waters: for example, geese? What are DEP's expectations for addressing wildlife sources and how will the Commonwealth assist municipalities since in PA "wildlife" are owned by the state?
- Completing a source inventory of pathogens for an MS4 drainage area may be insufficient and may need to be expanded to a larger watershed area, which is a monumental undertaking. CCWRA and USGS have invested significant resources on past investigations of sources of pathogens in the Brandywine watershed with very limited outcomes identifying sources, and with significant evidence that substantial portions of the pathogens are surviving in stream bed sediments (i.e., behind low-head dams, etc.) and being resuspended and moved with higher flows, thus complicating the task of identifying sources. Most likely the municipality's land or MS4 is contributing some, but is not the primary source or a significant source, but they will be required to pay for the source inventory. DEP or other guidance is needed to outline best steps and procedures for a source inventory to minimize financial resources to efficiently proceed with such an inventory and effective source identification and control when a stream is impaired for pathogens. Much time and money may be mis-directed with little progress to improve water quality without better guidance. **(23)**

Response: Direct discharges of pathogens to surface waters from wildlife could be identified as a known or suspected source. DEP does not expect the MS4 permittee to take any particular action; however, if an action has been or will be taken, report what it is.

DEP will allow larger scale efforts, if desired, to implement the PCMs contained in Appendices A, B and C. DEP agrees that most impairments are regional issues, not caused by sources within a specific municipality. Simply document the regional effort in the Annual MS4 Status Report. Unless these efforts are undertaken by a regional stormwater authority permittee or co-permittees, in which one submission is made to satisfy permit requirements, each permittee would need to independently submit the required documentation with Annual MS4 Status Reports to demonstrate compliance with the PCMs.

**PAG-13 General Permit
Comment Response Document**

287. Comment: Similar to BPNPSM0100k, there should be a guidance document for Appendix B, if DEP expects that a satisfactory PCM will be completed for pathogens. **(23)**

Response: See responses to Comment Nos. 277 and 283.

288. Comment: Permit Page 28 – Appendix B.A.2: If a suspected source is not associated with the permittee's storm sewer system planning, actions and enforcement may be difficult. Provide guidance to permittee on how to implement this program when it relates to operations or procedures that are beyond the scope of this permit such as with another NPDES permit holder or agricultural operations. Provide additional information about implementing this provision when the MS4 structural system is inside the growth area but the outfall location is outside the growth area. **(32)**

Response: When developing a source inventory under Appendices A, B and C of the PAG-13 General Permit, the permittee may consider sources that are known or suspected to originate from outside of the permittee's storm sewershed. Whether the source is within or outside of the storm sewershed, the same inventory requirements apply, i.e., the permittee must still provide a basis for its determination that a source is known or suspected, identify the responsible party if known, and indicate corrective actions that have been or will be taken, which may include none. To assist DEP with its review of this information, the permittee may provide an explanation as to the rationale for its corrective actions or lack thereof.

289. Comment: Clarification is needed about the establishment of an ordinance dealing with animal waste for waters impaired by pathogens (Appendix B, paragraph D). If animal waste is handled under another township ordinance, must it also be included in the Stormwater Management Ordinance? **(63)**

Response: No. It is acceptable for animal waste controls to be located in an ordinance other than the stormwater management ordinance. The other ordinance should be attached to the stormwater management ordinance when it is submitted to DEP.

290. Comment: NPDES Permit Appendix B – Why must a municipality develop an inventory of suspected and known sources of bacteria if a municipality discharges to an attaining stream with no pathogen impairment? It would seem that one cannot look for something that does not exist. Section D requires an ordinance to control animal waste on property owned by the permittee. Does this mean that private property not owned by the permittee but still located within the MS4 area does not fall under the jurisdiction of the proposed ordinance? **(54)**

Response: See response to Comment No. 248. Appendix B requires that the ordinance address permittee-owned property only. If a permittee wishes to develop a more stringent ordinance, it can.

291. Comment: PERMIT APPENDIX C States "...in stormwater within the drainage area of outfall discharging to impaired waters." What if impaired waters are two streams away from outfall; what if nonimpaired streams are between, etc.? Defaulting to the 5 miles? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: See response to Comment Nos. 108 and 248.

292. Comment: How does MS4 develop an inventory of suspected and known sources of Priority Organic Compounds? Note that 99.99% of all property owners use pesticides / herbicides; does that default to every property in watershed is "suspect"? What is basis of determination for "suspected"? What is basis of determination for "known"? Where might this information be obtained? What if the MS4 has no suspected or known sources? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

**PAG-13 General Permit
Comment Response Document**

Response: The MS4 permittee should review the MS4 Requirements Table to determine the particular priority organic compound that is of concern as related to the surface water impairment. In many cases PCBs is the pollutant of concern. PCBs are commonly affiliated with industrial operations that use or have used or manufactured dielectric fluids and transformers, capacitors, fluorescent light ballasts, electromagnets, etc. These operations could be known or suspected sources depending on the level of information available. The term “known” in this context generally means that analytical data are available to confirm the presence of a pollutant in a stormwater discharge or there are other compelling facts that lead the permittee to confirm a source (e.g., if an industrial site has been designated a Superfund Site due to PCB pollution in soil according to EPA, it may be deemed a known source). If a surface water is impaired due to an ingredient within a pesticide or herbicide and the permittee believes that the source is property owner usage, this should be identified in the inventory. The inventory would not list every property but rather identify property owner usage in a general way as a known or suspected source. DEP expects that when reasonable efforts are made at developing an inventory, there will be multiple known or suspected sources of the pollutant of concern.

293. Comment: Since there are no known industrial producers of Polychlorinated Biphenyls (PCBs) at this time, DEP should clarify and provide guidance on the remediation of legacy pollutants in the stream systems. **(7)**

Response: DEP does not expect the MS4 permittee to remediate legacy PCB pollutants in streams.

294. Comment: With regard to PCBs and the required Pollution Reduction Plan, to what extent are municipalities required to identify sources in their communities. Most sources of PCBs in suburban communities are from old transformers on the rain lines. Will more guidance be coming as to this pollutant? **(31)**

Response: See response to Comment No. 292.

295. Comment: Clarification regarding PCB sampling requirements should be provided. Appendix C indicates that sampling is both required and voluntary. **(45)**

Response: Under MCM #3, sampling is required under certain circumstances to verify suspected illicit discharges. Under Appendices A, B and C, sampling for investigatory purposes when developing a source inventory for the pollutants of concern is optional. For example, if during the course of outfall field screening a dry weather discharge is observed that contains foam, the permittee is required to collect a sample for analysis of any pollutants that may assist the permittee in determining whether or not the discharge is illicit. There is no decision to be made by the permittee – sample(s) must be collected. DEP does not specify the pollutants that must be analyzed, primarily because this decision could vary based on numerous factors. The permittee could analyze for PCBs, although this would be unusual. The permittee has discretion and can decide which pollutants to analyze. For developing the source inventory, the permittee could suspect that during precipitation events, the concentration of PCBs in stormwater runoff from a site is elevated, and decide to collect samples to confirm this suspected source.

296. Comment: PERMIT APPENDIX C – States “...in stormwater within the drainage area of outfall discharging to impaired waters.” What if impaired waters are two streams away from outfall; what if nonimpaired streams are between, etc.? Defaulting to the 5 miles? How does MS4 develop an inventory of suspected and known sources of Priority Organic Compounds? Note that 99.99% of all property owners use pesticides / herbicides; does that default to every property in watershed is “suspect”? What is basis of determination for “suspected”? What is basis of determination for “known”? Where might this information be obtained? What if the MS4 has no suspected or known sources? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: See response to Comment Nos. 108, 248 and 292.

297. Comment: Part C.II.A states that, “...PCMs must be implemented where the permittee, 1) has at least one stormwater outfall that discharges to impaired waters...” The following questions pertain to this language: Does

**PAG-13 General Permit
Comment Response Document**

the phrase “discharges to” refer to directly discharging to the impaired stream or does it refer to the outfall simply being located in the drainage area of an impaired stream? For example, Lower Heidelberg Township in Berks County is located entirely within the Tulpehocken Creek watershed and does not directly discharge to the Schuylkill River which is impaired due to PCBs. However, since the Township ultimately drains to the Schuylkill River, must the Township implement PCMs for PCBs? Similar to the question above, if an MS4 discharges directly to an unimpaired section of stream within the municipality, but a section of stream further downstream and outside of the municipality is impaired, is the upstream municipality responsible for implementing PCMs based on the impairments that exist further downstream? **(8)**

Response: The referenced language is intended to relate the MS4 Requirements Table to the permit. In response to the first question in this comment, the phrase “discharges to” refers to DEP’s understanding that there is either a discharge directly to an impaired water, or an impaired water exists further downstream that is within the 5-mile radius DEP used for this assessment. The answer to the second question is “yes,” if the Schuylkill River is within the 5-mile radius. The answer to the third question is also “yes,” if the impaired water is within the 5-mile radius, regardless of the municipality the water is located within.

298. Comment: Part C.II.A states that, “... PCMs must be implemented where the permittee, 1) has at least one stormwater outfall that discharges to impaired waters...” Does the phrase “discharges to” refer to directly discharging to the impaired stream or does it refer to the outfall simply being located in the watershed of an impaired stream? **(1)**

Response: See response to Comment No. 297.

299. Comment: According to Part C. Paragraph II.A, specific Pollutant Control Measures (PCMs) are required where the permittee (1) has at least one outfall discharging to impaired waters, and (2) the receiving waters are impaired due to metals, pathogens and/or priority organic compounds. Required PCMs include (1) development of an inventory of all suspected and known sources of impairments within one year of permit issuance, and (2) a complete investigation of each suspected source of impairment within three years of completion of the source inventory. While it is reasonable to expect the permittee to administer an illicit discharge detection and elimination program, it will be significantly more expensive, onerous and legally challenging to complete an inventory and follow-up investigations of impairment sources within the MS4. Many sources of impairment are likely to be located on private lands discharging from private outfalls (non MS4) directly to Waters of the Commonwealth. In such cases, permittees may lack the legal authority to conduct stormwater or dry-weather sampling on private lands. **(63)**

Response: See responses to Comment Nos. 277 and 283.

300. Comment: Permit Page 24 –IIA PCM & PRP: Provisions state “PCMs must be implemented where the permittee 1) has at least one stormwater outfall that discharges directly or indirectly to impaired waters, and 2) the “cause of impairment” is one or more of the causes listed in paragraphs A.1 through A.3, below.” It is unclear if this applies to all areas of the municipality or just to outfalls and areas that are within the Urbanized Area. Clarification should be provided. **(32)**

Response: Those MS4 outfalls that discharge to the impaired surface waters from the permittee’s MS4 are covered by the PCM requirements of the General Permit, regardless of where the outfalls are physically located. The storm sewersheds of those outfalls must be mapped and a source inventory developed. While mapping of the storm sewershed does not need to extend into other municipalities (unless those municipalities are working with the permittee on a joint plan or map/inventory), sources within other municipalities that flow into the MS4 and discharge at the outfall may be considered in the inventory.

301. Comment: If DEP intends to have counties submit one or more of these appendices, Chester County will question the efficacy of doing so. For example, the requirements of Appendices A, B, and C begin with a source inventory. The drainage area contributing to each of Chester County’s outfalls is solely within Chester County

**PAG-13 General Permit
Comment Response Document**

lands and sometimes may be just a parking lot. A source inventory in these cases, particularly Appendix B related to pathogens, would be unproductive. These three appendices also require permittees to "...submit...proposed action(s) it plans to take during the permit term to control known sources" without details or guidance of what extent source control efforts are required should the permittee find a source (for instance, reduction of a significant source versus and insignificant source). For instance, inclusion of Appendix D by counties would necessitate sediment and total phosphorus load reductions on a site by site basis which in some cases may not be achievable. DEP should provide its expectations. **(11)**

Response: DEP does not intend to require county MS4 permittees to implement any of the appendices; DEP is hopeful that counties will provide support and coordination to its municipalities in developing plans, maps and inventories or otherwise take a leadership role in regional efforts.

302. Comment: Appendices A, B and C refer to development of an inventory of "suspected and known" sources. It should be clarified that "unknown" is also an option and it is possible that the inventory could be blank An MS4 shouldn't be expected to speculate on the source of PCBs, just to satisfy the "suspected" criterion in the NOI. **(1), (8)**

Response: DEP expects that development of the source inventory will involve research. DEP would consider the submission of an inventory that simply indicates "No known or suspected sources have been identified" to be inadequate.

303. Comment: The use of appendices for pollutants such as acid mine drainage, pathogens, and priority organic compounds will help provide certainty to municipalities and conserve the Department's resources while promoting best practices for pollutant management. (Appendices A-C, Draft Permit at 27-29.) **(10)**

Response: DEP agrees with this comment.

Topic – Pollutant Reduction Plans (Appendices D and E)

304. Comment: Under Appendix D – In paragraph 3. (page 30), the criteria relate only to modifications to a CBPRP. As currently written, it appears that the permittee would determine its public involvement/participation process for the original CBPRP and include it in the PIPP. Was that DEP’s intent OR was it intended that these Plan modification criteria also apply to the original Plan? (This same comment applies to paragraph 3 of Appendix E). **(2)**

Response: The public participation requirements for Pollutant Reduction Plans (PRPs) submitted as part of NOIs are contained in the PRP Instructions document (3800-PM-BCW0100k). The same public participation requirements are contained in Appendices D and E to clarify that the same procedures are to be used for modifications to PRPs that must be submitted to DEP during the term of PAG-13 General Permit coverage.

305. Comment: Section II. Required PRP Elements, Paragraph A. Public Participation (page 2) – Bullet #4 refers to a “municipal authority that is the permittee”. Does this include all municipalities, regardless of whether it represents a single municipality or several municipalities (regional or county)? This question arises from the fact that the Section dealing with Co-Applicants on page 4 of the Draft PAG NOI Instructions, simply states that “if a regional stormwater authority is created to administer stormwater management programs through multiple municipalities, the authority may apply on behalf of its municipalities using a single NOI form.” Clarification as to whether this automatically results in the regional authority being the permittee or whether the participating municipalities could, as an option, each be issued a permit is needed. Similarly, on page of the Draft PAG NOI Instructions under MCM Implementation, it states that “the permittee is ultimately responsible for compliance with each of the MCMs.” As such, it appears that if a Regional Stormwater Authority is the permittee, it becomes responsible for compliance with the MCMs. Would this be on a regional basis as opposed to an individual municipal basis? Again, clarification is needed. **(2)**

Response: See response to Comment No. 34.

306. Comment: Do the requirements under bullet #5 need to be included in the PRP submitted with the NOI? Clarification is needed. Appendices D & E of Draft PAG-13 clearly stipulate that submission of a modified CBPRP/PRP must include the “permittees record of consideration of all timely comments received in the public comment period.” **(2)**

Response: Yes, the PRP submission must include documentation of satisfying the public participation requirements.

307. Comment: The Department’s proposed requirement that all PRPs and CBPRPs be open for public comment before being submitted to the Department will improve plans received by the Department and improve public awareness about stormwater. (MCM #2 and Appendices D and E; Draft Permit at 17 and 30-31.) We recommend incorporating the details of the local-level public participation process into the text of MCM #2 to make it explicit that all portions of the public notice and comment process (including municipal responses to comments received) must be completed before the initial plan is submitted to the Department. **(10)**

Response: MCM #2 BMP #2 has been revised to clearly indicate what documents require public participation, including PRPs.

308. Comment: Since a regional CBPRP would have many permittees, recommend including specific criteria that would allow for a single public notice representing all participating permittees to suffice (joint client or administrator can act on behalf of all co-permittees). Include specific requirements that are clear for cooperating permittees so that each permittee is not required to individually fund redundant public notice and public comment periods. (This same comment applies to Appendix E, as well as Section II, Paragraph A. of the Draft PAG-13 PRP Instructions). **(2)**

**PAG-13 General Permit
Comment Response Document**

Response: DEP has revised the PRP Instructions to specifically authorize joint public participation efforts for a regional PRP, as long as the notice of the availability of the PRP and the notice of a public meeting or hearing reaches the target audience groups of all permittees involved in the joint effort.

309. Comment: Public Participation. Is the public notice a one-time ad in the local? This is not inexpensive. (17)

Response: The PRP Instructions and General Permit require a minimum of a single advertisement in a local newspaper.

310. Comment: In addition to having the PRP submitted 180 days prior to permit date, a record of public participation has to be included. The applicant must consider and make a record of the consideration of each timely comment received from the public during the public period. What constitutes a suitable record? Is a response to the commenter required, or is it sufficient to consider the comment? (35)

Response: The public notice of the availability of the PRP for review must be attached to the PRP, as well as a record containing all public comments received and the permittee's record of consideration of each timely comment. This means that the permittee's position with respect to each comment must be documented. There is, however, no requirement for a response directly to the commenter.

311. Comment: Appendix D and E. If a permittee cannot achieve a scheduled milestone in its CBPRP, or decides to modify the proposed BMPs, they must modify the CBPRP and solicit comment in a newspaper of general circulation in the area. EPA guidance is clear that the public is the area served by the MS4. For DOD, this would include the area served by the facility's MS4, but not the surrounding area. Therefore, publication in a newspaper of general circulation in the area is too broad unless PADEP agrees that a military base newspaper meets this definition. In addition, public notice should not be necessary if a proposed modification still meets permit compliance requirements and schedules. Recommendation: Clarify what the public includes for non-traditional MS4s (people that reside or work in the area served by the MS4). Do not require public notice for modifications that still meet permit compliance requirements and schedules. (50)

Response: Non-municipal MS4s are contained within political jurisdictions. It is therefore subject to the stormwater ordinance of that jurisdiction, which may also be an MS4. It is therefore important that the non-municipal stormwater program be coordinated with water quality efforts of the local jurisdiction. For that reason DEP would expect the public notice to be wider than a site-specific newspaper or newsletter. DEP would furthermore strongly encourage non-municipal permittees to develop a joint PRP with surrounding jurisdiction(s).

DEP has revised the final PAG-13 General Permit to specify that modifications to PRPs that involve changes in the location, type or number of proposed BMPs or changes to storm sewershed maps require submission to DEP and completion of the public participation process. Other types of modifications do not need to be submitted to DEP or be publicly participated.

312. Comment: The new local public participation process for TMDL submissions, MS4 specific pollution reduction plans, and resubmitted nutrient and sediment TMDL design details and strategies are a direct result of DEP's Stipulation of Settlement (Settlement) with Citizen's for Pennsylvania's Future. The Settlement requires a permittee to provide notice of a 30-day public comment period in a paper of general circulation in the geographic area of the MS4 and sets specific requirements for at least one public meeting where comments will also be accepted. We recommend DEP narrow the scope of a permittees consideration of applicable comments to those public commentators who are directly impacted in the area served by the MS4. The permittee is also required to "consider and make a record of consideration" of all comments that are received. DEP should clearly state, where applicable, that the permittee is under no obligation to make changes to any plans or submissions as a result of comments received and that DEP will not require a permittee to make changes to submissions based on public comments alone. In addition, public notice should not be required for modifications that continue to meet the set permit compliance requirements and schedules. (52)

**PAG-13 General Permit
Comment Response Document**

Response: The comment suggested that DEP allow permittees to limit consideration of public input on the TMDL Plan to those from within the area served by the MS4. DEP disagrees. Permittees can reasonably consider whatever input is offered. There is however no obligation to accept and make use of any input received from within or outside of the area served by the MS4. The only obligation is to make a record of consideration of the input. Also see response to Comment No. 311.

313. Comment: We strongly support the enhanced public participation processes built into the permit. By allowing for notice-and-comment of pollutant reduction plans (PRPs) at the municipal level, the Draft Permit encourages citizen participation, which will lead to enhanced public awareness and improved stormwater management. **(12)**

Response: Thank you for the comment.

314. Comment: What is the basis for 10% and 5% reduction requirements for sediment and total phosphorus, respectively, without determination of existing baseline values? (PRP Instructions) **(45)**

Response: EPA's Chesapeake Bay model categorizes loads by sectors. MS4 loads are within a sector called "Urban". Within Urban there are regulated stormwater (MS4s) and non-regulated stormwater subsectors. The estimated 2014 loads (per EPA's 2014 progress run using the 5.3 Bay model) and the 2025 target loads for the pollutants of concern for the regulated stormwater subsector are as follows (information received from EPA's Chesapeake Bay Office):

Pollutant	2014 Estimated Loads (lbs/yr)	2025 Target Loads (lbs/yr)	% Reductions Required
TSS (i.e., sediment)	124,686,318	69,470,554	44%
Total Nitrogen (TN)	7,884,535	4,704,618	40%
Total Phosphorus (TP)	184,913	121,579	34%

Pennsylvania has an obligation to meet its 2025 Target Loads for all sectors and subsectors to comply with the Chesapeake Bay TMDL. DEP established the 2025 Target Loads in its Phase II Watershed Implementation Plan (WIP). The 2025 Target Loads for regulated stormwater may be revised in DEP's Phase III WIP (DEP has the ability to shift load, to a degree, between sectors, depending on whether the load is considered non-point source load allocation or point source wasteload allocation). In addition, when EPA conducts its next progress run using its Phase 6 model, DEP's estimated loads from regulated stormwater may increase or decrease.

DEP believes that a minimum of 10% reduction in sediment; a minimum of 5% reduction in TP; and a minimum 3% reduction in TN will be necessary to help Pennsylvania achieve the overall goals of the TMDL. DEP did not, for example, require a minimum 44% reduction for sediment because this level of sediment reduction is unachievable within a permit term. DEP has independently run numerous scenarios and believes 10% is achievable using cost-effective BMPs within a 5-year period, particularly if MS4s collaborate on development and implementation of PRPs.

DEP felt that establishing the same % reduction requirements for locally impaired waters was important due to the potential overlap between Appendix D (Chesapeake Bay PRPs) and Appendix E (PRPs for impaired waters). In other words, an MS4 within the Bay watershed that discharges stormwater to local surface waters that are impaired for sediment, for example, would be able to combine the PRPs for those surface waters.

It is noted that while the PAG-13 General Permit establishes minimum percent reduction requirements for sediment, TP and TN, DEP expects that the sediment reduction requirements will drive the selection of BMPs for Chesapeake Bay PRPs. The PRP Instructions have been revised to emphasize sediment reductions for Appendix D, as it is expected that, overall within the Bay watershed, the TP (5%) and TN (3%) goals will be achieved when a 10% reduction in sediment is achieved.

315. Comment: The Department's proposed requirement that municipalities required to submit PRPs (including Chesapeake Bay Pollutant Reduction Plans (CBPRPs)) reduce their total phosphorus (TP) loading by 5% and

**PAG-13 General Permit
Comment Response Document**

sediment loading by 10% within the 5-year general permit term is a step in the right direction, but should be further improved. (Appendices D and E; Draft Permit at 30-31.) In the final PAG-13, DEP should include percent reductions for nitrogen loading in addition to the phosphorus and sediment loadings percent reduction requirements. LID practices should be expressly encouraged – or even required – throughout the permit, and especially in the appendices discussing PRPs and CBPRPs. Pennsylvania is required to achieve specific reductions in nitrogen pollution to the Chesapeake Bay in accordance with the Watershed Implementation Program (WIP) and Total Maximum Daily Load. As currently defined in the Draft Permit, the pollutant targets are not guaranteed to achieve the WIP’s nitrogen reduction targets. Finally, we note that the Department may not treat these PRP targets as substitutes for drafting and implementing TMDL reports. Although these PRP requirements are a good step forward in addressing water quality impairments, they cannot take the place of the particularized study and targeted WLA requirements that are contained in a TMDL report. **(10)**

Response: DEP has included minimum percent reduction requirements for TN in Appendix D and the PRP Instructions of the final PAG-13 General permit; DEP does not, however, expect MS4s to select BMPs based on meeting TN (or TP) reductions. Those reductions will occur as part of any BMP that is implemented to meet sediment reductions.

316. Comment: One of these improvements is the Department’s proposal to require quantified pollutant load reductions from all municipalities that discharge to waters impaired for nutrients or sediment, even if they are not subject to wasteload allocations (WLAs) in Total Maximum Daily Load (TMDL) reports, including all Small MS4 permittees in the Chesapeake Bay watershed. This is a significant requirement not often implemented in other states. However, the amount of pollution reductions the permit requires – a 10 percent reduction in sediment and a 5 percent reduction in total phosphorus – will not address all water quality impairments in Pennsylvania. While it is true that those reductions will help move pollution levels in the right direction, the permit should go further and impose requirements that will in fact ensure compliance with water quality standards. 40 C.F.R. § 122.4(d); 25 Pa. Code §92a.5; see also 33 U.S.C. §§ 1311(b)(1)(C), 1342(a). The mandated reductions will ensure that municipalities begin to take a hard look at their stormwater pollution and that they begin to take steps to remediate it, but these are only first steps. This increased awareness must lead to more aggressive remediation measures, including measures necessary to implement future TMDLs. **(12)**

Response: DEP believes that the imposition of required pollutant load reductions in this General Permit is a significant step toward achieving water quality objectives in local surface waters and the Chesapeake Bay.

317. Comment: Appendices D and E require a minimum 10% reduction of sediment and a 5% reduction in phosphorus for municipalities with streams affected by these pollutants. The percent reductions appear to be arbitrary, are not calculated using baseline data, and thus have no rational relationship to the pollutant loadings of the specific impacted streams. Further the minimum reductions are not tied to a municipality’s ability to financially achieve such a reduction. A minimum reduction strategy in a small municipality could result in substantial costs and effort while the same reduction strategy in a large municipality could result in small costs, nominal effort, and limited pollution reduction impact. The “one size fits all” approach will yield inconsistent pollution reduction and does not target reduction efforts where they may be most effective. **(21)**

Response: Permittees will have the ability to target reduction efforts within their storm sewersheds that yield the most effective results, and it is in their best interests to do so. Also, see response to Comment No. 314.

318. Comment: The PRP Instructions require 10% reduction of sediment and 5% reduction of phosphorus. (Para I.D.). Where are these values derived and how are they to be determined if the MS4 focuses efforts on volume reduction (as stated by DEP in the Training sessions as the priority focus for implementation)? How are the sediment and phosphorus reductions resulting from reduced instream erosion as a result of volume reductions to be calculated? **(23)**

Response: The land-based loading rates from CAST (see Attachment B of the PRP Instructions) take instream erosion into account. Also, see response to Comment No. 314.

**PAG-13 General Permit
Comment Response Document**

319. Comment: The loading reduction requirements should be removed. Based on the York County WIP, the reduction limits are disproportionate to the land use. The limits seem arbitrary in nature. Achieving the proposed reductions may cause a significant burden or be beyond the ability of the permittee given that the sources of the pollutants are outside the area of coverage of the proposed permit such as with another NPDES permit holder or with agricultural or forest activities. Furthermore, if the limits are to remain, loading estimates should be allowed to be calculated for the growth area tributary to the receiving waters, not the entire municipal area tributary to the receiving waters. **(32)**

Response: For Chesapeake Bay PRPs, the minimum pollutant load reductions are a portion of the reductions that Pennsylvania's regulated stormwater subsector are required to achieve under the Chesapeake Bay TMDL. The calculation of existing loads is to consider the land area within the mapped storm sewershed of MS4 outfalls that discharge to applicable surface waters.

320. Comment: The minimum percent reduction for pollutant loadings of sediment and Total Phosphorus (TP) of 10% and 5%, respectively, over the 5-year period following DEP's approval of coverage should be eliminated or at least lessened. This requirement would be a significant financial burden to local government. **(34)**

Response: See response to Comment No. 314.

321. Comment: Appendix D and Appendix E – PRP Requirements for Discharges to Chesapeake Bay Watershed and Waters Impaired for Nutrients and/or Sediment. Section 1 of both Appendix D and E require minimum pollutant load reduction percentages within the 5-year permit timeline for the sediment and nutrient PRPs and the Chesapeake Bay PRP. We support the inclusion of compliance metrics. The permit requires at least 5% (nutrient) and 10% (sediment) reductions in 5 years – PEC does not understand how these metrics were determined, and requests clarification on this process. We recommend that percent reduction requirements be adopted that put permittees on a timeline for complying with water quality standards within a targeted time period. We suggest 20 to 25 years. Information from existing TMDLs could be used to set pollutant reduction percentages. **(53)**

Response: DEP is considering the need for pollutant reductions one permit term at a time.

322. Comment: The minimum percent pollutant reduction requirement and schedule is much more specific than in existing NPDES Individual MS4 permits. Recommendation: The minimum percent pollutant reduction requirement and schedule in Individual MS4 permits, when reissued, should be consistent with those proposed in this permit. **(50)**

Response: At this time DEP anticipates that similar reduction requirements and schedules will be used for individual NPDES permits issued to MS4s.

323. Comment: The draft Appendix D and its instructions should be revised to reduce or eliminate the proposed minimum percent reductions for pollutant loadings (10% reduction of existing sediment load, 5% reduction in existing total phosphorus load). PaDEP has not demonstrated that these percent reductions are proportionate to MS4s' contribution to the pollutant loads in the Chesapeake Bay. Furthermore, the data available to support the Chesapeake Bay TMDL and the PA Watershed Implementation Plans (PA WIP) suggests otherwise. Looking at just sediment, according to the Pennsylvania Phase I WIP for the Bay depending on the watershed, the agriculture sector's contribution ranges from 94% to 69% of the sediment load. Contribution of sediment from Forest and the associated timbering ranges from 20% in the Susquehanna Basin to 3-4% in the Eastern and Western Shore Watersheds. The urban sector's contribution of sediment ranges from 11% to 3%. Table B2 in Appendix 7 of the Pa Phase I WIP specifically identifies the amount of sediment contributed by MS4s to the total amount of sediment entering each of the four watersheds discharging to the Bay. MS4s only contribute the following sediment: 1.45% for the Susquehanna Basin, 0.02% for the Potomac River Basin, 0% for the West Shore Watershed, and 0.38% for the East Shore Watershed. **(51)**

**PAG-13 General Permit
Comment Response Document**

Response: Table B2 of DEP's Phase I WIP was, unfortunately, inaccurate and was replaced by more accurate information in the Phase II WIP (and will eventually be replaced by DEP's Phase III WIP). DEP acknowledges that agricultural land uses contribute the largest share of pollutant loads to the Chesapeake Bay, and DEP is taking steps to improve compliance with regulatory standards on farms. The Urban sector's contributions, according to the Chesapeake Bay model, exceed those of the wastewater sector for Total Nitrogen and sediment, and the wastewater sector has already made significant nutrient reductions and is on target to meet TMDL objectives by 2025. As of EPA's progress run in 2015, the Urban sector contributes approximately 15% of the Total Nitrogen, 16% of the Total Phosphorus and 20% of the sediment discharged to the Chesapeake Bay. See also response to Comment No. 314.

324. Comment: Imposing percent reductions on the MS4 sector that are disproportionate to their contribution to the impairment is unreasonable and will result in significant costs to the regulated community and the taxpayer while realizing only a de minimis reduction in sediment entering the Bay. No real benefit will be realized by the Bay. Furthermore, imposing across-the-board numeric targets on MS4s is inappropriate because the feasibility (and cost) of achieving a reduction will vary widely depending on the circumstances. Consistent with the maximum extent practicable standard for MS4 permitting, 33 U.S.C. § 1342(p)(3)(B)(iii), any requirement to achieve a pollution reduction must be conditioned on practicability for the particular MS4. **(51)**

Response: The cited section of the Clean Water Act requires, for discharges from municipal storm sewers, "...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*" (emphasis added). DEP has reached a finding that regulated stormwater discharges from MS4s contribute to impairment of the Chesapeake Bay and is requiring that measures be taken in the PAG-13 General Permit to reduce this contribution.

325. Comment: Finally, these reduction requirements are essentially the assessment of a waste load allocation (WLA) against an insignificant contributor to the impairment. The TMDL does not impose either numeric WLA or a load allocation (LA) against individual entities within the sectors. During the TMDL process, PaDEP has consistently maintained when the WIPs were being developed that numeric WLA would not be imposed on individual MS4s. Moreover, other sectors (Agriculture and Forests) which are known to be more significant contributors are not assessed any load allocations. **(51)**

Response: The TMDL does in fact impose a wasteload allocation for Pennsylvania's regulated stormwater discharges, in aggregate, as well as a load allocation for non-regulated stormwater discharges. Load allocations are also assigned to agricultural land uses in the Chesapeake Bay TMDL.

326. Comment: If this requirement remains in the general permit and the permittee achieves the 10% and 5% reductions in the permit term for the Bay TMDL, the MS4 should not have any requirements in its next permit term to reduce discharges under the Bay TMDL plan; the MS4 will have already achieved reductions more than proportional to its contribution to the impairment. The elimination of this requirement to reduce discharges once the reductions are received satisfies its TMDL requirements and should not be viewed by the agencies as permit backsliding under 33 U.S.C. § 1342(o)(1). **(51)**

Response: See response to Comment No. 321.

327. Comment: Appendix D requires a permittee to achieve a 10% reduction of existing sediment load and a 5% reduction in existing total phosphorus load within five years following DEP's approval of coverage under a general permit for discharges to the Chesapeake Bay Watershed. This requirement is inconsistent with current existing NPDES individual MS4 permitting requirements and does not take into consideration the MS4s verifiable pollutant load. We request DEP demonstrate the proposed reductions are proportionate to the permittee's contributing pollutant load to the Chesapeake Bay Watershed prior to implementing the requirements in Appendix D. **(52)**

**PAG-13 General Permit
Comment Response Document**

Response: See response to Comment Nos. 314 and 323.

328. Comment: The minimum percent reduction for pollutant loadings of sediment and Total Phosphorus (TP) of 10% and 5%, respectively, over the 5-year period following DEP's approval of coverage should be eliminated or at least lessened. This requirement would be a significant financial burden to local government. **(62), (64)**

Response: See response to Comment No. 314.

329. Comment: Appendix D, Paragraph 1 stipulates that permittees shall achieve a minimum 5% pollutant load reduction (lbs/year) for nutrients (phosphorus and nitrogen) and sediment over the 5-year period following DEP's approval of coverage. For permittees that have already prepared and submitted a Chesapeake Bay Pollution Reduction Plan (CBPRP) under the current permit, is the 5% pollutant load reduction requirement to be measured from the pollutant loads which existed prior to implementation of any pollutant control measures proposed in the current CBPRP, or shall the 5% reduction be measured from the calculated pollutant loads at the time of permit renewal in 2018? It is expected that some pollutant control measures recommended under the current CBPRP's will have been implemented by the time of permit renewal. The current permit does not require a specific percentage pollutant load reduction goal for the CBPRP. Under the current permit, it is optional to calculate pollutant loads and establish load reduction goals. Therefore, permittees that established pollutant load reduction goals and implemented pollutant control measures under their current CBPRP's will have to do more to achieve the 5% minimum pollutant load reduction requirement if the 5% reduction is measured from the time of permit issuance/renewal in 2018. **(63)**

Response: Existing loads are to be calculated as of the date of the development of the PRP. Where structural BMPs have been established within storm sewersheds, those BMPs can be used to demonstrate reduced existing pollutant loads.

330. Comment: Under Appendix D, Why were reductions of 10% for sediment and 5% for phosphorous chosen? **(63)**

Response: See response to Comment No. 314.

331. Comment: General Information, Section I. Paragraph B. (page 1) – The last sentence states that “calculations and BMP selections must be completed independently for each watershed.” Micro management requirements at such a small scale will offset much of the economic and pollutant reduction advantages of planning on the regional (county) level. For example, as currently proposed, the York County Regional CBPRP effort, which involves 44 municipalities, would be required to prepare 122 separate calculations and mapping efforts on a micro scale. It is, therefore, recommended that the calculations, mapping, selection, and implementation of stormwater BMPs for regional efforts be on the regional (county) level for those areas that drain entirely to the Chesapeake Bay. Loadings to the Chesapeake Bay (calculated for Appendix D) will be the largest, and these loadings will need to be reduced in the tributaries in the region. **(2)**

Response: This statement is intended to clarify that where an MS4 permittee is required to complete Pollutant Reduction Plans for separate surface waters, independent evaluations must be performed for each watershed or storm sewershed. This will mainly apply to PRPs for impaired waters (Appendix E). If, for example, an MS4 permittee must complete three PRPs according to the MS4 Requirements Table for three separate surface waters, storm sewershed maps must be developed, existing loads must be calculated, and BMPs must be implemented for pollutant reductions independently within those watersheds. In other words, BMPs cannot be implemented in one storm sewershed to count toward pollutant reductions in an entirely separate watershed.

**PAG-13 General Permit
Comment Response Document**

332. Comment: General Information, Section I. Paragraph E. (page 1) – York County adopted a model Integrated Water Resources Plan in close partnership with the Department and did the Plan on a watershed level consistent with the PA State Water Plan. Subsequently, a countywide Chesapeake Bay Watershed Implementation Plan was developed to achieve the Draft County Targets assigned by the Department. This Plan recommended a countywide CBPRP, which is currently being implemented with the documented goal of restoring the impaired streams in the County. It would be counter-productive to promote countywide planning, then regulate at the sub-municipal level. To address this concern, it is recommended that the words “and/or planning region” be added at the end of the last sentence of paragraph E. It is further recommended that regional co-applicants be allowed to prepare a PRP at the largest COMMON watershed listed on Appendix D and/or E that will encompass ALL of the listed watersheds and allow BMPs to be implemented, understanding that the most cost effective way is to target those impaired watersheds. For regional efforts entirely in the Chesapeake Bay, Appendix D would always be the Chesapeake Bay watershed. **(2)**

Response: Clarification has been added to the PRP Instructions that MS4 permittees that are not co-permittees may develop and submit a joint PRP. The “planning area” to be mapped would be the combined storm sewershed for all permittee jurisdictions.

Where local surface waters are impaired for nutrients and/or sediment, and those waters are tributary to a larger body of water that is also impaired, MS4s can propose BMPs within the upstream impaired waters to meet the pollutant reduction requirements of both the upstream and downstream waters. For example, if Stream A flows through a municipality that is tributary to Stream B, both are impaired and the MS4 has discharges to both streams, the MS4 can implement BMPs in the storm sewershed of Stream A to satisfy pollutant reduction requirements for both Streams A and B. In general, the MS4 permittee would not be able to satisfy pollutant reduction requirements for both streams if BMPs were only implemented in the storm sewershed of Stream B; however, on a case by case basis DEP will consider such proposals where it can be demonstrated that implementing BMPs in the upstream storm sewershed is infeasible.

If, however, Stream A does not flow into Stream B, both are impaired and the MS4 has discharges to both streams, in general DEP would expect that BMPs be implemented in the storm sewershed of both streams to meet pollutant reduction requirements. Where MS4s develop collaborative PRPs, DEP will consider deviations from these guidelines on a case-specific basis. MS4s participating in collaborative efforts are encouraged to contact DEP during the PRP development phase for feedback on proposed approaches.

For MS4s within the Chesapeake Bay watershed who are submitting combined PRPs to address both Appendices D and E, it is recommended that permittees focus on the impaired local surface waters first, and then determine if the BMPs proposed in those storm sewersheds will be sufficient to meet the overall pollutant reduction requirements for the combined storm sewershed for the Chesapeake Bay. Municipal or regional PRPs that include both local impaired waters (Appendix E) and Chesapeake Bay watershed (Appendix D) must address the local impaired waters (i.e., credit cannot be claimed under Appendix E for BMPs implemented outside of the storm sewershed of the local impaired waters).

333. Comment: Recommend including language for co-applicants involved in a regional plan to perform these public notice, public meeting, and comment period/resulting plan changes jointly on the regional level. **(2)**

Response: See response to Comment No. 308.

334. Comment: Section II. Required PRP Elements, Paragraph B. Map (page 2) – Recommend adding language to allow mapping in accordance with Comment 2 above for regional efforts. The municipal micro maps are already completed per the SWMP in Part C of the General Permit. **(2)**

Response: Where regional PRPs are developed, regional maps may also be developed. However, the mapping done for MCM #3 of the General Permit differs from the mapping necessary for the General Permit appendices (PRPs and PCMs) in that PRPs and PCMs require the storm sewershed(s) to be mapped while MCM #3 does not.

**PAG-13 General Permit
Comment Response Document**

335. Comment: General Information, Letter B. The cooperation of communities should be clarified as pertaining to watersheds, regulated sub-basins, or storm sewersheds. (7)

Response: See responses to Comment Nos. 308 and 332.

336. Comment: General Information, Section I. (page 1) – If the Department does not have confidence in regional planning efforts to accomplish the goal of restoring local waters (i.e. all impaired reaches be addressed), recommend placing another paragraph between paragraphs E and F that could perhaps allow well planned regional efforts to manage this goal according to an approved Department Plan with the understanding that DEP could implement “backstops” (more micro-management) should unsatisfactory progress be made. Also recommend that regional efforts be given the latitude to reduce pollutants in the most efficient manner at the most effective locations, regardless of arbitrary political boundaries, which is the philosophy of the PA State Water Plan. Recommend these political boundaries include “urbanized areas.” (2)

Response: See response to Comment No. 332.

337. Comment: What modeling methods are acceptable in determining baseline pollutant loads for TP and sediment? (PRP Instructions) (45)

Response: Any methodology that calculates existing pollutant loading in terms of lbs per year, uses BMP pollutant reduction efficiencies values contained in DEP’s BMP Effectiveness Values document (3800-PM-BCW0100m) or Chesapeake Bay Program expert panel reports, uses average annual precipitation conditions and is based on sound science may be considered acceptable. The simplified approach explained in the PRP Instructions can be used, or a more detailed effort may be pursued. The BMP Effectiveness Values document primarily uses average values from the Chesapeake Assessment and Scenario Tool (CAST); if BMPs are proposed that are not contained in the BMP Effectiveness Values document or are not addressed by Chesapeake Bay Program expert panel reports, other technical resources may be consulted for BMP effectiveness values.

338. Comment: Required PRP Elements, Letter D. Determine Baseline Loading for Pollutants of Concern. Figure 1 Example. Can the Chesapeake Assessment and Scenario Tool (CAST) model be used outside of the Chesapeake Bay Watershed to determine pollutant baselines? (7)

Response: The CAST model cannot be used outside of the Chesapeake Bay watershed because pollutant loading rates are for only those counties in the Chesapeake Bay watershed; however, the BMP effectiveness values from DEP’s BMP Effectiveness Values document (based primarily on CAST values) or Chesapeake Bay Program expert panel reports must be used for all PRPs (i.e., both Appendices D and E), except where BMPs are not addressed by those documents. The PRP Instructions have been updated to provide general pollutant loading rates for areas outside the Chesapeake Bay watershed that may be used to determine existing pollutant loads and calculate the required reductions. An example outside the Chesapeake Bay watershed has also been developed.

339. Comment: Required PRP Elements, Letter D. Determine Baseline Loading for Pollutants of Concern. Please clarify the statement on page 4. “Although DEP uses the MapShed tool for TMDL development, any modeling tool that is based on sound science is acceptable.” What is the certification and reviewing mechanism for deeming what is “acceptable”? (7)

Response: DEP reserves the right to question and/or disapprove the methodology if it believes it is not based on sound science. It is not possible to identify all circumstances that would lead DEP to a finding that a PRP is or is not acceptable; however, the examples in DEP’s PRP Instructions should provide insight on the type of simplified analysis that is acceptable. See also response to Comment No. 337.

**PAG-13 General Permit
Comment Response Document**

340. Comment: Further complicating the matter, the current guidance, established by the Department, for developing a TMDL Plan and/or a CBPRP is designed to provide municipalities with the maximum degree of flexibility in achieving pollution reductions. MS4 municipalities may use any model, publication, or guidance to calculate the amount of reduction a BMP will provide, including The Pennsylvania BMP Manual, The Chesapeake Bay Model Documentation, Chesapeake Bay Expert Panel Reports, and Peer-reviewed BMP studies.

Response: In calculating existing pollutant loads, any sound scientific approach may be used, including the simplified approach used in the PRP Instructions. In determining BMP effectiveness when analyzing the selection of BMPs for pollutant reductions, the values in DEP's BMP Effectiveness Values document or Chesapeake Bay Program expert panel reports must be used, except when BMPs are not addressed in those resources. See also response to Comment No. 337.

341. Comment: This maximum flexibility afforded to MS4 jurisdictions will result in considerable differences in the TMDL Plans and CBPRPs received by the Department. Municipalities may submit TMDL Plans and CBPRPs with widely different BMP pollution reduction values resulting in inequitable costs to be in compliance with their MS4 permit. Some municipalities may plan diligently and expend disproportionate resources to achieve pollution reduction, while other jurisdictions submit Plans claiming high rates of BMP efficiencies that in reality do not achieve its stated targets. The Department must make clear to local governments what standard pollutant reduction efficiencies to use in TMDL Plans and CBPRPs. In order to provide consistency and equitability, we contend CBPRPs should recommend calculating pollution reductions using values established by the Chesapeake Bay Model. Although ideally a TMDL Plan should be designed using the same model that was used to develop the TMDL, over the course of time far more accurate and comprehensive models are developed. These models, while not perfect, could award MS4s more precision and accuracy in the plans. We agree with the Model TMDL Plan that municipalities need to consider changes in land use that have occurred since the TMDL was written. We contend that such plans should also consider predicted land use change, either through grow models or zoning, to help MS4s offset the potential impacts of new stormwater loads through land use change. **(10)**

Response: DEP is requiring the use of BMP effectiveness values contained in DEP's Effectiveness Values document, based primarily on values in CAST, or Chesapeake Bay Program expert panel reports for all PRPs. This will promote consistency in that "credit" for the same BMP, in terms of percent pollutant load reduction, will be the same for all PRPs. The amount, in terms of lbs/year, may be different and depends on the calculation of existing loads. It is true that two MS4 permittees with identical factors could calculate two different existing pollutant load values, which could have the effect of one permittee needing to implement more BMPs than the other. DEP considered requiring the use of one existing pollutant loading approach for all PRPs but decided against this because DEP did not want to hinder the development or use of innovative approaches or MS4-specific models.

342. Comment: Observations on the Pollutant Reduction Plan (PRP) Instructions. Regarding Part I D. Since the pollutant load is only an estimate, it makes little sense to calculate a precise reduction without some stated error percentage. The various models must certainly have some measure of reliability that can be applied to the reduction computations. **(19)**

Response: Any method used to calculate existing pollutant loads will contain error or uncertainty. The BMP effectiveness values also contain uncertainty. If an applicant wishes to present existing load values with confidence intervals, it can, but ultimately the PRP needs to provide a point estimate from which the 10% reduction in sediment loading can be calculated.

343. Comment: Regarding Appendix A. The fact that we are still planning to use countywide land loading rates (rather than more specific data for smaller hydrologic units) into the future is evidence of a distinct bureaucratic weight that stifles innovation. **(19)**

**PAG-13 General Permit
Comment Response Document**

Response: County-wide loading rates are used for the simplified method as contained in DEP's Chesapeake Bay PRP example within the PRP Instructions. Other methods can be used to derive estimates of existing pollutant loads.

344. Comment: DETERMINE BASELINE LOADING FOR POLLUTANTS OF CONCERN, EXAMPLE 1. The instructions indicate "Although DEP uses the MapShed tool for TMDL development, any modeling tool that is based on sound science is acceptable." The instructions also include an attachment (Attachment A) that provides DEVELOPED LAND LOADING RATES FOR PA COUNTIES (FROM CAST) based on either impervious developed and pervious developed categories and corresponding loading rates for TN, TP, and TSS.

- **Based on CAST modeling:**

For Lancaster County, TSS loading is

- 1,480.43 lbs/acre/yr for impervious developed
- 190.93 lbs/acre/yr for pervious developed
- AVERAGE OF 835.7 lbs/acre/yr in a developed area

- An exercise was conducted recently using MapShed in Lancaster County for a regional CBPRP. **Based on MapShed modeling:**

For a locale in Lancaster County, TSS loading is

- 15.6 lbs/acre/yr for developed areas (averaged)

- A recent exercise in Lancaster County was conducted that resulted in sampling, analysis, and determining pollutant loading rates during a rain event associated with the requirements of an issued NPDES Permit.

A 1.5" rain event resulted in discharges from a single outfall that collects and conveys run-off from 1,033 acres of developed area. 60% (or 620 acres) has been identified as impervious coverage within this area. The rest is within an urban area as well (pervious developed).

During the 1.5" rain event, samples were collected until there was no longer a discharge. Based on the concentrations and the volume discharged (which is known due to installed meters), a total loading was determined for TSS:

- 178.3 lbs
- Based on 1,033 acres in the sewershed, that is a discharge of 0.173 lbs/acre

The Lancaster area averages ~43" of rainfall per year. Based on the single measured event (of 1.5"), you can assume 29 events are needed each year to reach the average rainfall.

- With 29 each – 1.5" rain events, the loading would be $178.3 \times 29 = 5,171$ lbs/yr
- With consideration to 1,033 acres, the loading would be 5.0 lbs/acre/yr
- The 5.0 lbs/acre/yr is much more in line with MapShed (15.6 lbs/acre/yr)
- The 5.0 lbs/acre/yr is not in line with CAST (835.7 lbs/acre/yr)

With the allowance for the ability to use a variety of tools (CAST, MapShed, etc.), this discrepancy could lead to a number of conflicting and unaligned values with a large variance between loading rates. Is there a concern with conflicting loading rates calculated (as it may muddy the overall picture of reduction progress)? **(27)**

Response: DEP does have concerns about the variability inherent with using different methods to calculate existing pollutant loads. DEP is encouraging but not requiring the use of the land-based loading rates contained in Attachment B of the PRP Instructions. Use of these rates will help streamline DEP's review of PRPs. A more detailed review by DEP may be expected when other methods are used. This statement is not made to

**PAG-13 General Permit
Comment Response Document**

dissuade the use of other methods, but where there are large discrepancies in the loading rates used between MS4s, DEP will attempt to understand the reasons why.

Without additional information DEP cannot speculate on the reason(s) for the large difference between the CAST-based loading rates and the rates generated through a MapShed model run. However, it is possible that the discrepancy results from the fact that MapShed models streambank erosion separate from land-based loading. MapShed applies a simple build-up/wash-off routine for impervious surface loading estimates since the main source of loading from these land uses is downstream channel degradation from rate and volume impacts of stormwater. Conversely, CAST does not model channel/bank erosion separately and instead distributes loads among upstream land-based sources. Therefore, a comparison of impervious loading rates from MapShed and CAST is not appropriate. If MapShed is used to determine existing pollutant loads, the full model including the BMP module must be used, which accounts for downstream erosion.

If stormwater sampling is used to estimate existing pollutant loads, DEP will carefully consider the methodology and assumptions used. How many samples were collected during the 1.5-inch rain event? What was the duration of the event and at what intervals were samples collected? Is stormwater sampling from one outfall representative of the entire storm sewershed within the PRP study area? These are the kinds of questions DEP may ask. It is recommended that DEP's Bureau of Clean Water be consulted prior to undertaking efforts to calculate existing loads based on sampling.

345. Comment: We recommend that one calculation model for baseline pollutant loadings be selected, for consistency. At a minimum, DEP should provide its preferred default method and allow permittees to propose the use of other methods if desired. This is particularly important in light of the uncertainty around numbers included in the Phase II WIPs and ongoing refinements of the Chesapeake Bay Model. DEP should explain how these calculations should be maintained and evaluated, and how they will be enforced. **(35)**

Response: The final PAG-13 General Permit requires, in Appendices D and E, the submission of a final report that documents the actual pollutant reductions achieved. This report is due with the first Annual MS4 Status Report that is due following the fifth year of General Permit coverage. For example, if DEP issues written approval of coverage to operate under the PAG-13 General Permit on June 1, 2018, the final report is due with the Annual MS4 Status Report submitted by September 30, 2023.

In general, the same methodology used to calculate the existing pollutant loads should be used in the final report to demonstrate the reductions. If BMP effectiveness values are updated in DEP's BMP Effectiveness Values document or Chesapeake Bay Program expert panel reports between the time the PRP is approved and the time the final report is developed, those updated effectiveness values may be used.

Also see responses to Comment Nos. 337, 340 and 341.

346. Comment: PRP Instructions – Bucks County, Montgomery County and Delaware County are not included in ATTACHMENT A – DEVELOPED LAND LOADING RATES FOR PA COUNTIES (FROM CAST). **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: Generalized loading rates for areas outside of the Chesapeake Bay watershed have been incorporated into the PRP Instructions and may be used by MS4 applicants that are subject to Appendix E.

347. Comment: If in an MS4 is outside the Chesapeake Bay watershed loading rates for nitrogen and phosphorus should be supplied by DEP for Bucks and Montgomery Counties. Municipalities do not have the resources to do their own storm water sampling to obtain the loading rates. **(46), (54)**

Response: See response to Comment No. 346.

**PAG-13 General Permit
Comment Response Document**

348. Comment: Items II.E.2. This item stated that permittees must use BMP effectiveness values identified by the Chesapeake Bay Program. The use of BMP efficiencies identified in CAST were recommended, but it was stated that other sources, like the Pennsylvania Stormwater Best Management Practices Manual (363-0300-002) might also be used. Recommendation on Item II.E.2. Revise this item to also mention other acceptable sources of BMP effectiveness particularly those from the Bay WQGIT Expert Panel report on Stormwater BMPs (retrofit adjustor curve method). **(50)**

Response: The final PAG-13 General Permit and PRP Instructions require the use of BMP effectiveness values in DEP's BMP Effectiveness Values document or Chesapeake Bay Program expert panel reports for all PRPs (Appendices D and E) to promote statewide consistency.

349. Comment: Will municipalities be permitted to include BMPs that have been recently constructed, or future BMPs constructed prior to approval of a PRP, towards TP and sediment reductions? **(45)**

Response: Structural BMPs that have been implemented can be used toward meeting pollutant reduction requirements. The existing pollutant loading is to be calculated as of the date of PRP development.

350. Comment: What date would the baseline loading be taken from? If the PRP is developed and studied in 2016/2017 will the municipality be able to take credit for the additional BMPs installed prior to 2018. **(45)**

Response: See response to Comment No. 349.

351. Comment: General Information, Letter C. DEP must provide guidance on the minimum standards to determine the Baseline pollutant loads for storm sewersheds. Mapsheds is identified as a potential resource, but a minimum standard of review guidelines should be established to generate a measure of compliance. **(7)**

Response: See responses to Comment Nos. 337 and 344.

352. Comment: Required PRP Elements, Letter D. Determine Baseline Loading for Pollutants of Concern. If a modeled baseline is different than the published TMDL baseline, how much analysis is required to be accepted by DEP as regulatory baseline for this permit cycle? Does the modeling need to be certified by a Professional Engineer? Will it be reviewed by a Professional Engineering with Hydraulics and Hydrology experience? **(7)**

Response: No published TMDL baseline loading information will be available when developing PRPs, as PRPs are developed for the Chesapeake Bay and local impaired surface waters without a TMDL. DEP will develop TMDL Instructions for use in developing TMDL Plans as part of individual permit applications, and this comment will be applicable to those instructions.

DEP is not requiring that PRPs submitted to DEP be certified by a professional engineer. If an MS4 applicant plans to conduct detailed modeling to determine existing pollutant loads, engaging the services of an engineer or other professional with modeling experience is recommended. A professional engineer would be necessary to certify design drawings, if necessary, for structural BMPs proposed as part of the PRP.

353. Comment: Required PRP Elements, Letter D. Determine Baseline Loading for Pollutants of Concern. Figure 1 Example. Why is the Storm Sewershed outside of the UA considered in the calculations of the baseline? Is this only beneficial if the land area in the extended area is needed for the implementation of a BMP for pollutant reduction in the Storm Sewershed? **(7)**

Response: The storm sewershed may extend beyond the urbanized area within a municipality. In such cases it is necessary to include the drainage area outside of the urbanized area for PRPs because it adds pollutant load to the MS4. BMPs may be installed anywhere within the storm sewershed for required pollutant reductions

**PAG-13 General Permit
Comment Response Document**

unless the area has been parsed because 1) the area, or a portion of the area, is already covered by an NPDES permit or 2) the area, or a portion of the area, does not drain to the MS4.

354. Comment: The PRP Instructions also state that “for each pollutant of concern the applicant must calculate and determine the existing (baseline) pollutant loading in stormwater discharges, in lbs/year. This is the existing loading as of the date of the NOI submission and should include all existing BMPs implemented to date.” DEP should clarify how counties with dispersed outfalls are to comply. For example, baseline loading could be established on a cumulative basis for all outfalls countywide but that wouldn’t be practical as there are many different receiving waterways. Or loadings could be established on an outfall by outfall basis but this could lead to mandated reductions being needed on an outfall by outfall basis. Obtaining reductions may be difficult enough on a watershed basis where applicants have a variety of approaches and opportunities. Site-specific reductions may be much harder to achieve. **(11)**

Response: County MS4 permittees are not expected to develop PRPs themselves, though DEP strongly encourages that counties work with municipal permittees to develop regional PRPs. The first step is to develop the storm sewer watershed map(s) based on the drainage areas of all outfalls. Once this map is in place, there are multiple ways to begin the process of estimating existing loads; DEP’s simplified method considers identifying the composition of the drainage area by pervious and impervious land, and applying the county-wide loading rates for those areas.

355. Comment: Section 1.C of the Pollution Reduction Plan (PRP) Instructions states that the existing baseline pollutant loading is calculated to be the estimated loading as of the date of the NOI submission. Section 1.D of the PRP Instructions states that a 10% and 5% loading reduction must be achieved for sediment and TP respectively within 5-years of the PRP approval. Given the potential limitations on funding and public land available for the implementation of BMPs; and the fact that municipalities have no current reduction requirement and will receive no credit for BMPs installed prior to the submission of their NOI, Sections 1.C and 1.D may encourage municipalities to delay implementation of BMPs until they are required to submit an NOI. It seems inappropriate not to give credit to municipalities who have proactively installed BMPs prior to having a minimum loading reduction requirement. Consideration should be given to adjusting the year or method the baseline is established. Similarly Section II.E seems to penalize municipalities that currently have an aggressive street sweeping program. If a municipality already sweeps their streets more than 25 times per year, they may not qualify to take credit for load reductions and further may be penalized if funding constraints or some other reason requires them to reduce the number of times their streets are swept. If the Bay Model calculates loadings from streets at a certain rate, why is not appropriate to give credit to the municipalities that sweep their streets at a frequency sufficient to meet the Model’s requirement for reduction regardless of when they started their street sweeping program? **(15)**

Response: MS4 permittees will be able to obtain “credit” for structural BMPs implemented in the past in terms of reduced existing pollutant loading. For example, use of DEP’s simplified method may involve a sediment loading rate of 2,000 lbs/acre/year for impervious surfaces; for those acres that are treated by BMPs, the loading rate (from the outlet of or discharge from the BMP) may, upon analysis and when justified, be reduced. In addition, DEP has revised the PRP Instructions to indicate that historical street sweeping practices need not be considered in calculating credit for future practices. Each year the level of street sweeping activities will be reported to DEP through Annual MS4 Status Reports, which will provide credit to the MS4 and, if in the Chesapeake Bay watershed, ultimately Pennsylvania in the Chesapeake Bay model. In other words, if a municipality currently sweeps their streets 25 times per year and proposes to continue this practice, credit for sweeping 25 times per year can be taken. The permittee should propose the level of street sweeping in its PRP and report on actual practices annually and in the final report due with the Annual MS4 Status Report by September 30th following the 5th year of General Permit coverage.

356. Comment: One of our clients, Warwick Township (Lancaster County, PA) has achieved significant strides in water quality improvements and pollutant reductions prior to and during the entire life span of the MS4 Permit Program. Implementation of nutrient and sediment reduction BMPs resulted in the Lititz Run watershed being named one of twelve Showcase Watersheds in the country. Additionally, a TMDL Plan/CBPRP/Impaired Waters Plan Update was submitted back in 2013 that revealed implemented BMPs have reduced pollutant loadings

**PAG-13 General Permit
Comment Response Document**

below TMDL thresholds for Lititz Run. The call for additional reductions contemplated by the draft permit (10% sediment and 5% Phosphorus) can be easily interpreted as “not recognizing” the work completed over the past 20 years that has led to significant reductions as shown in the 2013 plan submission referenced. **(27)**

Response: DEP understands and appreciates that some municipalities have done more than others to improve stormwater quality. See response to Comment No. 355.

357. Comment: The draft PRP instructions penalize current MS4 permittees with draft CBPRPs that want to implement BMPs now by shifting the baseline pollutant loading to the date of the NOI submission. For current MS4 permittees with draft CBPRP that have been submitted to DEP, but not reviewed or approved, any BMPs implemented prior to the new Permit will only count as a fraction if the baseline is shifted. This will likely cause any permittee to delay BMP implementation, which is an unwanted effect. It is suggested that the requirements are modified to allow any BMPs implemented after 2005 (consistent with the current and effective Chesapeake Bay PRP Instructions) to count toward the percent reduction requirements for the first permit cycle. **(49)**

Response: See response to Comment No. 355.

358. Comment: The draft PRP instructions include Attachment A, which provides a table for developed land loading rates for PA counties from CAST. These rates result in significantly higher loads than using the loading rates provided in the PA Stormwater BMP Manual. Toward the end of section II.D (top of page 4), the instructions state that “If land use-based loading rates are available, these rates may be used to possibly yield a more accurate estimate.” The next paragraph states that “If a modeling tool will be used to evaluate future pollutant loading for different BMP implementation scenarios, the modeling tool should be used to estimate baseline loading as well...” However, section II.E.2 states that “applicants within the Chesapeake Bay watershed must use BMP effectiveness values identified by the Chesapeake Bay Program, available through CAST...” It is suggested to clarify whether or not the rates and percent reductions from the PA Stormwater BMP Manual can be used for Appendix D (Chesapeake Bay Watershed) pollutant reduction plans. **(49)**

Response: Only the effectiveness values from DEP’s BMP Effectiveness Values document or Chesapeake Bay Program expert panel reports can be used, for the BMPs identified in those resources.

359. Comment: It is suggested to implement the recommendations provided by the Navy Region Mid-Atlantic on July 29, 2015, in general and specifically relative to “waters of the Commonwealth” and calculating existing baseline pollutant loading. **(49)**

Response: See responses to Comment Nos. 126 and 355.

360. Comment: Item 1.C. This item instructs permittees to calculate the existing baseline pollutant loading as the loading on the date of the NOI submission, including all BMPs implemented as of that date. This language is not clear with respect to allowing pollutant load reductions from these previously implemented BMPs and examples provided in Item II.D only show calculating BMP pollutant reductions from proposed BMPs. This appears contrary to Pennsylvania’s 2013 MS4 TMDL Plan / Chesapeake Bay PRP Instructions which specifically stated that “for PRPs, MS4s may take credit for previously installed structural BMPs that are operational and are maintained if such BMPs were installed after 2005 (i.e., 2006 or later), which is the cutoff used by Pennsylvania in its Chesapeake Bay Tributary Strategy.” Recommendation on Item 1.C. Clarify the language and examples by stating that pollutant reduction credit may be taken for certain previously installed BMPs and illustrate how to do this. **(50)**

Response: See response to Comment No. 355.

361. Comment: Items II.D. This item mentions that baseline loadings for development of individual MS4 PRPs associated with the Chesapeake Bay were not available from the TMDL because the TMDL was not at that fine a

**PAG-13 General Permit
Comment Response Document**

spatial scale. Use of the Chesapeake Assessment and Scenario Tool (CAST) which includes land loading rates for impervious and pervious surfaces for each Pennsylvania County is then discussed as a way to estimate the baseline loading. Although not mentioned, EPA coordinated with jurisdictions and developed the Bay Facility Assessment Scenario Tool (BayFAST) to assist federal agencies with estimating baseline loadings at a facility level scale. Use of BayFAST is also consistent with the recent EPA and Bay jurisdiction “Protocol for Setting Targets, Planning BMPs and Reporting Progress for Federal Facilities and Lands.” The Protocol also recognized that a federal agency may have already expended resources to develop planning tools or models prior to the rollout of BayFAST that were similar or equivalent. Where this was the case, the federal agency was encouraged to transition as soon as possible to BayFAST to enable consistency in federal agency planning. Recommendation on Items II.D. Revise this item to note that federal agencies can use BayFAST to calculate facility baseline loadings. In addition, we recommend that PADEP consider allowing use of other modeling tools as was done in the Protocol. **(50)**

Response: Any methodology that calculates existing pollutant loading in terms of lbs per year, evaluates BMP-based pollutant reductions utilizing the BMP effectiveness values contained DEP’s BMP Effectiveness Values document or Chesapeake Bay Program expert panel reports, uses average annual precipitation conditions and is based on sound science may be considered acceptable, including BayFAST.

362. Comment: Per federal regulations, an operator of a small MS4 is regulated if the small MS4 is “located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated);” 40 C.F.R. §122.32 (a)(1) (emphasis added). The NPDES permitting authority is authorized to designate additional areas pursuant to §§123.35(b)(3) and (b)(4) or pursuant to petition filed under §122.26(f). 40 C.F.R. §123.35 (b) generally provides that a NPDES permitting authority must develop a process and criteria for designating small MS4s that are not covered by the automatic designation of §122.32. Using this process and criteria, the permitting authority is allowed to designate additional MS4s that meet the established criteria ((b)(3)) or contribute “substantially” to the loadings of an interconnected MS4 that is otherwise regulated. The regulations make plain that EPA understands that it is possible that parts of municipalities may be unregulated for NPDES purposes based upon the urbanized areas (UA) approach. For further evidence of EPA’s intent, see Appendix 2 to the Phase II Rulemaking. The shaded area in Appendix 2 is the regulated area. Regulating areas outside of the UA is possible, but designation must occur. If DEP has not taken this step—and to the best of the commenter’s knowledge it has not—it is not permitted to expand the regulatory envelope by including unregulated lands outside the UA (the regulated area) in the determination of baseline. For this reason, the commenter recommends that DEP revise the PRP Instructions document to eliminate the requirement to include unregulated land in the map for purposes of the developing the baseline used to determine loadings of the pollutants of concern. **(61)**

Response: Under the authority of Section 5(a)(1) of The Clean Streams Law, 35 P.S. § 691.5(a)(1), DEP is requiring the development of a storm sewershed map, which may include land outside of the urbanized area, to implement Pollutant Control Measures and Pollutant Reduction Plans required by the PAG-13 General Permit. DEP is not, by including this requirement in the PAG-13 General Permit, officially designating areas outside of the urbanized area as a regulated small MS4. DEP is emphasizing the importance of accounting for the complete drainage area of an MS4 outfall in analyzing sources of pollutants and determining existing loading. For PRPs, including the complete drainage area of an MS4 outfall in the analysis (as opposed to just the drainage area within the urbanized area) will generally be beneficial to the MS4 permittee considering 1) the greater likelihood of pervious surfaces outside of the urbanized area, resulting in a lower loading per unit area than if focused on the urbanized area alone, and 2) the greater opportunity for locations where BMPs may be implemented to obtain “credit” for pollutant reductions.

363. Comment: Clarification is needed on how baseline pollutant loadings are to be established and how the required pollutant percentage reductions are to be measured. It is unrealistic to expect municipalities to conduct the type of comprehensive water quality analyses necessary to develop an inventory of all suspected and known sources of impairments. As Stephen Sherk of Steckbeck Engineering & Surveying Inc. points out in paragraph 8 of his letter (Appendix B), “it will be significantly more expensive, onerous and legally challenging to complete an inventory and follow-up investigations of impairment sources within the MS4.” **(63)**

**PAG-13 General Permit
Comment Response Document**

Response: Appendix B does not require the calculation of existing pollutant loadings. See the “Pollutant Control Measures” topic within this document.

364. Comment: It is unclear whether municipalities will be given credit for the reduction of pollutants from work done upstream from the urbanized area, either within or outside the borders of the permitted municipality. It is also unclear whether pollution reduction plans will need to be signed by an engineer. **(63)**

Response: Municipalities can claim “credit” for BMPs outside of the urbanized area, but within the municipal jurisdiction, if the BMPs have been or will be implemented within the storm sewershed. Municipalities can claim “credit” for BMPs outside the borders of the permitted municipality if a joint PRP is developed with collaborating MS4 permittees. Also, see response to Comment No. 352.

365. Comment: Under Appendix D, Is each Municipality required to determine its Phosphorous and Sediment Load to each stream, or is DEP going to determine this? **(63)**

Response: If a municipal MS4 permittee is developing a PRP on its own, that permittee is solely responsible for calculating the existing pollutant loading.

366. Comment: It shall be clarified if the existing pollutant loads calculated for the CBPRP are to be measured for (1) all areas within the urbanized boundary of the MS4, (2) those areas draining directly to the MS4, or (3) only those areas which the permittee has some measure of control over (e.g. roads, municipal-owned property, undeveloped lands). **(63)**

Response: Development of the storm sewershed map is the first step in estimating existing pollutant loading. The storm sewershed is the drainage area, within the municipality (or may be beyond municipal boundaries if a joint plan is developed), that drains to an MS4 outfall. An MS4 with multiple outfalls that discharge to applicable surface waters will have multiple storm sewersheds – the map should then be a composite of all applicable storm sewersheds, which is referred to as a “combined storm sewershed” in the PRP Instructions document. For Chesapeake Bay Pollutant Reduction Plans, for example, the entire municipal land area that drains to the MS4 will frequently be part of the storm sewershed. A storm sewershed will usually contain both publicly- and privately-owned property, and existing pollutant loading must be calculated for and BMPs must be proposed within the storm sewershed.

367. Comment: Under Appendix D, Can work be done outside of the urbanized area to reduce sediment and phosphorous loads (i.e. work with agricultural issues upstream in the watershed)? **(63)**

Response: Yes, as long as the proposed BMPs will be implemented within the appropriate storm sewershed.

368. Comment: Under Appendix D, We are continuously implementing new BMPs when opportunities arise. What base year and date will be used to establish a 10% reduction for sediment and 5% reduction for phosphorous? Will we receive credit for BMPs we are constructing now? **(63)**

Response: See response to Comment No. 355.

369. Comment: Under Appendix D, Were costs to municipalities factored in when the reduction goals were established? **(63)**

Response: Yes. Given the substantial obligations Pennsylvania has to reduce pollutant loading to the Chesapeake Bay, DEP considered a number of pollutant load reduction targets and came to the conclusion that BMPs designed to reduce 10% sediment can be done at reasonable cost over a 5-year period.

**PAG-13 General Permit
Comment Response Document**

370. Comment: Required PRP Elements, Letter F. Identifying Funding Mechanism(s). DEP must explain the mechanism on how the department will determine the financial feasibility of implementation of any proposed BMP. This appears to be outside of the role of the professional reviewers who are responsible for the validity of the science as presented, and therefore would require assistance by the municipality and other professionals for a holistic view of the municipal finances. Is this within the regulatory authority of the Pennsylvania Department of Environmental Protection? **(7)**

Response: The purpose of the requirement is to confirm that the permittee has a plan to implement the proposed BMPs. DEP does not anticipate conducting detailed financial analyses of the information provided.

371. Comment: Based on the Draft MS4 Requirements Table, it appears that the nutrients and siltation requirements noted for the Borough of Chambersburg can be addressed through the enclosed Chesapeake Bay Pollutant Reduction Plan that was submitted to DEP in July 2014. The Borough respectfully requests written confirmation regarding the status of the Chesapeake Bay Pollutant Reduction Plan. **(9)**

Response: DEP will provide feedback to all MS4 permittees that have submitted Chesapeake Bay PRPs under the 2013 PAG-13 General Permit. In general, these plans will need to be updated and submitted to DEP with the PAG-13 NOI by September 16, 2017 to demonstrate how the permittee will achieve the minimum required pollutant reductions in Appendix D.

372. Comment: “Identify Funding Mechanisms” – the PRP Instructions state that DEP will review funding and financial aspects of how the municipalities will pay for the implementation measures. This will add additional burden, cost, time and effort to an already overwhelming agenda of work required under Appendix E and other components of the draft permit. Please reconsider how far into the municipal financial aspects of implementation DEP needs to explore. **(23)**

Response: See response to Comment No. 370.

373. Comment: “Identify Funding Mechanisms” – the language states “...propose only those BMPs that can be reasonably achieved during the 5 years...” What if financial constraints preclude sufficient BMPs from being “reasonably achieved” and thus the MS4 cannot meet the 10%/5% reduction requirements? **(23)**

Response: The referenced statement has been removed from the PRP Instructions; it is an obvious statement inherent through an MS4 permittee’s BMP selection process.

374. Comment: Under Appendix D, Will grant opportunities be available through DEP for BMP implementation to meet the reductions required? Will this be a competitive or non-competitive process? **(63)**

Response: See response to Comment No. 584.

375. Comment: Page 4, No. 17: This section requires that a new PRP be developed before the new permit becomes valid. The requirement should be that the PRP is developed as part of the new permit, after permit coverage is authorized, as was done with the current permit. **(14)**

Response: DEP considered this alternative but also considered the 2025 compliance date for the Chesapeake Bay TMDL. Given the federal requirement to meet the TMDL, DEP believes that it is important that BMPs be implemented prior to 2025. For Appendix E, DEP believed that it was important to have PRPs for impaired waters on the same schedule as Chesapeake Bay PRPs, since there may be overlap within some municipalities.

**PAG-13 General Permit
Comment Response Document**

376. Comment: Please extend the time frames for when PCM/PRP/TMDL plans and ordinance adoptions are required to be completed. Please keep in mind that some Chester County municipalities will be required to address one (and in some cases four) TMDL(s) AND develop and implement two to four PRPs/PCMs simultaneously and within a very short timeframe, and adopt a revised ordinance. It is an impossible list for any municipality to achieve, do it well and meet all of DEP's expectations. **(23)**

Response: Timeframes have been adjusted for updating the stormwater management ordinances and for implementing Pollutant Control Measures, but DEP has not modified the requirement to submit PRPs with NOIs.

377. Comment: In the next permit cycle, PRPs are required to be submitted with the NOI/permit application. The instructions and application do not explicitly state whether this is required for new permittees to submit the PRPs with the application. The information required for these plans needs extensive research and coordination that new permittees may not be able to adequately complete before holding a permit. The deadline of the end of the first permit year also allows additional time for the development of regional partnerships and solutions. The three new permittees in Lycoming County for the current permit cycle (Hepburn, Fairfield and Lycoming Townships) benefited greatly from having a full year from the effective date of the permit before the CBPRP was due in order to engage in collaborative work with the more experienced MS4s and the County MS4 Planner. For the next permit cycle, there will be new plans, requirements, and enforcement procedures, most of which have not yet been clarified by DEP. Requiring these plans prematurely will simply result in the submission of poorly conceived or incomplete plans and the expenditure of additional, unnecessary staff time by DEP and permittees. We strongly recommend that DEP changes course to make the CBPRP and all PRPs due one year after the permit is issued to allow all parties enough time and information to complete this process successfully. **(35)**

Response: See response to Comment No. 375.

378. Comment: As discussed in Item 4 under the Draft Table comments above, it is recommended that PRPs not be required until one year after the start of the next permit, especially for permittees being added to the MS4 program for the first time. Most of these are suburban/rural townships that will need time to get up to speed with MS4 requirements and time to budget for the costs associated with the permit, including the cost of a consultant to complete the PRP. **(35)**

Response: See response to Comment No. 375.

379. Comment: Comment: It is requested that the PRP be submitted within one (1) year of permit issuance to give the municipalities' sufficient time to plan, develop and budget for the PRP. **(43)**

Response: See response to Comment No. 375.

380. Comment: Page 31 – Regarding the timing of the PRP, if the above comment is not embraced and the Permittee has to do an individual PRP, it would be helpful if the PRP was required to be submitted within one (1) year of the issuance of the Permit, thus allowing for the Permittee to budget for and prepare the PRP. **(42)**

Response: See response to Comment No. 375.

381. Comment: Permit Page 23, II.B. 1 and 2 – There is a reference to the NOI submission and PRP preparation. In the first page of the PAG-13, it says that submission of the annual report constitutes the intent to continue to operate under the permit. It says elsewhere that the permittee will be notified that an NOI needs to be submitted. Does that mean that the PRPs may not be due until DEP requires an NOI submission? It would be helpful to permittees to be able to plan for PRP development and know if this is a longer horizon objective or one that will be necessary to prepare for in the next permit term and start implementing in Year 1 of the next permit. **(41)**

**PAG-13 General Permit
Comment Response Document**

Response: Submission of a complete PRP, if required, must be completed in conjunction with the submission of an NOI for PAG-13 General Permit coverage by September 16, 2017. After submission of the NOI by September 16, 2017, the Annual MS4 Status Report serves as the ongoing NOI for permit coverage. The first Annual MS4 Status Report under the 2018 PAG-13 General Permit is due September 30, 2018 for existing permittees. If applicable, the permittee must provide an update of PRP activities in each Annual MS4 Status Report.

382. Comment: Regarding Part II B. Is there any particular mapping guidance – tolerance, base map, mapping datum - associated with the stormshed boundary? The PAMAP imagery often used as a background is rectified against the 2-foot contour data from the same program, and maps from adjoining jurisdictions would be highly compatible if more guidance were provided. Allowance should also be made for jurisdictions with more precise and/or more current mapping to utilize their own data. **(19)**

Response: DEP is in the process of developing a model map and recommendations for data to be included on the map and intends to make this map available through DEP's website, www.dep.pa.gov/MS4. DEP anticipates that the watershed layer entitled Smallsheds.shp will be recommended, available in the Statewide data download on PSU's Mapshed website.

383. Comment: Regarding Part II E (3). The concept of showing BMP's on a map for enforcement purposes is shortsighted if it still means just a paper map rather than a larger database and Geographic Information System (GIS) that allows more detailed analysis and ultimate focus on egregious and specific water quality degradation instead of gross regional estimators. **(19)**

Response: Identifying proposed BMPs on maps is less for enforcement purposes as it is for data collection purposes. Pennsylvania needs to obtain credit for such BMPs in the Chesapeake Bay model. In addition, the BMPs, once verified, will be stored in a statewide database and used for future planning purposes. MS4s will have the ability to modify the type(s) and location(s) of BMPs proposed in PRPs.

384. Comment: If one of the townships that contain Chester County outfalls uses the parsing process and the locations of those outfalls are parsed out, it is not explained where that would leave the County. Specifically, the PRP Instructions state that "if parsing is done, BMPs implemented within the parsed area will not count toward achieving pollutant reduction objectives." That can be interpreted to mean the BMPs would not count towards a township's objectives but taken literally, it could also mean that such a BMP would not count toward a county's objectives either. DEP should clarify how parsing would affect counties with outfalls that overlap township regulatory boundaries. **(11)**

Response: DEP encourages counties to serve in a leadership role by promoting collaborative solutions among their municipal jurisdictions. Municipalities could parse out a county's land area if the county has an NPDES permit, but counties are not expected to complete PRPs.

385. Comment: Page 2 of the PRP instructions indicates that "BMPs implemented within the parsed area will not count towards achieving pollutant reduction objectives." This restriction unnecessarily handicaps the ability of municipalities to achieve their goals. If a municipality implements a BMP that improves water quality, they ought to be able to take credit for it, no matter where it is located, and no matter what the source of the polluted runoff. We had been planning to implement forested riparian buffers along streams downslope of agricultural fields. None of the runoff from those fields goes through our MS4, but it is still a significant source of sediment and nutrients. Under this restriction we have two options:

- Implement more expensive, less effective, structural BMPs in non-parsed areas, rather than putting non-structural BMPs on available land, in locations where they will do the most good; or
- Accept responsibility for treating polluted runoff that is, by the definition on page 8 of document #3800-PM-BPNPSM0100s (rev. 5/2015), not coming from our municipal separate storm sewer.

**PAG-13 General Permit
Comment Response Document**

We do not believe either of these options is a responsible use of our residents' tax dollars, and ask DEP to reconsider this restriction. **(20)**

Response: There are two issues raised by this comment: 1) parsing and 2) offsetting.

Parsing is a process by which an MS4 permittee may remove land area that is covered by another NPDES permit, or otherwise the land area does not drain to the MS4 outfall. For example, once the storm sewershed is mapped, the permittee may identify an industrial stormwater facility with an NPDES permit that it wishes to parse out. The permittee may also identify a homeowners' association stormwater system that receives no stormwater flow from the MS4 and discharges directly to surface waters without entering the MS4, and may parse this land area out. Once the decision is made to parse out the industrial stormwater and HOA properties, any BMPs that are implemented on those properties cannot be credited toward the MS4 permittee's pollutant reduction obligations. Parsing guidelines are contained in Attachment A of the PRP Instructions.

The second issue relates to offsetting. DEP has received many requests to allow pollutant reduction credit for BMPs installed beyond the storm sewershed boundary. DEP is considering the development of an offsetting policy, but that policy is not yet established. There are many issues to consider for such a policy, including but not limited to agricultural baseline compliance. However, if an agricultural operation is located within the storm sewershed, BMPs implemented on that operation could be credited toward an MS4's pollutant reduction requirements.

386. Comment: Agriculture is the source of impairment for many of the impaired streams in Cumberland County. MS4 communities are required to implement stormwater BMPs within their boundaries, often at unreasonable costs, to address nutrient loading that is created outside of their jurisdiction. DEP should integrate flexibility in the permitting process that allows MS4 communities to take advantage of nutrient trading or "offsetting" programs to meet permit requirements. Such programs would enable municipalities to implement BMPs elsewhere in the watershed at a lower cost and higher nutrient reduction impact. **(21)**

Response: DEP is considering how the nutrient and sediment trading program may be used as a mechanism for compliance with required pollutant load reductions for MS4s. DEP is not at this time authorizing MS4s to purchase credits to satisfy pollutant load reduction obligations, but the possibility exists that a mechanism will be in place to do so in the future under an individual NPDES permit.

Also, see response to Comment No. 385.

387. Comment: It is understood that in the next permit cycle, MS4 permittees will be required to plan for an implement BMPs to achieve specific nutrient reduction targets. We strongly recommend that the new MS4 permits be written with similar language as wastewater discharge NPDES permits allowing permittees to meet their legal requirements by purchasing nutrient credits through the PA DEP nutrient trading program. It is difficult to achieve substantial (pound-for-pound) reductions of nutrient and sediment through stormwater BMPs at a reasonable cost. In many urban areas, space is simply not available for large-scale BMPs to be retrofitted to the urban landscape. These are also the same urban communities that have already borne the significant costs for WWTF upgrades. It is far more logical to allow MS4s who choose to do so to utilize the existing trading market and provide funds to incentivize further cost-effective investments in agricultural BMPs. **(35)**

Response: See response to Comment No. 386.

388. Comment: As noted in the report Nutrient Credit Trading for the Chesapeake Bay: An Economic Study published by the Chesapeake Bay Commission in May 2012, the potential cost savings "increased substantially" when trading is expanded to include regulated stormwater sources, because "implementing urban stormwater BMPs tends to be a much less cost-effective way of reducing nutrient loads than agricultural BMPs." Page 37 of the report states that the study's authors did not include urban sources as potential sellers of credits because in their analysis, urban sources are only purchasers of credits "due primarily to the relatively high costs of urban stormwater BMPs – these high costs make urban sources much more likely to be a purchaser rather than a seller when looking to meet Bay TMDL reduction goals." As shown in Figure 9-6 on page 47 of the study,

**PAG-13 General Permit
Comment Response Document**

compliance costs could be reduced by up to 82% by allowing the stormwater sector to participate in nutrient trading. (35)

Response: See response to Comment No. 386.

389. Comment: With the pending improvements to PA's nutrient trading program, it should be ready to bring new permittees into the marketplace by the time these permits are issued. And local trading programs such as Lycoming County's can be expanded to keep pollutant reductions and dollars within the local area, creating a quadruple-win scenario (cleaner local waters, a cleaner Bay, reduced costs of compliance for urban communities, and cash flow to conservation-minded farmers). (35)

Response: See response to Comment No. 386.

390. Comment: The PRP Instructions appear to be written for MS4s in the Chesapeake Bay watershed and do not provide guidance for the requirements of Appendix E, for MS4s that are not in the Chesapeake Bay watershed. Non-Chesapeake instructions and guidance are needed given the wide range of circumstances that non-Chesapeake Bay MS4s will have to address using PRPs under Appendix E. For example, the loading examples (Appendix A and the examples) are for Chesapeake Bay and we assume loading rates are not intended for non-Chesapeake Bay PRPs, but there is no other guidance presented. (23)

Response: The PRP Instructions have been updated to provide more specific information on MS4s required to implement Appendix E, and a non-Chesapeake Bay example has been provided.

391. Comment: The Appendix A of the PRP Instructions presents cumulative loads by County, and appears to only be loads for the Chesapeake Bay portion of the counties, but that is not clearly stated in the Instructions nor on the table. It is also not clear what the table is to be used for, and that it has no relevance beyond the boundaries of Chesapeake Bay drainages. (23)

Response: In the final PRP Instructions, Attachment B provides loading rates for counties in the Chesapeake Bay watershed. General loading rates have been provided in the PRP Instructions for non-Chesapeake Bay counties.

392. Comment: The PRP Instructions provide no guidance on how to address TN, or whether it is required. The example concludes (pg 6) that no TN reduction was required (Minimum Required – “—”). DEP's expectations for TN under Appendix E need to be clearly presented and explained. (23)

Response: For Pollutant Reduction Plans developed for impaired waters (Appendix E), Total Nitrogen (TN) does not need to be addressed. Anytime Appendix E is required due to a nutrient impairment (including “excess algal growth and organic enrichment), a Total Phosphorus (TP) reduction of at least 5% must be demonstrated by the end of the PAG-13 General Permit term. TN will be reduced to a degree as part of BMPs designed to reduce TP. In general, aquatic life impairments listed for nutrients are based on TP (TN impairments exist only for a few surface waters for potable water supply).

393. Comment: To provide a thorough set of comments on all the aspects and implications of the draft PRP Instructions would be a lengthy exercise and could not be completed without extensive discussion and interpretation from DEP as to DEP's expectations and intent. Given the magnitude of effort and cost that will be associated with the PRPs, it is essential that these instructions provide effective guidance for Appendix E as well as Appendix D. Further, several counties and municipalities have worked very hard and long to prepare implementation plans for various TMDL implementation efforts and the lessons learned and approaches used in these plans should be considered in PRP Instructions. We strongly request that prior to finalizing these PRP Instructions, that DEP work with and get input from entities that have previously developed implementation plans

**PAG-13 General Permit
Comment Response Document**

in effort to prepare an effective PRP approach for Appendix E. Much more work is needed on the PRP Instructions before finalization. **(23)**

Response: The PRP Instructions have been updated as a result of this and numerous other comments. DEP has taken the experiences of some MS4s in developing Pollutant Reduction Plans and TMDL Strategies and Design Details under the 2013 PAG-13 General Permit into account.

394. Comment: Appendix E Comment: Additional technical documentation / guidance is requested from DEP for establishing the existing loading of sediment and TP and for calculating the percent reductions. The PRP Instruction document (3800-PM-BPNPSM0100k Rev. 5/2015) references the use of the loading rates by County utilizing CAST. Included in this attachment A are loading rates for impervious and pervious developed land only. Clarification is requested if these rates can be used for undeveloped lands also. **(43)**

Response: Once the storm sewershed boundary is determined, under DEP's simplified method set forth in its PRP Instructions, the land within the storm sewershed may be delineated based on categories of 1) impervious developed, 2) pervious developed, and 3) undeveloped. Attachment B provides recommended loading rates for each of these land uses, both within and outside of the Chesapeake Bay watershed. Impervious and pervious developed land loading rates must be used for urbanized areas. Outside of the urbanized area, within the storm sewershed, land may be categorized as undeveloped, where applicable.

395. Comment: Appendix E – The commenter supports the proposed requirement that MS4s discharging to impaired surface waters implement specific best management practices even if a TMDL has not been established. This requirement to achieve reduction to existing pollutant loading for impaired streams is critical to improving the quality of these streams instead of merely maintaining the status quo under the current permit. Requiring municipalities to develop pollutant reduction plans and a pollutant reduction target for impaired waters will hopefully allow impaired waterways to be improved such that they could be removed from the impaired list even before a TMDL is developed and therefore, be returned to a more natural state more quickly. **(28)**

Response: Thank you for the comment.

396. Comment: The draft appendix E and its instructions should be revised to eliminate the numeric targets (10% reduction of existing sediment load, 5% reduction in existing total phosphorus load). Imposing numeric targets on MS4s without any determination that attaining those targets is practicable for the particular MS4 is inconsistent with the maximum extent practicable standard for MS4 permitting established by Section 402(p)(3)(B)(iii) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B)(iii). Any requirement to achieve a pollution reduction must be conditioned on practicability for the particular MS4. **(51)**

Response: See response to Comment No. 324.

397. Comment: Furthermore, PaDEP should not attempt to impose numeric targets or limits on permittees to address impaired watersheds prior to approving a total maximum daily load (TMDL) for the watershed. Proper completion of TMDLs is essential to assure that the burden of addressing watershed impairments is fairly allocated among those whose discharges contribute to the impairments. PaDEP should not attempt to use the requirements of a general permit to circumvent this process. Imposing numeric targets or limits for impaired watersheds prior to completing TMDLs also appears inconsistent with the approach to MS4 permitting taken by other states. The United States Environmental Protection Agency (U.S. EPA) recently completed a review of all state and EPA-issued individual and general MS4 permits issued up to June 2014. Municipal Separate Storm Sewer Systems Permits: Post-Construction Performance Standard & Water Quality-Based Requirements – A Compendium of Permitting Approaches (June 2014). U.S. EPA identified only four examples of states that issue permits with specific actions that must be taken to address impaired waters prior to completion of an approved TMDL. *Id.* at pp. 35-36. None imposed numeric targets or limits. *Id.* **(51)**

**PAG-13 General Permit
Comment Response Document**

Response: DEP disagrees with the idea that Pennsylvanians should wait for a TMDL to be developed before steps are taken to improve impaired waters to which the permittee discharges.

398. Comment: Appendix E (Pollutant Reduction Plan (PRP) for Water Impaired by Nutrients and/or Sediment). Draft PAG-13 requires the same minimum reductions for impaired waters as for Bay discharges (at a minimum, reduce sediment by 10% and total phosphorus by 5% over the 5 year permit term). Given that there is no TMDL in place for impaired waters, it is unclear how DEP determined these reductions are reasonable or fair. DEP seems to have picked these reductions to make them the same as in Appendix D. This is arbitrary. **(61)**

Response: The minimum required pollutant reductions are fair in the sense that MS4 permittees that have historically made efforts to restore impaired waters should have lower existing pollutant loads than those that have not made such efforts, hence requiring less effort to achieve the General Permit requirements. Appendix E is an attempt to avoid the development of a TMDL. If efforts are unsuccessful and a TMDL is developed, wasteload allocations will likely be assigned to MS4s and it is possible that pollutant reductions will be greater than what is required by Appendix E, particularly if no efforts are made to restore water quality leading up to development of a TMDL.

399. Comment: In Part C, Section II on page 22 of the draft permit, Municipalities with impaired streams (regardless of whether a TMDL has been approved) must now develop and implement a Pollutant Reduction Plan (PRP) that includes Pollutant Control Measures (PCMs). Furthermore, Appendix E requires specific sediment and total phosphorus percentage reductions for streams having impairments caused by either or both of these pollutants, in the absence of an established TMDL. The percent reductions mandated by DEP appear arbitrary and present undue burdens on the MS4, especially because these pollutants often originate on private lands (e.g., farmland) where BMP implementation is limited and costly. We recommend the following:

- a.) Pollutant reductions should continue to only be required only when a TMDL for a given stream or water body has established Waste Load Allocations (WLA) for the source(s).
- b.) Where a PRP is required it should be required to be submitted within one (1) year of approval of coverage (i.e. with the first annual report) rather than as part of the NOI. **(60)**

Response: Appendix E is specifically for MS4s that discharge to local surface waters impaired for nutrients and/or sediment, where a TMDL has not been developed or the TMDL has not identified a wasteload allocation for the permittee. Also see responses to Comment Nos. 375 and 398.

400. Comment: Appendix E requires a Pollutant Reduction Plan (PRP) to be submitted with the NOI. Would DEP entertain the suggestion that the PRP requirement be included for submission within one (1) year of approval of coverage; i.e., with the first annual report? This gives MS4s time to adapt to the new permit requirements. Will a template or other direction be given regarding the content of a PRP? **(1)**

Response: See response to Comment No. 375. An example of the calculations that could be used to develop a PRP for impaired waters is contained within the PRP Instructions. DEP plans to develop and post a model PRP to its website, www.dep.pa.gov/MS4, in the future.

401. Comment: Appendix E requires specific sediment and total phosphorus percentage reductions for streams having impairments caused by either or both of these pollutants. The percent reductions mandated by DEP appear arbitrary and present undue burdens on the MS4, especially because these pollutants often originate on private lands (e.g., farmland) where BMP implementation is limited and costly. Pollutant reductions should only continue to be required only when a TMDL for a given stream or water body has established waste load allocations for the source(s). **(1)**

Response: See response to Comment No. 399.

**PAG-13 General Permit
Comment Response Document**

402. Comment: Appendix E should clarify that the required percent loading reductions apply either to sediment or nutrients, or both, depending upon the sources listed on the impaired listing. The example implies that both pollutants need to be reduced per the Appendix E requirements. **(1)**

Response: The PRP Instructions have been updated with respect to Appendix E. If the cause of the impairment is siltation (i.e., sediment), a minimum 10% sediment reduction is required. If the impairment is based on nutrients or other surrogates for nutrients (e.g., “Excessive Algal Growth” and “Organic Enrichment/Low D.O.”), a minimum 5% Total Phosphorus reduction is required. If the impairment is caused by siltation and nutrients or its surrogates, both sediment (10%) and Total Phosphorus (5%) must be addressed.

403. Comment: Under Appendix E – In the opening paragraph (page 31), the phrase “may be combined” needs to be clarified. For example, could a permittee that has an outfall that discharges to the Chesapeake Bay combine their PRP from an outfall to an impaired stream that DOES NOT discharge to the Chesapeake Bay with its CBPRP? **(2)**

Response: DEP will allow the combining of PRPs under Appendices D and E where BMPs implemented in one storm sewershed will also benefit another storm sewershed. See for example the response to Comment No. 332. BMPs installed within a storm sewershed outside of the Chesapeake Bay watershed will not benefit the Chesapeake Bay, so while the physical document may be combined to submit one document rather than two as part of the NOI, each PRP will need to independently address the separate storm sewersheds.

404. Comment: PERMIT APPENDIX E “..with at least one direct or indirect stormwater discharge to receiving waters considered impaired for nutrient and /or sediment...” – does this include passing through other unimpaired / impaired streams to get to impaired streams? How will pollution reductions achieved under these PRPs be accounted for in TMDL’s that are currently being prepared? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: The terms “direct” and “indirect” have been removed from the final PAG-13 General Permit. In the event that a TMDL is prepared and approved by EPA despite an MS4’s implementation of BMPs to satisfy Appendix E of the PAG-13 General Permit (i.e., the work done was not sufficient to de-list the impairment), DEP will credit the work that was done to the MS4. The baseline condition in a TMDL is the time of the assessment that listed the water body as impaired. The reductions associated with any BMPs implemented between the time of the assessment and the development of the TMDL would be credited to the MS4.

405. Comment: Page 7 regarding PRP, #2 [“if...following criteria are met:”] “At the time of the NOI submission...the permittee has at least one stormwater outfall that discharges to waters impaired for nutrients or sediment and a TMDL has not been approved”. This seems to contradict the 5-mile approach taken in Draft Table of Requirements. **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: The MS4 Requirements Table used a 5-mile buffer to identify likely discharges to surface waters, based on drainage patterns. If an MS4 is listed in the Table as needing to implement an appendix of the PAG-13 General Permit, it means DEP assumed that its 5-mile approach accurately determined the surface water(s) the MS4 discharges to. In the event there is a mistake on the Table, the MS4 applicant or permittee should notify DEP as soon as possible (along with a map illustrating that there are no discharges to such waters) so that 1) DEP can revise the Table as necessary and 2) no unnecessary expenditures are made by the MS4.

406. Comment: Appendix E, Number 1 – There should be clarification on how the Annual Report Status is adequate on the fifth (5) year of the permit. **(7)**

Response: See response to Comment No. 355.

**PAG-13 General Permit
Comment Response Document**

407. Comment: Appendix E requires a Pollutant Reduction Plan (PRP) to be submitted with the NOI. Would DEP entertain the suggestion that the PRP would be included for submission within one (1) year of approval of coverage; i.e., with the first annual report? This gives MS4s time to adapt to the new permit requirements. **(8)**

Response: See response to Comment No. 375.

408. Comment: Appendix E requires specific sediment and total phosphorus percentage reductions for streams having impairments caused by either or both of these pollutants. The percent reductions mandated by DEP appear arbitrary and present undue burdens on the MS4, especially because these pollutants often originate on private lands (e.g., farmland) where BMP implementation is limited and costly. Instead, the Berks County MS4 Steering Committee would request that pollutant reductions continue to be required only when a TMDL for a given stream or water body has established waste load allocations for the source(s). **(8)**

Response: See response to Comment No. 398.

409. Comment: Appendix E should clarify that the required percent loading reductions apply either to sediment or nutrients, or both, depending upon the sources listed on the impaired listing. The example implies that both pollutants need to be reduced per the Appendix E requirements. **(8)**

Response: See response to Comment No. 402.

410. Comment: The use of pollutant reduction plans (PRPs) for Small MS4s that discharge to waters impaired for nutrients and/or sediment will help to ensure progress toward water quality goals even before TMDLs are established. (Appendix E; Draft Permit at 31.) **(10)**

Response: Thank you for the comment.

411. Comment: Appendix E:

1. How do demonstrate the loading reduction? Can it just be a theoretical calculation, based on the assumptions used to develop the PRP (i.e. I swept the street x number of times per years and I installed two BMPs)? Or, do I need to sample the sediment load at the beginning of the permit cycle, yearly prior to submission of the Annual Status Report and again at the end of the permit cycle? If I need to take samples I assume I should use the same methodology and criteria DEP used to decide if the stream is impaired.
2. I would add that while street sweeping will remove some of the siltation from the stream it has no effect on legacy silt that is moved around by the stormwater, and it does nothing to reduce the volume of stormwater which is a major factor in the siltation issue. **(17)**

Response: DEP does not at this time expect sampling of collected street sweepings or stormwater and analysis for the pollutants of concern to demonstrate pollutant reductions. MS4s can use the BMP effectiveness values in DEP's BMP Effectiveness Values document or Chesapeake Bay Program expert panel reports to determine load reductions for BMPs. DEP agrees that street sweeping should not be considered a significant component of an MS4's PRP.

412. Comment: Appendix E - What is the justification for using 5% for nutrient and 10% for sediment if we are not in the Chesapeake Bay watershed? **(17), (54)**

Response: See response to Comment No. 314.

413. Comment: Appendix E notes that in the event a permittee has at least one discharge to receiving waters of the Bay, the PRP may be combined with the CBPRP described in Appendix D. Alone, the CBPRP requires pollutant

**PAG-13 General Permit
Comment Response Document**

reductions to be implemented across the entire permitted area, whereas a nutrient PRP would only require these reductions to occur within an impaired stream's watershed. We recommend the District clarify if when combining a nutrient PRP with a CBPRP, the permittee will still need to separately demonstrate that the required 10% and 5% pollutant reductions are being achieved within a specific impaired stream watershed. Otherwise, will demonstrating that the required pollutant reductions are being achieved over the entire urbanized area be adequate for both plans, regardless of the location of the proposed BMPs. **(38)**

Response: See response to Comment No. 332.

414. Comment: How should municipalities demonstrate to the Department that the required pollutant reductions for Total Phosphorus and/or sediment have been achieved (i.e. modeling or monitoring)? (Appendix E, #1) **(45)**

Response: See response to Comment No. 411.

415. Comment: How long does the Department have to approve PRPs? Are municipalities expected to implement proposed BMPs without approval? (Appendix E, #2) **(45)**

Response: There is no specific schedule for DEP's approval of PRPs. PRPs must be implemented to achieve the minimum percent pollutant reductions by the end of the 5th year of General Permit coverage. The "clock" begins when DEP issues written approval of coverage to operate under the PAG-13 General Permit.

416. Comment: APPENDIX E. Paragraph number one states that the permittee is to determine its existing loading of sediment and total phosphorus. How is the permittee to determine its existing loading if it is a permittee without a WLA? **(46)**

Response: See response to Comment No. 337.

417. Comment: The draft Permit Appendix E is ambiguous as to the required reduction requirements for impaired waters. If waters are impaired as listed in the draft "MS4 Requirements Table" with requirements per Appendix E, are both of the reductions required (phosphorus and sediment) if the cause of the impairment is specifically listed as only "Nutrients" or only "Siltation" or "Suspended Solids"? Also, if the cause is listed only as "Excessive Algal Growth" or "Organic Enrichment/Low D.O.", do both or either of the phosphorus and sediment reduction requirements apply? It is suggested that the reduction requirements are clarified. **(49)**

Response: See response to Comment No. 402.

418. Comment: Appendix E imposes pollutant load reduction targets of 10% of existing sediment and 5% of existing phosphorus load for direct and indirect stormwater discharges to receiving waters considered impaired for nutrients and sediments in which a TMDL has not been developed or the TMDL has not identified a wasteload allocation for the permittee. TMDL's are important to guarantee that watershed improvements are fairly and reasonably distributed among those industries whose discharges may have contributed to any impairment. Appendix E should be revised to eliminate any percentage reduction targets for impaired waters without an existing TMDL. In addition, the requirement for MS4s to attain numeric reduction targets without demonstrating those targets are attainable may be inconsistent with Section 402(p)(3)(B) of the Clean Water Act which states that pollution reduction requirements must be based on attainability for a particular MS4. **(52)**

Response: See responses to Comment Nos. 324, 397 and 398.

419. Comment: If approved tools, such as CAST, PA BMP Manual, TMDLs, Census data, etc. are used in the development of the CBPRPs and PRPs, it is recommended that DEP consider not requiring a P.E. Seal, unless a P.E. was utilized in plan development. This would allow municipalities to save money for design of their BMPs

**PAG-13 General Permit
Comment Response Document**

and implementation of their plans. Since the CBPRP and PRPs are only “planning level” calculations/estimates, the need for a P.E. Seal is not apparent. **(2)**

Response: See response to Comment No. 352.

420. Comment: Due to the complexity and the regulatory component of these regulations, DEP should establish a minimum requirement for the level of experience and licensure for professionals to certify a communities PRP. In my experience, only those with a Professional Engineering License carry the Professional Liability Insurance to develop and prepare these types of plans. Conversely, only those with a Professional Engineering License with experience in Hydraulics and Hydrology can reasonably peer review, approve or challenge the validity of these plans. **(7)**

Response: See response to Comment No. 352.

421. Comment: Under Appendix D, Do PRPs need to be signed and sealed by an engineer? **(63)**

Response: See response to Comment No. 352.

422. Comment: DEP should develop acceptable quantifiable BMPs for roads with regard to removing sediment and nutrients. **(1)**

Response: The practices commonly used for nutrient and sediment removal and control for roads include street sweeping, vegetated swales, vegetated slopes, inlet/catch basin cleaning, and stormwater pipe flushing.

423. Comment: The Draft Permit does not address how responsibility will be assigned for pollutant removal plans where there are overlapping MS4 storm sewersheds. There could be three or more MS4s in one area within one municipality, but how will this responsibility be determined and monitored? **(14)**

Response: It is rare to have overlapping MS4 storm sewersheds. In general, the only scenario where this will apply is the case of a non-municipal permittee (like a university campus) within the jurisdiction of a municipal MS4 permittee. If required per the MS4 Requirements Table, both would be obligated to prepare a PRP. DEP would encourage the two MS4s to collaborate on a single PRP. If they combine resources the joint PRP could locate BMPs in the most cost-effective locations for both entities.

424. Comment: The PRP Instructions example BMP Option 1 is Street Sweeping and Option 4 is Urban Stream Restoration both of which DEP has indicated are not acceptable approaches, except under very limited circumstances. **(23)**

Response: MS4 permittees can propose both street sweeping and urban stream restoration in PRPs developed for compliance with the 2018 PAG-13 General Permit.

425. Comment: Appendix D. PRP Requirements for Discharges to the Bay. It was noted that “indirectly to waters” is not used in Appendix D. **(23)**

Response: The terms “indirect” and “indirectly” were removed from the PAG-13 General Permit. All MS4s that discharge to the Chesapeake Bay drainage must prepare a Chesapeake Bay PRP.

426. Comment: Appendix E. PRP Requirements for Nutrients/Sediment. It was noted that “indirect stormwater discharge to receiving waters...” applies here. **(23)**

**PAG-13 General Permit
Comment Response Document**

Response: The terms “direct” and “indirect” have been removed from Appendix E. If the MS4 Requirements Table specifies that Appendix E applies, a PRP must be developed regardless if the MS4 discharges directly to impaired waters or upstream of the impaired waters.

427. Comment: BPNPSM0100k. PRP Instructions. NOTE, #2. “There are no stormwater discharges to locally impaired waters...” There is no mention of indirect discharges. Should it be interpreted that this statement applies to only direct discharges? Please clarify. **(23)**

Response: No. Also see response to Comment No. 426.

428. Comment: There is no guidance on what additional is required if the BMP for the PRP will be installed on non-municipal land. If there are added requirements, they need to be explained so the MS4 can understand all limitations and conditions required as they prepare their plans. **(23)**

Response: Municipalities are not restricted to the installation of BMPs on publicly-owned land. The only difference between those located on public vs. private land is that a method must be implemented to assure continued operation and maintenance of those BMPs on private land.

429. Comment: Waterways identified as having a sediment impairment would be required to develop a Pollution Reduction Plan (PRP) to guide the selection and implementation of specific Best Management Practices (BMPs). Baseline pollutant loadings are to be estimated and the permittee must select BMPs that will achieve a 10% reduction for sediment loading to the Swamp Creek. The required reductions must be achieved within 5 years of the issuance of the permit. Comment: Where do we find the PRP Instructions (3800-PM-BPNPSM0100k)? What is the procedure for estimating the current sediment loading in any specific portion of the creek? What criteria is used to determine if loading reduction goals have been achieved in any specific portion of the creek? Are there grant funding opportunities to cover the costs associated with increasing regulations? **(25)**

Response: The draft PRP Instructions (3800-PM-BPNPSM0100k) were available through DEP’s eLibrary website in the draft PAG-13 General Permit package. The draft instructions are no longer available. The final PRP Instructions (3800-PM-BCW0100k) are also posted to DEP’s eLibrary website.

Also see responses to Comment Nos. 337, 411 and 584.

430. Comment: Will there be any provisions for the Pollution Reductions requirements to be specifically attributed to each municipality in the watershed? **(26)**

Response: Each MS4 permittee will be responsible for minimum pollutant reductions within the storm sewershed(s) of local impaired waters and/or waters the flow to the Chesapeake Bay, except perhaps where a joint or regional PRP is developed for Appendix D. In such cases BMPs may be proposed anywhere within the combined sewersheds of participating MS4s, assuming that local impaired waters do not also need to be addressed.

431. Comment: APPENDIX D - POLLUTANT REDUCTION PLAN REQUIREMENTS FOR DISCHARGES TO THE CHESAPEAKE BAY WATERSHED, general questions. Will an existing permittee be required to modify their CBPRP no matter what when coverage would commence under this permit? It is assumed the permit is calling out a requirement to outline a new set of pollutant reduction practices for this permit. If a municipality developed a CBPRP under the current permit that included long-term (more than 5 years) implementation of pollutant-reduction practices, would they need to revise the CBPRP under the new permit? What if a permittee was able to achieve reductions greater than the minimums listed during the current permit cycle – do they need to outline a new set of pollutant reduction practices with the draft permit cycle? **(27)**

**PAG-13 General Permit
Comment Response Document**

Response: All MS4s that are required to develop and submit PRPs in accordance with the MS4 Requirements Table and are seeking coverage under the PAG-13 General Permit must do so by September 16, 2017, the date all NOIs are due, regardless if a PRP was submitted to DEP to comply with the 2013 PAG-13 General Permit. In response to the first question in this comment, the PRPs submitted by September 16, 2017 must be completed in accordance with the PRP Instructions that are part of the 2018 PAG-13 General Permit package. A 10% reduction in sediment loading is required, regardless of past efforts. In response to the second question, those who have done more in the past can obtain "credit" for their efforts in terms of reduced existing pollutant loading, and therefore less overall load to remove moving forward. For example, if an MS4 implemented a BMP that reduced sediment loading from 1,000 lbs/year to 900 lbs/year prior to development of the PRP, the MS4 would be responsible for implementing additional BMPs to reduce 90 lbs/year rather than 100 lbs/year under the 2018 PAG-13 General Permit.

432. Comment: Warwick Township's focus was not limited to the Lititz Run watershed, and also included the Hammer Creek watershed. A number of improvements along Hammer Creek significantly improved water quality and stabilized the system. Then, several years ago, the Speedwell Forge dam was breached. The draft MS4 Requirements Table indicates Warwick Township is responsible for a PRP (and associated reductions) for nutrients and sediment on the Hammer Creek. So, in turn, is it a plausible assumption that municipalities should expect to address degraded conditions that they have already addressed but were negated by the actions of others? Would assistance be provided to municipalities to achieve called for reductions when actions by others (e.g. a state agency) negated 20 years of efforts? **(27)**

Response: The MS4 Requirements Table does not take into account the specific circumstances surrounding each water body impairment. If an MS4 applicant or permittee believes that the Table is not accurate or special circumstances are applicable, the applicant or permittee may submit a justification for a revision to the Table. Also see responses to Comment Nos. 251, 431 and 584.

433. Comment: While the addition of quantitative reduction goals is applauded as it provides a "real" set of targets for municipalities to work with. The intent of the MS4 Permit program is for conditions of the permit to be dictated by local entities (Ninth Circuit of Appeals). Perhaps a requirement of the permit is for permittees to identify a quantitative reduction target on their own in lieu of an arbitrary reduction applied across all permits. In turn, the reductions would be based on actual conditions and compliment actual loading conditions (or receiving stream conditions) from the MS4. **(27)**

Response: DEP does not believe, based in part on the Chesapeake Bay PRPs and TMDL Strategies submitted under the 2013 PAG-13 General Permit, that MS4 permittees will attempt to make meaningful reductions without load objectives in a permit.

434. Comment: It would be helpful for DEP to establish a timeline for review of the PRPs so that permittees have an expectation of when to plan for any potential follow-up actions. **(35)**

Response: See response to Comment No. 415.

435. Comment: Potential new permittees seeking a waiver should not be required to complete a PRP or CBPRP while their waiver request is pending. **(35)**

Response: DEP has updated the waiver application, instructions and criteria so that an MS4 should know well in advance of September 16, 2017 whether it will be eligible for a waiver, hence no need to develop a PRP if applicable. Also see response to Comment No. 523.

436. Comment: Section 1.A – Specific instructions should be provided to access the current information on impairments. The DEP should identify which streams require a plan in the "Integrated Report." **(35)**

**PAG-13 General Permit
Comment Response Document**

Response: The latest Integrated Report is posted to [DEP's website](#) (hyperlink provided). The Integrated Report is not the location for identifying MS4-specific requirements, which is why the MS4 Requirements Table was developed as a compilation of information from the Integrated Report and other sources.

437. Comment: Formulas for calculating BMPs in series should be provided. Please note that the calculation published in the E&S Manual is incorrect. **(35)**

Response: For BMPs in series, the generally accepted approach is to use the BMP effectiveness values at the outlet (effluent) of each BMP, which then becomes the influent for the next BMP.

For example, BMP A has an effectiveness value of 20% for sediment is followed by BMP B with an effectiveness value of 40% for sediment. A sediment load of 10,000 lbs/yr is estimated to enter BMP A. The overall effectiveness of this BMP series is:

1. Determine lbs/yr removed from BMP A: $10,000 \text{ lbs/yr} \times 0.2 = 2,000 \text{ lbs/yr removed}$
2. Determine lbs/yr entering BMP B: $10,000 \text{ lbs/yr} - 2,000 \text{ lbs/yr} = 8,000 \text{ lbs/yr}$
3. Determine lbs/yr removed from BMP B: $8,000 \text{ lbs/yr} \times 0.4 = 3,200 \text{ lbs/yr}$
4. Determine lbs/yr discharged from BMP B: $8,000 \text{ lbs/yr} - 3,200 \text{ lbs/yr} = 4,800 \text{ lbs/yr}$
5. Determine overall BMP series effectiveness: $(10,000 \text{ lbs/yr} - 4,800 \text{ lbs/yr} / 10,000 \text{ lbs/yr}) \times 100 = 52\%$

DEP is not sure which calculation published in the E&S Manual the commenter believes is incorrect but is interested in hearing from the commenter on this issue so corrections can be made as necessary.

438. Comment: What provision will PAG-13 have to address a case in which a downstream municipality has met their obligations for pollution mitigation under the general permit, but has a waterway which is being negatively impacted by lack of action to meet pollution reduction requirements by an upstream municipality or municipalities? **(45)**

Response: MS4s are responsible for complying with the pollutant reduction requirements of the PAG-13 General Permit, where applicable. Under Appendix E, if an MS4 complies but a surface water remains impaired due to inaction on the part of an upstream municipality, DEP may pursue enforcement if the upstream municipality is an MS4 permittee, and/or a TMDL may be developed that recognizes the efforts of the downstream municipality while requiring the upstream municipality to meet larger pollutant reduction requirements. If the upstream municipality is not an MS4 permittee, DEP may use its designation authority to require stormwater discharges to be covered by an NPDES permit.

439. Comment: Page 7 bottom: "A PRP is not required...and permittee is not required to follow Appendix D and/or E if the applicant demonstrates that both of the following apply: no flow to Chesapeake Bay watershed AND no stormwater discharges to locally impaired waters for nutrients and/or sediment." Is this the DEP imposed 5-mile discharge buffer? What does "locally" mean? **(3), (4), (5), (6), (24), (36), (40), (47), (57), (58), (59)**

Response: If the MS4 Requirements Table specifies the development of a Chesapeake Bay PRP (Appendix D), the MS4 applicant or permittee does not need to develop a PRP if it can be demonstrated that there are no stormwater discharges from the MS4 into waters that flow to the Chesapeake Bay.

If the MS4 Requirements Table specifies the development of a PRP for local impaired waters (Appendix E), the MS4 applicant or permittee does not need to develop a PRP if it can be demonstrated that there are no stormwater discharges from the MS4 into the local waters named in the MS4 Requirements Table. The 5-mile buffer was used primarily to identify local impaired surface waters that the MS4 likely discharges to.

440. Comment: The accompanying Pollutant Reduction Plan (PRP) Instructions leave counties in a grey area. The Instructions state that MS4s do not need to submit a PRP if "there are no stormwater discharges to locally impaired waters for nutrients and/or sediment" which does not apply to Chester County. So this criterion

**PAG-13 General Permit
Comment Response Document**

indicates the County will need to submit PRPs but DEP has not articulated the requirements for doing so due to the exclusion from the MS4 Requirements Table. DEP should clarify if this criterion refers to direct discharges only. **(11)**

Response: See response to Comment No. 301.

441. Comment: DEP should understand and establish different criteria, for items such street sweeping, runoff capture, etc., for a rural Township compared to that of a city. For example, Franklin is mostly rural, though much area is classified as Urbanized area. Street sweeping in a rural area [mainly roadside swales, without curbs] is much different than street sweeping in a town [an area that is mainly curbed]. **(1)**

Response: As of the date of this comment response document, EPA is providing the same credit to street sweeping of uncurbed streets as it does for curbed streets. Use the latest BMP effectiveness values as contained in DEP's BMP Effectiveness Values document (3800-PM-BCW0100m) or published Chesapeake Bay expert panel reports as of the date the PRP is developed.

442. Comment: For non-TMDL municipalities, if a new stream impairment is listed during the permit cycle, how will affected municipalities be notified that a PRP is required? (Part C, II.B.2) **(45)**

Response: The phrase, "or at any time following DEP's approval of permit coverage" has been removed from the final PAG-13 General Permit. If a new impairment is listed by DEP during the life of the 2018 PAG-13 General Permit, it will be considered as the MS4 Requirements Table is updated for the 2023 PAG-13 General Permit.

443. Comment: The pollutant reduction plan requirements of the draft appendices A, B, C and E should apply only where PaDEP determines, based on studies of the watershed, that the MS4 is more than a de minimis contributor to the impairment. Apart from practicable illicit discharge detection and elimination requirements, owners and operators of MS4s should be responsible only for the discharge of pollution generated by their MS4s. **(51)**

Response: Pollution is not generated by MS4s, but rather on-the-ground activities that wash into the MS4. All MS4s contribute to surface water impairments; whether the contribution is considered de minimis or not is a matter of opinion. The effort needed to comply with the PAG-13 General Permit will be commensurate with the determination of existing pollutant loading; de minimis existing pollutant loadings will result in de minimis activities needed to comply with the permit.

444. Comment: Paragraph B. (page 25) – The opening paragraph appears to insinuate that implementation of the PRP (urban s/w runoff improvements alone) will unilaterally be able to restore waters to attain water quality standards. However, it is unlikely that the PRP alone will be able to achieve water quality standards and designated/existing uses for all impaired waters. It is suggested that the language be revised to incorporate the idea that "with contributions from all sectors, the water will eventually attain water quality standards." Nevertheless, the current explanation of the PRP objective is useful. **(2)**

Response: DEP acknowledges that restoring water quality is generally a multi-sector effort.

445. Comment: What additional documentation will be required for BMPs already installed that reduce the baseline load factor? **(45)**

Response: Section II.E of the PRP Instructions has been revised to indicate the minimum information necessary to take credit for previously installed structural BMPs: 1) a detailed description of the BMP(s); 2) latitude and longitude coordinates for the BMP(s); 3) location of the BMP(s) on the storm sewershed map; 4) the permit number, if any, that authorized installation of the BMP(s); 5) calculations demonstrating the pollutant reductions

**PAG-13 General Permit
Comment Response Document**

achieved by the BMP(s); 6) the date the BMP was installed and a statement that the BMP continues to serve the function(s) it was designed for; and 7) The operation and maintenance (O&M) activities and O&M frequencies associated with the BMP(s). The MS4 permittee may optionally submit design drawings of the BMP(s).

446. Comment: Is there a maximum drainage area for which BMPs are allowed to treat? For instance, a 1,000 sf rain garden depending on where it is placed, could treat an acre of impervious or 5,000 sf of impervious. Is there a maximum loading factor for these BMPs? **(45)**

Response: BMPs are typically sized considering the volume that a design storm generates over the drainage area of interest. For infiltration BMPs, consideration of the infiltration rates of the site soils is also a design factor. Along with these factors, the design engineer considers dewatering and downstream stormwater conveyance capacity. The commenter is referred to the PA Stormwater BMP Manual (363-0300-002), Act 167 Watershed Plans, and the local ordinances (Stormwater and Land Development) of the municipality where the BMP is planned for BMP design information.

447. Comment: If outfall screening indicates no presence of any pollutants associated with Appendix A-E, the permittee should not be accountable for the Pollution Reduction Plan. **(39)**

Response: Outfall screening is associated with dry weather flows for the detection and elimination of illicit discharges. The PAG-13 General Permit appendices are applicable to the discharge of pollutants in stormwater under the full range of precipitation events.

448. Comment: What provision will PAG-13 have to address a case in which a downstream municipality has met their obligations for pollution mitigation under the general permit, but has a waterway which is being negatively impacted by lack of action to meet pollution reduction requirements by an upstream municipality or municipalities? **(31)**

Response: See response to Comment No. 438.

449. Comment: If we are in year 2 of implementing a PRP and DEP establishes a TMDL, do I then have to comply with the TMDL requirements in the current permit cycle for years 3, 4 & 5? **(17)**

Response: No. DEP will update the MS4 Requirements Table and a TMDL Plan may need to be developed for a future application for an individual NPDES permit.

Topic – General PAG-13 Comments

450. Comment: Part A – Section III – Monitoring, Reporting and Recordkeeping (pg. 10). Subsection B requires that monitoring results and reports required by the permit be retained by the permittee for at least 3 years from the date of measurement, report or application. We generally support this requirement, but recommend that data associated with PRPs and other permit elements that may extend over multiple 5-year permit cycles have longer retention requirements (e.g. retain such data until full compliance with permit is achieved). **(53)**

Response: The record retention requirements of the final PAG-13 General Permit have been revised from three years (as written in the draft) to five years. DEP has made this change under the authority of 40 CFR § 122.41(j)(2), which allows DEP to require a longer retention period. The main consideration in making this change is that DEP may inspect an MS4 permittee's on-site records only once every five years, depending on DEP's resources. (Note – EPA's national Compliance Monitoring Strategy suggests that MS4s should receive an on-site audit or inspection at least once every seven years). While the PAG-13 General Permit now requires retention of records for at least five years, DEP encourages permittees to retain records longer, particularly documentation such as Pollutant Reduction Plans and annual reports that will be helpful to the permittee in establishing the history of BMP implementation.

451. Comment: MONITORING, REPORTING AND RECORDKEEPING – Comments: Section III – A relating to sample collection and analysis being made to comply with “Standard Methods” when no specific compliance numbers are established seems to be over-kill. Since the objective of a best management practice is to accomplish a general reduction, then it seems appropriate that quick, but generally accepted field test kits for those parameters, for which they exist, ought to be acceptable until specific Waste Load Allocations as discharge concentrations are established. **(63)**

Response: The General Permit does not prohibit the use of field test kits or other monitoring equipment for the analysis of stormwater samples; however, before purchasing such kits or equipment it is recommended that the permittee verify that it meets EPA standards in 40 CFR Part 136.

452. Comment: III – D. Reporting Requirements – Comment: In reference to the reporting of sample collection and analysis; Following after the comment on Section III-A so long as the method of analysis is specified in the report, it seems appropriate to provide the latitude for analytical methods, so long as the method(s) is/are specified in the Annual MS4 Status Report. **(63)**

Response: See response to Comment No. 451.

453. Comment: Areas that are currently designated as urbanized areas (based on the 2000 census mapping) that are no longer designated as such based on the 2010 census mapping will no longer be subject to the conditions of the MS4 Permit, correct? **(1), (8)**

Response: According to EPA policy, “Any additional automatic designations of small MS4s based on subsequent census years is governed by the Bureau of the Census’ definition of a UA in effect for that year and the UA boundaries determined as a results of the definition. Once a small MS4 is designated into the program based on the UA boundaries, it cannot be waived from the program if in a subsequent UA calculation the small MS4 is no longer within the UA boundaries. An automatically designated small MS4 remains regulated unless, or until, it meets the criteria for a waiver” (see [EPA Fact Sheet, Urbanized Areas: Definition and Description](#)) (hyperlink provided).

**PAG-13 General Permit
Comment Response Document**

454. Comment: Permit Page 13 – I.C.4 Management Requirements: As development occurs and other capital projects are undertaken, change will regularly occur to the system that may affect stormwater quality or quantity. This may result in frequent need for submissions to PaDEP. Consideration should be given to the time frame of these submissions such as with the annual report. The section should identify where the submissions should be sent and the form. **(32)**

Response: See responses to Comment Nos. 187 and 190.

455. Comment: Permit Page 2, line 15 – reference to monitoring data. Will monitoring requirements and expectations be clearly indicated to the permittee? **(41)**

Response: The full provision referred to in this comment is, “DEP may deny coverage under the PAG-13 General Permit and require submission of an application for an individual permit based on a review of the NOI or other relevant information, including monitoring data.” This is a general statement that DEP could, if monitoring data (generally interpreted as stormwater sample data) reveals in DEP’s judgment that an MS4 is ineligible for PAG-13 General Permit coverage, require the submission of an application for an individual permit. With respect to the question, monitoring requirements are identified in Part C I.B.3 for MCM #3. There is also a general provision in Part C III in which DEP may require monitoring of stormwater discharge(s) as may be reasonably necessary in order to characterize the nature, volume or other attributes of that discharge or its sources. If DEP requires monitoring of stormwater discharges, MS4 permittees will be notified in writing.

456. Comment: Permit Page 23, III.C – Monitoring typically is interpreted to mean sample collection and analysis. This would seem to be an Individual Permit-level requirement instead of a General Permit requirement. Having this type of language in the General Permit gives DEP too much flexibility in terms of the level of accountability or investigation of a stormwater discharge, contrary to the qualitative nature of the General Permit. **(41)**

Response: DEP’s regulation at 25 Pa. Code § 92a.62(j) states, “The Department may require that the permittee perform additional sampling for limited periods for the purpose of TMDL development, or for other reasons that the Department determines are appropriate.” The PAG-13 General Permit uses this provision of DEP’s regulations (see Part C III). It is possible, but unlikely, that DEP will request specific monitoring of stormwater discharges during the permit term.

457. Comment: PART A - EFFLUENT LIMITATIONS, REPORTING AND RECORDKEEPING REQUIREMENTS; EFFLUENT LIMITATIONS – The effluent limitations are based on best management practices to comply with the MCMs. However, no baseline of performance is established, and no allowances for naturally occurring pollutant levels above what are assumed to be normal levels. For example: During the late Fall and early Spring leaf decay releases nutrient levels well above “average” stream levels and when small MS4 discharges receive these “natural” waters the discharge levels will be high for dry weather base flows, and possibly for light precipitation events coupled with the natural flows from such drained seepage areas. **(63)**

Response: With the exception of Pollutant Reduction Plans, in which a determination of existing loading is necessary in order to demonstrate pollutant load reductions, the PAG-13 General Permit does not require a baseline of performance because implementation of the stormwater management program (i.e., the MCMs in Part C I of the General Permit) constitutes compliance with the effluent limitations. Naturally occurring pollutant levels in stormwater or surface waters are considered by DEP through its surface water assessment process.

**PAG-13 General Permit
Comment Response Document**

458. Comment: Is Penn DOT subject to the same permit? What recourse does a Township have when Penn DOT roads discharge into a municipal storm sewer, to a regulated outfall and Penn DOT is causing a direct runoff of sediment and chemicals into the Township's storm sewer system and ultimately into the streams? **(1)**

Response: PennDOT was issued an individual MS4 NPDES permit (No. PA139601) in July 2011. A municipality should understand PennDOT's responsibilities for operation and maintenance of stormwater facilities and, if the municipality does not believe PennDOT is implementing those responsibilities, contact the PennDOT district manager to discuss resolution. DEP may assist with these discussions upon request. Note that DEP allows MS4 permittees to parse out PennDOT's area of responsibility (and any other entity with an NPDES permit for municipal or industrial stormwater) for the purpose of Pollutant Reduction Plans and TMDL Plans.

459. Comment: Also will SEPTA, AMTRAK, and other rail lines be required to obtain an MS4 permit to control their pollution runoff? **(31)**

Response: DEP is working with EPA to determine the answer to this question.

460. Comment: We support the March 16, 2018 effective date for the revised PAG-13. **(10)**

Response: Thank you for the comment.

461. Comment: The elimination of 5-year renewal Notice of Intent (NOI) for general permit coverage can weaken the effectiveness of MS4s to reduce polluted runoff by reducing opportunities for program evaluation and public participation. While we firmly support the Annual MS4 Status Report, getting rid of the 5-year renewal NOI requirement is counter to the intent of a 5-year limit to a permit: program assessment and improvement. We believe the 5-year renewal NOI should remain a requirement for permit coverage. Each NOI submission for renewed coverage should be published in the Pennsylvania Bulletin to allow for public comment and participation in the permit process. **(10)**

Response: DEP's model for NPDES General Permits is to require the submission of an annual report, which serves as an annual NOI, rather than require a 5-year renewal NOI. When General Permits are reissued, DEP notifies all entities with existing coverage of any modifications to the requirements for ongoing permit coverage and provides an opportunity for entities to "opt out" and apply for an individual permit if desired. DEP has successfully implemented this approach for other General Permits and believes it can do the same for the PAG-13 General Permit. DEP will consider enhanced opportunities for public review moving forward; for example, it may be possible for DEP to post annual reports to its website in the future, following development of its electronic annual reporting system.

462. Comment: Renewal NOI's, currently required to be submitted every 5 years will, will no longer be required. New permits will not have a specified expiration date. The expiration date of the 2018 permit will be March 15, 2023, but permit coverage will continue indefinitely without the need for renewal as long as the municipality continues to be eligible for permit coverage. Comment: Will a renewal NOI be required for the 2018 permit with no NOI's required from that point on? If so, does the NOI need to be submitted 180 days prior to expiration of the 2013 Permit? **(25)**

Response: Yes, if an MS4 permittee wishes to continue operating under the PAG-13 General Permit or wishes to receive a waiver and is eligible for PAG-13 General Permit coverage, submission of a PAG-13 NOI is required by September 16, 2017 (i.e., the NOI must be received by DEP on or before this date). Regardless of the coverage expiration date listed on page 1 of the written approval of

**PAG-13 General Permit
Comment Response Document**

coverage issued by DEP, submission of the NOI is required by September 16, 2017 because it is 180 days prior to the expiration date for the 2013 PAG-13 General Permit (March 15, 2018), and the MS4 that is covered by the 2013 PAG-13 General Permit will be immediately covered by the 2018 PAG-13 General Permit on March 16, 2018. Submission of this NOI will be the last 5-year NOI submission the permittee should need to make, unless otherwise notified by DEP in writing. Starting September 30, 2018 for existing permittees, the Annual MS4 Status Report submission will serve as the permittee's notice of intent that it wishes to continue coverage under PAG-13.

463. Comment: Clarification on deadlines for NOI – are deadlines per the state-wide PAG13 coverage 2013-2018 or are they based on each municipalities individual permit received after 2013? This will cause there to be many different permit deadlines. **(37)**

Response: See response to Comment No. 462.

464. Comment: The permit authorization page indicates that “when the General Permit is renewed, reissued, or modified, the facility or activity covered by this approval for coverage must comply with the final renewed, reissued, or modified General Permit.” We recommend permittees be notified when the next permit is in effect and it clearly be indicated what version of the annual report the permittee will need to utilize, in addition to the reporting due dates. This concern is due to ongoing situation in which municipalities did not (or still haven't) received renewal permits in concurrence with dates listed in the Authorization to Discharge. **(38)**

Response: DEP will issue notification letters to all MS4s following issuance of the 2018 PAG-13 General Permit. This letter will provide clarification on measures that should be taken to prepare for the submission of the NOI or individual permit application by September 16, 2017, and clarify the annual reporting process moving forward. On March 16, 2018, MS4s with existing PAG-13 coverage (whether or not DEP issued a written approval of coverage to the MS4 for the 2013 PAG-13 General Permit) will be automatically covered under the 2018 PAG-13 General Permit. The MS4 must then comply with the 2018 PAG-13 General Permit, with the exception of certain requirements that are only triggered upon DEP's issuance of a written approval of coverage.

465. Comment: The permit authorization page indicates that “when the General Permit is renewed, reissued, or modified, the facility or activity covered by this approval for coverage must comply with the final renewed, reissued, or modified General Permit.” Will existing permittees be notified when the next permit is in effect and clearly indicate in what annual report the permittee will need to start reporting on changes to the requirements? **(41)**

Response: See response to Comment No. 464.

466. Comment: Permit Second Page 2, 5th line from the bottom – refers to conditions in the permit that do not take effect until DEP's approval coverage. Those conditions need to be clearly stated as contingent upon effective approval coverage date. Is this effective approval coverage date for the permittee's new authorization, or the effective date of the new General Permit? **(41)**

Response: For the requirements that do not take effect until DEP issues a written approval of coverage to the MS4 permittee, the effective date of General Permit coverage listed on page 1 of the physical permit package issued by DEP is the date that starts the clock on those requirements.

For example, if a new MS4 (not previously covered by an NPDES permit previously) is subject to Appendix A per the MS4 Requirements Table, the storm sewershed map must be submitted to DEP with an Annual MS4 Status Report that is due no later than two years following DEP's written

**PAG-13 General Permit
Comment Response Document**

approval of General Permit coverage. If the effective date of General Permit coverage is July 1, 2018, for example, the map would need to be submitted no later than September 30, 2019 (i.e., the first report due following the effective date of coverage). The map could not be submitted with the Annual MS4 Status Report that is due September 30, 2020 because this date is greater than two years following DEP's written approval of coverage.

467. Comment: General question – Language throughout the draft permit refers to “permit issuance” as a milestone that triggers certain things to happen. If a permittee has been operating under an MS4 permit for a period of time, does permit issuance refer to the very first permit authorization, or the next actual authorization? In the event that the permit is extended by DEP, and no authorization is provided in writing, do any new requirements apply and how will deadlines be determined? **(41)**

Response: Most requirements of the 2018 PAG-13 General Permit become effective automatically on March 16, 2018, which is the effective date of the statewide General Permit. Where DEP indicates in the General Permit that certain requirements are triggered by DEP's written approval of coverage, it means the requirements take effect upon the effective date of coverage under the 2018 PAG-13 General Permit, as specified on page 1 of the PAG-13 General Permit (“Approval of Coverage” page), which is issued by DEP in writing to confirm that DEP agrees the permittee is eligible to operate under the General Permit.

468. Comment: Another matter pertains to the “carryover” of plans between permit cycles. With the coming December 2015 deadline for municipalities to submit revised TMDL compliance strategies per their 2013 permit, those plans may be subject to change relative to the 2018 permit application. We suggest that the department recognize, and be supportive of, any changes to plans submitted in the middle of a permit cycle and be viewed as incremental rather than final. **(56)**

Response: DEP will be issuing notification letters to all MS4 permittees and those MS4s that received waivers following publication of the final 2018 PAG-13 General Permit. DEP will discuss in that letter how TMDL Plans for individual permits should be handled.

469. Comment: The Department should make it a priority to update the BMP Manual. We understand that the Department is in the process of revising the BMP Manual. We encourage the Department to prioritize that revision so that the updated version will be available to Small MS4s as they are preparing to draft their TMDL Plans, PRPs and CBPRPs for the 2018 permit cycle. **(10)**

Response: See response to Comment No. 235.

470. Comment: It is suggested that the PA Stormwater BMP Manual is revised and published as soon as possible for use by permittees to create the required pollutant reduction plans. **(49)**

Response: See response to Comment No. 235.

471. Comment: We also encourage the department to expeditiously review the draft suggestions from the Pa. Stormwater Technical Workgroup regarding modifications to DEP's stormwater best management practice manual. This will help townships and other regulated municipalities have clear guidance for inspecting and verifying these structures as part of their stormwater management responsibilities. **(56)**

Response: See response to Comment No. 235.

**PAG-13 General Permit
Comment Response Document**

472. Comment: Low Impact Development (LID) and green infrastructure practices to preserve and improve natural hydrologic function should be prescribed as the basis for Maximum Extent Practicable (MEP) in the draft permit. Courts have restated that permits must not be issued without this requirement for MEP controls. Because MEP is the guiding technology requirement that will define how much and by what means a municipality will move towards stormwater pollution prevention, MEP must be well defined and include current technology as it develops. Pennsylvania's MS4 general permit should guide municipalities to emphasize the 'maximum' and thoroughly define that which is 'practicable' to include the use of LID and green infrastructure. **(48)**

Response: The use of LID and green infrastructure practices is required in MCM #5, BMP #2 of the PAG-13 General Permit and is a component of DEP's model Stormwater Management Ordinance. The model ordinance includes an optional provision in which stormwater management site plans must (if the provision is enacted) provide a detailed justification if methods other than green infrastructure and LID are proposed to achieve the volume and rate controls required under the ordinance. DEP has focused its efforts on addressing impaired waters for the 2018 MS4 NPDES permit term, but LID and green infrastructure may become a more prominent focus in future permits.

473. Comment: DEP should ensure the dated LID content in the 2006 Pennsylvania Stormwater Best Management Practices Manual (Manual) is revised and published as soon as possible but no later than the onset of the forthcoming PAG-13 cycle. At present the Manual lacks current technology and practices regarding LID and green infrastructure. Because the draft permit references the Manual and serves as a guide for permittees, substantial revision to reflect the current acceptance and proven effectiveness of LID and green infrastructure as well as specific guidance for the use of these practices in the context of MS4 control will help advance urban stormwater management in Pennsylvania. Further, ongoing revision of the Manual, as LID and green infrastructure technologies and practices expand, should be planned. **(48)**

Response: Revisions to the PA Stormwater BMP Manual are underway and are expected to address LID.

474. Comment: We currently have an individual permit. This states we need to apply for a general permit, have DEP deny coverage, then submit the application for an individual permit. Is this correct? **(17)**

Response: Please refer to the latest version of the MS4 Requirements Table. In prior versions of the Table, if "Yes" was indicated in the column, "Individual Permit Required?," it was indication that an individual permit is required due to the fact that a TMDL Plan must be developed. The latest version of the Table indicates "Yes" not just for TMDL Plans, but also for discharges to Special Protection waters and if the permittee currently holds an individual permit. If a permittee does not need to develop a TMDL Plan and does not have at least one discharge to Special Protection waters, the permittee may be eligible to apply for coverage under the PAG-13 General Permit.

The answer to the commenter's question is "no," DEP does not expect that an MS4 applicant will submit an NOI for PAG-13 General Permit coverage in order for DEP to deny the coverage. DEP expects that the applicant will submit an individual permit application.

475. Comment: It is unclear if the individual permits will contain the same content and requirements as the PAG-13 permit. It would be extremely helpful if DEP could clarify whether a similar revision process and comment period will be forthcoming for individual permits. As mentioned in #2 below, clear guidance provided with sufficient advance notice will be necessary so that partners have sufficient time to evaluate and enter into potential regional solutions. **(35)**

**PAG-13 General Permit
Comment Response Document**

Response: DEP is not required to publish draft versions of individual permits, individual permit applications or related materials. However, following publication of the final PAG-13 General Permit, DEP plans to develop these permits, applications and materials and post draft versions to DEP's MS4 website for informal comment by interested parties. Overall DEP expects the individual permit template will look similar to the PAG-13 General Permit. While this template will be available for DEP staff to use for the issuance of individual permits, there is an opportunity to customize the individual permit to some extent to account for MS4-specific factors, unlike with the PAG-13 General Permit.

476. Comment: The permit authorization page indicates that “if the permittee is unable to comply with the renewed or amended General Permit, the permittee must submit an application for an individual NPDES permit within 90 days of publication of the final General Permit.” What would trigger the inability for a permittee to not comply with the new permit? Is it possible for an individual permit to provide less strict requirements for a permittee? Historically, individual permits were required in order to have tighter controls or larger penalties on the permittee. **(41)**

Response: The trigger is the permittee's review of the 2018 PAG-13 General Permit. The permittee may, for example, determine that it will not be able to meet one or more of the eligibility criteria for the General Permit. The permittee may also decide that it has unique circumstances that would be better suited for an individual permit. In either case the opportunity exists for the permittee to submit an individual permit application; in the interim, while DEP is reviewing the individual permit application, the permittee will continue operating under the PAG-13 General Permit.

There is no set rule on whether individual permits are more stringent than general permits. In one sense, general permits are supposed to establish the minimum requirements for a particular type of discharge and individual permits may go beyond those minimum requirements; on the other hand, individual permits can be customized to a degree.

477. Comment: Permit Page 3, line 4 – Suggest to add the word “reasonable” before deadline since Individual Permit applications are more involved than General Permit NOIs. **(41)**

Response: The word “reasonable” is not part of the regulations that form the basis for this General Permit provision, but in general DEP will provide 180 days to complete and submit an individual permit application.

478. Comment: PaDEP should clarify that PaDEP does not intend that the terms and conditions of the draft PAG-13 General Permit create binding norms for the terms and conditions of individual MS4 permits. The terms and conditions of the draft PAG-13 include significant new requirements that are not found in the regulations for MS4 permits promulgated by the Environmental Quality Board (EQB). If PaDEP wishes to create binding norms for the terms and conditions of individual MS4 permits, PaDEP should propose appropriate regulatory changes to the EQB. **(51)**

Response: DEP believes that all terms and conditions within MS4 NPDES permits are supported by existing state and federal laws and promulgated regulations.

479. Comment: The draft PAG-13 General Permit appears to create new regulatory requirements for individual MS4 permits without undergoing the legally required framework for developing regulations in the Commonwealth and appear add new regulatory requirements for compliance with the NPDES permitting process that do not exist under current law. Should DEP try to mandate all conditions found in the draft PAG-13 General Permit, the documents would be of questionable validity and likely unenforceable since they were not promulgated as a regulation pursuant to the Commonwealth Documents Law and the Regulatory Review Act. We recommend DEP provide clarification to the

**PAG-13 General Permit
Comment Response Document**

regulated community that any changes to the PAG-13 General Permit will not supersede current regulations for individual MS4 permits. **(52)**

Response: General NPDES Permits do not create new regulatory requirements; rather, statutory and regulatory requirements and authorities provide the basis for NPDES permits, both general and individual.

480. Comment: What administrative arbitration process will PADEP develop to address such disputes to prevent potentially counterproductive and wasteful legal disputes between municipalities. **(31), (45)**

Response: DEP can offer its assistance where there are disputes, but there are no plans to develop a formal administrative arbitration process at this point in time.

481. Comment: We strongly support the exclusion from PAG-13 of Small MS4s that have been assigned WLAs. Small MS4s subject to WLAs require more individualized attention as part of the permitting process to ensure that the best management practices they propose as part of their permit applications are consistent with the TMDL requirements. **(12)**

Response: DEP agrees that where MS4s have been assigned a specific or general WLA for nutrients and/or sediment in a TMDL, an individual NPDES permit is more appropriate.

482. Comment: Suggest that DEP issue a list of all of the acronyms that are used for this program i.e., PCM - Pollutant Control Measures, AMD - Acid Mine Drainage, etc. **(17)**

Response: DEP may develop such a list and post it to DEP's MS4 website in the future.

483. Comment: Suggest that the next time Department issues a draft permit that put line numbers on all pages to make it easier to provide comments. **(17)**

Response: DEP will look into whether this can be done given the technology DEP uses to develop permit documents.

484. Comment: East Goshen Township has an individual MS4 permit? Will DEP issue and solicit comments on the draft individual permit? If yes what is the timetable for this? **(17)**

Response: Draft individual permits are issued in response to the receipt of individual permit applications. There is no specific timeline on when a draft permit may be issued following an MS4's submission of an individual permit application. When a draft permit is issued, a 30-day public comment period applies.

485. Comment: DEP should notify us that permit is administratively complete. Please explain why a MS4 permit is different than any other permit. **(17)**

Response: DEP no longer notifies the applicant in writing of the administrative completeness of any sewage, industrial waste, industrial stormwater or municipal stormwater NPDES permit NOI or application; instead, DEP refers the applicant to its website to check on the status of an application (see PAG-13 NOI Instructions).

**PAG-13 General Permit
Comment Response Document**

486. Comment: Will these permits be acted upon in accordance with the Permit Review Process and Permit Decision Policy? **(17)**

Response: The PAG-13 General Permit, like all DEP-issued permits, is part of the Permit Review Process, but the PAG-13 General Permit is not part of the Permit Decision Guarantee program established in DEP policy.

487. Comment: For new outfalls do I need to submit an updated outfall map? **(17)**

Response: The final PAG-13 General Permit requires the identification of newly discovered (but existing) outfalls in the next Annual MS4 Status Report that is due. In the event new stormwater outfalls are proposed, the permittee shall submit written notification to the DEP office that approved permit coverage at least 60 days prior to commencing a discharge from the new outfall. The permittee's map should be updated as soon as possible and be made available to DEP upon request.

488. Comment: A goal of MS4 permits is to reduce runoff and prevent soil erosion to municipal separate storm sewers. The practice should not stop at the curb but must evolve to specifically address runoff issues in relatively crowded residential developments where houses are built on narrow lots. Storm water does not always percolate into the ground or find its way to drains and inlets due to ground contours, and this can lead to ponding and flooding. At times, a homeowner may divert water to adjacent properties using ditches angled at 45 degrees. As a result, the receiving homeowners can then become liable for water damaged sidewalks. Municipalities do not concern themselves with this grey area of neighborly disputes. Municipal storm water best management practices should require municipalities to mark residential property boundaries (survey lines) and where needed, to install drop inlets on yards that connect to the storm water drains on the streets. These steps would assist the MS4 stated objectives of reducing storm water runoff and soil erosion (on residential properties), and obviate storm water diversions from next door neighbors. **(18)**

Response: These ideas to reduce runoff from individual properties are not for DEP to mandate but rather are ideas that municipalities would investigate during the development of pollution reduction plans, storm water management plans and implementation of BMPs.

489. Comment: DEP should provide a succinct summary that clearly outlines the changes between the 2013 and 2018 PAG-13 permit. **(21)**

Response: DEP's notification letter to all MS4s following publication of the final PAG-13 General Permit will identify the substantive changes between the 2013 and 2018 General Permits.

490. Comment: It would be helpful if DEP would provide a summary of additions and/or changes taking effect under the new permit. **(63)**

Response: See response to Comment No. 489.

491. Comment: Permit Page 15 –III.B.2.b Other Responsibilities: Refers to an "...appropriate DEP transfer form". Form not provided for comment. **(32)**

Response: The transfer form (3800-PM-BPNPMSM0041b) is available through [DEP's eLibrary website](#).

**PAG-13 General Permit
Comment Response Document**

492. Comment: PAGE 12 Section B. Transfer of Permits #3. In the event DEP does not approve transfer of coverage under this General Permit, the new owners or controller must submit a new NOI. Will this require submission of another NOI fee? If so this could be a disincentive for the permittees to notify DEP of the permit transfer. **(39)**

Response: Yes, a new NOI fee would be required; failure to notify DEP of a transfer in operation from one entity to another may be considered a violation subject to enforcement action, and it is possible that a penalty could be assessed that is greater than the NOI fee.

493. Comment: First, I want to cite the fact that all of this information was advertised in the Pennsylvania Bulletin. I am sure it meets the DEP's legal requirements, however, municipalities must advertise in a newspaper of general circulation to meet a significantly more stringent, and expensive requirement in order to keep the public informed of our actions.

Next, one must read the announcement in the Bulletin which in itself takes considerable concentration and focus keeping all the acronyms and phraseology in mind that is not enough. Then you have to locate the website and the appropriate links. Click the link to find every municipality in the state, thankfully arranged by county. When the correct municipality is located you scan across the table to find a miscellany of references to appendices. These then must be researched to find the actual problem and I have not worked further to find how one would access the actual remedy.

I am only a Township Manager not a chemist or a water specialist. I have no past knowledge of what the problem is or if in fact there is a problem with the Stony Run Creek. I do know you are putting us all in a precarious position that will do very little to clean up our waterway.

The approach put forth by the DEP and the EPA will promise full employment for themselves and our municipal engineers for many years to come with little to show for it except the empty pockets of our tax payers. And to the larger Federal government it really isn't a problem because through huge fines you go far in paying your own way.

Even if you want to continue in this obfuscating manner, why lay it at our doorstep when there are hundreds of 501(c)(3) organizations supporting doing good in the name of clean water. Why are they not given this mission? Being in the business one would hope that they know what they are doing and possibly even know your language. They might even be clear, friendly and persuasive thereby gaining willing cooperation of the general public. People will pay fines when bullied and forced but when things are clarified rather than confounded they are more likely to jump on the bandwagon and help.

Me, I'm just trying to do what I signed up for: Look out for the residents I serve, see that their money is respected and spent wisely, that the police are properly equipped, trained and are doing their jobs, that the roads are clear and in good condition, parks available and clean, homes built in compliance, communication transparent and clear, ordinances and the comprehensive plan are up to date and so much more, but you are hijacking my resources and so much of my time – and even our newsletter is now taken over by DEP requirements.

Please consider whether you really want clean water. If so, I believe PAG-13 is not the best way to get there. **(33)**

Response: Thank you for your comments. DEP understands your position. The PA legislature in an attempt to address the added costs recently enacted legislation that would allow municipalities to form authorities. Regional authorities can charge fees and cover larger areas to share resources and reduce expenses. As of this writing, the PA legislature is discussing legislation that would extend the ability to charge fees to first and second class Township codes and Borough codes.

**PAG-13 General Permit
Comment Response Document**

The prevention of pollution and the protection of public health and the environment is the basic mission of DEP. DEP is charged with ensuring that the environmental laws passed by state and federal legislatures are implemented.

- 494. Comment:** Clarification is needed regarding riparian forest buffers, typically located in floodplains. Arguments have been made that even though the most ideal condition is a forested buffer – by planting the stream bank with forest vegetation, you are now creating obstructions in a floodplain that will catch debris and possibly cause a damming condition which would obstruct the stream flows. **(37)**

Response: For a riparian buffer, the ideal circumstance is a design that restores natural conditions along a stream, distinguished from a design which imparts a condition which did not exist in the stream's natural state. With that design recommendation understood, the benefits of providing a riparian buffer far outweigh a potential situation where obstructions in the floodplain create a damming condition, obstructing stream flows. It is understood and documented in the PA Stormwater BMP Manual that maintenance guidelines include the consideration that stable debris may form as various zones of the riparian buffer mature. In particular, as Zone 1 (beginning at the top of the streambank and occupying a strip of land with a fixed width of fifteen feet measured horizontally on a line perpendicular to the streambank) reaches 60 years of age, it will begin to produce large stable debris. Maintenance goals suggest that large debris such as logs create small dams which trap and hold detritus for processing by aquatic insects, thus adding energy to the stream ecosystem, strengthening the food chain, and improving aquatic habitat. Wherever possible, stable debris should be conserved. Where nuisance conditions exist and debris dams must be removed, the goal is to try to retain useful, stable portions which provide detritus storage, and remove other debris to a sufficient distance from the stream so that it will not be removed by high water.

- 495. Comment:** Permit Page 10, Section I.D.4 – Suggest adding “negatively” before the word “affect” to better match the content of the 40 CFR reference. **(41)**

Response: It is not clear what aspect of the General Permit this comment refers to; if Part A III.D.4 (Unanticipated Non-Compliance or Potential Pollution Reporting), the term “affected” is not preceded by “negatively” in the regulation supporting this provision, i.e., 25 Pa. Code § 91.33(b). If referring to Part B I.C.4, the term “affect” is not preceded by “negatively” in the regulation supporting this provision, i.e., 40 CFR § 122.41(l).

- 496. Comment:** Page 23, III.E – Is DEP mandating that stormwater authorities be created if a municipality has an MS4 permit? **(41)**

Response: DEP believes the comment is referencing a provision in Part C III of the draft PAG-13 General Permit, which states, “The permittee shall develop and maintain adequate legal authorities and shall maintain adequate funding and staffing to implement this General Permit, including the SWMP contained in Part C I of this General Permit.” This provision was contained in the 2013 PAG-13 General Permit.

No, DEP is not mandating the use of stormwater authorities. The intent of the wording in the General Permit is to require that permittees maintain adequate legal authority to enforce the permit requirements. For municipal permittees legal authority is established in local ordinance(s). Since non-municipal permittees do not enact ordinances, the phrase “where applicable” has been added to the final PAG-13 General Permit.

The use of a stormwater authority (or multi-municipal joint authority) may however be an efficient method to meet permit requirements, as an authority can charge stormwater fees and a joint authority may add economy of scale to the management of stormwater issues.

**PAG-13 General Permit
Comment Response Document**

497. Comment: It would be helpful if PADEP would provide clarity that any FERC regulated project (i.e. a gas pipe line project) is exempt from the municipality's MS4 program requirements. **(42)**

Response: DEP is in the process of evaluating whether certain local ordinances, including stormwater ordinances enacted by an MS4 under its NPDES permit, apply to pipeline projects. DEP is aware of pending litigation on a related issue and is therefore unable to offer clarification at this time on the specific issue raised.

498. Comment: It would be helpful for PADEP to develop a standardized E-Permit submission process. **(42)**

Response: DEP agrees and is working on an electronic annual reporting system. Since the annual report will serve as the NOI, existing MS4s will, in general, no longer need to submit 5-year NOIs to DEP. DEP does recognize the need however to create an electronic permit application system for individual permits for MS4s and other facilities.

499. Comment: Clarification is requested for the requirement to monitor stormwater discharges. This monitoring may be expensive and municipalities will need to budget for this requirement. **(43)**

Response: See responses to Comment Nos. 455 and 456.

500. Comment: The proposed permit includes a number of revisions that, in our opinion, provide greater clarity for MS4s in preparing their NOI submissions for coverage effective on March 16, 2018. In particular, we agree with the following administrative changes:

- Using the annual MS4 status report to serve as the NOI for ongoing coverage, thereby eliminating need for submission of renewal NOIs every five years.
- Removing de-chlorinated swimming pool discharges from the list of authorized non-stormwater discharges.
- Streamlining reporting requirements so that annual reports are due on September 30th for all MS4 permittees.
- Increasing accessibility of stormwater permit information to public.
- Reaffirming and clarifying that permittees are ultimately responsible for construction (Minimum Control Measure #4) and post construction stormwater management (Minimum Control Measure #5) compliance. For Minimum Control Measure #4, specifically requiring agreements between the permittee, the Conservation District and any other resources to be used by the permittee that clearly defines the roles for each entity.
- Requiring preparation of a PRP in the NOI when a MS4 discharges stormwater to waters that drain to the Chesapeake Bay, or otherwise to local waters that are impaired for nutrients and/or sediment regardless of whether a TMDL has been approved.
- Not authorizing a general permit for regulated small MS4s who are assigned a wasteload allocation in a TMDL approved by EPA for nutrients and/or sediment.
- Adding the requirement that the permittee shall develop and maintain adequate legal authorities, and shall maintain adequate funding and staffing to implement the General Permit.
- Requiring in the PRP that the permittee identify project sponsors and partners and probable funding sources.
- Requiring that municipalities report all incidents causing or threatening pollution.

**PAG-13 General Permit
Comment Response Document**

- Requiring under Minimum Control Measure #5 that an inventory of post-construction stormwater management Best Management Practices (BMPs) be developed that track location as well as operation maintenance activities. **(53)**

Response: Thank you for the comment.

501. Comment: Agricultural Runoff – This association offers its assistance to both the Department of Environmental Protection and the Department of Agriculture in advancing solutions on how to handle the growing issue of agricultural stormwater runoff flowing into municipal road drainage structures. Such unintended drainage should not automatically be deemed a municipality’s responsibility for management. PSATS asks that the department make a clear statement of policy that such separation of accountability is the premise of parsing, and that it clearly applies in this situation. **(56)**

Response: See response to Comment No. 140.

502. Comment: MS4s Are Not Required to Comply with Water Quality Standards. At several points in Draft PAG-13, DEP references a requirement for permittees to comply with water quality standards (WQS). This is legally incorrect. The Clean Water Act requires MS4s to reduce the discharge of pollutants from their systems to the “maximum extent practicable,” or to the MEP. MS4s are not required to install or implement BMPs to “ensure” compliance with WQS. Courts across the U.S. have repeatedly held that MEP is the only standard that applies to MS4 discharges. Hence, the unlawful references identified below should be revised to recognize the unique MS4 compliance standard:

- Part A.I.B (Effluent Limitations) (p. 7) – Allows DEP to “require additional BMPs or other control measures to ensure that the water quality standards of the receiving waters are attained.” (p. 7). The commenter recommends that DEP strike the referenced sentence.
- Part. C.III.D (p. 25) requires that a permittee ensure that a SWMP is “designed to prevent increased loadings of pollutants and to not cause or contribute to a violation of water quality standards...” This is an unlawful and unworkable compliance standard. The commenter recommends that Part C.III.D be stricken. **(61)**

Response: DEP’s regulations at 25 Pa. Code § 92a.11 require that where other chapters are applicable to a discharge requiring an NPDES permit, those chapters govern whenever their application produces a more stringent effluent limitation than would be produced by application of federal requirements. In issuing a permit to an MS4 or any other discharge, DEP must implement its regulations at 25 Pa. Code § 96.3 (water quality protection requirements). In other words, discharges to surface waters in Pennsylvania may be authorized by DEP only if the discharge can occur in a manner that will maintain water quality standards.

503. Comment: DEP Should Recognize a Permittee’s Role as a Co-Regulator. Many aspects of Draft PAG-13 require that a permittee act as regulator with regard to discharges into its MS4. As a regulatory agency itself, DEP surely understands that there are limits to the ability to “police” regulatory requirements. Permittees should not be asked to do more than DEP itself would be capable of doing in its oversight role. The commenter recommends changes to the following text to reflect this reality:

- Part C.I.B.3.d (IDDE) (p. 19) requires that a permittee “remove or correct any illicit discharges...” The commenter recommends that the requirement should be to investigate illicit discharges and take appropriate enforcement against violators. Some illicit discharges are not traceable even after reasonable attempts to find the source, making it impossible to “remove or correct” the violation. **(61)**

**PAG-13 General Permit
Comment Response Document**

Response: The phrase “or implement appropriate enforcement” is used in the final PAG-13 General Permit following the language referenced by the comment in recognition that if an illicit discharge cannot be removed or corrected in a timely manner, the MS4 permittee will be in compliance with the permit if an appropriate enforcement response is made.

504. Comment: Expectations Should Be Clear Up-Front; Unilateral Changes During the Term Are Unacceptable. The commenter is concerned that several sections of Draft PAG-13 allow DEP to unilaterally change the permit terms well into the permit cycle. This creates due process, notice, and fundamental fairness issues. Municipal permittees should be able to review the GP and readily understand what is expected for permit compliance before submitting a notice of intent (NOI) to be covered. If a permittee is concerned about the requirements, the permittee has the opportunity at that point to seek an individual permit (IP). Problematic sections include:

- Part A.I.B (Effluent Limitations) (p. 7) – As noted above, this language allows DEP to “require additional BMPs or other control measures to ensure that the water quality standards of the receiving waters are attained.” (p. 7). The commenter recommends that DEP strike this sentence.
- Part C.III.C. (p. 25) allows DEP to require any monitoring “as may be reasonably necessary...” to characterize discharges. MS4 monitoring can be very expensive and is often of limited value given the diffuse and sporadic nature of stormwater runoff. Permittees should be able to understand expectations for monitoring before submitting an NOI, and those expectations should be honored throughout the permit term. DEP should not reserve the right to change the rules for monitoring, especially given the potential expense involved, mid-permit cycle. The commenter recommends that DEP strike Part C.III.C. **(61)**

Response: In the event that DEP determines that implementation of a permittee’s stormwater management program is insufficient to meet water quality standards, DEP may either notify the permittee that it must apply for an individual permit or it may allow the require the implementation of other measures. Also see response to Comment No. 456.

505. Comment: Clarification is needed about the role of the MS4 operator when a private entity holds an individual NPDES permit and discharges possibly polluted stormwater into the storm sewer system. **(63)**

Response: Private entities with either an individual NPDES stormwater permit or with general NPDES (PAG-03) permit coverage may discharge to an MS4. The MS4 permittee is responsible for managing stormwater flow (i.e., quantity) from the private entity. The quality of the stormwater may be subject to local ordinances or SOPs. The NPDES permit issued by DEP controls the quality of the discharge to the MS4 with respect to federal Clean Water Act and state Clean Streams Law requirements, but the private entity must also meet applicable local ordinances and SOPs, and such ordinances and SOPs should be enforced by the permittee. Permittees are also given the choice, for Pollutant Reduction Plans and TMDL Plans, to parse out the drainage area of private entities with NPDES permit coverage when determining the permittee’s area of responsibility and calculating pollutant loads.

506. Comment: STORMWATER MANAGEMENT PROGRAM (SWMP) - The MEP (Maximum Extent Practicable) like most of the agricultural Best Management Practices (BMPs) attempts to reduce some nebulous base pollutant level from reaching the streams of the Chesapeake Bay Watershed, in this case, those within Pennsylvania. The reduction, however, is just as nebulous without a verifiable base load premised upon empirical analyses. Currently, we have no verifiable base load, and therefore assignment of waste load allocations to any perceived contributor is fallacious. In the case of agricultural BMPs nutrient reductions are estimated based on assumed nutrient loads applied or

**PAG-13 General Permit
Comment Response Document**

generated by some unknown census of poultry and livestock in the basin. A recent article in the Chesapeake Bay Journal, August 2015, confirms the difficulty with agricultural nutrient management. The attempt to do similar reductions with MS4 discharges, even though mostly piped instead of non-point source, faces the same difficult quantification of source concentrations. **(63)**

Response: EPA has a model it uses to estimate pollutant loading to the Chesapeake Bay from various watersheds. As DEP reports point source data and non-point source BMP data to EPA, the model recalculates Pennsylvania's estimated contributions of pollutant loads. These contributions are compared against wasteload allocations that are established in EPA's 2010 Chesapeake Bay TMDL. DEP agrees with the comment in that there are numerous assumptions built into the model, but it is the tool selected to guide management decisions for the Chesapeake Bay.

507. Comment: The SWMP as focused on the MCMs being accomplished by BMPs is facing similar difficulties to evaluating the agricultural BMPs performance. We can talk and preach about making the right environmental decisions, but the constraints come most when trying to demonstrate actual waste load reductions without some base from which to work. **(63)**

Response: Permittees that are required to develop Pollutant Reduction Plans to reduce pollutant loading to the Chesapeake Bay and locally impaired waters will need to calculate existing loadings for the pollutant(s) of concern. From this baseline, required pollutant load reductions can be determined, and the permittee will need to evaluate and propose BMPs that can achieve those reductions.

508. Comment: The training and education MCMs will eventually pay-off, but only if all vested parties do their part. The current situation of the Chesapeake Waterman seeking more lax fishing quotas rather than to allow for population regrowth of blue crabs and oysters is a similar attitude to PA farmers arguing for food production over nutrient control costs. Placing another burden upon municipalities to accomplish goals for the Chesapeake, when the Chesapeake is continuing to be degraded by mismanagement and natural climate insult is not the route to success. **(63)**

Response: DEP agrees that the challenge is for each sector to do its share, both to protect local waters and the Chesapeake Bay.

509. Comment: The reality is that the Chesapeake Bay is well into middle-age for eutrophication, although some of it is not natural, it has suffered major insults from natural events; i.e. Hurricane Agnes, June, 1972, and Tropical Storm Lee, September, 2011. These major sediment insults brought considerable phosphorus load entrained within the clay sediment load. The ecology of the Chesapeake Bay is not likely to recover from these natural insults while further degradation continues. But, we need to realistically evaluate what recovery is possible and at what cost. If the cost/recovery analysis finds that the ecological recovery is not significant and the miniscule reductions borne by all the BMPs, MCMs, MEPs, and SWMPs fails to enhance the productivity of the Bay to even half the pollutant reduction efforts and cost, then a ceiling on such expenditures needs to be established. An often over-looked requirement of Federal legislation is the cost to enforce it; we have not done an adequate job in this respect with the MS4 program. How do we know where we are going, and how fast we can get there if we do not have a valid road map and timetable to get where we are going? **(63)**

Response: DEP agrees that the science of Chesapeake Bay pollution control is open to debate. Note however that the bulk of what is being done to protect the Bay will also provide needed water quality improvements to local waters. With respect to MS4 BMP implementation, DEP promotes careful selection of cost-effective BMPs to be installed over time, with the option available to MS4s to obtain as much control as possible through improved stormwater management of future development/redevelopment.

**PAG-13 General Permit
Comment Response Document**

510. Comment: Paragraph E (page 25) – Including provisions requiring permittees to maintain budgets, staffing levels, etc. is not necessary and is arbitrary verbage. Permittees are required to be in compliance with the permit, which will necessitate adequate municipal/non-municipal management. Recommend deleting paragraph E. **(2)**

Response: DEP believes it is imperative that permittees develop and maintain adequate legal authorities, where applicable, and maintain adequate funding and staffing to implement the stormwater management program. Compliance with the permit is required, but DEP believes that compliance can only be achieved when a commitment in the form of legal authorities, funding and staffing is made year after year. That commitment may be a solo effort by the permittee or a joint effort amongst multiple permittees.

511. Comment: In general Chester County finds the grouping of Appendices A, B and C as PCMs and Appendices D and E as PRPs very confusing. DEP should make these more consistent. Particularly confusing is why Appendix E is treated differently than the other Appendices. Each grouping has its own set of instructions. The language about when Appendix D or E will not be required should be mirrored for Appendices A through C. The use of “indirectly” also adds to the confusion. **(11), (23)**

Response: The term “indirectly” has been removed from the language in the appendices. Appendices A through C require Pollutant Control Measures and Appendices D and E require a Pollutant Reduction Plan. Pollutant Control Measures and Pollutant Reduction Plans are different and therefore it is not possible to make all appendices consistent.

512. Comment: Fact sheet, bottom of page 7 speaks to when Appendix D or E will not be required. This same language should be mirrored for Appendices A-C. The use of “indirectly” also adds to the confusion. Does not “indirectly” also apply to Appendix E? There is no mention of that at the bottom of page 7. Perhaps Appendix D should stand on its own? **(23)**

Response: See response to Comment No. 511. In addition, the fact sheet language has been revised to state, “If an applicant has completed its mapping and demonstrates that there are no stormwater discharges to waters impaired by the pollutants of concern, the permittee is not required to follow Appendices A, B and/or C, as applicable.” If it is discovered by the permittee as part of the mapping effort that there are no stormwater discharges to waters impaired for the pollutants of concern, the permittee should submit the map to DEP with a request to update the MS4 Requirements Table. If DEP agrees, the Table will be amended and a revised page 1 of the PAG-13 General Permit package will be issued to clarify the revised requirements for appendices, as applicable.

513. Comment: Page 24 – Regarding PCMs and PRPs, the undertaking of this type of initiative should not be placed on the Permittee; rather, this should be a more unified effort so as to make the program not only effective, but also productive. It appears as though a watershed based approach may be more effective. I would imagine PADEP staff would prefer to have less plans to review and monitor, thus, a more global initiative should be considered. **(42)**

Response: DEP would prefer that MS4s work cooperatively to develop PRPs and agrees that a watershed-based approach may be more effective, but DEP is not mandating that MS4s cooperate. DEP has no preference on whether MS4s work cooperatively to implement PCMs in Appendices A, B and C, but MS4s may determine it is cost effective to do so.

**PAG-13 General Permit
Comment Response Document**

514. Comment: Page 24 – Section II – PCMs and PRPs. The requirement to develop and implement PCMs and PRPs will create a large financial strain for municipal budgets and staff time. We do not support the implementation of these mandatory watershed reduction plans as municipalities do not control the majority of the land in which the pollutants originate from. We request PA DEP re-evaluate these requirements and modify the program accordingly. A recommendation is for the permit to require municipalities to make necessary improvements to land in which they control such as public rights-of-way, park land and other municipal-owned properties. Following this permit cycle, we recommend the program be evaluated to determine if additional controls can be implemented. **(43)**

Response: The PCMs in Appendices A through C are focused on the permittees identification and documentation of sources of pollutants of concern. In order to meet PRP requirements in Appendices D and E, the MS4 permittee may determine that implementation of BMPs on permittee-owned land alone may not be sufficient to achieve pollutant load reductions. In addition to cooperation with private landowners and enforcement of ordinances, the establishment of stormwater authorities and establishment of fee structures based on impervious surface or other features is an approach that could incentivize the implementation of BMPs on private lands.

515. Comment: POLLUTANT CONTROL MEASURES AND POLLUTANT REDUCTION PLANS. The development of measures to control and reduce pollutant loads is worthwhile. The effective methods to accomplish these objectives may not be so clear. In the development of such reduction plans the permit holder needs to have some latitude for innovative approaches, since many situations may not be “typical” and therefore not have a “stock” solution. **(63)**

Response: DEP agrees and believes that the larger the “planning area” (i.e., the more municipalities cooperate), the greater the opportunities will be to find locations for cost effective BMPs to reduce pollutant loads.

Topic - Waivers

516. Comment: The exemption criteria should not be based on population, but based on whether you have a municipal storm sewer system. Our municipality is very old and our streets are not curbed and we do not have inlet boxes, direct discharges, or a storm sewer system. We meet all exemption criteria except for the population. The annual reports are ineffective and the permit requirement burdensome when we are not controlling pollutants. The purpose is to clean stormwater. If we have nothing to monitor or test, the exemption should be granted regardless of the population or size of your MS4 area. It is a waste of tax payer dollars and a waste of limited DEP staff time to review reports that are not contributing to cleaning up the environment. **(16)**

Response: See 40 CFR §§ 122.32(d) and (e). The waiver criteria are established in federal regulations and depend first and foremost on population served by the MS4. DEP has revised the waiver application to ask two population-related questions: 1) Does the MS4 serve a population of less than 1,000 within the urbanized area? and 2) Does the MS4 serve a population under 10,000 within the municipality seeking a waiver? The draft waiver application only considered one of these population criteria.

Note that the definition of a municipal separate storm sewer includes roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains (i.e., the absence of street curbing, inlet boxes or pipes does not necessarily mean that a municipality does not have an MS4).

517. Comment: BPNPSM0100e. Waiver. Eligibility Information: Please clarify if MS4 is shorthand for municipality or if it intended to mean the MS4 system in the UA. There may be some municipalities that have a TMDL WLA but the TMDL watershed/stream is not in their UA. Perhaps #2 could be phrased something like “Does the municipality have WLA for a TMDL stream that their MS4 discharges to and that is within their UA?” **(23)**

Response: To clarify this issue, DEP has modified the waiver application to ask the following question, “Does the MS4 have at least one outfall that discharges stormwater to surface waters with an approved TMDL?” This question is not concerned with the presence or absence of a stream within an urbanized area. If the MS4 has at least one stormwater discharge to a stream with an approved TMDL, regardless of where the outfall or stream is located relative to the UA, the applicant must answer the question above as Yes.

518. Comment: This permitting package for draft PAG-13 General Permit includes a waiver application (3800-PM-BPNPSM0100e Rev. 5/2015). The commenter is concerned that the proposed criteria for a waiver may result in exceedances of water quality standards, including impairment of designated uses like exceptional value (EV) and high quality (HQ). Discharge from the regulated small MS4 to a surface water classified as a HQ or an EV water are not permitted under PAG-13, however a small MS4 with discharges to a surface water classified as a HQ or an EV water could be granted a waiver from PAG-13 if it satisfies the proposed criteria for a waiver. The commenter recommends that a question ascertaining whether the MS4 is located in an EV or HQ watershed should be included under “WAIVER ELIGIBILITY INFORMATION” on the waiver application. If the answer to this question about is “YES,” the applicant should not be eligible for a waiver. **(28)**

Response: Only those entities with small populations served by their MS4s will be granted waivers, where there is no indication that prior stormwater discharges have caused or contributed to surface water impairments and where there is little likelihood of future discharges causing impairments. In most cases, where these waived MS4s exist in Special Protection (HQ/EV) watersheds, the discharges had been occurring prior to DEP’s designation of the surface waters as Special Protection (i.e., such discharges would be considered “grandfathered”).

519. Comment: Under question #1, please specify that the form is requesting the population for the urbanized area within the municipality/MS4, not within the entire UA. While it would seem self-apparent based on the definition of UA, many individuals filling out this form may not have this information. **(35)**

Response: See response to Comment No. 516.

**PAG-13 General Permit
Comment Response Document**

520. Comment: Should question #3 be interpreted to mean that any potential MS4 within the Chesapeake Bay watershed is ineligible for a waiver? Since the Chesapeake Bay is impaired for nutrients and sediment, the clause “including the Chesapeake Bay watershed” seems to suggest this. **(35)**

Response: DEP has eliminated the phrase, “including the Chesapeake Bay watershed” and has added the word “local” to the description of surface waters in the waiver application. DEP does not intend to deny waivers to applicants solely on the basis of its MS4 existing within the Chesapeake Bay watershed; if there are no discharges to waters with an approved TMDL and there are no local surface water impairments, a waiver can be granted assuming the population criteria are met. Even if there is a local surface water impairment, DEP may decide to grant a waiver if DEP determines that the MS4’s discharges are not causing or contributing to the impairment and will not likely do so in the future. The waiver application has been updated to allow MS4s that meet population criteria but discharge to impaired waters to optionally apply for an “advanced approval” from DEP by December 31, 2016. The advanced approval, if granted, should be attached to the waiver application.

521. Comment: It appears that any municipality located within the Chesapeake Bay watershed would be ineligible for a waiver. The Department should consider all waiver requests within the Chesapeake Bay watershed and review these requests based upon the individual characteristics of the municipality. The “blanket” ineligibility policy for municipalities within the Chesapeake Bay watershed will cause undue hardships to many small MS4 operators that would otherwise be eligible for a waiver of Permit coverage. **(34), (62), (64)**

Response: See response to Comment No. 520.

522. Comment: We note that question #3 under waiver eligibility information will preclude any MS4 within the Chesapeake Bay Watershed from being eligible for a waiver. We recommend the reference to the Bay Watershed be removed from Question #3. In the event a municipality has a population of less than 10,000 within the urbanized area and does not discharge to any impaired surface waters, we feel should still be eligible for consideration of a waiver. The department may elect to include separate waiver criteria for municipalities with populations less than 1,000 people as was included in prior permits. **(38)**

Response: See response to Comment No. 520.

523. Comment: We urge a careful review of requests for waivers based on the individual characteristic of each municipality and not adopt a “blanket” ineligibility policy. However, many of Lebanon County’s urbanized areas are managing stormwater from rural municipalities which have been granted waivers. **(63)**

Response: DEP is requiring the submission of Pollutant Reduction Plans, in accordance with the MS4 Requirements Table, with NOIs by September 16, 2017 (i.e., must be received by DEP on or before this date). MS4s with existing waivers must also submit NOIs by this date. However, DEP does not wish for MS4s to expend resources to develop required plans unless it is certain that NPDES permit coverage will be required starting in 2018. This is why DEP is establishing concrete rules on who is and is not eligible, and is providing an advanced approval process for those MS4s that believe they are not contributing to local surface water impairments.

Topic – Stormwater Ordinances

524. Comment: All of Chester County worked with DEP for a long time to complete a stormwater ordinance that was both MS4 and Act 167 compliant and is just 1 1/2 years old, but it will require an amendment due to the new checklist and including the revised list of allowed discharges. How is this justified? **(1)**

Response: See responses to Comment Nos. 25 and 526.

525. Comment: Item 5.a is simply an alternative form of presenting the exact same information as that contained in item 5.b and serves no purpose. Item 8.c requires transmission of written reports concerning inspections to the municipality. What inspections? Construction Inspections? Operation and Maintenance Inspections? Transmitted by who? The Township is conducting its own inspections of these items and have inspection reports by others should not be required. **(1)**

Response: See DEP's Stormwater Management Ordinance Checklist (3800-PM-BCW0100g), page 3, Article 5, a. and b. The expectations for 5.a and 5.b are different. 5.a is a requirement that BMPs remain in place for their intended use. 5.b is a requirement that an O&M Plan for the BMP be recorded.

Item 8.c (referring to Article VIII, Section 802 of DEP's Model Ordinance) requires the landowner to submit inspection reports to the municipality to ensure stormwater management BMPs, facilities and/or structures continue to function as intended. If a municipality chooses to inspect privately-owned BMPs the ordinance can be revised to eliminate the requirement for landowner reports. If a municipality's existing or 2022 ordinance differs from DEP's model ordinance, the municipality should document the difference with an explanation of how the item is addressed.

526. Comment: Page 6 of NOI at bottom regarding Model Ordinance, Why doesn't adoption of an Act 167 Ordinance from 2005 or later satisfy this requirement the way it has up to now? The questions seem pointless: "Has a Stormwater Management Ordinance been enacted that is consistent with the 2013 DEP Model Ordinance?" Is "yes" checked if an Act 167 Ordinance has been enacted? "Is the municipality subject to an approved Act 167 Plan approved by DEP in 2005 or later?" This doesn't seem to matter. Why not just ask what is the current stormwater ordinance? The latest Model Ordinance (DRAFT) is 2015. Is this what MS4s need to be consistent with? Is the checklist based on this Ordinance? How will the Ordinance work with the "no NOI" / extended via submission of Annual Report concept; does DEP expect to revise the 2015 Model Ordinance at some point, and will that then trigger the need for an NOI? **(3), (4), (5), (6), (13), (24), (36), (40), (47), (57), (58), (59)**

Response: DEP has revised the NOI to allow renewal permittees to comply with the ordinance requirement in one of three ways: 1) permittees can attach an ordinance which is consistent with DEP's 2013 Model Ordinance (3800-PM-BPNPSM0100I, 4/2012) or 2022 Model Ordinance (3800-PM-BCW0100j) (i.e., uses the Model Ordinance as a template and is not customized); 2) permittees can attach an Act 167 ordinance that was approved by DEP in 2005 or later; or 3) permittees can attach a customized ordinance that the permittee believes satisfies the requirements of the 2013 PAG-13 General Permit. Under Option 3, permittees would need to complete the new PAG-13 Stormwater Management Ordinance Checklist (3800-PM-BCW0100g) to demonstrate that the ordinance satisfies the 2013 PAG-13 General Permit. The new Checklist also includes a column for the 2022 DEP Model Stormwater Management Ordinance – this column is to be used solely to show what is different between the 2013 and 2022 model ordinances and what updates must be made by permittees to comply with the 2022 DEP Model Stormwater Management Ordinance.

527. Comment: DEP appears to give more grace to those out of compliance or new to the permit package than those Municipalities that may have a newly enacted Act 167 Ordinance. In the specific case of those Municipalities in Chester County, the 2013 adoption of the DEP approved Act 167 Ordinance does not meet the minimum requirements of the checklist. However, this was a DEP approved ordinance which cost each municipality in time, consulting and advertising fees to adopt the ordinance without the ability to apply for reimbursement, which is documented in regulations of Act 167. DEP should provide a longer period of compliance for those

**PAG-13 General Permit
Comment Response Document**

communities with recent adoption of Act 167 Ordinance, and comply with the Act by providing reimbursement of the cost to adopt and enforce the ordinance. **(7)**

Response: See response to Comment Nos. 25 and 526.

528. Comment: The Department's requirement that permittees notify the Department about certain waivers or variances to the stormwater ordinance is a positive step that will help to ensure that the intent of the stormwater ordinance is fulfilled. **(10)**

Response: DEP has introduced a requirement under MCM #3 of the 2018 PAG-13 General Permit that the permittee must notify DEP of the approval of any waiver or variance allowing an exception to non-stormwater discharge provisions of an ordinance or SOP. This notice must be submitted in the next Annual MS4 Status Report following approval of the waiver or variance.

529. Comment: The changes proposed to the draft model ordinance (3800-PM-BPNPSM0100j, Rev. 5/2015) could significantly enhance municipal efforts to manage stormwater pollution on private property, especially if all "optional" provisions are implemented. The draft model should emphasize something it does not appear to mention, namely a possible incentive for municipalities to adopt these more rigorous, optional standards. That incentive is the ability of the municipalities to achieve required pollutant load reductions without having to pay for (and raise public revenue for) municipal stormwater control projects. To counter possible, reflexive resistance to anything going beyond the minimum requirements, we suggest emphasizing this significant incentive by making it clear (either in the introductory language in the preface to the document or otherwise) that municipalities that choose to adopt these provisions will be able to account for the resulting pollutant load reductions as part of their PRP or CBPRP calculations. We encourage the Department to monitor the implementation of these "optional" provisions in communities that choose to adopt them. Based on the experiences of these municipalities, the Department may wish to consider making some of these "optional" provisions mandatory in the next revision of the model ordinance. **(10)**

Response: DEP has added a statement to the introduction to the 2022 Model Stormwater Management Ordinance as follows: "Use of the optional content may be used toward meeting pollutant load reduction obligations of the NPDES permit if the permittee can demonstrate reductions from the optional practices."

530. Comment: Section 305: We strongly support the Department's proposed addition of an optional riparian buffer requirement to the model stormwater ordinance. Riparian buffers are one of the most effective and efficient BMPs for preventing pollution both during and after earth disturbance activities, and providing natural, long-term sustainability for aquatic resource protection and water quality enhancement. To further enhance the potential benefits of such a provision, we suggest establishing 35 feet as a minimum width of the Riparian Buffer Easement and allowing municipalities to require wider buffers if they choose to do so. **(10)**

Response: The optional content in Section 305 was clarified to indicate a minimum width of 35 feet.

531. Comment: Article IV. Section 401(E)(2): We are pleased that the model ordinance requires a determination of site conditions in accordance with the BMP Manual. However, the ordinance should go further and require use of the recommended site design process in the BMP Manual, including the checklist in the Manual. Consistent with this approach, the ordinance should give preference to preventive nonstructural BMPs, and then to mitigative nonstructural BMPs. **(10)**

Response: This is an option for a future DEP model ordinance, and municipalities may choose this approach to meet its ordinance obligations by September 30, 2022 (existing permittees) or following the fourth (4th) year of General Permit coverage (new permittees).

**PAG-13 General Permit
Comment Response Document**

532. Comment: We agree that up to date ordinances should be required for new development where the more stringent regulations would apply and we would have all the controls and agreements in place to ensure stormwater discharges can be monitored and treated as they occur. Until then, the Municipality should be exempt from the annual reports and from NPDES permit requirements. **(16)**

Response: Unless DEP grants a waiver, an MS4 cannot be exempt from annual reports and NPDES permit requirements.

533. Comment: Our ordinance, which was based on the county wide ordinance that was approved by DEP in 2013, was adopted on November 19, 2013. Is this ordinance acceptable to DEP for this permit? **(17)**

Response: Yes. See response to Comment No. 526.

534. Comment: Page 6 of the NOI should be revised to explicitly state that municipalities with Stormwater Ordinances in compliance with Act 167 Plans approved in 2005 or later meet the requirements of the Stormwater Management Ordinance Checklist. **(20)**

Response: See response to Comment No. 526.

535. Comment: Cumberland County adopted a countywide Act 167 Plan that included the development of a model stormwater management ordinance that was approved by DEP. All 33 municipalities in the county have since adopted that ordinance. CCPD recommends that municipalities that have adopted a stormwater management ordinance pursuant to a countywide Act 167 Plan be exempted from the model ordinance requirement. If such a waiver is not granted, DEP should be required to review a municipality's existing ordinance and determine if it complies with the standards outlined in the model ordinance checklist. Municipalities should not bear the burden of a "self-assessment" to determine consistency with new standards established by DEP when they have already adopted a stormwater management consistent with state policy. **(21)**

Response: DEP agrees that permittees with recently-developed ordinances should have more time to make further revisions. See response to Comment No. 526.

536. Comment: Model Ordinance Section 110.C – Waivers: This section of the model ordinance states that regulated stormwater activities of 1 acre or more cannot be waived by municipalities unless approved by DEP or designated conservation districts. The impact of this requirement on the municipal plan approval process, potential time delays, and associated costs should be determined. **(21)**

Response: The content in the model ordinance does not create a new requirement. It is just a reminder that disturbances of an acre or more require a Chapter 102 NPDES permit.

537. Comment: Model Ordinance Section 301.G.3 – General Requirements: Low impact development or green infrastructure must be used to address volume and rate controls. If not, a detailed justification must be provided. This appears to require the time and cost to adopt low impact development and green infrastructure standards in municipal ordinances which could also increase plan preparation and review time. Municipalities should be encouraged to use a variety of stormwater management practices and not be required to employ certain standards that may or may not be most effective for a given situation. **(21)**

Response: The referenced requirement is to be included at the option of the municipality. DEP agrees that locally-appropriate cost-effective controls should be used.

538. Comment: Model Ordinance Section 305 – Riparian Buffers: The municipality's responsibility is unclear. Are riparian buffers required in floodplains or when adjacent to a water body? It appears this requirement may

**PAG-13 General Permit
Comment Response Document**

prohibit development within a floodplain area which conflicts with many municipal ordinances and the FEMA model ordinance that allows certain types of development in floodplains with conditions. In addition, this requirement is not listed on the ordinance checklist. **(21)**

Response: The referenced requirement is to be included at the option of the municipality. The requirement is not on the checklist because it is optional.

539. Comment: The percentage of existing impervious area that must be considered as “meadow in good condition”, as set forth Section 303 of the Model Stormwater Management Ordinance should be carefully reviewed, perhaps by the Redevelopment Subcommittee of the Pennsylvania Stormwater Technical Workgroup, to determine the appropriate minimum percentage of impervious that must be considered meadow in good condition in order to ensure both a practical, reasonable and effective recapture of formerly impervious landscape when the property is subject to redevelopment and likely also, related local land development approvals. This is a sensitive topic such that the workgroup should have technical competencies that also reflect the needs of various stakeholders, but Pennsylvanians, overall, should not foreclose recapturing more “natural” drainage conditions when land is subject to redevelopment. **(22)**

Response: The 20% minimum of existing impervious surface that is assumed to be “meadow in good condition” in modeling calculations is a regulatory standard. Municipalities may set a higher standard in their ordinances. The incremental pollutant capture gained by control beyond 20% can be credited to Pollutant Reduction Plans and TMDL Plans.

540. Comment: The model ordinance language, checklist and draft permit requirements present a complex set of ordinance requirements that would take extensive time and effort to review and determine whether or not any required changes would be incompatible, inconsistent, counter-productive to other components of the County-wide Act 167 ordinances recently adopted (2013-2014) by all 73 municipalities in Chester County. Without such a review, it is impossible to provide DEP with constructive comments of how or if edits are needed to allow for any required changes to be made without creating “cascading” impacts on other aspects of the ordinance. We strongly request and recommend that if no provision is to be included in the final permit to allow MS4s with DEP approved Act 167 ordinances to bypass the ordinance checklist process, that prior to finalizing the ordinance, DEP work with counties that have recently completed Act 167 ordinances to ensure the checklist and ordinance revision requirements will not create counter-productive results for these Act 167 ordinances. **(23)**

Response: See response to Comment No. 526.

541. Comment: BPNPSM0100g. Ordinance Checklist. Is DEP requiring that the exact wording as listed in provisions in the Checklist must be used in the municipal ordinance? There is no general guidance to explain this. Requiring municipal ordinances to include exactly what DEP lists in the Draft Permit will, in many cases, require municipalities to reduce the level of control that their existing ordinances currently require to a lower standard. Please revise the instructions to clearly allow for “at least as stringent as” those listed in the DEP Checklist. **(23)**

Response: DEP requires that ordinance content be “generally consistent with” the model ordinance and/or the checklist. Use of the exact wording is not required. Controls which exceed DEP minimums are not inconsistent; the model ordinance says it reflects “DEP’s minimum expectations.”

542. Comment: Ordinance Checklist – 3.e. “A standard earth disturbance area, no greater than one acre...” Then referring to BPNPSM0100j, there is mention that the Checklist contains DEP’s minimum expectations to comply with both Act 167 and NPDES permit. More significance should be stressed of the extensive work and stringent levels of controls completed by counties and their municipalities in developing locally-specific County-wide Act 167 Plans and ordinances. DEP should state that municipalities are expected to continue to implement their DEP approved individual county-wide 167 Plan ordinances and they should not adopt DEP’s Model Ordinance requirements to meet MS4 and 167 requirements if they have adopted an ordinance from a County-wide Act 167 that has been approved by DEP since 2005. **(23)**

**PAG-13 General Permit
Comment Response Document**

Response: See response to Comment No. 526.

543. Comment: Ordinance Checklist – The Draft permit should be revised to include a “check box” to indicate whether the MS4 has an adopted Act 167 ordinance that was approved by DEP since 2005, and that the MS4 can then “skip” the ordinance checklist portion of the application. The water quality and runoff gains that may be achieved from the small ordinance updates presented in the draft permit will not be realized compared to the cost and time a municipality will have to undergo to revise and adopt an updated ordinance to meet permit requirements. **(23)**

Response: See response to Comment No. 526.

544. Comment: BPNPSM0100h. Ordinance Checklist Instructions – Please clarify when conducting a review of the municipal ordinance versus the Checklist, that a municipality may check off “Yes” if the provision is “addressed in a manner generally consistent with DEP’s Model Ordinance”? This should be more overtly stated if true to reduce confusion. As indicated in the above comments, there should be a clear “checkbox” to allow municipalities to indicate that they have adopted a DEP approved Act 167 ordinance and therefore do not need to complete the Checklist review. **(23)**

Response: See response to Comment No. 526.

545. Comment: Ordinance Checklist Instructions – Should the Checklist be used to compare with the municipal ordinance in a manner “generally consistent with” the line items or must it be “exact”? Instructions must also indicate that existing ordinances be “generally consistent with or more stringent than...” the DEP MS4 requirements. **(23)**

Response: See response to Comment No. 541.

546. Comment: Ordinance Checklist Instructions – The instructions include conflicting statements. Please clarify the language to clearly state whether a fully compliant ordinance must answer “Yes” to all items in the Checklist. This is inferred by the following statement: “DEP does not expect that the ordinance match DEP’s Model Stormwater Management Ordinance...or that all the answers to the questions in the Checklist are “Yes”. If the applicant determines that one or more questions are answered “No”, the applicant will have one year...to update...” Please state the expectation out right to reduce confusion. **(23)**

Response: See response to Comment No. 526.

547. Comment: If only one or a few “No” are checked, please reconsider when the municipality must revise the ordinance. In Chester County, countless hours and monies were spent by the municipalities to revise their ordinances to comply with the County-wide Act 167 in late 2013 and 2014. To require Chester County municipalities to revise their ordinance again in 2018 only four years later, for relatively minor changes in DEP required language is excessive and burdensome and will not be the best use of municipal resources to improve water quality, especially in light of all the other TMDL and PRP requirements. **(23)**

Response: See response to Comment No. 526.

**PAG-13 General Permit
Comment Response Document**

548. Comment: DRN believes that recommendations made by the Delaware River Basin Commission Flood Advisory Committee (FAC) are germane to and should be incorporated into the final PAG-13 and accompanying documents. While the commenter believes each of the recommendations have value in better protecting public safety and health and natural resources of Pennsylvania, recommendations (taken directly from the FAC Recommendations) of particular relevance to PAG-13 include:

Stormwater Regulations – New and Redevelopment

Background: Managing the impacts of stormwater runoff and the flooding that often results is becoming as challenging as ever. Impacts caused by urbanization and impervious land cover include increased runoff volumes, diminished stream base flow, increased frequency of bank full flooding, stream bank erosion, loss of riparian forest cover, floodplain disconnection, decline in aquatic and plant diversity and changes in sediment yield and transport. Facing many of same the challenges experienced by stormwater managers nationwide, such as impaired watercourses listed on the EPA 303d stream inventory, antiquated drainage infrastructure and an increase in flooding frequency and severity, stormwater managers and regulators have been forced to move away from traditional stormwater management methods which have been proven to be ineffective.

To that end, ordinances have been promulgated that focus on a runoff volume based method of stormwater management; rather than traditional store and release stormwater designs. These new designs emphasize the importance of maintaining a healthy hydrologic balance between recharging groundwater supplies, the use of infiltration to maintain stream health and filtering stormwater runoff using natural, non-structural practices by the implementation of Green Technology Best Management Practices (GTBMPs). Stormwater managers in the Mid-Atlantic region recognize that approximately 90% of the annual rainfall comes from rain events of 2 inches or less.

The challenges to successfully managing stormwater runoff are not limited to the physical boundaries of hydrology and hydraulics. Runoff is a natural occurring process respective of land uses and the associated land covers. A successful stormwater program must address the range of land uses from residential to commercial and Greenfield development to Brownfield development and redevelopment.

Recommendation: The goal of stormwater design within the Delaware River Basin should mimic pre-development hydrology at a minimum by the following:

- Require post development infiltration to achieve 100% of the pre-development infiltration condition when feasible.
- Mandate no net increase in the volume rate of runoff post development as compared to pre-development.
- Mandate use of stormwater best management practices to address runoff volume management, pre-development infiltration goals, re-use and reduction of stormwater. Include peak rate control for the 2, 10 and 100 year design storm if not already addressed by the series of strategies already used to address volume, infiltration and quality issues.
- Establish corridors for the conveyance event (typically the 10 year frequency storm event) and verify that no hazards or life-safety issues exist for storm events up to the 100 year flood event through the creation of easements or right of ways.
- Require minimum vegetated buffers on riparian buffers to all watercourses in the basin.
- Provide 100% water quality treatment for the 2.0" rainfall event in 24-hours.

In keeping with this recommendation, DRN encourages PADEP add to **Section 103. Purpose** of the Small Municipal Separate Storm Sewer Systems (MS4s) Model Stormwater Management Ordinance (3800-PM-BPNPSM0100j) the following specific provision language: "Reduce runoff volumes." and "Mimic predevelopment hydrology." **(28)**

Response: DEP agrees and has added these considerations under Section 103 of the model ordinance.

549. Comment: Permit Page 20 – I.B.3.e Stormwater Management Program (SWMP), MCM#3: Provisions should be provided to re-submit stormwater management ordinances with annual reports any time the ordinance is revised. **(32)**

**PAG-13 General Permit
Comment Response Document**

Response: DEP is requiring the submission of modified stormwater management ordinances in an annual report due by September 30, 2022 (existing permittees) or following the fourth (4th) year of General Permit coverage (new permittees). If DEP's model ordinance is modified for the 2023 PAG-13 General Permit, DEP would anticipate a similar provision in that General Permit (e.g., submit the modified ordinance by September 30, 2027).

550. Comment: Permit Page 22 – I.B.5.e Stormwater Management Program (SWMP), MCM#5: Provisions should be provided to re-submit ordinances that encourage and expand LID with annual reports any time the ordinance is revised. **(32)**

Response: See response to Comment No. 549.

551. Comment: Various Minimum Control Measures require municipal permittees to enact an ordinance that satisfies all applicable requirements in DEP's Stormwater Management Ordinance Checklist. Municipalities within Chester County have all adopted the County-wide Act 167 Stormwater Ordinance in 2014. We recommend the NOI be modified to make it clear that a recent Act 167 Stormwater Management Ordinance (PA DEP approved) is sufficient and adoption of the DEP Stormwater Ordinance is not necessary. Based upon our preliminary review of the DEP Stormwater Management Ordinance Checklist, it appears we will be able to complete this document for our Act 167 Ordinance. We also acknowledge that minor modifications to the ordinance may be necessary regarding the authorized discharges. **(43)**

Response: See response to Comment No. 526.

552. Comment: We urge DEP to make the model ordinance an option, not a requirement, to be adopted in the exact form presented. MS4 permittees should be permitted to adopt their own ordinances that contain specific, identified mandatory provisions from this model ordinance. **(35)**

Response: See response to Comment No. 526. Use of the model ordinance is one of three options.

553. Comment: The Draft Model Ordinance does not address existing stormwater runoff from adjacent properties. It would be helpful if the Ordinance outlined the municipalities' or state's authorizations to require a property owner to correct stormwater discharge onto neighbor's property, if the municipality chooses to do so. It is unclear what authority the municipality has. **(35)**

Response: Article III, Section 301.F of DEP's model ordinance addresses the creation of (new) stormwater flows and alterations to existing flows. The model ordinance does not address existing flows onto adjacent properties but the municipality can add specific language to address this scenario if desired.

554. Comment: Section 401.E.10 provides an optional provision that a justification must be included with the site plan for BMPs other than GI or LID practices. We strongly feel that this provision should be optional, not required. It would also be helpful to specify what kind of justification criteria are sought and under what circumstances non GI/LID practices should be permitted by the municipality that chooses to adopt this provision. **(35)**

Response: DEP agrees that it should be optional; because it will be optional, DEP is inclined to rely on local judgment in lieu of specific criteria.

555. Comment: Section 301.M: We suggest adding a statement that the Design Considerations in the BMP Manual must be followed. **(35)**

**PAG-13 General Permit
Comment Response Document**

Response: DEP is reluctant to restrict site-specific engineering judgment by mandating design considerations to precisely what is in the BMP Manual.

556. Comment: Section 302.A: We suggest exempting earth disturbances based on impact instead of area. For example, utility line installation and street paving could be exempt, but an increase in impervious areas in urban areas might require some type of treatment. **(35)**

Response: The use of area is a Chapter 102 regulatory standard.

557. Comment: Section 302.B: We suggest exempting particular types of agricultural activities, but not all to reduce the amounts of nutrients entering municipal storm sewer systems. **(35)**

Response: Agricultural activities are specifically exempted in state regulation.

558. Comment: Section 303.B: We suggest modifying the requirements for CG-2 to require rate control or eliminate the method. Please note that some DEP Regional offices are instructing consultants that CG-2 is no longer recognized by PADEP. **(35)**

Response: DEP agrees that CG-2 is not applicable for sites greater than one acre, as noted in the model ordinance.

559. Comment: Section 407: As-Built Plans should include the latitude and longitude for each BMP. **(35)**

Response: DEP has revised Section 407 of the model ordinance to include the submission of latitude and longitude coordinates for all permanent stormwater BMPs, at the central location of the BMP.

560. Comment: In Section 109, clarification could be made on who is authorized to determine whether a permit is considered "Erroneous." **(35)**

Response: The municipality is authorized to make this determination.

561. Comment: In Section 110.C, consider adding "through the NPDES Permit process" at the end of the last sentence. **(35)**

Response: The suggestion is to add the noted phrase after the statement, "No waiver or modification of any regulated stormwater activity involving earth disturbance greater than or equal to one acre may be granted by the Municipality unless that action is approved in advance by the Department of Environmental Protection (DEP) or the delegated county conservation district." The concept is inherent to the current language because the one-acre threshold is an NPDES standard.

562. Comment: In Article II under the definition of "Impervious Surface", part of the definition reads: "Decks, parking areas and driveway areas are not counted as impervious areas if they do not prevent infiltration." Will the developer be required to prove the pervious nature of those situations? What methods should be used to determine this, including to what degree of perviousness is acceptable? Even "pervious" materials such as compacted gravel can have an infiltration rate closer to asphalt than forest. **(35)**

Response: Local officials are best suited to make site-specific judgments of this nature.

**PAG-13 General Permit
Comment Response Document**

563. Comment: In Article II, the definition of “Qualified Professional” could be tightened, because the phrase “otherwise qualified by law” could be interpreted to include an act of a local municipal body. For example, if a municipality makes a resolution that its secretary, who has minimal stormwater training, will serve as the township stormwater permit officer, does that meet the test of being “otherwise qualified by law?” **(35)**

Response: DEP believes it is unlikely that a municipality would purposely recognize unqualified personnel as qualified.

564. Comment: In Article II under the definition of “Retention Volume/Removed Runoff,” the statement “not released directly into the surface waters” could be revised to read: “captured and not released outside of the stormwater structure during or after a storm event. The captured volume dissipates through ground infiltration, transpiration and plant uptake.” **(35)**

Response: The definition proposed in the 2022 draft model ordinance is unchanged from the 2013 version. The proposed language in the comment could require additional clarification to ensure the definition does not conflict with regulatory provisions, which may introduce confusion. DEP prefers to retain the current definition at this time.

565. Comment: In Article II definition of “Runoff,” the statement “flows over the land” could be replaced by “does not immediately infiltrate into the ground or directly fall upon surface waters.” **(35)**

Response: See response to Comment No. 564.

566. Comment: Article III Section 301.F could be revised to read: “without written notification to the adjacent property owner(s) by the developer and written consent from the adjacent property owner through legal easement.” **(35)**

Response: Municipalities are free to customize their ordinances if it is desired to obtain written consent from adjacent property owners, but the standard of notifying adjacent property owners (but not requiring consent) remains in DEP’s model ordinance.

567. Comment: In Section 302.E, a clarifying statement would be helpful in understanding the Municipality’s denying or revoking an exemption is an appealable action. **(35)**

Response: The model ordinance in Section 806 provides suggested language regarding appeals.

568. Comment: In Section 303, first paragraph and Section 303.B, consider revising the wording “For regulated activity areas equal or less than one acre” and “to regulated activities greater than one acre” in this model ordinance and the BMP manual to be consistent with the Chapter 102 regulations that refer to the one-acre rule as “equal to or greater than one acre.” The consistency would help avoid confusion for this ordinance and the BMP manual application vs. NPDES permitting. **(35)**

Response: It is correct that Chapter 102 regulates activities “equal to or greater than one acre.” The BMP Manual however, not Chapter 102, establishes the use of CG-1 vs. CG-2. The BMP Manual specifies the use of CG-1 for activities greater than one acre, which means, technically, that a disturbance of exactly one acre could rely on CG-2. Although the use of precisely the same logic has appeal, it would be inappropriate for the model ordinance to reflect a standard different than the BMP Manual.

569. Comment: In Section 503, consider making the Performance Guarantee applicable after a certain threshold of cost estimate of the improvements, or possibly alter to read: “For SWM Site Plans that involve subdivision and land development, upon determination of the governing body, the applicant shall...” **(35)**

**PAG-13 General Permit
Comment Response Document**

Response: The details of the Performance Guarantee are at a municipality's discretion, subject to Municipal Planning Code requirements.

570. Comment: In Section 601, consider adding "E. Review of Cost of Improvements for Performance Guarantee." (35)

Response: Municipalities may at their discretion add such language.

571. Comment: In Section 804.C, consider adding the wording: "...cannot be reinstated, except where the applicant has been granted an appeal." (35)

Response: Municipalities may at their discretion add such language.

572. Comment: In Section 806, consider adding provision for the Municipality to designate a Stormwater Appeals Board and stating what actions are appealable: appeal of waivers, appeal of plan denial, etc. (35)

Response: Municipalities may at their discretion add such language.

573. Comment: In Appendix A.3, consider adding the wording: "the Municipality shall notify, in writing (via mail with return receipt requested, with a time frame of a minimum of 30 days to be in compliance), the Landowner..." (35)

Response: DEP is reluctant to suggest that permittees should not have immediate access to private property because it could be important for health and safety reasons.

574. Comment: In Appendix A.4, consider adding the wording: "...to maintain said BMP(s), but cannot change the character of the BMPs or surrounding land surface without written permission from the Landowner." (35)

Response: Municipalities may at their discretion add such language.

575. Comment: Regarding the ordinance adoption, we adopted the PADEP-approved model ordinance in December 2013 and had our solicitor certify the ordinance adoption process. We ask that stormwater ordinance adoptions consistent with Act 167 studies be permitted to qualify without any further action on behalf of the municipality until such time as the PADEP requirements dictate a change in the model ordinance contrary to the municipality's ordinance. (42)

Response: See response to Comment No. 526.

576. Comment: Approved Act 167 Ordinances – On page 6 of the NOI (form 3800-PM-BPNPSM0100b rev. 5/2015) the question after the Stormwater Code certification asks, "Does the Stormwater Management Ordinance meet the requirements of the Checklist?" Basically, it seems that if an ordinance was adopted in 2014 that was deemed by DEP to be "Consistent with the 2013 Model Ordinance", as stipulated in the certification, that it should, in turn, meet the requirements of the Checklist. Therefore, if DEP has modified the Model Ordinance requirements, it seems that it would be beneficial for DEP to clearly designate on the checklist which of the items are NOT Consistent with the 2013 Model Ordinance (and/or an Act 167 adopted after 2005), that will require the Ordinance to be amended to be in compliance, rather than leave it to each municipality to make that determination. (44)

Response: See response to Comment No. 526.

**PAG-13 General Permit
Comment Response Document**

577. Comment: The requirement is to notify adjacent property owners when storm water flows may be altered on adjacent property. The term altered must be defined. Does it mean any increase in flows? Does it mean any decrease in flows? Does it mean changing “overland flow” from 100 feet from the property line to 90 feet from the property line? **(46)**

Response: Municipalities may at their discretion define terms such as “altered.”

578. Comment: DEP should encourage permittees to adopt the proposed draft model stormwater ordinance including optional components. Optional components should become required components where stormwater is listed as an impairment and especially where permittees are required to meet loadings reductions of the Chesapeake Bay Program. **(48)**

Response: For the 2018 PAG-13 General Permit, permittees who decide to use the optional content and are able to demonstrate pollutant load reductions as a result of its use will be able to take credit for implemented BMPs to meet requirements of Appendices D and E of the General Permit.

579. Comment: We appreciate that DEP has included a definition for LID but recommend the definition include green infrastructure to be inclusive of the many practices that best manage stormwater to the MEP. **(48)**

Response: Municipalities may at their discretion provide clarification in definitions.

580. Comment: The commenter objects to DEP’s inclusion of a “recommended” 35-foot mandatory minimum riparian forested buffer requirement in the revised model ordinance. Many local governments will erroneously believe that they must adopt the model ordinance as presented by DEP without changes. Inclusion of this arbitrary recommendation and pushing local government adoption is also beyond the scope of DEP’s authority. We request DEP revise the model ordinance and delete all “highlighted options” providing local governments with reasonable clarity as to their responsibilities. We also request DEP clearly state that all currently enacted minimum ordinance requirements will meet DEP requirements and clarify changes are considered options for local governments. In addition, “optional” language for a minimum riparian forested buffer requirement raises questions and concerns relating to conflicts with current state and federal regulations. We request DEP provide guidance and clarification on the following issues as they would conflict with FEMA Flood Ordinances, 25 Pa. Code Chapter 105 (Dam Safety and Waterway Management), and municipal floodplain ordinances.

- The requirement to record an easement document for Municipal Natural Resource Protection is typically regulated via a Zoning Code as setbacks or overlays. The requirements for easement recordation in the model ordinance appear to conflict with many municipal ordinances.
- It appears the model ordinance expands the regulatory protection of floodplains. Any expansion of the riparian buffer into floodplain areas will create conflicts with already permitted actions within regulated floodplains. The current language does not provide for sufficient clarity on effects to these existing permitted activities within floodplains.
- Should the riparian buffer remain within the floodplains, it should be limited to the FEMA regulated floodplains and the Group 13 SEO Manual provision should be excluded or the scientific basis for inclusion of these soil groups should be provided.
- The limits of the riparian buffer requirement are currently unclear and should be clarified. The definition mentions wetlands whereas the regulation does not include wetlands. This discrepancy may cause municipalities to incorrectly include wetlands in the riparian buffer when that is not the recommendation of the PAG-13 update. **(52)**

Finally, the commenter believes the construction oversight provisions in Section 407 B are unnecessary and overly burdensome. 25 Pa. Code Chapter 102 requires construction oversight of BMPs for any disturbance over one acre that requires an NPDES permit. These requirements will place an unnecessary financial burden for small projects less than one acre, and exceed the scope of DEP’s authority. **(52)**

**PAG-13 General Permit
Comment Response Document**

Response: The riparian buffer content is described in the model ordinance as optional. As such it is not required, nor is it necessarily recommended for all permittees, because it is important that each permittee make choices that are cost effective for local conditions.

It is true that municipalities use different mixes of content between their stormwater, SALDO and zoning ordinances. DEP has no objection to the content of the model stormwater ordinance being applied through other ordinance mechanisms, at local discretion.

The requirement in Section 407.B is unchanged from the 2013 model ordinance and is in accord with the Chapter 102 Notice of Termination. Note that the language in 407.B that allows someone other than a licensed professional to sign the completion certificate does not apply to Chapter 102 permits. It is intended to apply to controls on disturbances of less than one acre in municipalities that choose to regulate outside the scope of Chapter 102.

581. Comment: Page 19 of the draft permit and the Ordinance Checklist Instructions do not include a Stormwater Ordinance from a DEP-approved Act 167 study as an acceptable ordinance that would meet the “applicable requirements” as exists under the current permit. This change presents a potentially significant and unfair burden on municipalities that have participated in an approved Act 167 study and enacted a Stormwater Ordinance that is consistent with that study. The Ordinance Checklist implies that there could be an annual requirement to amend the Stormwater Ordinance, which would be time consuming and expensive, and make enforcement that much more difficult due to resulting confusion among applicants. Stormwater Ordinances that are consistent with DEP-approved Act 167 studies should continue to remain sufficient under the permit. **(60)**

Response: See response to Comment No. 526.

582. Comment: Under the Appendix B (Pollutant Control Measures for Waters Impaired by Pathogens), D – The paragraph discusses establishment of an ordinance. If animal waste is handled under another Township ordinance, does it have to be included in the Stormwater Management Ordinance? **(63)**

Response: No. Municipalities may locate stormwater requirements in ordinances other than the stormwater ordinance. A copy of the other ordinance(s) should be provided to DEP.

583. Comment: We strongly support the proposed changes to the draft model ordinance. The revised version of the model stormwater ordinance allows municipalities to adopt optional ordinance provisions that would enhance municipal stormwater management efforts by requiring additional stormwater management on private land. Additionally, the model ordinance promotes green infrastructure and low impact development practices that manage stormwater and provide additional benefits. We support these provisions that would broaden and help ensure the performance of stormwater management efforts. **(12)**

Response: Thank you for the comment.

Topic – Funding and Resources

584. Comment: What funding programs will DEP be rolling out to aid municipalities to offset costs associated the program? Refer to item III.E on page 25. **(1)**

Response: DEP advertised grant funding for stormwater BMPs in the summer of 2015; funding offers are expected in early 2016. DEP expects to offer a similar program in 2016-2017. The Pennsylvania Infrastructure Investment Authority (PENVEST) routinely offers financing for non-point source BMPs, including stormwater BMPs. More information is available on DEP's website, www.dep.pa.gov/MS4.

DEP has a few recommendations to permittees for generating funds and maximizing resources to comply with the NPDES permit:

- Municipalities should attempt to work collaboratively with neighboring municipalities to implement stormwater management programs (MCMs) and other permit requirements to the maximum degree practicable. This is inherent with co-permittees, but even neighboring municipalities with separate permit coverage can collaborate in certain ways. Neighboring permittees can for example combine their public education programs. In addition, Chesapeake Bay Pollutant Reduction Plans can be done on a county scale.
- Consideration should be given to updating local ordinances to include the optional content in DEP's 2022 Model Stormwater Management Ordinance and other BMPs that go beyond state-mandated minimums; such BMPs can be used toward an MS4's pollutant reduction obligations, where applicable. Voluntary retrofits on private property can be encouraged. All municipal construction projects should include improved stormwater management in addition to the primary purpose of the project. Many things can be done without large-scale investment by municipalities on single-purpose stormwater BMPs.
- Consideration should be given to the creation of stormwater authorities. Joint authorities, servicing more than one jurisdiction, can provide an economy of scale. Authorities can also be used to assess stormwater management fees.

585. Comment: DEP should provide funding assistance for various regional groups, such as CTIP. CTIP can offer much needed assistance to local municipalities. **(1)**

Response: Some counties are providing critically important leadership to their local jurisdictions. There is however no existing means for the state to fund that work.

586. Comment: The costs of implementation for existing and future PAG-13 permittees should be considered and associated funding for compliance activities. The MCMs in the general permit and the pollutant control measures/reduction plan requirements of Appendices A-E all include intensive mapping, field investigation, analysis, monitoring and inspection requirements. Many municipalities have small budgets, limited technology, and no full-time staff. Compliance for many municipalities may be virtually impossible without the imposition of new revenue sources, such as tax increases, to cover the costs of program compliance. **(21)**

Response: See response to Comment No. 584.

587. Comment: Program Funding – Our firm represents five (5) municipalities in Chester County and two (2) in Delaware County regarding the implementation of the MS4 program. Funding to support compliance of the objectives and goals of the program has been an issue since its inception. This new Permit, with its added requirements to implement various substantive and costly physical improvements towards improving water quality will only add to the fiscal burden already affecting these municipalities. While everyone clearly understands the need to implement a program that will benefit the environment as a whole regarding storm related runoff, these municipalities are not in a position to undertake this program separately and independently. DEP should take an increased leadership role in requiring that either municipalities join together to attack this

**PAG-13 General Permit
Comment Response Document**

problem on a watershed basis or require the Counties to assume responsibility for the program, which has been done in other areas of the Commonwealth. **(44)**

Response: DEP encourages collaborative efforts among local jurisdictions and leadership roles by counties, but does not at this time believe it has the authority to require such cooperation.

588. Comment: Will grant funding be tied to specific Pollution Reduction Plans? For instance, will projects included in a municipality's PRP be given preferential treatment for grant funding over projects not included in a PRP. **(45)**

Response: The rating system for DEP's 2015-2016 stormwater BMP funding program included a factor for BMPs in approved Pollution Reduction Plans. If the BMP was proposed in an approved plan, it would be scored higher than a BMP that is not in an approved plan. DEP anticipates that future funding programs will maintain this philosophy.

589. Comment: The implementation of Best Management Practices (BMPs) necessary to achieve required pollutant reductions will represent a major expense to municipalities with municipal separate storm sewer systems (MS4s), and it is unclear whether these costs were considered when these goals were established. A 10% reduction of sediment and 5% reduction of phosphorus may be too cost-prohibitive for local governments to bear. We urge the Department to provide grants to offset the considerable costs associated with the implementation of pollutant reduction measures. **(63)**

Response: See response to Comment No. 584.

590. Comment: While there is support for the goals of better managing stormwater to prevent flooding and reduce pollutants entering waterways, there is great frustration with the complexity of the current and proposed permits. Neither the state nor the federal government is providing resources to help municipalities meet these challenges. Engineering firms must be hired to provide the expertise necessary to develop Chesapeake Bay Pollutant Reduction Plans and complete required reports, at considerable expense that municipalities cannot afford. The filing fee should be eliminated. **(63)**

Response: DEP understands the complexity of the MS4 program and encourages any municipality that seeks compliance assistance to contact DEP's regional office that issued the permit or DEP's Bureau of Clean Water. Assisting MS4s with permit compliance is a priority for DEP. Also see response to Comment No. 157 regarding fees.

591. Comment: We also note that the implementation of a comprehensive and effective MS4 stormwater management program presents numerous administrative, technical and economic challenges for the over 940 MS4s in Pennsylvania's six watershed basins. In our experience, municipalities have varying capacity to develop and implement comprehensive stormwater management programs that will effectively reduce pollution. At the state level, administrative and funding policies need to enable continued, long term support to Pennsylvania's MS4s in their compliance efforts. Given recent budget and programmatic cuts, we are concerned about Department capacity to provide this support, manage the stormwater program, and enforce its requirements. **(53)**

Response: While funding is a significant challenge for MS4 permittees and DEP, DEP is optimistic that working collaboratively to implement the requirements of the MS4 permit program will result in achieving the goals of the program.

592. Comment: We want to ensure that DEP continues to view the "operational life span" of a township's compliance efforts to be in the realm of 30 to 40 years so as to not require townships to comply with all stormwater plan requirements in the course of one or two 5-year permit cycles.

**PAG-13 General Permit
Comment Response Document**

Response: There is no compliance schedule for implementation of an MS4's stormwater management program; the MCMs must be implemented immediately with certain exceptions, such as the time provided to update stormwater management ordinances. DEP does not, for example, believe that 30 to 40 years is needed to develop a list of target audience groups under MCM #1. There is a compliance schedule for implementation of Pollutant Control Measures and Pollutant Reduction Plans in the PAG-13 General Permit (see appendices).

DEP agreed that in order to meet pollutant reduction goals for TMDL Strategies as part of the 2013 PAG-13 General Permit (i.e., the full reductions necessary to comply with a TMDL's wasteload allocation), it may take several permit terms. DEP continues to agree with that philosophy, but is, for Pollutant Reduction Plans, also specifying specific minimum pollutant reduction goals for one permit term, i.e., a percentage of the overall pollutant loading, that it believes are achievable.

593. Comment: Even with the threat of increased state and federal attention being focused on municipal stormwater program compliance, municipalities still cannot, without significant additional state, federal and local public investment, quickly extract themselves from their current stormwater conditions which have been the net result of the settlement patterns and road and drainage paradigms of the past 100+ years. **(56)**

Response: See response to Comment No. 584.

594. Comment: Continued incremental progress must be the defining keystone of these efforts rather than the "leapfrogging" manner of progress argued by some. **(56)**

Response: DEP has expected incremental progress during the permit term starting with the effective date of the PAG-13 General Permit in March 2013. DEP's focus to date has been on compliance assistance. Compliance assistance is still a priority for DEP, but expectations will be higher, particularly for renewal permittees, in the subsequent permit term.

Topic – Training and Outreach

595. Comment: DEP should host more seminars and events to aid the municipalities with development of the MS4 program. **(1)**

Response: DEP participates in many stormwater-related events and will continue to do so. In 2016, DEP will hold a series of training events for new MS4 permittees as well as training events that focus on Pollutant Reduction Plan and TMDL Plan development. These events will be announced on DEP's website, www.dep.pa.gov/MS4 and through other channels. DEP would like to do more outreach to the MS4 community and will do so as funding becomes available.

596. Comment: Additional MS4 training opportunities are encouraged. It would be helpful if DEP and EPA staff could coordinate a central location and host annual training events. **(9)**

Response: See response to Comment No. 595. DEP will consider hosting an annual training event if a consistent source of funding is in place.

597. Comment: Chester County representatives attended both of the training sessions held by DEP in February and March of this year. Still, the individual and cumulative implications of all the components of the draft Permit are difficult to fully comprehend and understand, particularly as they relate to counties. Chester County strongly requests that additional workshops be held before the permit is finalized and that DEP consider the challenges that counties face while seeking to comply with these permits. DEP should also provide details regarding individual permits as this process moves forward. **(11)**

Response: See responses to Comment Nos. 475, 590 and 595.

598. Comment: DEP should take proactive steps to notify and educate communities that are expected to be covered under the 2018 PAG-13. The municipalities in Cumberland County that are now part of the 2010 UA, listed in the MS4 Requirements Table and likely to be 2018 PAG-13 permittees were unaware of the NOI and associated comment opportunities. Most of those same municipalities have no experience with PAG-13 and do not understand program requirements. As noted above, PAG-13 compliance will require substantial municipal investment in staff and technology. Proactive notification and education by DEP would allow these municipalities to prepare for their impending responsibilities. **(21)**

Response: Thank you for the comment. In addition to its website and press releases, DEP has worked with statewide municipal associations to help spread the word when there is MS4-related news. DEP is considering other methods to disseminate information, including but not limited to MS4 newsletters that are distributed via email.

599. Comment: The individual and cumulative implications of all the components of the draft Permit are difficult to fully comprehend and understand. CCWRA strongly requests and recommends holding workshops BEFORE and after the permit has been finalized to help ensure that thorough input is provided from the MS4s so that DEP fully understands the constraints and limitations its requirements will cause, and whether further edits can avoid unnecessary complications, and to clarify for the MS4s DEP's expectations for achieving the requirements contained in the permit or requirements in an individual permit. **(23)**

Response: The final PAG-13 General Permit referred to by the comment will be effective on March 16, 2018, and all NOIs for coverage under the 2018 PAG-13 General Permit will be due by September 16, 2017. Normally there would be ample time to hold workshops and other events to gather additional feedback beyond that which was submitted during the 93-day comment period for PAG-13 (May 30 – August 31, 2015); however, DEP has determined that Pollutant Reduction Plans must be developed and submitted with NOIs. As a result, DEP believes that training on the development of Pollutant Reduction Plans is critical during the period between issuance of the final PAG-13 General Permit and September 16, 2017. Issuance of the final PAG-13 General

**PAG-13 General Permit
Comment Response Document**

Permit well before the March 16, 2018 effective date was deemed important to provide certainty on the contents of the permit and to allow for adequate preparation to comply.

600. Comment: Overall, more detailed guidance and clarification, provided in writing on all aspects of the MS4 program, would be very helpful. It is understood and appreciated that MS4s are provided with some discretion in how to meet program requirements. However, the program is evolving, and expectations are changing. Even experienced permittees cannot rely on past practices or guidance to predict future expectations. Permittees frequently have questions about MS4 requirements, and may at times receive different advice or information from different DEP offices or staff members. And verbal guidance cannot be referred to later when an issue arises. The more specific, clear and organized DEP can be in its written guidance, the more likely permittees will achieve compliance with the Department's expectations on the first attempt, reducing staff time commitments for both entities. **(35)**

Response: DEP understands the concern and commits to having detailed guidance on all aspects of the MS4 program on its website as soon as possible and to consider ways to better distribute important information.

601. Comment: Will there be designed MS4 / Non-Point Source Management staff at DEP to contact if issues or concerns with permitting arise? **(37)**

Response: DEP's Bureau of Clean Water (previously named Bureau of Point and Non-Point Source Management) develops all of the published documentation for the MS4 program in Pennsylvania. The Bureau of Clean Water has multiple staff with knowledge of MS4 permitting issues. For general questions related to implementation of the program, MS4s are encouraged to contact the Bureau of Clean Water at (717) 787-8184 or RA-EPPAMS4@pa.gov. The Clean Water Program in DEP's six regional offices implements the permitting and compliance activities for the MS4 program. Each regional program has staff that are either dedicated to or are knowledgeable of MS4 permitting, and should be contacted when there are questions concerning issues that are specific to the MS4.

602. Comment: Municipal Training: We are encouraged that DEP recognizes the need for additional training programs to increase municipal understanding of exactly what DEP expects for compliance under each of the six "minimum control measures" (MCMs) as part of the 2018 PAG-13. We stand with the department in advocating for additional training opportunities, as we believe a direct outreach will be the most effective way to demonstrate how municipal officials should address stormwater management. **(56)**

Response: Thank you for the comment.

603. Comment: Finally, we recommend that DEP designate representatives able to aid municipalities in their efforts to comply with these complex requirements, similar to PennDOT's Municipal Service Representatives who provide guidance on the use of liquid fuel funds. The Department needs to be adequately staffed so that local officials can get questions answered in a timely fashion. **(63)**

Response: DEP is seeking funding for technical service / outreach representatives for the MS4 program, similar to programs in place for drinking water and wastewater, to further assist MS4s. However, DEP believes it can answer all questions from local officials in a timely fashion with its existing resources.