

**FACT SHEET FOR NDPDES PERMIT
NDR04-0000**

**GENERAL PERMIT FOR STORMWATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

DATE OF THIS FACT SHEET – JANUARY 2021

INTRODUCTION

The Federal Clean Water Act (CWA, 1972, and later amendments in 1977, 1981, and 1987, etc.) established water quality goals for the navigable (surface) waters of the United States. One mechanism for achieving the goals of the CWA is the National Pollutant Discharge Elimination System (NPDES), which the US Environmental Protection Agency (EPA) has oversight authority. In 1975, the State of North Dakota was delegated primacy of the NPDES program by EPA. The North Dakota Department of Environmental Quality (NDDEQ), hereafter referred to as “department”, has been designated the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251, et seq.], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of the act and similar federal acts. The department’s authority and obligations for the wastewater discharge permit program is in the NDAC 33.1-16 (North Dakota Administrative Code) which was promulgated pursuant to NDCC chapter 61-28 (North Dakota Century Code). The department uses North Dakota Pollutant Discharge Elimination System (NDPDES) as its permitting title.

The following rules or regulations apply to NDPDES permits:

- Procedures the department follows for issuing NDPDES permits (NDAC chapter 33.1-16-01),
- Standards of Quality for Waters of the State (NDAC chapter 33.1-16-02.1).

These rules require any treatment facility operator to obtain an NDPDES permit before discharging wastewater to state waters. They also define the basis for limits on each discharge and for other requirements imposed by the permit.

According to the North Dakota Administrative Code (NDAC) section 33.1-16-01-08, the department must prepare a draft permit and accompanying fact sheet, and make it available for public review. The department must also publish an announcement (public notice) during a period of thirty days, informing the public where a draft permit may be obtained and where comments regarding the draft permit may be sent (NDAC chapter 33.1-16-01-07). For more information regarding preparing and submitting comments about the fact sheet and permit, please see **Appendix A – Public Involvement**. Following the public comment period, the department may make changes to the draft NDPDES permit. The department will summarize the responses to comments and changes to the permit in **Appendix C - Response to Comments**.

TABLE OF CONTENTS

BACKGROUND INFORMATION.....3

SIGNIFICANT PERMIT CHANGES.....5

COVERAGE UNDER THIS PERMIT8

APPLICABILITY OF THE GENERAL PERMIT8

DISCHARGES NOT COVERED.....9

REQUEST FOR AUTHORIZATION.....9

ALTERNATIVE PERMIT COVERAGE AND NOTICE OF TERMINATION10

SPECIAL CONDITIONS10

MUNICIPAL SEPARATE STORM SEWER SYSTEM PROGRAM.....11

ADDITIONAL PERMIT CONDITIONS12

POST-CONSTRUCTION CONTROLS12

INDUSTRIAL ACTIVITIES.....12

RETENTION AND AVAILABILITY OF RECORDS12

ANNUAL AND DISCHARGE MONITORING REPORT REQUIREMENTS.....12

REGULATED SMALL MS4 DESIGNATION CRITERIA.....13

SURFACE WATER QUALITY-BASED EFFLUENT LIMITS14

NUMERICAL CRITERIA FOR THE PROTECTION OF AQUATIC LIFE AND RECREATION15

NUMERICAL CRITERIA FOR THE PROTECTION OF HUMAN HEALTH.....15

NARRATIVE CRITERIA15

ANTIDegradation15

MIXING ZONES.....15

NUTRIENTS15

EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA16

MONITORING REQUIREMENTS16

TEST PROCEDURES.....16

PERMIT ISSUANCE PROCEDURES16

PERMIT ACTIONS.....16

PROPOSED PERMIT ISSUANCE.....16

APPENDIX A – PUBLIC INVOLVEMENT INFORMATION.....18

APPENDIX B – GLOSSARY20

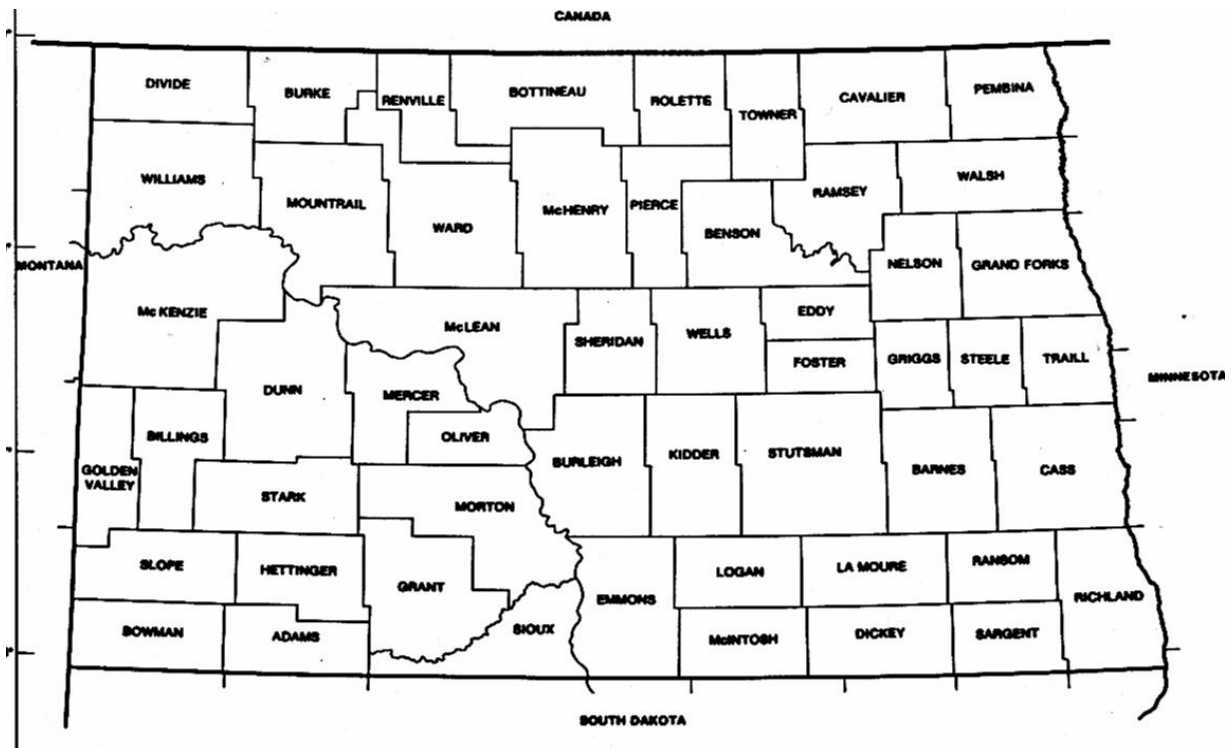
APPENDIX C – RESPONSE TO COMMENTS26

BACKGROUND INFORMATION

General Information

Permit Number:	NDR04-0000
Permit Type:	General Permit, Renewal
Small Municipal Separate Storm Sewer System General Permit Type:	Comprehensive General Permit 40 CFR 122.28(d)(1)
Type of Treatment:	Best Available Technology Economically Achievable (BAT); Best Professional Judgment (BPJ); and Best Management Practices (BMPs)
Discharge Location:	Waters of the State of North Dakota

Figure 1 – Photograph of the State of North Dakota



General permits (Title 40 of the Code of Federal Regulations (CFR), 122.28) provide a streamlined means to cover a large number of facilities that are subject to the regulations pertaining to small Municipal Separate Storm Sewer Systems (MS4s). These facilities are subject to the requirements of Section 402 of the Clean Water Act, as enforced by the NDPDES program. In addition, the general permit process places less of an administrative burden on the issuing authority than the individual permitting process. The general permits require baseline control practices aimed at minimizing the impact of stormwater discharges to waters of the

FACT SHEET FOR NDPDES PERMIT NDR04-0000
 GENERAL PERMIT FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
EXPIRATION DATE: MARCH 31, 2026
 Page 4 of 45

state. Individual permits may be developed to address specific water quality concerns if necessary.

The present general permit issued for stormwater discharges from small MS4s expires March 31, 2021. The initial general permit was issued in response to the EPA’s Stormwater “Phase II” Final Rule published on December 8, 1999 (64 FR68722). The rule requires the department, as the delegated permitting authority, to issue permits for discharges from certain small MS4s.

The primary goal of this permit is to restore and maintain the chemical, physical, and biological integrity of waters of the state to the extent practicable through the implementation of management practices applied to urban stormwater runoff. This permit reflects the phase II rule in requiring regulated MS4s to develop management practices to reduce pollutants in stormwater from the MS4. The minimum requirements for controlling pollutants in stormwater are outlined in a MS4 Program which regulated MS4s must develop. The MS4 Program consists of six minimum control measures (MCM) which include: public education, public participation, illicit discharge elimination, construction site runoff controls, post-construction stormwater management, and pollution prevention for municipal operations. The general permit meets the requirements of 40 CFR 122.34 for a small MS4 (40 CFR 122.28(d)) and is written as a comprehensive general permit (40 CFR 122.28(d)(1)).

The storm sewer systems covered by this permit primarily consist of the systems or portions of systems located within a census defined urbanized area (UA). The systems designated based on UA are referred to as “automatic” designations. In 2002, 14 MS4s in the state were regulated based on the UA criteria. Four additional systems were regulated based on the mandatory review specified in the rules for cities with populations greater than 10,000. Additional information on the designation process for regulation by the permit and possible future designations is provided in the department’s policy document titled, Designation Criteria for Small MS4s. One additional system is regulated under this permit based on the 2010 census defined UA. The 19 MS4s regulated by this permit are identified in Tables 1 and 2.

Table 1: Regulated Small MS4s Located in Urbanized Areas

	Fargo/Moorhead	Grand Forks	Bismarck/Mandan
Cities	Fargo West Fargo Horace	Grand Forks	Bismarck Mandan Lincoln
Counties (Parts located in UA or contributing to regulated city)	Cass	Grand Forks	Burleigh Morton
Public Facilities	North Dakota State University	University of North Dakota	Bismarck State College
	North Dakota Department of Transportation		

Table 2: Regulated Small MS4s Based on Designation Criteria

City	Population (1990)
Minot	36,567
Dickinson	16,010
Jamestown	15,527
Williston	12,512

SIGNIFICANT PERMIT CHANGES

The following additions or changes to the proposed general permit were made:

1. A definition for a “measurable storm event” was added to the proposed permit.
2. A statement was added to Part I of the proposed permit stating the permit is a “Comprehensive General Permit” as required by 40 CFR 122.28(d).
3. The list of discharges authorized under Part I(B)(1) of the proposed permit was expanded to include “other sources identified” in the permit.
4. The application requirements in Part II of the proposed permit were changed to require new permit applications and renewal applicants to submit a notice of intent to the department as part of the permitting process. The changes were made to be consistent with the authorization requirements of 40 CFR 122.28(b)(2)(i) and (v).
5. A statement was added to Part II(B) of the proposed permit stating the Municipal Separate Storm Sewer System (MS4) Program must be a written document (or documents) that describe how the permittee intends to comply with the permit requirements as required by 40 CFR 122.34(b).
6. Reporting releases as required by NDAC 33.1-16-02.1 was included in the types of releases that must be reported in Part III(A) of the proposed permit.
7. A table of Education and Outreach Activities including requirements to implement a minimum number of the outreach activities (Part IV(F)(1)(e)) were added to the Public Education and Outreach on Stormwater Impacts Minimum Control Measure (MCM). Record retention and documentation requirements also were added as Part IV(F)(1)(f) of the Public Education and Outreach on Stormwater Impacts MCM. The additions are meant to make education and outreach activities clear, specific, and measurable as required by 40 CFR 122.43(a).
8. A requirement to provide the public with the opportunity to provide input about the permittee’s MS4 Program at least once per year was added to the Public Participation/Involvement MCM (Part IV(F)(2)(a)). A requirement to provide the public with a resource to submit comments (oral or written) also was added to the Public

FACT SHEET FOR NDPDES PERMIT NDR04-0000
GENERAL PERMIT FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
EXPIRATION DATE: MARCH 31, 2026

Page 6 of 45

Participation/Involvement MCM (Part IV(F)(2)(b)). The additions are meant to make the public participation and involvement activities clear, specific, and measurable as required by 40 CFR 122.43(a).

9. Non-stormwater discharges were added to Part IV(F)(3)(b) of the proposed permit as a type of discharge that needs to be investigated. In addition, the timeline to eliminate the source of an illicit discharge/dumping was moved from Part IV(F)(3)(b) to Part IV(F)(3)(c).
10. A list of distribution methods for providing information about illicit discharges and dumping was added to Part IV(F)(3)(d). The list of distribution methods is meant to make the section of the Illicit Discharge Detection and Elimination MCM clear, specific, and measurable as required by 40 CFR 122.43(a).
11. Non-stormwater discharges were added to Part IV(F)(3)(e) of the proposed permit as a type of discharge that needs to be tracked.
12. A requirement to remove non-stormwater discharges that are significant contributors of pollutants to the MS4 was added to Part IV(F)(3)(f) of the Illicit Discharge Detection and Elimination MCM. The addition is meant to make the section of the Illicit Discharge Detection and Elimination MCM clear, specific, and measurable as required by 40 CFR 122.43(a). Also, the requirement was updated in response to Comment #4 to state permittees are responsible for identifying whether the non-stormwater discharge is a significant contributor of pollutants to the MS4.¹
13. A requirement to provide the public with a resource to contact the permittee about construction site stormwater runoff control was added to the Construction Site Stormwater Runoff Control MCM (Part IV(F)(4)(e)). The addition is meant to make the section of the Construction Site Stormwater Runoff Control MCM clear, specific, and measurable as required by 40 CFR 122.43(a).
14. A requirement to list construction activity enforcement methods was added to Part IV(F)(4)(f) of the Construction Site Stormwater Runoff Control MCM. In addition, a requirement to inspect 100 percent of certain construction activities under the jurisdiction of the MS4 once per year was added to Part IV(F)(4)(f). The additions are meant to make the inspection and enforcement requirements clear, specific, and measurable as required by 40 CFR 122.43(a).
15. Electronic or hardcopy systems used to track inspection and enforcement of construction activity was added to Part IV(F)(4)(g). The addition is meant to make the inspection and enforcement requirements clear, specific, and measurable as required by 40 CFR 122.43(a).
16. A list of ways to provide the construction industry with information about the use of erosion and sediment controls, stabilization practices, and other best management practices to minimize the discharge of pollutants in stormwater runoff was added to Part IV(F)(4)(h). The

¹ Added in response to Comment #4.

FACT SHEET FOR NDPDES PERMIT NDR04-0000
GENERAL PERMIT FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
EXPIRATION DATE: MARCH 31, 2026

Page 7 of 45

addition is meant to make the section of the Construction Site Stormwater Runoff Control MCM clear, specific, and measurable as required by 40 CFR 122.43(a).

17. The language in Parts IV(F)(5)(b) and (c) was updated to make the two sections of the Post-construction Stormwater Management for New Development and Redevelopment MCM clear, specific, and measurable as required by 40 CFR 122.43(a).
18. Language in Parts IV(F)(6)(d)(2), (3), and (4) and as well as Part IV(F)(6)(e)(2) was updated to make the sections of the Pollution Prevention for Municipal Operations MCM clear, specific, and measurable as required by 40 CFR 122.43(a).
19. Electronic reporting requirements and reporting conditions were included in Part VI(E) of the proposed permit.
20. Language in Part VII(E) of the proposed permit pertaining to who can sign applications, reports, and other information was updated to be consistent with 40 CFR 122.22 and other NDPDES stormwater discharge general permits.
21. The design considerations for Wet Detention Ponds in Appendix 1 were updated to specify the Water Quality Volume is the volume above the permanent pool elevation.
22. The requirement to conduct an inspection with 48 hours of a precipitation event resulting in a stormwater discharge for facilities required to develop a Storm Water Pollution Prevention Plan (SWPPP) was removed from Appendix 2(6)(a)(1) of the proposed permit. Inspections are still required once per calendar quarter.
23. The requirement to record the time of an inspection for facilities required to develop a SWPPP was removed from Appendix 2(6)(d)(1) of the proposed permit. In addition, Appendix 2(6)(d)(1) of the permit allows for a means other than a signature to verify the identity of the inspector.
24. The requirement to record the time of maintenance activities for facilities required to develop a SWPPP was removed from Appendix 2(6)(e) of the proposed permit.
25. Oil field production water was included as one of the materials that must have adequate leak and spill protection in Appendix 2(9)(b) of the proposed permit.
26. Language in Appendix 2(9)(d) of the previous permit pertaining to construction activity related to the normal operation and expansion of a MS4 facility was removed from the proposed permit. The language required construction activity inherent to the normal operation and expansion of a MS4 facility to conduct such activity in accordance with the SWPPP for the MS4 facility. The department determined this type of activity is more appropriately covered by the construction general permit.
27. Appendix 2(9)(e) of the proposed permit was revised to allow wash water from vehicle and equipment cleaning and washing to discharge to the storm sewer system if it does not contain detergents or hazardous cleaning products. BMPs are used to address sediment, and dry clean-up methods are used to clean up oil and grease and other toxic or hazardous materials. Language for municipal vehicle and equipment cleaning and washing operations

~~in Appendix 2(9)(e) of the proposed permit was revised to allow wash water from operations that does not contain detergents, hazardous cleaning products, and minimal amounts of sediment to be discharged to the storm sewer system.²~~

28. The monitoring period and requirement to submit monitoring results were added to Appendix 5 of the proposed permit for facilities that are required to sample.
29. Changes were made to Appendix 5 – Stormwater Sampling Requirements, Procedures and Conditions in the proposed permit specifying the type of storm event that must be sampled and when a sample must be collected. In addition, representative sampling plans must be included as part of the SWPPP.
30. The inspection frequency of pollution control devices was changed in Part IV(F)(6)(d)(1) of the finalized permit in response to Comment #1.³
31. The opening statement of Part IV(F)(3) of the finalized permit was updated in response to Comment #5.⁴
32. Part I(B)(4)(a) of the finalized permit was updated in response to Comment #11 to address the department's antidegradation procedures.⁵
33. Part I(C)(2) of the finalized permit was updated in response to Comment #12 to clarify the application process for permittees.⁶
34. Part III(C) of the finalized permit was updated in response to Comment #13 to state how often permittees must review whether their MS4 Program addresses impaired waters or Total Maximum Daily Load waste load allocations.⁷
35. The conditions for modifying an MS4 Program in Part IV(G) of the finalized permit were updated in response to Comment #17.⁸
36. Language in Parts VII(F) and (G) of the finalized permit related to non-compliance reporting and bypasses was updated in response to Comment #18 and Comment #19.⁹

COVERAGE UNDER THIS PERMIT

Applicability of the General Permit

The proposed general permit authorizes the discharge of relatively uncontaminated stormwater from small MS4s to the waters of the state of North Dakota may be granted. The permit is not

² Language changed in response to Comment #22.

³ Added in response to Comment #1.

⁴ Added in response to Comment #5.

⁵ Added in response to Comment #11.

⁶ Added in response to Comment #12.

⁷ Added in response to Comment #13.

⁸ Added in response to Comment #17.

⁹ Added in response to Comment #19.

intended for discharges from industrial activities or construction disturbances unless otherwise specified. These activities will be covered under separate general permits, NDR05-0000 for industrial activities; NDR32-0000 for mining, extraction or paving material preparation activities; and NDR11-0000 for construction activities. This permit applies to discharges composed (either in whole or in part) of stormwater from small MS4s as defined in 40 CFR 122.26(b)(16) and designated under 40 CFR 122.32(a)(1) & (a)(2).

Authorization under this permit applies only to the storm sewer system (or portions of a system) operated by the MS4 and described in the application. Authorization under this permit does not cover other regulated MS4s operated within or connected to the MS4.

Discharges Not Covered

There are other types of discharges that are not appropriately regulated by the proposed permit and other limitations on what activities the proposed permit can authorize. As such, the following discharges are not eligible for coverage under the proposed permit:

- Discharges other than stormwater and allowable non-stormwater sources.
- Discharges of stormwater when a separate NPDES permit is required for these activities. For example, while stormwater from ~~industrial activity or~~¹⁰ construction activity may be discharged from a MS4 with authorized stormwater discharges, this permit does not replace or satisfy any other permits required for those discharges.
- Discharges from new MS4 outfalls or the expansion of existing MS4 outfalls that are not constructed or operated in accordance with the conditions of the permit. The discharge from new or expanded MS4 discharges unless the new or expanded MS4 discharge is constructed and operated in accordance with the conditions of the permit.¹¹
- Discharges whose direct, indirect, interrelated, interconnected, or independent impacts would jeopardize a listed threatened or endangered species or adversely modify a designated critical habitat.
- Discharges that adversely affect properties listed (or eligible for listing) in the National Register of Historic Places or affecting known or discovered archeological sites.

Request for Authorization

Small MS4s that are required to obtain coverage under the proposed permit must submit a Notice of Intent (NOI) in accordance with 40 CFR 122.28(b)(2). Small MS4s covered under the present permit shall be retained, provided a satisfactory request was made under the renomination provisions of the permit. ~~If necessary, the department may require the submittal of a new NOI.~~¹² The NOI will include the following:

- The street address and the name of the owner, agency, or person with operational control of the MS4;

¹⁰ Deleted in response to Comment #27.

¹¹ Language changed in response to Comment #23.

¹² Sentence removed in response to comment #24.

- The name, address, and telephone number of the contact responsible for permit compliance;
- A brief description of the extent of the MS4;
- The name or general description of the water body(s), or other MS4s, that receive stormwater from the MS4;
- The location of MS4 owned and operated facilities and open spaces;
- The location and description of systems operated by other public entities within the MS4;
- A summary of the MS4 Program as outlined in the permit.

Alternative Permit Coverage and Notice of Termination

The department may require any small MS4 to apply for and either obtain an individual NDPDES permit or seek coverage under an alternative NDPDES general permit (40 CFR 122.28(b)(3)). Any small MS4 covered by this general permit may request to be excluded from such coverage by applying for an individual NDPDES permit. When an individual NDPDES permit is issued to a person otherwise subject to this permit, the applicability of the general permit to the individual permittee is automatically terminated upon the effective date of the individual permit. When a permittee is approved for coverage under an alternative general permit, the applicability of this general permit is automatically terminated upon the date of approval for coverage under the alternative general permit.

Special Conditions

The proposed permit must identify discharges that are prohibited from coverage under the permit. Wastewater and other non-stormwater sources that combine with a stormwater discharge must comply with a NDPDES permit specifically for the wastewater or non-stormwater discharge. Non-stormwater discharges that are eligible for coverage under the proposed permit include: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from firefighting activities. These non-stormwater discharges are identified, or sufficiently similar to those identified, in similar EPA stormwater discharge general permits.

The proposed permit does not relieve the permittee of the reporting requirements under 40 CFR 110, 40 CFR 117, or 40 CFR 302 or the reporting requirements found in NDAC 33.1-16-02.1. Any releases which meet any reporting requirements must be reported. There is a remote possibility that hazardous substances in excess of reporting quantities may enter stormwater discharges regulated by this permit. Since the discharge of these hazardous substances is not authorized by this permit, the reporting requirement exemption in 40 CFR 117.12 would not apply, and all specified reporting requirements would remain in effect. Of a more probable nature is the possibility of oil in excess of the mandated reporting quantity entering a stormwater

discharge. As an oil spill release is not authorized by this permit, the discharger would not be relieved of the reporting obligations, which in this case are identified in 40 CFR 110. In addition, the requirements of Section 311 of the Clean Water Act, and any applicable provisions of Section 301 and 402 of the Clean Water Act would also apply.

MUNICIPAL SEPARATE STORM SEWER SYSTEM PROGRAM

Permittees must develop, implement and enforce a MS4 Program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP) to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The MS4 Program consists of a combination of Best Management Practices (BMPs) including education, maintenance, control techniques, system design and engineering methods, and other provisions to meet the minimum requirements of the permit. The MS4 Program can consist of a single document or multiple documents that describe how the permittee intends to comply with the requirements of the permit as allowed by 40 CFR 122.34(b).

The MS4 Program addresses the six minimum control measures (MCM) outlined in 40 CFR 122.34. The permit includes the minimum controls identified for the six control measures. The terms and conditions for each MCM are meant to be expressed in clear, specific, and measurable terms which may include narrative, numeric, or other types of requirements (40 CFR 122.43(a)). The MCMs are:

1. Public education and outreach;
2. Public participation/involvement;
3. Illicit discharge detection and elimination;
4. Construction site runoff control;
5. Post-construction runoff control; and
6. Pollution prevention/good housekeeping for municipal operations.

The MS4 Program must include BMPs that control or reduce pollutants as appropriate for a community. MS4s must consider the sources of pollutants and the potential polluting activities in the MS4 when developing BMPs. For each minimum control measure, there must be a description of the BMPs for the measure, responsible department in charge, an implementation schedule, and measurable goals that will be used to determine the success or benefits of the BMPs.

Implementation of one or more minimum control measures may be shared between MS4s (40 CFR 122.35). This rule provides that a MS4 may cooperate with all or part of a MS4 Program developed by another MS4. This option is particularly beneficial for MS4s that serve low populations, have limited resources, or are adjacent to another MS4. An MS4 still remains responsible for compliance with the permit within their jurisdiction, however. Any agreement outlining such an arrangement must be maintained as part of the MS4 Program (40 CFR 122.35(a)(3)).

ADDITIONAL PERMIT CONDITIONS

Post-Construction Controls

The proposed permit includes design considerations for post-construction controls. The design considerations provide a volume of runoff that needs to be treated called the Water Quality Volume. The Water Quality Volume is generally equivalent to the first 0.5 inches of runoff. The design considerations also specify drawdown and detention times for ponds used for sedimentation. The Water Quality Volume along with the drawdown/detention times provide a base for the design of post-construction controls to treat runoff from new development and redevelopment projects.

Industrial Activities

Stormwater discharges from industrial activities operated by the permittee may be covered by this permit provided the permittee develops and implements a stormwater pollution prevention plan (SWPPP) for each industrial facility. Typical industrial stormwater discharges operated by municipalities are transportation facilities, wastewater treatment facilities with design flows of 1.0 million gallons per day and waste handling facilities. The MS4 may obtain a separate permit for the industrial activities within the area covered by the MS4. If a MS4 does not obtain coverage under a separate permit for industrial stormwater discharges, the MS4 must develop a SWPPP as outlined in the proposed MS4 permit. The SWPPP requirements are the same as those found in the state's 2020¹³ general permit for industrial stormwater discharges.

Retention and Availability of Records

The proposed permit includes requirements to keep records required by the permit for at least three years and submit records when specifically asked to do so, and to make records available to the public in accordance with 40 CFR 122.34(d)(2).

Annual and Discharge Monitoring Report Requirements

The proposed permit requires permittees to submit reports to the department each year in accordance with 40 CFR 122.34(d)(3). The annual report covers the monitoring period from January 1 to December 31. The report is due by March 31 of each year unless¹⁴ another date is¹⁵ set by the department.

MS4 facilities that are required to conduct sampling under the proposed permit must submit a discharge monitoring report (DMR). The DMR summarizes monitoring results obtained during the monitoring period. If no discharge occurs during a reporting period, "no discharge" shall be reported. Facilities also must report if a sample could not be collected because the facility was inactive or unstaffed, or if the discharge occurred outside of normal business hours. The proposed permit describes the schedule for submitting yearly reports.

¹³ Added in response to comment #28.

¹⁴ Changed in response to comment #29.

¹⁵ Added in response to comment #29.

REGULATED SMALL MS4 DESIGNATION CRITERIA

A description of the regulated MS4s in North Dakota including the designation criteria developed based on the Stormwater Phase II Final Rule (December 8, 1999) was released in a separate policy document North Dakota Department of Health NDPDES Storm Water Permitting Policy Designation Criteria for Small MS4s, December 19, 2002. The document reflects the designation criteria in place when the Phase II Final Rule took effect. The policy document is not being changed as part of the permit renewal; however additional small MS4s may be or have been designated as “regulated” MS4s since the document was released.

The Phase II rule directs the state to require permits for certain MS4s located in urbanized areas (UAs) and develop designation criteria that would be applied to MS4s outside an UA. The rationale for the discretionary parts of the designation criteria are noted in this fact sheet.

The Phase II rule includes four provisions for designating a small MS4 for regulation and thus subject to permit coverage. A system can be designated as a “regulated” small MS4 by any of the following:

1. Automatic designation: Small MS4s located within the boundaries of an UA defined by the latest decennial census conducted by the U.S. Census Bureau;
2. Potential designation by permit authority: Small MS4s that are located outside of UAs determined to result in or have the potential to result in significant water quality impacts;
3. Contributes to an interconnected regulated MS4: Small MS4s that contribute substantially to pollutant loadings of a physically interconnected MS4 regulated by the NDPDES program; or
4. Petition for designation: Small MS4s may be designated following a final determination by the department on a petition, or request, for designation.

Small MS4s located in an UA are automatically designated for coverage under 40 CFR 122.32. The definition for small MS4 includes systems serving state or federal complexes such as colleges in addition to the typical municipal entities such as cities and towns. The definition also includes systems owned by a public body having jurisdiction over the disposal of stormwater and other wastes such as a highway system.

A list of storm sewer systems located within urbanized areas was provided in the preamble to the Phase II rule. The list identified several townships in North Dakota as potential MS4s subject to automatic coverage. In North Dakota, townships are not normally associated with the operation of storm sewer systems. While townships normally maintain roads within their boundaries, NDCC 58-12-05 provides that the township overseer of highways is a deputy of the county superintendent of highways. In addition, the century code title pertaining to townships (NDCC 58) does not identify duties pertaining to the operation of storm sewer systems. As such, the department has not designated townships as “regulated” small MS4s that require coverage under the general permit.

The department has not required coverage for state or federal systems or complexes in UA's (such as colleges, military facilities, prisons, etc.) that service a population less than 1,000.

While these entities could have piping and other conveyances that drain stormwater, the stormwater is generally routed to a city system. In regard to these small public complexes, the preamble to the Phase II rule indicated that the permit authority would have to use its best judgment to decide if the complex should be regulated as a small MS4 based on the nature of the complex and its stormwater conveyance system (64 FR 68749). Additionally, the permit authority should consider whether the public complex cooperates with the municipality's efforts to implement their stormwater management program. Since the city (or county) is in the best position to identify the extent of its jurisdiction and cooperation by a public complex, the department will rely on the city's (or county's) judgment and require permits for facilities that are identified as not cooperating with the local stormwater program.

The Phase II Final Rule requires the department as the permitting authority to develop a set of designation criteria and apply them to MS4s outside of UAs (40 CFR 123.35(b)). The rule required the evaluation of MS4s serving a population of at least 10,000 and with a population density of at least 1,000 people per square mile prior to December 9, 2002 (40 CFR 123.35(b)(2)&(3)). All cities in North Dakota with a population of 10,000 or greater were designated for coverage.

The department's designation criteria for MS4s outside of UAs take into consideration the factors in 40 CFR 123.35(b)(1). The factors include the municipality's population, the sensitivity of the receiving water, proximity to an UA, and pollutant contribution to a receiving water. The department can apply the criteria, as appropriate, to designate additional small MS4s for coverage under the permit at any time.

The department waived coverage under the general permit for several very small MS4's located in the Fargo UA (40 CFR 123.35(d)). The incorporated towns of Briarwood, Frontier, Prairie Rose, and North River were waived due to populations well under 1,000 people and limited growth potential. The department intends to continue the waivers as part of the permit renewal.

The cities of Lincoln and Horace, located in the Bismarck and Fargo UAs, respectively, are the smallest cities regulated by the permit. Lincoln had a population of 1,730 based on the 1990 census and did not meet the criteria for waivers in 2002 as specified in the Phase II rule for places with populations of more than 1,000 people. Horace had a population of 2,430 based on the 2010 census and also was included in the Fargo UA.

SURFACE WATER QUALITY-BASED EFFLUENT LIMITS

The North Dakota Standards of Quality for Waters of the State (NDAC Chapter 33.1-16-02.1) – known as the state water quality standards (WQS) – are designed to protect existing water quality and preserve the beneficial uses of North Dakota's surface waters. Stormwater discharge permits must include conditions that ensure the discharge will meet the surface water quality standards. Water quality-based effluent limits may be based on an individual waste load allocation or on a waste load allocation developed during a basin wide total maximum daily load (TMDL) study. TMDLs result from a scientific study of the water body and are developed in order to reduce pollution from all sources.

Numerical Criteria for the Protection of Aquatic Life and Recreation

Numerical water quality criteria are listed in the WQS for surface waters (NDAC Chapter 33.1-16-02.1). They specify the maximum levels of pollutants allowed in receiving water to protect aquatic life and recreation in and on the water. The department uses numerical criteria along with chemical and physical data for stormwater and receiving waters to derive the effluent limits in the discharge permit. When surface water quality-based limits are more stringent or potentially more stringent than technology-based limits, the discharge must meet the water quality-based limits.

Numerical Criteria for the Protection of Human Health

The U.S. EPA has published numeric water quality criteria for the protection of human health that are applicable to dischargers. These criteria are designed to protect humans from exposure to pollutants linked to cancer and other diseases, based on consuming fish and shellfish and drinking contaminated surface waters. The WQS also include radionuclide criteria to protect humans from the effects of radioactive substances.

Narrative Criteria

Narrative water quality criteria (NDAC Chapter 33.1-16-02.1-08) limit concentrations of pollutants from exceeding applicable standards of the receiving waters. The department adopted a narrative biological goal solely to provide an additional assessment method that can be used to identify impaired surface waters.

Antidegradation

The purpose of North Dakota's Antidegradation Policy (NDAC Chapter 33.1-16-02.1 (Appendix IV)) is to:

- Provide all waters of the state one of three levels of antidegradation protection.
- Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.

The department's fact sheet demonstrates that the existing and designated uses of the receiving water will be protected under the conditions of the proposed permit.

Mixing Zones

The department's WQS contain a Mixing Zone and Dilution Policy and Implementation Procedure, NDAC Chapter 33.1-16-02.1 (Appendix III). This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

Nutrients

Numeric nutrient criteria have yet to be developed for the state of North Dakota. Currently, the WQS contain a narrative standard stating that surface waters must be free from nutrients in concentrations or loading that cause objectionable growth of vegetation, algae, or other impairments (NDAC 33.1-26-02.1-08(1)(a)(6)). The proposed permit contains public education,

illicit discharge and dumping, TMDL, and requirements for written fertilizer application procedures that allow permittees to address nutrient reduction.

EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA

The effluent limitation and benchmark concentrations in the proposed permit reflect the conditions of the EPA Multi-Sector General Permit (MSGP-2015). Water quality-based limits may be imposed on discharges covered by this permit through the implementation of a TMDL allocation. In addition, a MS4 covered by this permit may be required to obtain an individual permit based on site specific water quality-based limitations.

MONITORING REQUIREMENTS

The department requires monitoring, recording, and reporting (NDAC Chapter 33.1-16-01-(21-23) and 40 CFR 122.41 and 122.44) to verify that the treatment process is functioning correctly and that the discharge complies with the permit's limits.

Test Procedures

The collection and transportation of all samples shall conform to EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount.

PERMIT ISSUANCE PROCEDURES

Permit Actions

The proposed permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to WQS, the development and approval of waste load allocation plans, the development or revision to water quality management plans, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Proposed Permit Issuance

The proposed permit meets all statutory requirements for the department to authorize a stormwater discharge associated with small MS4s. The permit includes limits and conditions to protect human health and aquatic life, and the beneficial uses of waters of the State of North Dakota. The department proposes to issue the proposed permit for a term of five years.

Any request to retain coverage under a renewal of this permit shall be made in writing to the department at least 15 days prior to the expiration date of this permit. Typically, the department

FACT SHEET FOR NDPDES PERMIT NDR04-0000
GENERAL PERMIT FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
EXPIRATION DATE: MARCH 31, 2026

Page 17 of 45

provides permit holders with renewal or renotification instructions when a new permit has been drafted. Upon request by the department, a new Notice of Intent shall be submitted.

APPENDIX A – PUBLIC INVOLVEMENT INFORMATION

The department proposes to reissue a general permit for stormwater discharges associated with small Municipal Separate Storm Sewer Systems. The permit includes the use of best management practices, the development of a MS4 Program, monitoring requirements, and other conditions. This fact sheet describes the types of small MS4s covered under the permit and the department's reasons for requiring permit conditions.

The department will place a Public Notice of Draft on **February 5, 2021** in the **Bismarck Tribune**, the official newspaper of the capital city, and in **Regional Papers** throughout the state to inform the public and to invite comment on the proposed draft North Dakota Pollutant Discharge Elimination System permit and fact sheet. The notice also will be mailed to the department's Public Notice mailing list and placed on the department's Public Comments, Meetings & Notices webpage.

The Notice –

- Indicates where copies of the draft Permit and Fact Sheet are available for public evaluation.
- Offers to provide assistance to accommodate special needs.
- Urges individuals to submit their comments before the end of the comment period.
- Informs the public that if there is significant interest, a public hearing will be scheduled.

You may obtain further information from department by telephone, 701.328.5210 or by writing to the address listed below.

North Dakota Department of Environmental Quality
Division of Water Quality
918 East Divide Avenue, 4th Floor
Bismarck, ND 58501

The primary author of the general permit and fact sheet is Dallas Grossman.

FACT SHEET FOR NDPDES PERMIT NDR04-0000
GENERAL PERMIT FOR SMALL MUNICIPAL SEPERATE STORM SEWER SYSTEMS

EXPIRATION DATE: MARCH 31, 2026

Page 19 of 45

**North Dakota Department of Environmental Quality Public Notice
Issue of an NDPDES Permit**

Public Notice Date: 2/5/2021 Public Notice Number: ND-2021-002

Purpose of Public Notice

The Department intends to issue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

Permit Information

Application Date: 10/1/2020 Application Number: NDR04

Applicant Name: Small Municipal Seperate Storm Sewer Systems (MS4s)

Mailing Address: ND Dept of Env Quality, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947

Telephone Number: 701.328.5242

Proposed Permit Expiration Date: 3/31/2026

Description

The NDDEQ proposes to reissue NDPDES General Permit NDR04-0000 to authorize the discharge of stormwater from small Municipal Separate Storm Sewer Systems (MS4s). The permit applies to MS4s in North Dakota that are regulated pursuant to 40 CFR 122.26. MS4s covered by this permit are located in census defined urbanized areas and cities with a population of at least 10,000. The NDDEQ may authorize other small MS4s based on criteria outlined in the Phase II Federal Stormwater Rule. The general permit requires a stormwater management program to reduce pollutants in stormwater discharges from the MS4 and includes minimum control measures as identified in 40 CFR 122.34.

MS4s included in the renewal are: Bismarck City of, Bismarck State College, Burleigh County (Urbanized Area), Cass County (Urbanized Area), Dickinson City of, Fargo City of, Grand Forks City of, Grand Forks County (Urbanized Area), Horace City of, Jamestown City of, Lincoln City of, Mandan City of, Minot City of, Morton County (Urbanized Area), ND Dept. of Transportation (Urbanized Area), NI State University, University of ND, West Fargo City of, and Williston City of.

Tentative Determinations

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCAA will be protected.

Information Requests and Public Comments

Copies of the application, draft permit, and related documents are available for review. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947 or by calling 701.328.5210.

All comments received by March 11, 2021 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

APPENDIX B – GLOSSARY

DEFINITIONS Standard Permit BP 2019.05.29

1. “**Act**” means the Clean Water Act.
2. “**Average monthly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
3. “**Average weekly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
4. “**Best management practices**” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. “**Bypass**” means the intentional diversion of waste streams from any portion of a treatment facility.
6. “**Composite**” sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24-hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
7. “**Daily discharge**” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
8. “**Department**” means the North Dakota Department of Environmental Quality, Division of Water Quality.
9. “**DMR**” means discharge monitoring report.
10. “**EPA**” means the United States Environmental Protection Agency.
11. “**Geometric mean**” means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

12. “**Grab**” for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.
13. “**Instantaneous**” for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.
14. “**Maximum daily discharge limitation**” means the highest allowable “daily discharge.”
15. “**Salmonid**” means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.
16. “**Sanitary Sewer Overflows (SSO)**” means untreated or partially treated sewage overflows from a sanitary sewer collection system.
17. “**Severe property damage**” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
18. “**Total drain**” means the total volume of effluent discharged.
19. “**Upset**” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

DEFINITION Permit Specific

1. “**Common plan of development or sale**” means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, e.g., a housing development of five ¼-acre lots (40 CFR 122.26(b)(15)(i)).
2. “**Expanded source of pollutants**” means any changes in volume, quality, location, or any other factor that results in increased pollutant loading from a regulated discharge source which would have significant permanent effects on waters of the state.
3. “**General permit**” means a permit issued under NDAC 33.1-16-01 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.

4. **“Maximum extent practicable”** or **“MEP”** is the statutory standard that establishes the level of pollutant reductions that an owner or operator of regulated MS4s must achieve. The USEPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. The USEPA envisions application of the MEP standard as an iterative process.
5. **“Measurable storm event”** means a storm event that results in an actual discharge and follows the preceding measurable storm event by at least 72 hours (3-days). The 72-hour storm interval does not apply if you document that less than a 72-hour interval is representative for local storm events. In the case of snowmelt, the monitoring must be performed at a time when a measurable discharge occurs at your site.
6. **“Municipal separate storm sewer system”** or **“MS4”** means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
 - Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management Agency under section 208 of the CWA that discharges to waters of the United States;
 - Designed or used for collecting or conveying stormwater;
 - Which is not a combined sewer; and
 - Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.
7. **“NPDES”** means National Pollutant Discharge Elimination System and includes the authorized state program.
8. **“New development”** means construction activities that create new impervious surface.
9. **“New source of pollutants”** means a discharge that started after the effective date of this permit.
10. **“Notice of Intent”** as referenced in the US EPA documents is synonymous with the term “permit application” for the purposes of this permit.

FACT SHEET FOR NDPDES PERMIT NDR04-0000
GENERAL PERMIT FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
EXPIRATION DATE: MARCH 31, 2026

Page 23 of 45

11. **“Other regulatory mechanism”** means any legally enforceable document, such as a contract or other agreement that has penalties such as withholding payments, fines or other measures to prevent non-compliance.
12. **“Operator”** means the person with primary operational control and legal responsibility for the municipal separate storm sewer system.
13. **“Outfall”** means the point where a municipal separate storm sewer system discharges from a pipe, ditch, or other discrete conveyance to receiving waters, or other municipal separate storm sewer systems. It does not include diffuse runoff or conveyances, which connect segments of the same stream or other water systems.
14. **“Owner”** means the person that owns the municipal separate storm sewer system.
15. **“Person”** means the state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity, including, but not limited to, association, commission or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation, or other entity.
16. **“Physical alteration”** means the dredging, filling, draining, or permanent inundating of a wetland. Restoring a degraded wetland by reestablishing its hydrology is not a physical alteration.
17. **“Redevelopment”** refers to alterations of a property that change the “footprint” of a site or building in such a way that results in the disturbance of equal to or greater than one acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts and offer no new opportunity for stormwater controls.
18. **“Small municipal separate storm sewer system”** or **“small MS4”** means all separate storm sewers that are:
 - Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.
 - Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to 40 CFR 122.26 paragraphs (b)(4) and (b)(7) of, or designated under paragraph (a)(1)(v).
 - This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

19. **“Stormwater”** means stormwater runoff, snowmelt runoff, surface runoff and drainage.
20. **“Stormwater discharge associated with construction activity”** means discharge of stormwater from construction activities; including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre. Construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
21. **“Stormwater associated with industrial activity”** means stormwater runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR 122.26(b)(14). Industrial facilities (including industrial facilities that are federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)-(xi)) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this subsection:
- (i) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under Category (xi) of this paragraph);
 - (ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28, 29, 30, 311, 32, 33, 3441, 373;
 - (iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by products or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;
 - (iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;
 - (v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;
 - (vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;
 - (vii) Steam electric power generating facilities, including coal handling sites;

FACT SHEET FOR NDPDES PERMIT NDR04-0000
GENERAL PERMIT FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
EXPIRATION DATE: MARCH 31, 2026

Page 25 of 45

- (viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42, 44 and 45 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) - (vii) or (ix) - (xi) of this subsection are associated with industrial activity;
 - (ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;
 - (x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;
 - (xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25.
22. **“Total Maximum Daily Load” or “TMDL”** is the process established by the USEPA for the allocation of pollutant loads, including stormwater, to a particular water body or reach of a water body.
23. **“Uncontaminated ground water infiltration** (as defined at 40 CFR 35.2005(20))” means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.
24. **“Waters of the State”** means any and all surface waters that are contained in or flow in or through the state of North Dakota as defined in NDCC 61-28-02. This definition includes all water courses, even if they are usually dry.

APPENDIX C – RESPONSE TO COMMENTS

Below are summaries of the written comments received during the public comment period. Although there are specific responses to each comment, the document should be read in its entirety with the understanding that a response to one comment may be applicable to additional comments. The department has updated the proposed permit and fact sheet to provide clarification and address comments received during the comment period. Substantive changes are discussed in the responses.

North Dakota Cities' Engineering and Public Works Comments:

1. Comment

Separator Frequency
Section IV.F.6.d.1

“the frequency may be reduced to once every two years.”

This should be changed to once every five years to match the frequency of the pond and outfall inspections outlined in the applicable section.

Response

The department reviewed the inspection frequency requirements of this section.

The department determined pollution control devices require inspection more often than ponds and outfalls. The department also determined standardizing the inspection frequency would make the requirement easier to implement for permittees. In response to this comment, the department changed Part IV(F)(6)(d)(1) from:

“Annually inspect all pollution control devices, such as grit chambers, sumps, floatable skimmers, traps, separators, small settling devices, and filtering devices. If maintenance or sediment removal is required as a result of each of the first two annual inspections, the frequency of inspection must be increased to prevent carry-over or washout of pollutants from control measures and maximize pollutant removal. If maintenance or sediment removal is not required as a result of both of the first two annual inspections, the frequency may be reduced to once every two years.”

To:

“Inspect all pollution control devices such as grit chambers, sumps, floatable skimmers, traps, separators, small settling devices, and filtering devices once every two years on a rotating basis. If maintenance or sediment removal is required as a result of two consecutive inspections, the frequency of inspection must be increased to annual.”

2. Comment

Principal Executive Officer
Section VII.E

The term “principal executive officer” needs to be more clearly defined within the MS4 or local ranking elected officials need to be able to designate authorized staff. Municipal department heads need signatory power for all applications. Construction managers need signatory power for construction NOI documents.

Response

The department defers to 40 CFR 122.22(a)(3) for the signatory requirements of an NOI. Because the structure of municipal government can vary between municipalities, the department defers to the North Dakota Century Code – particularly Title 40 – for what is considered a principal executive officer or similar position.

The Small Municipal Separate Storm Sewer System permit does not apply to stormwater discharges from construction activity and small construction activity as defined in 40 CFR 122.26(b)(14)(x) and (b)(15). Notice of intent signatory authority related to construction activity and small construction activity is outlined in the NDPDES construction stormwater permit, NDR11-0000.

3. Comment

Sampling Requirements
Appendix 2.7

“The SWPPP shall include sampling procedures for facilities required to conduct sampling.” The phrase “facilities required to conduct sampling” should be changed to “facilities with industrial activities identified in Section IV.F.6.e.4 of the MS4 permit” or similar. The vague language does not match the intent of requiring sampling for defined industrial activities.

Response

The department concurs with the North Dakota Cities’ Engineering and Public Works’ suggestion. The department updated the language in the finalized permit to specifically identify the types of facilities that are required to sample. In response to this comment, the department changed the first sentence of Appendix 2, Item 7 from:

“The SWPPP shall include sampling procedures for facilities required to conduct sampling.”

To:

“The SWPPP shall include sampling procedures for facilities with industrial activities identified in Part IV(F)(6)(e)(4) of this permit.”

4. Comment

Non-Stormwater Sources
Section IV.F.3.f

“Address the following categories of non-stormwater discharges or flows if identified as significant contributors of pollutants to the MS4”

This phrase should be modified to “identified by permittee as significant contributors of pollutants to the MS4.” These determinations need to be made locally.

Response

The department concurs with the North Dakota Cities’ Engineering and Public Works’ suggestion. The requirement for the permittee to address a non-stormwater discharge if the permittee identifies the non-stormwater discharge as a significant contributor of pollutants to the MS4 is supported by 40 CFR 122.34(b)(3)(ii). In response to this comment, the department changed the first sentence of Part IV(F)(3)(f) from:

“Address the following categories of non-stormwater discharges or flows if identified as significant contributors of pollutants to the MS4.”

To:

“The permittee shall address the following categories of non-stormwater discharges or flows if the permittee identifies them as significant contributors of pollutants to the MS4.”

5. Comment

Bismarck’s comments pertain to section Sec IV – 3 – f (see below)

First sentence change to; “If identified by the permittee as a significant contributor of pollutants”

Remove the second sentence, contradicts the opening statement of this section.

f. Address the following categories of non-stormwater discharges or flows if identified as significant contributors of pollutants to the MS4. **If a non-stormwater discharge or flow is identified as a significant contributor of pollutants to the MS4, then it must be eliminated or removed in accordance with Part IV(F)(3)(c).**

Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from firefighting activities.

Response

As stated in Item 12 of the Significant Permit Changes section of this fact sheet, the addition of the second sentence to first paragraph of Part IV(F)(3)(f) of the Small MS4 permit is to make the section clear, specific, and measurable as required by 40 CFR 122.43(a) and the Final MS4 General Permit Remand Rule. The department reviewed whether the sentence

and the opening statement of Part IV(F)(3) – particularly the statement that illicit discharges do not include non-stormwater discharges as described in Part IV(F)(3)(f) – contradict each other. The department determined the two sections as written in the draft permit may contradict each other. As a result, the department updated the second sentence of the opening statement of Part IV(F)(3) from:

“Illicit discharges do not include discharges or flows from emergency firefighting activities, non-stormwater discharges as described in Part IV(F)(3)(f) below, or other activities authorized by a separate NPDES permit.”

To:

“Illicit discharges do not include discharges or flows from emergency firefighting activities, non-stormwater discharges as described in Part IV(F)(3)(f) unless the permittee identifies them as significant contributors of pollutants to the MS4, or other activities authorized by a separate NPDES permit.”

City of Bismarck Comments:

6. Comment

Separator Frequency
Section IV.F.6.d.1

“the frequency may be reduced to once every two years.”

This should be changed to once every five years to match the frequency of the pond and outfall inspections outlined in the applicable section.

Response

Please refer to the Department’s response to comment # 1.

7. Comment

Principal Executive Officer
Section VII.E

The term “principal executive officer” needs to be more clearly defined within the MS4 or local ranking elected officials need to be able to designate authorized staff. Municipal department heads need signatory power for all applications. Construction managers need signatory power for construction NOI documents.

Response

Please refer to the Department’s response to comment # 2.

8. Comment

Sampling Requirements

Appendix 2.7

“The SWPPP shall include sampling procedures for facilities required to conduct sampling.”
The phrase “facilities required to conduct sampling” should be changed to “facilities with industrial activities identified in Section IV.F.6.e.4 of the MS4 permit” or similar. The vague language does not match the intent of requiring sampling for defined industrial activities.

Response

Please refer to the Department’s response to comment # 3.

9. Comment

Non-Stormwater Sources

Section IV.F.3.f

“Address the following categories of non-stormwater discharges or flows if identified as significant contributors of pollutants to the MS4”

This phrase should be modified to “identified by permittee as significant contributors of pollutants to the MS4.” These determinations need to be made locally.

Response

Please refer to the Department’s response to comment # 4.

10. Comment

Bismarck’s comments pertain to section Sec IV – 3 – f (see below)

First sentence change to; “If identified by the permittee as a significant contributor of pollutants”

Remove the second sentence, contradicts the opening statement of this section.

f. Address the following categories of non-stormwater discharges or flows if identified as significant contributors of pollutants to the MS4. **If a non-stormwater discharge or flow is identified as a significant contributor of pollutants to the MS4, then it must be eliminated or removed in accordance with Part IV(F)(3)(c).**

Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from firefighting activities.

Response

Please refer to the Department's response to comment # 5.

U.S. Environmental Protection Agency Comments:

11. Comment

It is unclear if the Permittee would be responsible for fulfilling this antidegradation procedure requirement (in particular, the last sentence indicates "Unless otherwise directed by the Department..." which seems to imply the Permittee, since it is assumed the Department would not need to direct itself, through this permit, to perform the review). However, this seems to contradict the referenced section of NDAC 33-16-02.1-02(2)(c) and Appendix IV of the NDAC which indicates "...the process that will be followed by the department of environmental quality for implementing the antidegradation policy..."

Would recommend clarifying who would be responsible for conducting the antidegradation review if one is required.

Response

The comment is in reference to Part I(B)(4)(a) in the Coverage Limitations section of the permit. The department reviewed the language in this section. The reference to the North Dakota Administrative Code in this section should have been updated from NDAC 33-16-02.1-02(2)(c) to NDAC 33.1-16-02.1-02(2)(c). The update reflects the administrative rules of the NDDEQ.

The department also reviewed the antidegradation procedures in NDAC 33.1-16-02.1, Appendix IV. The department is responsible for completing antidegradation reviews for regulated activities such as the issuance of a NDPDES permit, dredge and fill activities, and water quality certifications. The department demonstrated in the statement of basis that the existing and designated uses of receiving waters would be protected under the conditions of the permit thus completing the antidegradation review for the NDPDES Small MS4 permit.

In response to the comment, the department updated the language in Part I(B)(4)(a) from:

"A new or expanded MS4 discharge must be constructed and operated in accordance with the conditions of this permit. A review may be required under the antidegradation procedures outlined in the North Dakota Standards of Quality for Waters of the State (NDAC 33.1-16-02.1-02(2)(c)) for new or expanded sources of pollution that result in significant effects on the quality or use of a receiving water. Unless otherwise directed by the department a review is not required for new or expanded MS4 sources developed in accordance with this permit."

To:

“A new or expanded MS4 discharge must be constructed and operated in accordance with the conditions of this permit. An antidegradation review may be conducted by the department in accordance with the antidegradation procedures outlined in the North Dakota Standards of Quality for Waters of the State (NDAC 33.1-16-02.1-02(2)(c)) for new or expanded sources of pollution that result in significant effects on the quality or use of a receiving water outside of the scope of this permit.”

12. Comment

It is unclear what conditions apply to new vs. existing permittees? There are different requirements (i.e. develop within first 5 years a program) listed throughout the permit but not all specify if they are required of new permittees vs. existing permittees (as not all listed would seem to apply to both)? Additional comments related to specific examples are noted through rest of document.

Would also recommend adding information in this section (C) for the process for new applicants that are not pre-designated by the department (would not seem to technically fall under C1. or C2. categories listed here)- unless only MS4s that are pre-designated by the department can be new applicants (so they are one in the same)?

Response

The comment is in reference to Part I(C)(2) in the coverage and authorization section of the permit. The department reviewed the language in this section and throughout the permit. Existing permittees are expected to already have a MS4 Program developed and implemented, and any changes to the program as a result of a change to the permit would ultimately be incorporated. New permittees are allowed to develop a MS4 Program over a period of time and ultimately expected to implement a program that is consistent with other permittees.

The department reviewed the language in Part I(C) as it relates to applicants. The department updated the section to include three types of applicants (renewal, new, and designated). Criteria for designating “regulated” small MS4s may be found in the department’s policy document titled, Designation Criteria for Small MS4s and is authorized by 40 CFR 123.35. The department also included dates of coverage authorization and expectations for MS4 Program development and implementation. The department updated the language in Part I(C) from:

“To obtain authorization under this general permit for stormwater discharges, permittees must submit a complete notice of intent (NOI) and develop a MS4 Program as outlined in Part IV of this permit. The MS4 Program must be implemented as a condition of this permit authorization. The submittal and authorization effective dates are provided below.

1. New Designation Applicants

The department may designate small MS4s that were not previously regulated by a permit to obtain coverage under this permit. Operators of MS4s that are designated for coverage after the permit effective date must submit a complete NOI within 180 days of notification unless otherwise specified by the department. Authorization to

discharge stormwater under the permit will become effective 30 days after the NOI is submitted unless the department requests additional information during that time.

2. Renewal Permittees

Permittees that were covered by the previous MS4 general permit and have submitted a NOI in accordance with the department's request are authorized to discharge stormwater on the effective date of this permit. Permittees must continue to implement the MS4 Program as described in the NOI and modify or revise the MS4 Program in accordance with this permit. Permittees may be required to submit a compliance schedule if the permittee cannot demonstrate that the MS4 Program is implemented in accordance with the conditions of this permit."

To:

"To obtain authorization under this general permit for stormwater discharges, permittees must submit a complete notice of intent (NOI) and develop a MS4 Program as outlined in Part IV of this permit. The MS4 Program must be implemented as a condition of this permit authorization. The submittal and authorization effective dates are provided below.

1. Renewal Permittees

Permittees that were covered by the previous MS4 general permit and have submitted a NOI in accordance with the department's request are authorized to discharge stormwater on the effective date of this permit. Permittees must continue to implement the MS4 Program and modify or revise the MS4 Program in accordance with this permit. Permittees may be required to submit a compliance schedule if the permittee cannot demonstrate that the MS4 Program is implemented in accordance with the conditions of this permit.

2. New Applicants

New permittees that have submitted a NOI in accordance with this permit are authorized to discharge stormwater 30 days after the NOI is submitted unless the department requests additional information during that time. New permittees must develop and implement a MS4 Program as outlined in Part IV of this permit.

3. New Designation Applicants

The department may designate small MS4s that were not previously regulated by a permit to obtain coverage under this permit. Operators of MS4s that are designated for coverage after the permit effective date must submit a complete NOI within 180 days of notification unless otherwise specified by the department. Authorization to discharge stormwater under the permit will become effective 30 days after the NOI is submitted unless the department requests additional information during that time. New permittees must develop and implement a MS4 Program as outlined in Part IV of this permit."

13. Comment

Recommend, if practical, adding specific TMDL language so permittees clearly know what WLAs are applicable to them.

Additionally, if this review is to be performed by the Permittee when there is an approved TMDL, is there a frequency they should review the report at (e.g. annually) to keep up with any changes to the Integrated Report? If so, would recommend adding in a frequency, if appropriate, to help ensure the Permittees are aware of changes to the Integrated Report.

Response

The comment is in reference to Part III(C) in the impaired waters and total maximum daily load (TMDL) section of the permit. The department determined it would not be practical to add TMDL language that identifies what WLA applies to permittees. The development of a TMDL may include a specific WLA that is applicable to a permittee; however, that process is outside of the scope of the Small MS4 permit. The Small MS4 permit can be a tool to ensure the requirements of a TMDL are implemented.

The department reviewed the language related to permittees reviewing the latest Integrated Report (which includes the list of impaired waters in North Dakota) and approved TMDLs. Since the Integrated Report is updated every two years, the department added language to the permit to include a frequency for reviewing the report every two years.

The department also determined that if the MS4 discharges to a receiving stream with an approved TMDL, then the MS4 Program must be reviewed annually to determine if the program meets the WLA set forth in the TMDL.

The department changed Part III(C) from:

“If the MS4 discharges to waters identified on the current list of impaired waters under Section 303(d) of the Clean Water Act (see *Integrated Report* on the department’s website), the MS4 Program must be reviewed to determine if changes to the program are required to reduce the impact of stormwater discharges from the MS4. If a TMDL has been approved for a water body, the MS4 Program must be reviewed to determine if the MS4 Program meets the TMDL’s Waste Load Allocation (WLA) set for stormwater sources. If the MS4 Program is not meeting the applicable requirements, schedules, and objectives of the TMDL, the MS4 Program must be modified.”

To:

- “1. If the MS4 discharges to waters identified on the current list of impaired waters under Section 303(d) of the Clean Water Act (see *Integrated Report* on the department’s website), the MS4 Program must be reviewed to determine if changes to the program are required to reduce the impact of stormwater discharges from the MS4. Permittees must review the Section 303(d) list of impaired waters every two years to determine if the MS4 discharges to an impaired water. If the MS4 discharges to an impaired water identified on the 303(d) list, permittees must develop a schedule outlining when changes to the MS4 Program will be made.
2. If a TMDL has been approved for a water body, the MS4 Program must be reviewed annually to determine if the MS4 Program meets the TMDL’s Waste Load Allocation

(WLA) set for stormwater sources. If the MS4 Program is not meeting the applicable requirements, schedules, and objectives of the TMDL, the MS4 Program must be modified. Permittees must develop a schedule outlining when changes to the MS4 Program will be made.”

14. Comment

The previous sentence indicates new permittees. Would recommend this sentence clearly indicate if this requirement also only applies to new permittees, or existing permittees as well.

Response

The comment is in reference to paragraph 2 in Part IV(A) in the Implementation Requirement section of the permit. The department reviewed and updated the sentence from:

“The ordinance for construction site stormwater runoff controls required in Part IV(F)(4) must be completed within three (3) years from the date coverage is obtained.”

To:

“New permittees must complete the ordinance for construction site stormwater runoff controls required in Part IV(F)(4) within three (3) years from the date coverage is obtained.”

15. Comment

"Develop" seems to imply that this requirement is for permittees that do not have this already so, is this for new permittees only (since existing permittees should already have this completed)? Recommend clarifying whether this is a requirement for existing vs new MS4s.

Response

The comment is in reference to paragraph 2 in Part IV(E) in the MS4 Program Map section of the permit. The department will keep the sentence the same in the finalized permit as developing and maintaining a current map is an ongoing activity which applies to both new and existing permittees.

16. Comment

Great job being clear, specific and measurable!

Response

The comment is in reference to Table 1 in Part IV(F)(1) in the MS4 Program control measures section of the permit. The department appreciates the comment.

17. Comment

Would these be outside of what is already currently required by the permit? If so, would recommend maybe further clarifying how any "in writing" program modifications will be required/ implemented - i.e. is NDDEQ planning to do a modification of the Permit to include more requirements, through modification and reissuance of just a permit authorization letter, issue individual permits if updated requirements outside of the GP are needed, or some other documented mechanism?

Response

The comment is in reference to Part IV(G) in the Modification to the MS4 Program section of the permit. The department reviewed the language in the permit. The department determined modifications to the MS4 Program can be made by the permittee within the scope of the permit. The department determined changes to the MS4 Program based on a TMDL also can be made by the permittee within the scope of the permit. Finally, the department determined that new state or federal regulations, changes to the Clean Water Act, and changes to water quality standards would result in changes to the MS4 general permit (either through permit reissuance or modification) and would be outside of the scope of the permittee. As a result, the department changed Part IV(G) from:

1. "The department may require the permittee to modify the MS4 Program as needed, and may consider the following factors:
 - a. Discharges from the storm sewer system are adversely impacting the quality of receiving waters;
 - b. More stringent requirements are necessary to comply with new state or federal regulations; or
 - c. Additional conditions are deemed necessary to comply with the goals and requirements of a TMDL, the Clean Water Act, or water quality standard.

Modifications to the MS4 Program required by the department will be made in writing. The modification request will set forth a schedule for compliance.

2. The MS4 Program may be modified without prior approval of the department, provided it is in accordance with the following:
 - a. A BMP is added or removed from the MS4 Program;
 - b. A less effective BMP identified in the MS4 Program is replaced with an alternate BMP. The alternate BMP shall address the same or similar concerns as the ineffective or failed BMP;
 - c. When a BMP is identified as ineffective a schedule for implementing an alternative BMP must be provided; and

- d. All modifications must be included in the annual report for the year the modification is made.”

To:

The MS4 Program may be modified in accordance with the following:

1. A BMP is added or removed from the MS4 Program.
2. A less effective BMP identified in the MS4 Program is replaced with an alternate BMP. The alternate BMP shall address the same or similar concerns as the ineffective or failed BMP.
3. When a BMP is identified as ineffective a schedule for implementing an alternative BMP must be provided.
4. All modifications must be included in the annual report for the year the modification is made.

18. Comment

Does NDDEQ anticipate these applying to any of the MS4's that may be permitted?- up to NDDEQ's discretion to keep in if needed, but unsure under what circumstances this would apply for an MS4.

Response

The comment is in reference to Part VII(F)(1)(a) and (b) in the Twenty-four Hour Notice of Noncompliance Reporting section of the permit. Twenty-four-hour reporting of noncompliance is a condition applicable to all NDPDES permits (40 CFR 122.41(l)). The department reviewed the language in the draft permit and 40 CFR 122.41(l). To make the language more in line with 40 CFR 122.41(l), the department removed the reference to lagoon cell overflows and updated to the citation to the bypass section of the permit (see response to comment 19). Part VII(F)(1)(a) was changed from:

“Any lagoon cell overflow or any unanticipated bypass which exceeds any effluent limitation in the permit under G. Bypass of Treatment Facilities;”

To:

“Any unanticipated bypass which exceeds any effluent limitation in the permit under G. Bypass;”

The department also changed the language in the first sentence of the first paragraph from:

“Reports shall be submitted to the address in Part VI.E. Reporting of Monitoring Results.”

To:

“Reports shall be submitted in accordance with **Part VI.E. Reporting of Monitoring Results.**”

19. Comment

Same comment as above. Does NDDEQ anticipate these applying to any of the MS4's that may be permitted?- up to NDDEQ's discretion to keep in if needed, but unsure under what circumstances this would apply for an MS4.

Response

The comment is in reference to Part VII(G) in the permit which addresses bypasses. Requirements that address bypasses are conditions applicable to all NDPDES permits (40 CFR 122.41(m)). The department reviewed the language in the draft permit and 40 CFR 122.41(m). To make the language more in line with 40 CFR 122.41(m), the department changed the name of the section from “**Bypass of Treatment Facilities**” to “**Bypass**”. The department also reorganized the three items in the Part VII(G) into two items. The department changed Part VII(G) from:

“G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to any of the following provisions in this section.
2. Bypass exceeding limitations-notification requirements.
 - a. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of bypass.
 - b. Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required under F. Twenty-four Hour Notice of Noncompliance Reporting.
3. Prohibition of Bypass. Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied

if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

- c. The permittee submitted notices as required under the 2.a. Anticipated Bypass subsection of this section.

The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three (3) conditions listed above.”

To:

“G. Bypass

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to any of the following provisions in this section.
 - a. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of bypass.
 - b. Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required under F. Twenty-four Hour Notice of Noncompliance Reporting.
2. Prohibition of Bypass. Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The permittee submitted notices as required under the 1.a. Anticipated Bypass subsection of this section.

The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three (3) conditions listed above.”

20. Comment

Same comment as above. Does NDDEQ anticipate these applying to any of the MS4's that may be permitted?- up to NDDEQ's discretion to keep in if needed, but unsure under what circumstances this would apply for an MS4.

Response

The comment is in reference to Part VII(H) in the permit which deals with upset conditions. Requirements that address upsets are conditions applicable to all NDPDES permits (40 CFR 122.41(n)). The department reviewed the language in the draft permit and 40 CFR 122.41(n). The language in the permit is consistent with the language in 40 CFR 122.41(n).

21. Comment

Would recommend the SWPPP still maintain some requirement to generally address how construction activity will be handled (e.g. the SWPPP identify under what conditions/types of activity the MS4 will ensure coverage, as appropriate, by the CGP -to make sure it is covered).

The previous MS4 general permit provision that was removed indicated:
"Stormwater discharges from construction related activity inherent to the normal operation and expansion of covered facilities (such as landfills) shall be conducted in accordance with the practices identified in the SWPPP. Any newly constructed stormwater outfall shall be added to the SWPPP or, if appropriate, covered by another applicable NDPDES permit."

Would also recommend that the SWPPP address newly constructed outfalls as well, as was previously included in this deleted language.

Response

The comment is in reference to item 26 in the "Significant Permit Changes" section of the statement of basis for the permit which discusses changes to requirements for construction activity related to the expansion of an industrial-type facility owned or operated by the MS4.

Construction activity at an industrial-type facility that meets the requirements of 40 CFR 122.26(b)(14)(x) and (b)(15) would be required to obtain a separate construction stormwater permit. Any construction activity at an industrial-type facility that does not meet these requirements would be addressed by Section 4(f) of Appendix 2 in the MS4 permit which deals with erosion and sediment control implementation in areas vulnerable to erosion. Any newly constructed outfall would be added to the SWPPP as part of the site map conditions found in Section 1(c) of Appendix 2 in the MS4 permit.

22. Comment

Would recommend providing some additional detail/examples of what would be considered "minimal" amounts of sediment, as this term could probably be interpreted very differently by different permittees.

In addition, would recommend considering whether it would be beneficial to include language to ensure wash water does not contain other contaminants (e.g. oil/grease, salts/deicers from vehicles)?

Response

The comment is in reference to item 27 in the “Significant Permit Changes” section of the statement of basis for the permit which discusses changes to vehicle and equipment cleaning and washing operations. The department reviewed this item as well as Appendix 2(9)(e) of the MS4 permit and the NDDEQ’s 2020 industrial stormwater permit. Based on the review, the department revised Appendix 2(9)(e) of the MS4 permit from:

“Wash water from vehicle or equipment cleaning and washing operations shall drain to a sanitary sewer, sump, or other proper collection system, with the exception of wash water from vehicle or equipment cleaning and washing operations where detergents or hazardous cleaning products are not used and where the discharge of sediment to the storm sewer system has been minimized.”

To:

- “e. Wash water from vehicle or equipment cleaning and washing operations shall drain to a sanitary sewer, sump, or other proper collection system, with the exception of:
- 1) Wash water from vehicle or equipment cleaning and washing operations without the use of detergents or hazardous cleaning products;
 - 2) Wash water where the discharge of sediment to the storm sewer system has been minimized by BMPs; and
 - 3) Wash water without contact with oil and grease deposits or other toxic or hazardous materials unless cleaned up using dry clean-up methods.”

The revised language is consistent with the wash water requirements of the 2020 industrial stormwater permit which is the basis for the requirements in the MS4 permit.

The department also revised item 27 in the statement of basis from:

“Language for municipal vehicle and equipment cleaning and washing operations in Appendix 2(9)(e) of the proposed permit was revised to allow wash water from operations that does not contain detergents, hazardous cleaning products, and minimal amounts of sediment to be discharged to the storm sewer system.”

To:

“Appendix 2(9)(e) of the proposed permit was revised to allow wash water from vehicle and equipment cleaning and washing to discharge to the storm sewer system if it does not contain detergents or hazardous cleaning products, BMPs are used to address sediment, and dry clean-up methods are used to clean up oil and grease and other toxic or hazardous materials.”

23. Comment

Recommend adding some additional clarification/context to this part of the sentence, otherwise it could lead to some confusion by an MS4 as to whether they are covered for any new/expanded discharges (i.e. the first part of the sentence seems to indicate these may not be covered discharges, but the second part seems to indicate they could be (even without notification/approval by NDDEQ- not sure if this is NDDEQ's intent?) if they are just constructed/operated in accordance to the permit)? It is also unclear what would be considered a "new or expanded" discharge (is this just for new outfalls, changes to discharges from existing outfalls, expansion of the MS4 as a whole, etc.)?

Response

The comment is in reference to the third bullet in the list of "Discharges Not Covered" of the "Coverage Under This Permit" section of the statement of basis for the permit. The department concurs that the language was written could cause confusion. In response, the department changed the language in the statement of basis from:

"The discharge from new or expanded MS4 discharges unless the new or expanded MS4 discharge is constructed and operated in accordance with the conditions of the permit."

To:

"Discharges from new MS4 outfalls or the expansion of existing MS4 outfalls that are not constructed or operated in accordance with the conditions of the permit."

24. Comment

The wording on pg. 27 of the permit indicates:

"Renotification

Any request to retain coverage under a renewal of this permit shall be made in writing to the department at least 15 days prior to the expiration date of this permit. Upon request by the department, a new Notice of Intent shall be submitted."

The above permit wording seems to have a firmer requirement for a new NOI to be submitted (as compared to the use of "if necessary" and "may" in the highlighted statement). Would recommend aligning the wording so that it is clear whether an NOI will be required under the renotification process.

Response

The comment is in reference to the permit renewal discussion found in the first paragraph of the "Request for Authorization" section of the statement of basis for the permit and Part VIII(L) in the permit. Since a NOI is required by all small MS4s to obtain coverage under a MS4 general permit (40 CFR 122.28(b)(2)), the department removed the following sentence from this section of the statement of basis:

"If necessary, the department may require the submittal of a new NOI."

In addition, the department removed Part VIII(L) – Renotification from the finalized permit as it conflicted with Part I(C) – Obtaining Coverage and Authorization Effective Dates.

25. Comment

Would recommend clarifying if there are types of "diverted stream flows" that would not be considered eligible here (e.g. seems like technically this could include things like water transfers, for which this permit is not intended to cover?).

Response

The comment is in reference to the list of allowable non-stormwater discharges found in the first paragraph of the "Special Conditions" of the "Coverage Under This Permit" section of the statement of basis for the permit. The department determined it is not necessary to clarify the types of diverted stream flows that are considered eligible in this section. The term "diverted stream flows" is included in the list of allowable non-stormwater discharges found in 40 CFR 122.34(b)(3)(ii), but it is not further defined.

26. Comment

This sentence appears to be cutoff (is there some additional language missing here)?

Response

The comment is in reference to the last sentence of paragraph four in the "Municipal Separate Storm Sewer System Program" section of the statement of basis for the permit. The department reviewed the sentence. The sentence is not cutoff. The sentence contrasts the previous sentence.

27. Comment

Seems like this part may contradict or be confusing with permit language on pg 10 and 19 of the permit. Under coverage limitations, the permit indicates, "This permit does not authorize the discharge of stormwater when a separate NPDES permit is required for these activities. For example, while stormwater from industrial activity or construction activity may be discharged from a MS4 with authorized stormwater discharges, this permit does not replace or satisfy any other permits required for those discharges."

The highlighted wording under Industrial Activities here, seems to indicate that in some cases industrial SW discharges can be covered or an MS4 "may" get a separate permit, but the permit language (pg 10 and 19) seems more specific that these types of discharges are not covered and a separate permit is required. If there are different scenarios when each of these may be applicable, would recommend including more detail so the scenarios in which each of these applies is clear. Or, re-word one/both of these sections so the language clearly aligns between both sections.

Response

The comment is in reference to the “Industrial Activities” portion of the “Additional Permit Conditions” section of the statement of basis for the permit and Parts I(A)(3), I(B)(2), and IV(F)(6)(e)(3) in the permit. The department reviewed the conditions of the permit and determined the reference to “industrial activity” in Part I(B)(2) could contradict the intent of covering municipal operations that are similar to industrial activities under the MS4 permit as provided in Part I(A)(3). In response, the department changed the second sentence in Part I(B)(2) in the permit from:

“For example, while stormwater from industrial activity or construction activity may be discharged from a MS4 with authorized stormwater discharges, this permit does not replace or satisfy any other permits required for those discharges.”

To:

“For example, while stormwater from construction activity may be discharged from a MS4 with authorized stormwater discharges, this permit does not replace or satisfy any other permits required for those discharges.”

In addition, the department updated the second sentence in the second bullet in the “Discharges Not Covered” portion of the “Coverage Under this Permit” section of the statement of basis from:

“For example, while stormwater from industrial activity or construction activity may be discharged from a MS4 with authorized stormwater discharges, this permit does not replace or satisfy any other permits required for those discharges.”

To:

“For example, while stormwater from construction activity may be discharged from a MS4 with authorized stormwater discharges, this permit does not replace or satisfy any other permits required for those discharges.”

28. Comment

Since the state's general permit for industrial stormwater discharges is incorporated here by reference, is it the intent that the SWPPP requirements are dynamic with any future changes to that general permit (and the permittee would be expected to keep track of those changes to remain in compliance)? If that is not the intent, would recommend either specifically listing out the SWPPP requirements from the general permit for industrial stormwater discharges (and removing this reference), or specifying here which specific version of the general permit for industrial stormwater discharges is to be referenced for these standard requirements (so the requirements are clear in case there are changes/new version of the general permit for industrial stormwater during the MS4 GP term).

Response

The comment is in reference to the last sentence in the “Industrial Activities” portion of the “Additional Permit Conditions” section of the statement of basis for the permit. In response, the department clarified in the sentence that the SWPPP requirements are the same as those in the 2020 industrial stormwater permit.

29. Comment

Should this be "unless", or does NDDEQ typically designate other dates in addition to this March 31st date?

Response

The comment is in reference to the last sentence in the “Annual and Discharge Monitoring Report Requirements” portion of the “Additional Permit Conditions” section of the statement of basis for the permit. The department concurs with the EPA’s suggestion. The department updated the sentence from:

“The report is due by March 31 of each year or another date set by the department.”

To:

“The report is due by March 31 of each year unless another date is set by the department.”