



FACT SHEET

For

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
SPDES PERMIT
for
STORMWATER DISCHARGES
from
Municipal Separate Storm Sewer Systems
of
New York City**

Final Permit Renewal

Issued Pursuant to Article 17, Titles 7, 8 and Article 70
of the Environmental Conservation Law

November 17, 2021

INTRODUCTION

The New York State Department of Environmental Conservation (Department) has finalized a renewal of the State Pollutant Discharge Elimination System (SPDES) permit for Stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s) Owned or Operated by the City of New York (Permittee), NY0287890. On August 1, 2015, the Department issued the first SPDES permit for the NYC Municipal Separate Storm Sewer System (NYC MS4). The permit was issued for a five-year term. On January 31, 2020, the Permittee submitted a timely and sufficient renewal application allowing for a State Administrative Procedures Act (SAPA)¹ extension of the 2015 permit.

The Department proposes to renew and modify NY0287890, which when finalized will be effective for a new five (5) year term and will continue to authorize discharges of stormwater to surface waters of the State from the NYC MS4.

BACKGROUND

The NYC MS4 is a large MS4 subject to the Phase I stormwater permitting requirements specified in the Clean Water Act. The requirements in the Code of Federal Regulations, 40 CFR §122.26(d), for large MS4 discharges formed the basis of the requirements in the initial permit, which required the submission of an approvable Stormwater Management Program (SWMP) Plan. The SWMP Plan was submitted by the Permittee on August 1, 2018, and was approved by the Department on March 14, 2019. The final renewal permit will require the Permittee to implement the various programs developed under the previous permit and in the approved SWMP Plan. In addition, the following sources were consulted in constructing this permit:

1. NYSDEC SPDES General Permit for Stormwater Discharges from MS4s (GP-0-10-002, dated May 2010 and modified October 2011 and GP-015-003, dated May 2015 and modified July 15, 2015);
2. MS4 Improvement Guide (EPA Publication 833-R-10-001), April 2010;
3. Individual MS4 permit programs from other Phase I MS4s such as Philadelphia, Los Angeles, Chicago, Houston, and District of Columbia.

PERMIT COVERAGE AND LIMITATIONS

The final renewal permit will continue to authorize the stormwater discharges from the Permittee, as a large MS4, currently existing within the jurisdictional boundaries of NYC

¹ State Administrative Procedures Act Section 401(2) and 6 NYCRR 621.11(f)

(urbanized area), and limited to those MS4 outfalls owned by the Permittee, provided the Permittee implements the SWMP Plan as it is written, and maintains the legal authority to do so. The intent of this final renewal permit is to build off the requirements contained in the previous permit and continue to manage urban sources of stormwater runoff to protect overall water quality and improve water quality in impaired waters. The final renewal permit acknowledges current and future planned improvements as part of NYC's Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP) process and the impact of non-MS4 sources and planned controls for those sources.

This permit requires measures that will ensure that the Permittee implements specific practices that will control the various sources of pollutants and their means of entry into the MS4, reducing pollution system-wide to the maximum extent practicable (MEP) with the goal of attainment of water quality standards. Under the final renewal permit, the Permittee will implement the approved Stormwater Management Program (SWMP) Plan that addresses public education and participation, illicit discharges, construction site stormwater runoff, post-construction stormwater management practices and its own (municipal) facilities and operations similar to the controls required for every small MS4 under the SPDES General Permit for Stormwater from Municipal Separate Storm Sewer Systems (MS4 General Permit). In addition, the permit requires an industrial user and industrial source control program, as required by the Phase I regulations, and a program to control floatable and settleable trash and debris. Part IV of the permit contains prescriptive requirements as to the SWMP Plan contents that represent the technology based effluent limits. The requirements found in Part II of the permit include further control measures for impaired waters that constitute the water quality based effluent limits. Attainment of water quality standards in waters to which the Permittee discharges will require an iterative approach consistent with Section 402(p)(3)(b) of the Clean Water Act, and the permit will operate in conjunction with other efforts such as CSO LTCPs.

The following provides a brief summary of the major components of the final renewal permit requirements:

Summary of Permit Changes

- The Permittee has developed legal authority to enforce the requirements of this permit, and must submit recertification of this authority annually;
- Coney Island Creek is subject to the criteria laid out under Impaired Waters with Approved LTCPs;
- At EDP, the Permittee must provide a list of people at municipal agencies for the Department to contact in the event of an illicit discharge. That list must be updated annually. The Permittee has implemented a new threshold of 20,000 square feet for covered development projects, including in the right of way, under construction and post-construction requirements. However, road reconstruction projects that disturb less than an acre of land will require erosion and sediment controls only;
- The 20,000 square-foot for covered development projects under construction and post-construction requirements will also apply to

maintenance activities in the right of way, however, those projects will require erosion and sediment controls only;

- The Permittee must maintain an inventory with location information of all sites with post-construction BMPs. The Permittee will be responsible for providing information for sites that have applied for coverage since June 2019, with the remaining information for sites that have been covered since 2003 to be provided by the Department;
- During the last permit term, the Permittee discovered that there are currently no structural flood management controls within the Urbanized Area. Because of this, the evaluation requirement under Pollution Prevention and Good Housekeeping has been removed;
- The Permittee must conduct a loading rate study to characterize the floatables discharged from the MS4. The study must be completed within three years from its start; and
- The Permittee is required to evaluate long term trends in the MS4 and to ultimately develop urban stormwater quality models to estimate runoff volume and pollutant loads for individual source areas within a watershed.

Jurisdictional Authority & Communication

The permit defines the jurisdictional authority, responsibilities and roles of the Permittee in managing stormwater within the jurisdictional boundaries of NYC, referenced in this permit as the “urbanized area.” The following areas continue to be regulated under the permit, which ultimately discharge to MS4 outfalls owned by the Permittee: NYC-owned storm sewers; High Level Storm Sewers (with the exception of facilities that are sited near High Level Storm Sewers but discharge to combined sewers) and Bluebelts; construction activities covered under a general SPDES permit; and industrial stormwater facilities/areas. Consistent with the previous permit, the final renewal permit will continue to regulate NYC municipal operations and facilities that drain by overland flow (direct drainage) to surface waters of New York State. As with the previous permit the Permittee is not required to administer and monitor the construction and industrial stormwater facilities/areas, permitted under general SPDES permits, for: 1) facilities and operations that drain directly into surface waters of New York State through pipes or open channel conveyances, which are not NYC-owned or -operated separate storm sewers; and 2) facilities and operations, which are not NYC municipal facilities and operations, that drain by overland flow to surface waters of New York State.

The Department will continue to regulate facilities covered under a SPDES individual permit, SPDES general permitted non-traditional MS4s and concentrated animal feeding operation (CAFO) facilities/areas that discharge directly and wholly to waters of New York State, including those that discharge through NYC’s MS4.

Impaired Waters

The permit includes additional controls for impaired waters where more stringent controls are necessary:

Impaired Waters without TMDLs - The permit does not authorize new discharges of pollutants causing existing water quality impairments so that reductions achieved through the required pollution control measures are not negated by new development. To meet this requirement, the Permittee must implement a program that ensures no net increase (NNI) of pollutants of concern (POCs) to impaired waters resulting from non-negligible land use changes.

Impaired Waters with Approved LTCPs – The previous permit required the Permittee to identify “priority MS4 waterbodies.” Where information indicates that a waterbody listed in a CSO LTCP is not expected to result in compliance with applicable water quality standards, and stormwater from the MS4 is identified as a significant contributor to the water quality impairment, the permit requires the Permittee to implement, as part of the SWMP Plan, additional or customized best management practices (BMPs) for each control measure that addresses the POCs causing the impairment identified in the CSO LTCP. At the time of the EDP, the only impaired water that falls into this category is Coney Island Creek. If additional LTCPs get approved after the EDP, and new waterbodies fall under this classification, under the final renewal, the Permittee must, within two years of LTCP approval, document in the Annual Report:

- A determination of priority source categories for POCs causing the impairments;
- A list of additional non-structural BMPs for each control measure outlined in the SWMP Plan and an implementation schedule; and
- A description of opportunities to implement green infrastructure that are cost effective and feasible.

The Permittee identified one priority MS4 waterbody under the previous permit: Coney Island Creek, featured in the approved Coney Island Creek LTCP, which will be subject to the terms dictated in the final renewal permit under Part II.B.2.a-b, and e.

Legal Authority

The previous permit required that the Permittee develop and maintain the authority to carry out all aspects of its SWMP, including requiring the control of pollutants flowing into the MS4, having access to inspect sources of pollutant discharges, and being able to compel compliance and issue citations in the event of violations. Legal authority for construction site runoff control, post-construction/permanent runoff control, industrial and commercial inspections, and illicit discharge detection and elimination programs was attained in the previous permit term when the New York City Council enacted Local Law No. 97, the NYC

Stormwater Law, on May 30, 2017. Under the final renewal permit, the Permittee must submit a re-certification by the NYC Corporation Counsel, or their designee, that the legal authority previously outlined is maintained.

Enforcement Measures & Tracking

Under the previous permit, the Permittee developed an escalating enforcement policy that clearly describes the action to be taken for common violations. The policy describes the procedures to ensure compliance with local ordinances and standards, including the sanctions and enforcement mechanisms that will be used to ensure compliance. The final renewal permit will require ongoing implementation of the adopted policy and procedures for enforcement and tracking.

Stormwater Management Program (SWMP) Plan

The Permittee submitted its Stormwater Management Program (SWMP) Plan on August 1, 2018, as required by the previous permit, and it was subsequently approved by the Department on March 14, 2019. The approved SWMP Plan, when implemented as prescribed in the final renewal permit, will reduce stormwater pollutants to the MEP and allows the Permittee some flexibility in selection of the management practices that will be used to meet the permit requirements. The SWMP Plan also describes how the Permittee will address pollutants and includes BMPs and associated measurable goals. The Permittee shall keep the SWMP Plan current and shall revise it annually, as described in III.A.2 and IV.B.3.b to incorporate any new or modified BMPs and measurable goals, and associated timelines for their implementation. The SWMP Plan is a consolidation of all the Permittee's relevant ordinances or other regulatory requirements; a description of all programs and procedures (including standard forms to be used for reports and inspections) that will be implemented and enforced to comply with the final renewal permit; and an up-to-date document of the selection, design and implementation of all stormwater control measures. The permit requires the Permittee implement the following programs as best management practices, as documented in the SWMP Plan.

Public Education & Outreach – Under the previous permit the Permittee developed an education/outreach program tailored and targeted to specific water quality issues of concern within the urbanized area. In addition, the Permittee developed a process to assess how well its program is changing public awareness and behaviors and determine what changes are necessary to maximize the effectiveness of its public education program. The final renewal permit will require the Permittee to implement the approved processes and procedures developed under the previous permit and contained in the approved SWMP Plan.

Public Involvement/Participation – The permit requires that the Permittee, building off the progress of the previous permit cycle, implement a public involvement/participation program that provides the

opportunity for the public to participate in the implementation, review and major revision of the SWMP. The Permittee must also maintain a mechanism for the public to request and receive any stormwater-related information, including facilitation of public comments on the program's annual report.

Mapping– The permit requires that the Permittee provide a storm sewer system drainage area map, showing the location of Permittee-owned or -operated MS4 outfalls discharging to surface waters of the State. This map is to be updated within five years of EDP.

Illicit Discharge Detection & Elimination (IDDE) – The permit requires that the Permittee continue to implement and enforce an IDDE program. To the extent existing programs do not satisfy the requirements of this program, the Permittee is required to include appropriate modifications or additions in the SWMP Plan. This program must include the following:

- A law, ordinance, or other regulatory mechanism that prohibits (to the extent allowable under State or local law) illicit discharges and certain non-storm water discharges into the MS4, and appropriate enforcement procedures and actions. The Permittee accomplished this requirement under the previous permit by enacting the NYC Stormwater Law (Local Law No. 97) on May 30, 2017;
- A plan to detect and eliminate unauthorized non-stormwater discharges, including illegal dumping, into the MS4 which must:
 - Delineate procedures for identifying and detecting illicit discharges
 - Delineate procedures of how to prevent illicit discharges, and necessary corrective actions to eliminate them;
 - Delineate procedures of how to prevent, contain and respond to spills to the MS4;
 - Delineate procedures for conducting investigations into the track down of identified illicit discharges and illegal connections; and
 - Delineate procedures for timely reporting and public notifications.
- A plan to ensure staff performing IDDE tasks are adequately trained;
- The education of public employees, businesses, and the general public about the hazards associated with illegal discharges and improper disposal of waste;
- A list of contacts at different municipal agencies, under the final renewal permit, for the Department to contact in the event of an identified illicit discharge in its respective sewer service area;
- The determination of appropriate BMPs and measurable goals to ensure no illicit discharges to the MS4;
- An outfall reconnaissance inventory (ORI), a continuous ongoing DEP effort, that follows requirements of the Shoreline Survey dictated in the SPDES WRRF permits. Under this requirement, the Permittee must survey every outfall in its system at least once every 10 years. The

Permittee must make reasonable progress every year; it will document that progress in its annual report to the Department; and

- A sentinel monitoring program, another ongoing effort by DEP, that conducts sampling in dry weather conditions at a certain number of specified stations. The stations will be agreed upon by technical staff between the Permittee and the Department.

Construction Site Stormwater Runoff Control –

The final renewal permit requires the Permittee implement and enforce its construction site stormwater runoff control program, developed and approved in the SWMP Plan under the previous permit, to reduce pollutants in stormwater runoff to its MS4 from eligible construction activities, which will now be referred to as “covered development projects.” This program includes:

- A law, ordinance or other regulatory mechanism requiring the implementation of measures to control water runoff, construction materials and debris, and erosion and sediment from construction sites. The Permittee accomplished this requirement under the previous permit by enacting the NYC Stormwater Law (Local Law No. 97) on May 30, 2017;
- Written procedures for site plan review of construction plans that consider potential water quality impacts;
- Written procedures for site inspection and enforcement of control measures;
- Sanctions to ensure compliance;
- Procedures for the receipt and consideration of complaints and other information submitted by the public;
- Develop and maintain an inventory of active construction sites within its jurisdiction; and
- Appropriate construction BMPs and measurable goals to ensure the reduction of Pollutants of Concern (POCs).

Under the final renewal permit, the permittee must implement the approved procedures and continue to:

- Address stormwater runoff to the Permittee’s MS4 from covered development projects and provide protection equivalent to the SPDES General Permit for Stormwater Discharges from Construction Activity (CGP);
- Require construction managers for road construction or reconstruction projects less than one acre to implement erosion and sediment controls;
- Maintain an inventory of active construction sites within the urbanized area; and

- Verify that construction managers and site operators have received the proper erosion and sediment control training before working in the urbanized area.

During the previous permit term, the Permittee conducted a soil disturbance threshold study and determined the appropriate threshold of soil disturbance to trigger permit coverage under the construction site stormwater runoff control program is 20,000 square feet, or a creation of 5,000 square feet or more of impervious surface. That means construction activities that disturb 20,000 square feet or more, covered maintenance activities, or smaller disturbances that are part of a greater development plan that disturb 20,000 square feet or more, and/or create 5,000 square feet or more of impervious surface, will require coverage under the construction program. This new threshold went into effect on February 15, 2022, as stated in the Unified Stormwater Rule, promulgated by DEP pursuant to legislation enacted by the New York City Council on September 27, 2020 (Local Law 91 of 2020). Construction activities that meet these criteria will from here on be called “covered development projects.”

Post Construction Stormwater Management – The previous permit required the Permittee develop, implement and enforce a Post Construction Stormwater Management program to reduce pollutants in post construction runoff to its MS4 from new development and redevelopment projects. To meet this permit requirement, the Post Construction Stormwater Management Program in the approved SWMP Plan includes:

- Strategies which include a combination of structural and/or nonstructural BMPs;
- A law, ordinance or other regulatory mechanism requiring the implementation of post-construction runoff controls to the extent required by the SPDES CGP. The Permittee accomplished this requirement under the previous permit by enacting the NYC Stormwater Law (Local Law No. 97) on May 30, 2017;
- Written procedures for Stormwater Pollution Prevention Plan (SWPPP) reviews and inspections to ensure that all projects that are subject to post-construction stormwater management requirements comply with the SPDES CGP; and
- Provisions for adequate long-term operation and maintenance of stormwater management practices by trained individuals, including inspections to ensure practices are performing properly.

Under the final renewal permit, the Permittee must maintain an inventory of post-construction stormwater management practices within its jurisdiction. The inventory, which will include all relevant information,

including location, must include practices within the urbanized area that discharge to the MS4 and were both permitted by the Permittee since June 1, 2019, and implemented and authorized by the Department between March 10, 2003, and June 1, 2019. Information applicable to the latter practices will be provided by the Department.

The Permittee has, in accordance with the final renewal permit and pursuant to local law, reduced the lot size soil disturbance threshold for applicability of post-construction stormwater management practices to 20,000 square feet (implemented as of February 15, 2022). However, for covered development projects for road construction and reconstruction that are less than one acre, and for maintenance projects in the municipal rights of way, including road paving and milling, it will be required that erosion and sediment control practices be implemented, but post-construction stormwater control practices will not be required.

The previous permit included a requirement for SWPPPs pertaining to structural flood controls for flood management projects in the urbanized area. However, the Permittee reported that no such projects or controls exist within the urbanized area. Therefore, the final renewal permit removes these requirements.

Pollution Prevention/Good Housekeeping for Municipal Operations –

The Permit requires that the Permittee implement a pollution prevention/good housekeeping program for municipal operations and facilities to ensure that such operations and facilities are not a significant source of pollutants. To meet this requirement, the Permittee must continue to implement a plan that:

- Includes a prioritized inventory of municipal operations and facilities with initial prioritization into high, medium and low categories on the basis of potential for water quality impact. The initial prioritized list with prioritization tiers was created under the previous permit, and is updated annually;
- Assesses all municipal operations and facilities at specified frequencies based on their potential for water quality impacts according to the prioritized inventory;
- Implements management practices, policies and procedures to reduce or prevent the discharge of pollutants from its municipal operations and facilities;
- Ensures that all municipally owned or operated facilities or operations discharging stormwater associated with industrial activity have coverage under the SPDES Multi-Sector General Permit (MSGP) or this MS4 permit; and
- Incorporates runoff reduction techniques and green infrastructure during planned municipal upgrades, including in the municipal right of

way, if feasible and cost-effective. Green infrastructure will be designed per specifications of the NYC Stormwater Manual.

The previous version of the permit included a requirement that pertained to flood management projects and the associated existing flood control devices effects on water quality. However, the Permittee has reported that no such projects or controls exist within the urbanized area.

Industrial Stormwater Sources – The permit requires the implementation of an inspection program to assess whether unpermitted private industrial and commercial facilities require MSGP coverage, as well as maintain an inventory of facilities and make necessary referrals to Department. This permit also requires the Permittee, through adequately trained staff, to conduct inspections and appropriate enforcement of covered MSGP facilities. To meet this permit requirement, the Permittee must continue to implement a program that:

- Includes a law, ordinance or other regulatory mechanism providing NYC with the authority to require the implementation of proper control measures at applicable industrial and commercial sites. The Permittee accomplished this requirement under the previous permit by enacting the NYC Stormwater Law (Local Law No. 97) on May 30, 2017;
- Includes written procedures for site inspection and enforcement of control measures;
- Ensures that staff conducting inspections is adequately trained;
- Includes sanctions to ensure compliance;
- Includes procedures for tracking inspections; and
- Includes a plan to inspect and assess unpermitted industrial and commercial facilities not covered under SPDES MSGP or individual SPDES permits to determine whether they should be referred to the Department for such coverage.

Control of Floatable and Settleable Trash and Debris – The permit requires the Permittee’s stormwater program to target and control floatable and settleable trash and debris. To meet this permit requirement, the Permittee will be required to implement the approved methodology to determine the baseline load of trash and debris. Under the final renewal permit, this is referred to as the loading rate study, and must be completed within three years of EDP.

Monitoring & Assessment of Controls – The permit requires the Permittee to implement a Monitoring Program, which must meet the following objectives:

- Characterization and assessment of the quality of stormwater discharges at representative MS4 outfalls;

- Identification of sources of specific pollutants, including POCs; and
- Detection and elimination of illicit discharges and illegal connections to the MS4.

The Permittee is required, under the final renewal permit, to evaluate long-term trends in water quality and to develop urban stormwater quality models. The Permittee is required to report its progress on the development of the models to the Department starting two years after EDP, and annually thereafter.

Recordkeeping/Reporting – The permit specifies recordkeeping requirements and reporting to demonstrate compliance with the terms and conditions of the permit. The permit also includes reporting requirements for the remaining permit term to demonstrate that the stormwater management program is being implemented and is effective in achieving the goal of minimizing the discharge of pollutants from the MS4 to the MEP. The permit also requires that NYC develop a tracking system to track the information required in the permit, as well as the information required to be reported in the annual report.

Appendices

In the previous permit, Appendix I provided a map of all the impaired waterbodies to which the Permittee discharges stormwater. During the development of the final renewal permit, the Department issued an updated 303 (d) List of impaired waterbodies, which did not include a comparable map. Thus, the impaired waterbodies map has been omitted in the final renewal permit.

The 2018 303 (d) List issued by the Department in June 2020 also changed some of the terminology used for impairments. Between 2016 and 2018, “Floatables” was changed to “Garbage & Refuse,” and “Pathogens” was changed to “Fecal Coliform.” These changes are reflected in Appendix I of the final renewal permit. However, the final renewal permit still refers to “pathogens” and “floatables” to be consistent with the previous permit.