

Response to Comments on NPDES General Permit ILR40

General Comments:

1. **Comment:** Illinois EPA should wait for USEPA to issue minimum program requirements before issuing new statewide performance standards so as to ensure compliance with the Federal program.

Response: USEPA has deferred their post-construction regulations in order to divert more resources to support state activities.

2. **Comment:** The draft permit will require a new commitment of public resources. A cost benefit analysis should be developed for the development of performance standards and regulatory policy.

Response: The Illinois EPA appreciates concerns regarding the cost of implementation to local governments. The Illinois EPA modified the permit to include additional requirements pursuant to USEPA guidance and the MS4 Permit Improvement Guide (April 2010). The Illinois EPA recommends partnering with nearby MS4 communities to share costs of monitoring, educational guidance, staff/contractor training, etc.

3. **Comment:** The draft permit repeatedly requires compliance to “the maximum extent possible.” Illinois EPA needs to provide specific guidance as to what measures would constitute the maximum extent possible.

Response: USEPA developed the terminology “maximum extent possible” with the storm water permit regulations and any subsequent permit language. The terminology was intended to allow maximum flexibility in the MS4 programs based on available resources. Please refer to 40 CFR 122.34.

4. **Comment:** Concern was expressed to the Illinois EPA that proposing to incorporate statewide performance standards into the NPDES Permit without legislative review and only limited public input.

Response: Illinois EPA was required to include much of the language in this permit by USEPA for minimum program requirements. Illinois EPA also used USEPA’s MS4 Permit Improvement Guide (April 2010) to include various permit requirements. Storm Water Performance standard recommendations were submitted by a stakeholder group to Illinois EPA on June 30, 2013. If the Illinois EPA intends to proceed with the development of Post-Construction Storm Water Standards, a stakeholder group will be formed and any regulations or criteria would be developed in accordance with the requirements of the Illinois Administrative Procedures Act.

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Specific Comments:

Comments are responded to in order of their location in the permit:

1. **Part I.C.2 (1 comment):** The comment stated that the wording of this part was contradictory as a discharge that was covered under Part I.B.2 of the permit may not be covered under Part I.C.2.

Response: This part has been modified from the previous permit to include an example of a discharge that may not be appropriate for the general permit. The limitation on coverage could include a source of non-storm water discharge identified in Part I.B.2 which discharges pollutants in violation of a water quality standard or new or increased pollutant loading that may be a substantial contributor of pollutants to the receiving stream.

2. **Part I.C.4 (6 comments):** These comments requested clarification that this part be applied to sites greater than 1 acre and what types of treatment would be appropriate for non-storm water discharges. Also, the commenters requested that a threshold be established for these discharges at which point enforcement would be taken against the discharger.

Response: The non-storm water discharges which are prohibited by this part are required pursuant to 40 CFR 450 and must be included in the ILR10 and ILR40 permits. Thresholds were not established by USEPA for these discharges.

3. **Part I.C.5 (7 comments):** These comments requested clarification that this part applied to sites greater than 1 acre and what types of treatment would be appropriate for non-storm water discharges. Also, the commenters requested that a threshold be established for these discharges at which point enforcement would be taken against the discharger.

Response: The non-storm water discharges which are prohibited by this part are required pursuant to 40 CFR 450 and must be included in the ILR10 and ILR40 permits. Thresholds were not established by USEPA for these discharges. Discharges from de-watering activities should be addressed in the MS4's construction site runoff control program using practices from the Illinois Urban Manual.

4. **Part II.A.2 (16 comments):** Comments were received indicating that Part 2.A.2 would require the submission of an additional NOI by those communities which had already submitted renewal applications in a timely manner.

Response: The language in the permit has been revised to accept previously submitted NOIs. The Illinois EPA did not intend that permittees be required to submit duplicate NOIs.

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5. **Part II.B.2 (1 comment):** The existing permit requires the applicant to specify both the operator and the person responsible for implementing the NOI. Why was this change made?

Response: The Illinois EPA has encountered situations where the individual(s) responsible for implementing the NOI were different from the person(s) applying for the permit. The intent of this part is to identify the responsible contact person(s).

6. **Part II.B.3 (3 comments):** The commenters wanted the Illinois EPA to identify a specific year's 303(d) list. Also some questioned what constituted a stream segment.

Response: A stream segment is an Illinois EPA designation of a particular stream reach and is commonly used in Illinois EPA programs. The Illinois EPA will not specify a particular year as the 303(d) list is revised every two years. Information on the most recent 303(d) list may be found on the Illinois EPA's website at <http://www.epa.state.il.us/water/water-quality/index.html>. TMDL studies will be posted as they are completed on the Illinois EPA's website at <http://www.epa.state.il.us/water/tmdl/>. The NOI should specify if the stream segment is identified on the most recently approved 303(d) list or any currently applicable TMDL and the pollutants for which the segment is impaired.

7. **Part II.B.3 (1 comment):** The commenter requested that information be provided for water quality studies.

Response: The electronic address for the State Water Quality mapping tool has been added to Part II.B.3.

8. **Part II.C (1 comment):** The commenters objected to having to submit both a written copy and an electronic copy of the Annual Report.

Response: see comments on Part V.C.

9. **Part III.A (5 comments):** These commenters wanted language to be re-written to specify that the permittee is only responsible for water quality violations which were caused by the same permittee.

Response: This condition is consistent with the language in Subtitle C Section 304.105.

10. **Part III.C (7 comments):** Several commenters requested clarification as to whether an MS4 subject to more than one TMDL would be required to comply with multiple TMDLs. One commenter wanted the permit to specify that an MS4 was only liable for water quality violations caused solely by that MS4.

Response: A permittee must comply with each TMDL which identifies specific waste load allocations or BMPs to specific permittees.

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11. **Part III.C.8 (1 comment):** The commenter requested a definition of “two continuous monitoring cycles.”

Response: The wording has been changed to say “monitoring from two continuous NPDES Permit cycles.”

12. **Part III.C.9 (6 comments):** Comments on this part requested that the Illinois EPA provide information on TMDLs that would impact specific permittees.

Response: See the response to Part IV.E.

13. **Part III.E (10 comments):** Comments indicated there was a conflict between the timing and approval of NOIs submitted in accordance with III.E.1.c and the 150 day administrative continuance after issuance of the new general permit.

Response: This part allows for administrative continuance of the permit and has been approved by USEPA. This part will not be modified. The NOI requirements contained in Part II of the permit have been modified to allow previously submitted NOIs. Administrative continuance of the permit and submission of NOIs are separate issues.

14. **Part III.E.1 (1 comment):** The commenter indicated that they believed there was a contradiction in the number of days allowed for the submission of new NOIs after issuance of a new MS4 permit.

Response: The 150 days allowed for automatic continuance of an expired permit has been approved by USEPA and will not be modified. The NOI requirement has been modified to allow previously submitted NOIs to be accepted under the new MS4 permit. Administrative continuance and submission of NOIs are separate issues.

15. **Part III.E.2 (1 comment):** The commenter believed this part was redundant in view of Part III.E.1.

Response: Part III.E.2 discusses the requirements for duty to reapply whereas III.E.1 discusses automatic continuation of an expired permit. These are separate subjects.

16. **Part IV.B (25 comments):** The comments regarding Part IV.B requested clarification as to what the evaluation of BMPs should entail.

Response: The Illinois EPA expects permittees to evaluate each BMP that was identified in their NOI for the 6 minimum control measures. The permittee must note if the goals were met or not met in the Annual Report. BMPs for the minimum control measures may be modified to obtain a more effective storm water management program. As new BMPs are added to a permittee’s program they should be evaluated and included in the Annual Report.

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17. **Part IV.B.1 (11 comments):** Comments on this part consisted of climate change concerns which were dealt with in response to comments on Part IV.B.5.b.

Response: See response to Part IV.B.5.b.

18. **Part IV.B.1.a (1 comment):** The comment on this part requested an expansion of the part to provide additional specific guidance.

Response: Additional specific guidance was included in this part.

19. **Part IV.B.1.a (16 comments):** These comments dealt with the public participation portion of the climate change issue.

Response: See comment IV.B.5.b for the Illinois EPA's response.

20. **Part IV.B.2.c (16 comments):** Comments on this part requested clarification on whether the annual public meeting on storm water issues was required to be a separate meeting or could it be part of regular business meeting conducted by the permittees.

Response: The annual meeting can be part of a regular meeting conducted by the permittee; however, the portion of the meeting agenda dealing with storm water issues must be properly public noticed to the general public prior to the meeting. Language in the permit has been modified to reflect this clarification.

21. **Part IV.B.2.d (29 comments):** Numerous comments were received requesting a definition of an "environmental justice area" and information on where maps of such areas may be located.

Response: Environmental justice reviews have been incorporated into permit programs on an Illinois EPA wide basis. A definition of "environmental justice area" has now been included in the MS4 permit. Information on Environmental Justice concerns may be found at: <http://www3.epa.gov/environmentaljustice/>.

22. **Part IV.B.3.h (9 comments):** Comments indicated that this was potentially an increase in operational expense to permittees. Also, it was noted there is no definition of what constitutes a high priority discharge.

Response: Each MS4 must evaluate their outfalls and prioritize them based on items such as population tributary to the outfall, industries tributary to the outfall, etc. Prioritization and subsequent inspections may take into account available permittee resources.

23. **Part IV.B.4.a.ii (4 comments):** The commenters requested clarification that this part meant that contractors were required to meet these provisions.

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Response: The wording in this part has been revised to specify that MS4 programs must require construction site owners/operators to design, install, and maintain effective storm water controls.

24. **Part IV.B.4.a.vii (4 comments):** Commenters indicated that they believed this part shifted the liability for enforcing their ordinances to the permittee.

Response: This part was unchanged from the previous permit. Permittees have always been responsible for enforcing their ordinances.

25. **Part IV.B.5 (2 comments):** Several comments were received regarding specific sections of Part IV.B.5. Two comments were received regarding this Part in general. Those comments dealt with the vagueness of the language in different sections of this part and the need to codify the post-construction requirements.

Response: Terminology in this permit and in Section IV.B.5. was developed by USEPA for the MS4 program and several definitions are contained in Part VI of this permit. Illinois EPA was required to include the language in this permit by USEPA for minimum program requirements. Illinois EPA also used USEPA's MS4 Permit Improvement Guide (April 2010) to include various permit requirements.

26. **Part IV.B.5.b (29 comments):** Commenters were concerned that local entities lacked the expertise to predict the potential impacts of climate change on weather patterns affecting their communities. They also believed they lacked the expertise to include information on climate change impacts in the educational components of the MS4 program.

Response: The Illinois EPA does not intend for MS4 permittees to initiate immediate construction activities in response to climate change. The intent is to have communities begin to prepare initial planning efforts for extreme weather events and to educate the public on potential impacts of climate change. Climate change efforts were recognized in Senate Bill 27-80. Information on climate change impacts may be found on USEPA's website at <http://epa.gov/climatechange/>.

27. **Part IV.B.5.c (12 comments):** Commenters were concerned regarding the requirement for permittees and/or developers in their jurisdictions to develop long term operation and maintenance plans. Specifically commenters were concerned about the cost and which party would bear the responsibility for implementing such plans.

Response: Long term operation and maintenance plans are essential for post-construction storm water management. USEPA's MS4 Permit Improvement Guide (Doc. No. EPA 833-R-10-001) discusses the necessity of long term maintenance of post-construction storm water controls. Maintenance agreements were also referenced in the USEPA document. However, the Illinois EPA did not include requirements for such agreements in order to allow the permittee greater flexibility in developing long term operation and maintenance plans.

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28. **Part IV.B.5.d (2 comments):** One commenter objected that there was no requirement to document compliance with this part. A second commenter believed that there would be some instances where it would not be possible to implement BMPs in developed areas without purchasing additional right-of-way.

Response: The permit has been modified to require documentation of BMPs implemented pursuant to this part of the permit. Alternative BMPs without the purchase of additional right-of-way could be considered.

29. **Part IV.B.5.e (15 comments):** Commenters were concerned that this part would require retrofitting of storm water controls to existing developed areas.

Response: The Illinois EPA will require permittees to evaluate potential retrofit projects and determine whether such retrofits are feasible within the permittee's available resources.

30. **Part IV.B.5.f (3 comments):** These comments objected that this part provided specific design guidance for particular post-construction BMPs.

Response: The permit does not specify any setback distances for items i through v and only recommends that no infiltration practices be implemented near sensitive areas that may affect groundwater and surface water. The setback provisions in item vi are consistent with potable water supply well setback provisions under the Illinois Environmental Protection Act for the location of pollution sources near potable water supply wells.

31. **Part IV.B.5.h (2 comments):** Comments were concerned about long term operation and maintenance plans.

Response: See comment IV.B.5.c.

32. **Part IV.B.5.i (2 comments):** Comments were concerned about long term operation and maintenance plans.

Response: See comment IV.B.5.c.

33. **Part IV.B.5.k (27 comments):** The comments on this part reflected two areas of concern. First was the issue of how to plan for the impacts of climate change. Other comments requested clarification of what constituted a flood management project.

Response: The climate change issue is addressed in the response to IV.B.5.b. A definition of flood management project has been added to the permit.

34. **Part IV.B.6. (2 comments):** Comments were concerned about the training of contractors.

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Response: See comment IV.B.6.a.

35. **Part IV.B.6.a (3 comments):** Commenters indicated that permittees should not be responsible for training contractors. Comments also objected to requiring annual training as the permittees should determine when training was needed. A training outline with minimum training criteria was also requested.

Response: The Illinois EPA determined that annual training is required to update permittee's staff and contractors on any changes to the MS4 program. Contractors may attend the same training sessions as the permittee's staff. The Illinois EPA recommends partnering with other MS4s so as to share the cost of training. Each MS4 or group of MS4s should tailor their training to the specific needs and numbers of employees involved. Please review USEPA's storm water website for training guidance.

36. **Part IV.B.6.b and c (3 comments):** Commenters indicated that compliance with this part may be difficult and permittees should have a phased time period to address storage requirements for chemicals and de-icing agents.

Response: The Illinois EPA will require fertilizers, pesticides, and other chemicals to be stored indoors, immediately, to prevent any discharge from these sources. New permanent de-icing material storage structures may be phased within two years of the effective date of the permit.

37. **Part IV.B.6.c (2 comments):** Commenters indicated that it would not be possible to guarantee containment of runoff from de-icing piles under all possible conditions.

Response: The wording of the permit has been changed to require that runoff from storage structures, stockpiles, and loading/unloading facilities will be managed to minimize such runoff.

38. **Part IV.B.6.d (1 comment):** The commenter requested a change in language to clarify what flood management projects should be addressed in this part.

Response: The wording of this part has been modified to address the comment.

39. **Part IV.D.1 (3 comments):** Commenters objected to requiring a written agreement between permittees to delineate shared responsibilities.

Response: The language in the permit has been changed to recommend written agreements between permittees delineating shared responsibilities.

40. **Part IV.E (11 comments):** Comments focused on the need for the Illinois EPA to supply TMDL information to the permittee and the objection that the TMDL was a watershed program that might extend outside of the boundaries of a particular permittee.

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Response: Information on specific TMDL studies may be found on the Illinois EPA website at <http://www.epa.state.il.us/water/tmdl/>. The Illinois EPA agrees that the TMDL plan may be addressed on a watershed basis; however, it is the responsibility of individual permittees to comply with any applicable TMDL.

41. **Part V.A (36 comments):** These comments expressed concerns with the requirements for in-stream monitoring of MS4 discharges for total suspended solids, total nitrogen, total phosphorous, fecal coliform, chlorides, oil and grease, and other parameters for which a water is considered impaired. Main concerns were related to cost, staff time, and overall scope of the monitoring programs

Response: Monitoring is a requirement of the NPDES program. The resultant data is intended to allow the MS4 and permitting agencies to evaluate the success of implemented best management practices (BMPs). The original requirement for instream monitoring has been modified to allow MS4 communities various options. MS4 communities with a population less than 25,000 may limit their monitoring to visual observations of the storm water discharge. MS4 communities with a population greater than or equal to 25,000 have been provided with a menu of monitoring options with which to evaluate their programs. MS4 communities of any size may partner with other MS4s within a watershed in order to reduce monitoring costs. MS4 communities with a population less than 25,000 may opt for one or more of the monitoring options contained in the menu provided for larger communities. In addition, MS4 communities may evaluate the effectiveness of BMPs with published literature.

42. **Part V.B (6 comments):** Commenters questioned how long any Annual Report should be posted.

Response: The Illinois EPA's intent in Part V.B was to include all Annual Reports for the duration of any current permit. Additional language was included in Part V.C which requires retention of records for a period of 5 years.

43. **Part V.C (8 comments):** Commenters objected to having to submit both a written copy and an electronic copy of the Annual Report.

Response: The written copy is required to provide a legal signature while the electronic copy is needed for posting on the website. The Illinois EPA will be developing a phased electronic system for NPDES applications and subsequent reporting pursuant to recent USEPA regulations.

44. **Part V.C.7 (1 comment):** This comment stated that monitoring program results should be used for assessing whether waste load allocations or performance requirements are being met by the MS4.

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Response: This part was modified to require the permittee to use the results of the monitoring program to assess whether the performance requirements of the permittee's program were being met.

45. Part VI (1 comment): A commenter requested a definition of the phrase "pollutants of concern."

Response: A definition of "pollutants of concern" has been added to Part VI.

02-09-2016