

**State of Wisconsin
Department of Natural Resources
April 2019**

Responses to Public Comments on Wisconsin Pollutant Discharge Elimination System (WPDES) General Permit for Municipal Separate Storm Sewer Systems

General Permit to discharge storm water to waters of the state from the Municipal Separate Storm Sewer System (MS4) that is owned or operated by a municipality, WPDES General Permit No. WI-S050075-3 (“general permit”)

On February 25, 2019, the Wisconsin Department of Natural Resources (Department) public noticed the proposed WPDES MS4 general permit named above. On March 27, 2019, the Department held a public hearing on the proposed general permit. The comment period closed on March 29, 2019. The Department received comments on the proposed general permit from the following municipalities and/or organizations:

Appleton	City of Appleton
CW	Clean Wisconsin
LWM	League of Wisconsin Municipalities
Madison	City of Madison
MMWQC	Mid-Moraine Water Quality Collective
MEA	Midwest Environmental Advocates
MEJ	Midwest Environmental Justice
MRK	Milwaukee River Keeper
NEWSC	North East Wisconsin Stormwater Consortium
Oshkosh	City of Oshkosh
R&M	Ruekert & Mielke, Inc.
SWWT	Southeastern Wisconsin Watersheds Trust, Inc.
USEPA	United States Environmental Protection Agency
Watertown	City of Watertown
West Bend	City of West Bend

This document represents the Department’s response to written comments on the proposed permit. In this document, the Department may have paraphrased or edited comments to capture the main point or clarify a comment. Any minor corrections to typographical errors, updating page numbers and headers/footers, updating the Table of Contents and titles, and correcting formatting and web links are not included in this summary document.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) COMMENTS

By email and an accompanying letter dated March 7, 2019, the USEPA stated that it would not object to issuance of the public noticed general permit. By email and an accompanying letter dated April 30, 2019, the USEPA stated that it would not object to issuance of the final proposed general permit.

PUBLIC COMMENTS

GENERAL COMMENTS ON THE GENERAL PERMIT

Comment 1

Oshkosh – The proposed MS4 general permit contains terms and conditions of general application that are void for a failure to follow rule-making procedures required by Wis. Stat. 227.10 relating to the implementation of Water Quality Based Effluent Limits (WQBELs) including Total Maximum Daily Loads (TMDLs) for total suspended solids or phosphorus.

Response: Pursuant to s. 283.31(3)(d), Wis. Stats., the Department may issue a permit under this section for the discharge of any pollutant, or combination of pollutants, subject to any more stringent limitations, including those needed to meet federal or state water quality standards, or schedules of compliance established by the Department. This includes implementation of federally approved TMDLs.

Comment 2

Oshkosh – The DNR guidance on the implementation of WQBELs for MS4s is void for failure to follow rule-making and new guidance legislation. There are numerous guidance documents incorporated by reference in a number of terms and conditions contained in the draft general permit. The WQBELs MS4 requirements that depart from guidance documents without an adequate explanation are contrary to section 38 of 2017 Wisconsin Act 369.

Response: The Department did not incorporate guidance as a general permit term or condition. The general permit has guidance listed in notes, which are not terms or conditions, but provide context or refer to proposed ways for regulated entities to meet the permit terms and conditions.

Comment 3

Appleton, NEWSC – Consider modifying section titles (2.3.1, 2.4.1, 2.4.2, 2.4.3, 2.5.1, 2.5.2, 2.5.3) to be more descriptive towards the permit conditions that follow the title.

Response: Section titles were updated as suggested.

1.4 OUTSTANDING AND EXCEPTIONAL RESOURCE WATERS

Comment 4 (1.4.2)

League, Madison, NEWSC – As written, this section appears to prohibit any new land development activity within an MS4 area. The Department should clarify this language to provide that a new MS4 discharge would be allowed if sufficient pollutant control is provided to protect the ORW or ERW concentration level. Suggest adding the following sentence: “If the new MS4 discharge of pollutants is anticipated to exceed background ORW or ERW concentration levels of concern, the new MS4 discharge of pollutants is allowed if the new MS4 discharge concentration and load are both less than the current undeveloped discharge concentration and load from the same property.” Or “The new MS4 discharge of pollutants is allowed if the new MS4 discharge concentration and load are both less than the current undeveloped discharge concentration and load from the same property.”

Response: The language in section 1.4.2 represents the Department’s current antidegradation policy for MS4 discharges to ORWs and ERWs and has been carefully written in accordance with ch. NR 207, Wis.

Adm. Code, and through past consultation with USEPA. Consequently, the language in section 1.4.2 will remain unchanged.

1.5 IMPAIRED WATERBODIES AND TOTAL MAXIMUM DAILY LOAD REQUIREMENTS

Comment 5 (1.5.1)

MEA, MRK – It is unclear whether a permittee must identify whether its MS4 discharges to an impaired waterbody within 90 days of the start date of the permit, or only by March 31 of each odd-numbered year. Therefore, DNR should modify sections 1.5.1 and 3.1.1 of the 2019 draft MS4 permit to include the language “within 90 days after the start date of permit coverage and by March 31 of each odd-numbered year thereafter.”

Response: The 2014 permit requires permittees to identify impaired waterbodies by March 31 of each odd-numbered year, thus permittees were already required to identify these waterbodies this year, 2019. There is no expectation to have permittees check again this year. Therefore, no changes were made to section 1.5.1 or 3.1.1, and the language “Within 90 days of start date and” was removed from Table 4: Compliance Schedule for Permit Requirements.

Comment 6 (1.5.1)

CW, MRK – We support the requirement for permittees to include a written section in its storm water management program regarding the management practices and control measures they will implement as part of their program to reduce the discharge of pollutants of concern to impaired waterbodies that do not have TMDL requirements yet for those pollutants.

MEA, MRK - The 2019 MS4 permit fails to require permittees to explain why certain control measures and practices were chosen in comparison to other alternatives. The 2014 MS4 permit required the permittee to “explain why these control measures and practices were chosen as opposed to other alternatives,” the 2019 MS4 permit requires no such explanation.

Response: The language from the 2014 MS4 general permits was added at the end of section 1.5.1: *“...and explain why these control measures and practices were chosen as opposed to other alternatives.”*

Comment 7 (1.5.1)

Appleton – The proposed language in section 1.5.1 states that the permittee must develop a plan “...that discusses the management practices and control measures it will implement as part of its program to reduce, with the goal of eliminating, the discharge of pollutants of concern [emphasis added] that contribute to the impairment of the waterbody.” The City is not aware of any storm water management technology that can eliminate the discharge of pollutants.

Oshkosh – The goal of eliminating the pollutant is an unattainable goal. To draw upon language already utilized within the State of Wisconsin Administrative Code, the City suggests utilizing language such as “with the goal of reducing to the maximum extent practicable the discharge of pollutants that contribute to the impairment of the waterbody.”

Response: The Department understands that in the absence of a federally approved TMDL there may be cases where completely eliminating a pollutant of concern via the municipality’s storm sewer system may not be attainable. The permit language states that this is a goal. Therefore, the permittee can provide a valid explanation of why eliminating the pollutant is not achievable after taking into account the best available technology, cost effectiveness, etc. In addition, this language is consistent with state

and federal law. Consequently, no changes were made to section 1.5.1 in response to this comment.

Comment 8 (1.5.3)

Appleton, League, Madison, NEWSC – As written, this section appears to prohibit any new land development activity within an MS4 area. The Department should clarify this language to provide that a new MS4 discharge would be allowed if sufficient pollutant control is provided to protect the ORW or ERW concentration level. Suggest adding the following sentence: “If the new MS4 discharge of pollutants is anticipated to exceed concentration levels of concern for an impaired water body without an USEPA approved TMDL, the new MS4 discharge of pollutants is allowed if the new MS4 discharge concentration and load are both less than the current undeveloped discharge concentration and load from the same property.”

Response: Section 1.5.3 applies to a new MS4 discharge of a pollutant. “New MS4 discharge of a pollutant” is defined in section 5.15.

1.9 GENERAL STORM WATER DISCHARGE LIMITATIONS

Comment 9 (1.9)

Appleton, League, Madison, NEWSC, Oshkosh – A permitted MS4 is not responsible for controlling practices or pollutants generated by agriculture. Any reference to responsibility over agriculture should be removed from the MS4 permit.

Response: The language in section 1.9 is taken verbatim from s. NR 102.04, Wis. Adm. Code. Including the word “agricultural” does not impart any responsibilities or requirements upon the permittee that it does not otherwise have under law. Consequently, the language in section 1.9 will remain unchanged.

Comment 10 (1.9)

MEA, MRK – The 2019 MS4 permit’s general storm water discharge limitations are insufficient to meet the stated goals of the MS4 permit program promulgated in ch. NR 216, Wis. Adm. Code. The 2019 MS4 permit language taken from NR 102 is insufficient to meet the requirements of NR 216. The 2019 MS4 permit limitations are significantly weaker than previous MS4 permit limitations.

Response: The language in section 1.9 is taken verbatim from s. NR 102.04, Wis. Adm. Code, which are the general surface water uses and criteria to preserve and enhance water quality. The permit cannot modify the water quality standards that are in this section of code.

1.13 COMPLIANCE WITH PERMIT REQUIREMENTS

Comment 11 (1.13)

NEWSC, Oshkosh – The City would like the DNR acknowledge the importance of grant programs. Add the following sentence: “However, the Department recognizes that the availability of grants may influence MS4 compliance schedules for achieving compliance with MS4 waste load allocations identified within USEPA approved TMDLs.”

Response: The Department recognizes that a multitude of factors can influence a WPDES permittee’s ability to comply with its WPDES permit, and the Department may take one or more of those factors into account on a case-by-case basis in determining compliance.

2.1 PUBLIC EDUCATION AND OUTREACH

Comment 12 (2.1)

CW, MEJ, MRK – Support the clarifications to section 2.1 of the draft general permit.

Response: Thank you for your comments.

Comment 13 (2.1, 2.2)

MEJ – Suggest that permit also include explicit language requiring permittees to include the consideration of diverse racial/ethnic groups and disadvantaged communities in their stormwater outreach and engagement strategies, and in the types of stormwater education materials designed and disseminated. In line with the Code of Federal Regulations (40 CFR 122.34), which states that “The permit should encourage the permittee to tailor the outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities...” Similarly, later it states that public involvement/participation permit elements should “make efforts to reach out and engage all economic and ethnic groups.”

Response: The permit allows for the permittee to tailor its Public Education and Outreach and Public Involvement programs to its appropriate target audience. Sections 2.1.3 and 2.2.4, Target audience and Target participant options respectively, were developed based on the USEPA Remand Rule. Permittees that target other audiences and participants not listed can be reported under “general public” or “other specific audience.”

Comment 14 (2.1.1)

NEWSC – Suggest updating the number of topics required based on municipality population sizes. Consider modifying the first sentence as follows: “The permittee shall address all eight topics at least once during the permit term. Permittees with a population of _____ or more shall address a minimum of six topics each year. Permittees with a population less than _____ shall address a minimum of three topics each year.”

Response: Cities, Villages, and Towns with a population of 5,000 or less based on the latest U.S. census account for 35% of permittees covered under a general permit. Additionally, in the 2017 annual reports, all municipality types averaged six or more topics a year, while the bottom third of permittees averaged 4 topics a year. Therefore, to prevent backsliding in education efforts the Department suggested smaller populations to address a minimum of four topics per year.

Language to section 2.1.1 was updated as follows: *“The permittee shall address all eight topics at least once during the permit term. Permittees that are a County shall address a minimum of six topics each year. Permittees that are a City, Village, Town, or University with a population of 5,000 or more based on the latest U.S. census shall address a minimum of six topics each year. Permittees that are a City, Village, Town, or University with a population less than 5,000 based on the latest U.S. census shall address a minimum of four topics each year. Topics may be repeated as necessary. Permittees shall select from the topic areas in Table 1.*

Note: *Universities should average its enrolled student population plus employee population over a recent ten-year period to determine which requirement it should follow for permit compliance. Universities are also expected to undertake public education efforts that reach the entire student body and staff.”*

Comment 15 (2.1.1 Table 1)

Appleton, NEWSC, Oshkosh – Consider changing the name of some “Topic Areas” to better reflect the

description provided in Table 1, the six minimum control measures, and the permit requirements.

Response: “Topic Areas” 4, 5, 6, and 7 were updated as suggested.

Comment 16 (2.1.2)

NEWSC – Suggest updating the number of public education delivery mechanisms required based on municipality population sizes. Consider modifying the first sentence as follows: “The permittee shall use at least four public education delivery mechanisms each year. Permittees with a population of _____ or more shall use at least two from the Active/Interactive Mechanisms column in Table 1. Permittees with a population less than _____ shall use at least one from the Active/Interactive Mechanisms column in Table 1.”

Response: Language to section 2.1.2 was updated as follows: *“The permittee shall use at least four public education delivery mechanisms each year. Permittees that are a City, Village, Town, or University with a population of 5,000 or more based on the latest U.S. census shall use at least two from the Active/Interactive Mechanisms column in Table 2 each year. Permittees that are a City, Village, Town, or University with a population less than 5,000 based on the latest U.S. census shall use at least one from the Active/Interactive Mechanisms column in Table 2 each year. Permittees that are a County shall use at least one from the Active/Interactive Mechanisms column in Table 2 each year.”*

Note: *Universities should average its enrolled student population plus employee population over a recent ten-year period to determine which requirement it should follow for permit compliance. Universities are also expected to undertake public education efforts that reach the entire student body and staff.”*

Comment 17 (2.1.2 Table 2)

Appleton, League, NEWSC, Oshkosh – Consider adding a bullet for “Other” beneath the Active and Passive columns.

R&M – We recommend adding regional events to the Active/Interactive Mechanisms portion of Table 1 [sic] to allow communities to count regional efforts toward permit compliance.

SWWT – It is our belief that if a municipality is actively contributing to a regional campaign or activity and where that campaign or activity hosts or attends a community event that draws in residents from the surrounding communities, each contributing municipality should be recognized in actively participating in the "active mechanism" of "Informational booth at event.”

Response: “Other” was added as an additional delivery mechanism topic under both the Active/Interactive and Passive Mechanism columns. The Department will continue to accept regional efforts as counting towards permit requirements. Please note that the table in section 2.1.2 was incorrectly labeled as Table 1 in the proposed permit and has been corrected as Table 2.

Comment 18 (2.1.2, 2.2.2)

West Bend – Can one single delivery mechanism be used to address multiple measurable goals in both sections? For example, a single public hearing is held to address the IDDE program and the annual report for public comment.

Response: Yes, one single delivery mechanism can be used to address multiple Topics (2.1.1) or Permit activities (2.2.1). No change was made to the permit.

Comment 19 (2.1.3, 2.2.4)

Appleton, NEWSC, Oshkosh – Consider adding “elected officials” and “riparian landowners.” Please consider

deleting “restaurants” and “agriculture.” It does not seem appropriate to single out one business type. Pursuant to Section 1.12.2, the permitted MS4 is not responsible for educating agriculture.

Response: “Agriculture” and “restaurants” were removed from the target audience (2.1.3) and target participant (2.2.4) lists. The Department agrees that “restaurants” can be targeted and reported under “businesses.” “Elected officials” was not added to the list because this permit requirement relates to educating the public and elected officials would be considered internal municipal staff, whereas internal training and education is addressed under section 2.6.9, Pollution Prevention. “Riparian landowners” also was not added to the list because that subgroup could be reported under “residents” or “other appropriate audience.” The intent of these options is to closely align with the USEPA eReporting Requirements.

2.2 PUBLIC INVOLVEMENT AND PARTICIPATION

Comment 20 (2.2)

CW, MRK – Similar to our comments on to Section 2.1, Clean Wisconsin and Milwaukee Riverkeeper support the added clarification provided to permittees regarding their obligations around public involvement and participation, and the inclusion of a “Volunteer Activity” to more actively engage community members around improving local water quality.

Response: Thank you for your comment.

Comment 21 (2.2.1)

Oshkosh – The City hopes the Department recognizes that there should be no need to update ordinances annually and suggests the requirement for ordinance input be given in a separate sentence to provide more clarity “when a storm water related ordinance is updated that the permittee shall provide opportunity for the public to comment.”

Response: The Department recognizes that a permittee does not need to update their storm water related ordinances annually, nor does the permittee need to have the public provide input on them annually unless the ordinance is up for adoption or amendments. Therefore, the clause “if applicable” was moved to the front of “adoption or amendment of storm water related ordinances” instead of at the end of the sentence.

Comment 22 (2.2.3)

NEWSC – Consider modifying the first sentence as follows: “Permittees with a population of _____ or more shall implement at a minimum one of the following volunteer activities per year: government event (public hearing, council meeting, etc.), group best management practice (BMP) installation, etc.”

Response: It’s important that permittees have a sustained effort to engage citizens in storm water related activities. Municipalities are encouraged to share resources by participating in regional efforts control costs. No changes were made to the permit.

2.3 ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE)

Comment 23 (2.3 and 2.3.3.a)

MEA, MRK – The 2019 MS4 Permit fails to require permittees to investigate potential illicit discharges in a timely manner. Section 2.3.3.a of the 2019 MS4 permit must go beyond boilerplate language from s. NR 216.07(3)(d), Wis. Adm. Code. Failing to require permittees to investigate potential illicit discharges as soon as possible is contrary to Wisconsin law.

Response: The permit does not prevent the permittee from investigating potential illicit discharges and it requires permittees to address a known discharge as soon as possible or notify the Department if it will take more than 30 days to remove. Under the process of finding sources of illicit discharges and addressing them in a timely manner, the first sentence in 2.3.4 was updated to read: *“The permittee shall take appropriate action to remove known illicit discharges from its MS4 system discovered under section 2.3 as soon as possible.”* The Department allows and expects a permittee to develop and use self-imposed timelines in its illicit discharge detection and elimination program that are tailored to its own particular circumstances.

Comment 24 (2.3.2)

CW, MRK – Regarding Section 2.3.2, Clean Wisconsin and Milwaukee Riverkeeper support the requirement that “permittees shall select minor outfalls for annual on-going dry weather field screening during the term of the permit,” as well as develop a prioritization procedure to assist in determining which minor outfalls to screen annually. However, we suggest that the WDNR provide a numeric requirement regarding the number or percentage of minor outfalls that must be assessed annually, and also include language to ensure that minor outfalls that have a reasonable potential for illicit discharges are assessed throughout the permit term. We suggest all minor outfalls be screened at least once during the 5 year permit term. We’d also suggest consideration of several of the IDDE provisions from the Menomonee River Watershed-Based MS4 Permit (WI-S050156-1), including the requirement that major outfalls that have shown evidence of illicit discharge during the last 2 sample events (under the preceding permit term) be evaluated at least annually and that other “prioritized” outfalls for illicit discharge based on reasonable potential for discharge, regardless of size, be evaluated annually or at an increased sampling frequency. The Menomonee permit also allows for decreased monitoring frequency for major outfalls that have been found to be “clean” during prior sample events to provide more flexibility to municipalities.

Response: Per s. NR 216.07(3)(i), Wis. Adm. Code, field screening applies to all major outfalls and any additional screening is selected by the municipality or the Department. Whereas, in this proposed permit, the Department is requiring the municipality to do additional screening for minor outfalls as compared to the previous permit but leaving it up to the municipality to determine the appropriate amount of screening based upon its resources and developed risk analysis. No changes were made to the permit.

Comment 25 (2.3.2)

CW, MRK – More guidance should be given regarding prioritization procedures and sampling methods that municipalities could follow that would address both industrial and sanitary illicit discharges. While several factors for prioritization are included in this section (e.g., land use, structure age, population density), there are other factors including pipe condition/age, proximity to sanitary pipes, etc. that may be more useful in prioritizing potential illicit discharges from sanitary waste. Likewise, the field indicators identified in section b of 2.3.2. may help identify industrial illicit discharge, but will not help identify sanitary waste entering waterways through an MS4 system, which is contributing to bacteria impairments statewide. Bacteria testing should be

required, or at least allowed without written permission, as part of field analysis. The only reference to sanitary waste is in section 2.3.3 (f.) regarding minimizing cross connections. Given that Wisconsin has lost a lot of industry over the last decade, increased effort should be given to detecting illicit forms of sanitary waste entering waterways through the stormwater system.

Response: Section 2.3.2 has a note that references the Department’s “MS4 Illicit Discharge Detection and Elimination guidance,” which can assist permittees in developing and maintaining their IDDE programs. Additional requirements for bacteria elimination were developed in Appendix B for permittees who received a Bacteria wasteload allocation in the Milwaukee River Basin TMDL. No changes were made to the permit.

Comment 26 (2.3.2)

CW, MRK – Pollution from major or minor outfalls that are not running in dry weather, but may be contributing significant pollution during wet weather, are largely ignored in the general permit. While outfalls running in dry weather are continually polluting our waterways, some outfalls that run only during wet weather can contribute significantly more pollution. Permits should be iterative and require continuous improvement as part of addressing Maximum Extent Practicable (MEP). Accordingly, we suggest that some initial wet weather sampling be required to address this potentially significant pollution source. The results of such wet weather sampling can be evaluated, and future permits modified if it’s determined that dry weather sampling is sufficient for detecting illicit discharge.

Response: Pursuant to NR 216.07(3)(i), Wis. Adm. Code, field screening is based on observations made during dry weather conditions. Wet weather sampling is difficult to implement and still requires discussion and study nationwide. The USEPA’s “Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments” references “The annual mass discharges of many pollutants were found to be greater in dry weather flows than in wet weather flows.” No changes were made to the permit.

Comment 27 (2.3.3)

CW, MRK – DNR’s recent MS4 survey showed that only a very small percentage of identified illicit discharges were actually fixed. If only major outfalls are required to be tested and a “select” number of minor outfalls, it is unclear how all areas of the MS4 with “reasonable potential for containing illicit discharges” will even be assessed, let alone addressed. In addition, while section 2.3.3.h requires documentation of screening activities and actions taken, we suggest that documentation also be submitted to the DNR as existing reporting mechanisms do not capture this information.

Response: The permit requires the permittee to create a prioritized risk-based program to assist with selecting the highest-risk minor outfalls for screening. The permittee is also required to submit the IDDE program to the Department and keep the screening records on site. The records can be submitted to the Department upon request at any time. Additionally, the Department is looking at how illicit discharges are reported, confirmed, and eliminated during its review of annual report submittals.

Comment 28 (2.3.3.d)

Appleton, NEWSC, Oshkosh – Consider relocating the public reporting requirement to section 2.2 Public Involvement and Participation or including in other six minimum control measures. For example, public reporting for failing construction site erosion controls and failing stormwater management facilities are other ways for the public to participate in the MS4 stormwater program. In addition, please consider modifying the sentence as follows: “Promote, publicize, and facilitate public involvement through public reporting. Provide a

form, website, email address, and/or telephone number for storm water complaints submitted to the MS4 by the general public and/or municipal employees.” In order to facilitate documentation of the public reporting, MS4s may prefer public reporting through a form, website, or email, besides a telephone number. USEPA and WDNR are moving toward electronic reporting in order to reduce their costs. MS4s should also be allowed to fulfill permit requirements using electronic reporting tools to the maximum extent practicable.

Response: Section 2.3.3.d is about creating the procedures on how the public should report illicit discharges. Education on the promotion of these procedures can count towards public education requirements. Language was updated to read: *“Promoting, publicizing, and facilitating public reporting of illicit discharges or water quality impacts associated with discharges into or from MS4s through a central contact point, including a form, website, email address, and/or telephone number for complaints and spill reporting, and publicize to both internal permittee staff and the public.”*

Comment 29 (2.3.4)

CW, MRK – We require clarification that the 30-day response window in section 2.3.4 pertains to cross connections and sanitary waste. If it does, we support this provision as it’s a significant improvement over related requirements in past permits.

Response: Yes, section 2.3 includes illicit discharges pertaining to cross connections and sanitary waste. Language was updated in this section per Comment 23.

2.4 CONSTRUCTION SITE POLLUTANT CONTROL

Comment 30 (2.4.1.c)

West Bend – If all planned erosion control BMPs are properly implemented, it is assumed that sediment discharge from a construction site will be minimal. Is proper implementation of BMPs sufficient to meet the requirements of 2.4.1.c(1-2)? Or, is DNR looking for MS4 permit holders to require that calculations be performed using the DNR’s Soil Loss Tool demonstrating a discharge of no more than 5 tons per acre per year be submitted by developers/contractors for City review and approval prior to the start construction?

Response: Municipalities are required to have the same standard of 5 tons per acre per year and developers/contractors are required to meet that standard. The MS4 general permit incorporates the standard and the expectation that the permittee will implement and enforce it. Therefore, the MS4 general permit is not the place to entertain alternatives to using the Soil Loss Tool. If a municipality has an alternative and technically sound approach through which it can demonstrate meeting the 5 tons per acre per year standard, it can be discussed with the Department outside of the MS4 general permit reissuance process.

Comment 31 (2.4.4.b and Table 3)

Appleton, NEWSC, Oshkosh – Clarify that the inspection frequencies provide in Table 3 are intended for the municipality’s inspectors, not the landowner’s inspectors. Modify the inspection frequency to 45 days.

Response: Language was added to section 2.4.4.b to indicate that the permittee is responsible for the inspections and the inspection frequency for active sites was updated to the suggested 45 days. Please note that the table in section 2.4.4.b was incorrectly labeled as Table 2 in the proposed permit and has been corrected as Table 3.

Comment 32 (2.4.4.b and Table 3)

West Bend – Final Inspection requires the MS4 permit holder’s inspector to verify that permanent storm water management best management practices are installed as designed. This is essentially requiring that an asbuilt survey of the BMP will be required. The City of West Bend currently does not require developers to submit asbuilt plans for stormwater BMPs (as they are privately owned & maintained). Adding this requirement will not only add cost for developers/contractors in completing these asbuilt surveys, but it will also add cost in municipal staff time to review the asbuilt plans and “chasing” developers/contractors in order to get these asbuilts submitted. What is the purpose in the City retaining asbuilt plans for a privately owned and maintained stormwater BMP?

Response: A permittee is responsible for discharges to its MS4 under subch. I of ch. NR 216, Wis. Adm. Code, and a permittee that is a city the statutory authority to regulate construction site erosion control and storm water management under s. 62.234, Wis. Stats. Consequently, it is reasonable and appropriate for the permit to expect a permittee to require permanent storm water management best management practices be installed as designed. Please note that this requirement only applies to permanent storm water management best management practices that discharge to the permittee’s MS4.

Comment 33 (2.4.4.c)

West Bend – Clarify the definition of “proper documentation”. Is a completed inspection checklist required? Are photos required? Or is a brief note summarizing findings on a site sufficient? This section requires “maintenance of records.” How long is DNR expecting the MS4 permit holder to keep these records on file? Clarify language to indicate how long records must be kept.

Response: Permittees are welcome to use the Department’s Construction Site Inspection Report (Form 3400-187) to document inspections. A note was added to section 2.4.4.c directing permittees where to acquire the form. Section 4.16 of the permit contains records retention requirements.

2.5 POST-CONSTRUCTION STORM WATER MANAGEMENT

Comment 34 (2.5.3)

CW, MRK – Clean Wisconsin further supports inclusion of written procedures for post-construction site plan review which incorporates consideration of potential water quality impacts, as well as the recommendation that municipal staff obtain training on that post-construction plan review. This additional level of review will help to avoid adverse water quality impacts and better educate municipal staff.

Response: Thank you for your comment.

Comment 35 (2.5.4)

Appleton – Clarify if this is intended for the municipality or the landowner.

Appleton, NEWSC, Oshkosh – Consider modifying the sentence as follows: “Written procedures that will be used by the permittee to track and enforce long-term maintenance of storm water management facilities implemented through the MS4’s ordinance jurisdiction, approval process, and authority.”

West Bend – Clarify language to reflect that this requirement is intended for only new BMPs which are part of projects subject to post-construction water quality standards of NR 151 installed after the date the MS4 permit holder’s ordinance requiring compliance with NR 151 took affect. This requirement should not apply to pre-existing PRIVATE storm water facilities that may be within the MS4 boundary, but that the City has no control

over or authority to inspect.

Response: Section 2.5.4 states that these are written procedures that the permittee will use. The recommended modifications to the first sentence were incorporated. Clarifying language was added to section 2.5.4 to state that at a minimum, section 2.5.4 is applicable to the implementation of practices to meet the post-construction performance standards.

2.6 POLLUTION PREVENTION

Comment 36 (2.6.1)

Appleton, NEWSC – Consider clarifying if vegetated swales are structural storm water facilities. Typically, vegetated swales are classified as a non-structural storm water facility, similar to street sweeping and catch basin cleaning. MS4s do not typically know the year that a vegetated swale was constructed. Some vegetated swales were constructed along roadways about 100 years ago, when records did not exist.

Response: The purpose of this section is not to classify a particular BMP as structural or non-structural but to have the permittee provide information on the practices it's using to meet a water quality requirement in the permit. If the year a vegetated swale was constructed is unknown, then it is acceptable to indicate that. The reference to "structural" has been removed.

Comment 37 (2.6.1.c(1))

NEWSC – Consider clarifying that operation procedures are also needed, in addition to maintenance.

Response: Operation was added to section 2.6.1.c(1).

Comment 38 (2.6.1.c(2))

Appleton, NEWSC, Oshkosh – Consider deleting "as-built plan" and replacing with "record drawing". Professional liability insurers may not provide insurance coverage if the phrase "as-built plan" is used rather than "record drawing".

Response: "As-built plans" was replaced with "A record drawing" in section 2.6.1.c(2) and a note was added describing a record drawing. Any other references to "as-built plans" were also updated to "record drawing" throughout the permit.

Comment 39 (2.6.1.c(3))

Appleton, NEWSC – Consider modifying as follows: "If using BMP to satisfy post-construction stormwater performance standards (NR 151.12, NR 151.24, or TMDL) and BMP is owned by another entity, provide written documentation from BMP owner, which states the permitted MS4 has permission to use BMP for satisfying post-construction stormwater performance standards (NR 151.12, NR 151.24, or TMDL)." The owner approval letter provides an opportunity for the BMP owner to recoup a portion of its capital or other costs associated with BMP construction and implementation.

Response: The purpose of section 2.6.1.c is for the permittee to confirm if each of the listed elements exists and is available. Consequently, the suggested language was not incorporated. The phrase "water quality requirement in this permit" is used to be comprehensive without listing each requirement. However, language in this section was adjusted to make the intent clearer.

Comment 40 (2.6.1.c(3))

NEWSC – Consider adding as follows: "If using BMP to satisfy developed urban area stormwater performance

standards (NR 151.13, NR 151.25, or TMDL) and BMP is owned by another entity, provide written documentation from the MS4's attorney, which states the permitted MS4 has legal authority to either require or perform BMP maintenance." An owner approval letter or permission is not needed to use BMP for satisfying developed urban area stormwater performance standards (NR 151.13, NR 151.25, or TMDL), if the permitted MS4 has legal authority to require proper operation and maintenance of the BMP.

Response: See response to Comment 39 above.

Comment 41 (2.6.2)

West Bend – Clarify language to indicate how long inspection/maintenance documentation must be kept on file.

Response: Section 4.16 of the permit contains records retention requirements.

Comment 42 (2.6.3)

West Bend – Clarify language to define "other municipally owned properties" subject to these requirements. Are City-owned public parks (where people may litter) included? Are City-owned public parking lots (which are salted each winter) included?

Response: Parks and automobile parking lots are not included. However, section 2.6.3 was amended to make the intent clearer.

Comment 43 (2.6.5.a)

NEWSC, Oshkosh – Clarify if tracking and reporting of street sweeping waste tonnage and lane-miles is from (1) all urban streets that are swept, (2) only urban streets that are modeled as street sweeping for numeric water quality requirements, or (3) MS4's choice.

Response: The permit only pertains to street sweeping activities performed to meet a water quality requirement under the permit. Please only report on those activities.

Comment 44 (2.6.5.b)

NEWSC, Oshkosh – Clarify if tracking and reporting of catch basin cleaning waste tonnage and number of sumps is from (1) all urban sumps that are cleaned, (2) only urban sumps that are modeled as catch basin cleaning for numeric water quality requirements, or (3) MS4's choice.

Response: The permit only pertains to catch basin cleaning activities performed to meet a water quality requirement under the permit. Please only report on those activities.

Comment 45 (2.6.5.d)

West Bend – In the first sentence of this section, proposed language states "Proper management of leaves and grass clippings..." Does the first sentence apply to private property only?

Response: The first sentence in section 2.6.5.d was changed to read "Proper management of leaves and grass clippings from municipally-owned properties and private property." However, the remainder of this section is intended to specify the program services offered to private property owners, so that clarification was made.

Comment 46 (2.6.6, 2.6.7)

CW, MRK – We support this section, and recommend that the WDNR further require information on any

external training or certification program attended by permittees or their contractors to ensure they are minimizing deicing applications to only those necessary to protect public safety. This comment could also apply to Section 2.6.7 regarding nutrient management.

Response: Thank you for your comment. Please note that section 2.6.9 specifies the required training for appropriate municipal staff and other personnel involved in implementing each of the elements of the pollution prevention program.

Comment 47 (2.6.6)

West Bend – Proposed language states that “If road salt or other deicers are applied by the permittee or a contractor on behalf of the permit, no more shall be applied than necessary to maintain public safety.” This sentence is vague. What does DNR consider as the threshold for the amount applied to maintain public safety? This minimum amount applied for public safety can mean different things to different people. The language provided does not give us guidance on what amount of salt or deicer applied the DNR considers too much and what amount the DNR considers not enough. What is the standard for application?

Response: In the note under section 2.6.6, the permit includes reference to the WisDOT Highway maintenance manual - Chapter 6, which provides information on deicing activities to balance public safety with environmental concerns.

2.7 STORM WATER QUALITY MANAGEMENT

Comment 48 (2.7.1.a & b)

Appleton, NEWSC – Clarify that the type of BMP can change over time, but the community-wide TSS water quality performance cannot backslide as compared to performance before July 1, 2011. For example, the permitted MS4 may decide to urbanize a rural street, such that the grass swales are replaced with curb and gutter and a different type of BMP (e.g. biofilters, wet detention ponds, etc.). The intent of the legislative requirement is to maintain the NR 151.13 community-wide TSS water quality benefits of the BMPs implemented before July 1, 2011. The BMPs can change, but the NR 151.13 community-wide TSS water quality benefits of the implemented BMPs generally cannot backslide.

Response: Although the permit reflects the language in s. 281.16(2)(am)3., Wis. Stats., the Department acknowledges that BMPs may change over time. Section 2.7.1.a and b were modified to address the clarification requested.

2.9 ANNUAL REPORT

Comment 49 (2.9)

Madison – As a significant amount of data requested is associated with anti-icing operations, leaf removal and spring clean-up of anti-icing (sweeping), we suggest moving the reporting deadline to June 30.

Response: When the Department held regional listening sessions there were varying requests for having the annual report due earlier in January or February or later in June. Due to this variation and no consensus on a date change, the Department has not changed the annual report due date in this permit.

3. COMPLIANCE SCHEDULE

Comment 50 (3.2 – 3.7)

Appleton, League, Oshkosh, R&M, Watertown – Revise compliance dates for sections 3.2 through 3.7 to March 31, 2021 or space throughout the permit term. For municipalities requesting consultants to prepare/update these documents, budgets will be adoption in the fall and funding will not be available until January 2020.

Response: Compliance dates for sections 3.2 through 3.7 were updated as suggested to March 31, 2021. These updated dates were also reflected in Table 4: Compliance Schedule for Permit Requirements.

Comment 51 (3.8)

Appleton – TSS reduction modeling is time consuming and expensive, especially for communities in multiple TMDL reachsheds. Appleton tries to do this approximately every five years. Revise the requirement of reporting TSS percent reduction to once during the permit term, as community-wide plans are updated.

Response: Section 3.8 is not a general requirement for the permittee to perform developed urban area modeling every year. If the permittee performs updated developed urban area modeling for some reason, then certainly the Department expects the updated modeling results to be reported. Otherwise, the permittee is only expected to re-report its most recent developed urban area modeling results. Note that section 3.8 applies to the developed urban area performance standards, not TMDLs.

GENERAL COMMENTS ON THE TOTAL MAXIMUM DAILY LOAD (TMDL) APPENDICES

Comment 52

Appleton, NEWSC – Consider developing and updating Technical Standards for those urban management practices allowed by WDNR. Technical Standards need to provide design criteria and considerations for the urban TMDL pollutants of concern: total suspended solids and total phosphorus. Available technology will influence or determine if the TMDL compliance plan is feasible. For example, a Technical Standard is needed for chemically enhanced treatment so MS4s know where the technology can and cannot be used. It is challenging for an MS4 to develop a TMDL implementation plan if the technology does not exist to achieve the TMDL, if the WDNR does not approve of the technology, or if the WDNR does not provide a Technical Standard for the pollutant of concern. Since TSS and TP reductions cannot be credited for practices without a DNR approved Technical Standard, what steps are the Department taking to increase the number of Technical standards for new practices.

Response: The Department continues to evaluate and prioritize the development of additional technical standards. Currently, the Department is drafting a technical standard for proprietary filtration devices. Technical standards are developed by team members whom are agency engineers and technicians, municipal reviewers, university researchers, industry representatives, and conservation professionals from across the state that volunteer to contribute their time, expertise, and experience to the development of standards. In the meantime, the Department will consider other technology on a case-by-case basis.

Comment 53 (A.5.3.a Note and B.4.3.a. Note)

Appleton, LWM, Madison – Remove language that reduction goals can be met through modifying ordinance requirements for redevelopment. Many TMDL total phosphorus waste load allocations have reduction levels greater than 60% from a no controls condition, making this an unrealistic option. Even if 100% of the land were

eventually redeveloped, a phosphorus reduction level of 60% or greater would be needed, and thus infiltration or filtration would be required on every site. This is not technically or physically feasible in a redevelopment condition. Appleton has experienced a reluctance from property owners to maintain their properties due to the 40% TSS reduction requirement.

Madison has already implemented stricter redevelopment requirements than those in ch. NR 151, Wis. Adm. Code, however the references in the note implies that pollution reduction through stricter local redevelopment pollution could result in achievement of waste load allocation reduction targets on a reachshed basis, this is not a realistic expectation. The notes are misleading and should be revised to reflect that this method can be used as one tool to meet waste load allocation.

Response: This change has been made to the Notes in Appendix A and B.

APPENDIX A: PERMITTEES SUBJECT TO A TMDL APPROVED PRIOR TO MAY 1, 2014 INCLUDING APPLICABLE UPDATES

Comment 54 (A.3)

NEWSC – Clarify or define the phrase “TMDL Compliance Plan.”

Response: The permit has been clarified to define TMDL Compliance Plan as that which was developed and concurred with by the Department to meet sections 1.5.4.4 and 1.5.4.5. of the 2014 MS4 general permits.

Comment 55 (A.3)

NEWSC – Clarify that each permitted MS4 has flexibility to work toward TMDL compliance in the most cost-effective and strategic manner to the MS4. For example, the MS4 can elect to:

- a. Focus all efforts and budget resources in one reachshed until the TMDL goals are satisfied for the reachshed, before moving on to the next reachshed and their associated TMDL goals.
- b. Focus all efforts and budget resources on satisfying older USEPA approved TMDLs, before moving on to satisfying newer USEPA approved TMDLs.
- c. Focus efforts and budget resources equally amongst older USEPA approved TMDLs, new USEPA approved TMDLs, and their associated reachsheds.
- d. Focus efforts and budget resources on satisfying all USEPA approved TMDLs for one pollutant of concern (e.g. sediment), before focusing efforts on satisfying USEPA approved TMDLs for other pollutants of concern (e.g. phosphorus).

Response: Permittees were given the opportunity to develop their own implementation plan in the 2014 MS4 general permits where they had full flexibility to develop a plan based upon their needs and resources available. Permittees who have submitted an implementation plan with a schedule and that have received Department concurrence with their plan will be able to follow their individualized plan. Permittees who have not complied with the previous permit requirement, will be expected to choose one of the other compliance options presented in the Appendix.

Comment 56 (A.5.2)

Appleton – Revise date to March 31, 2022.

Response: The date in sections A.5.2 and A.6.1.b was revised to October 31, 2021. This date was set to allow time for practices to be implemented within the permit term. The City may opt to follow its existing implementation plan under section A.3.1 and/or re-prioritize projects from its existing plan to meet the implementation requirements in section A.5.2. The City’s revised plan for the permit term anticipated to start in May 2024 is not due until October 31, 2023, under section A.6.3.

Comment 57 (A.5.2)

CW – A compliance option is described, referring to a 20% reduction TSS and 10% reduction in TP. Where do those figures come from? Is this required/allowed by federal law? Is it an exercise of DNR’s discretion?

Response: The 20% TSS and 10% TP are levels of reduction that the Department selected. If the permittee is not able to meet these levels during this permit term, then the permittee would be subject to requirements in section A.5.3.

Comment 58 (A.5.2 and calculation example)

CW, MRK – Clean Wisconsin and Milwaukee Riverkeeper support the requirement of an additional minimum reduction of 20% in sediment or total suspended solids, as well as the requirement of an additional 10% reduction in total phosphorus. It is important that MS4 permittees subject to TMDL requirements approved prior to May 1st, 2014 continue to strive for additional reductions in TMDL pollutants of concern in every permit term until impaired waters are delisted.

We’d suggest this section of the permit be clarified to better explain that these reductions are measured from the baseline assumption for the TMDLs (e.g. a 40% reduction for TSS over no controls and 27% reduction for TP over no controls for the Rock River), and not measured from the no control condition. The example on page 37 could be clarified to minimize confusion.

Response: Sections A.5.2.a and b. have been changed to clarify that the reductions will be calculated from the current s. NR 151.13. Wis. Adm. Code, regulatory level of 20% TSS control and the equivalent TP control level of 15% for the Rock River Basin.

Comment 59 (A.5.2 Note)

NEWSC – Below table is provided to help MS4s understand how the percentages in the draft permit translate into a potential TMDL compliance timeline.

Additional Reduction	TMDL Compliance Timeline	5 Year Permit Terms
5%	100.0 years	20.0
10%	50.0 years	10.0
15%	33.3 years	6.7
20%	25.0 years	5.0
25%	20.0 years	4.0
30%	16.7 years	3.3
35%	14.3 years	2.9
40%	12.5 years	2.5

45%	11.1 years	2.2
50%	10.0 years	2.0

Response: This table is correct provided the additional percent reduction remains the same in future permit terms. The reductions stipulated under A.5.2 are interim compliance targets set for this permit term. The Department will evaluate whether to adjust the additional percent reductions when the permit is reissued in the future and as a result will not be including this table in the permit. Future permit reduction targets may taper off or vary between municipalities based on individual plans.

Comment 60 (A.5.3)

Appleton, LWM – Add an option that would allow an MS4 to undertake “other activities as approved by DNR.”

Response: The options listed are minimum items to implement. There is no restriction on pursuing additional measures the may facilitate meeting pollution control in the future.

Comment 61 (A.5.3)

LWM – Require a completion of only a subset of options outlined in section A.5.3.a-g.

Response: Section A.5.2 and A.5.3 become TMDL compliance options when a permittee did not complete the permit requirements contained in sections 1.5.4.4 and 1.5.4.5 of WDPES Permit No. WI-S050075-2 or WI-S050181-1. If a permittee chooses section A.5.3 as an option, the permittee must complete all the requirements of A.5.3.a through g. The Department recognizes via the note to section A.5.3 that the permittee can optimize its resources.

Comment 62 (A.5.3)

CW, MRK – Add an option for permittees to revise their local municipal codes and ordinances to remove barriers to the use of green storm water infrastructure practices.

Response: The options listed are minimum items to implement. There is no restriction on pursuing additional measures the permittee may facilitate in meeting pollution control in the future.

APPENDIX B: MS4 PERMITTEES SUBJECT TO MILWAUKEE RIVER BASIN TMDL

Comment 63 (Appendix B)

MMWQC, R&M, Watertown – A pollutant trading option could be listed as a separate compliance item in Appendix B, similar to the adaptive management option.

Response: The Department considered this during permit development but decided not to include Water Quality Trading (WQT) as a stand-alone compliance option because it is not anticipated that an MS4 will meet all of its reduction goals through trading alone. Specific trades can be accounted for when the WQT plan is approved by the Department and the practice has been installed.

Comment 64 (B.3)

R&M – The permittees in the Milwaukee River Basin are still working on TMDL planning and an adaptive management plan may not be approved at this time. Section B.3 could be modified to reflect the development and future implementation of Adaptive Management Programs to meet the goals of the TMDL.

Response: The Department recognizes that permittees in the Milwaukee River Basin are developing their individual strategy for meeting TMDL compliance and encourages permittees to consider this alternative when evaluating all their options. Section B.3 was updated to provide the permittee an opportunity to choose this as a compliance option and for the permittee to submit an adaptive management plan for approval by the Department by March 31, 2022.

Comment 65 (B.3 and B.4.3)

MMWQC, R&M – If a permittee opts to participate in an adaptive management program, which would most likely go beyond the 5-year term of a MS4 permit, the permittee should not be required to implement the items listed in section B.4.3.

Response: The intent of option B.3 was to be a stand-alone option for adaptive management. Language was added to B.4.3 to include *“If the permittee has chosen not to participate in an adaptive management plan as stipulated in section B.3...”* to clarify.

Comment 66 (B.4.1)

MMWQC, R&M – The March 31, 2020 deadline for evaluating and notifying the Department of Natural Resources (DNR) of whether a permittee will or will not achieve full TMDL compliance within this 5-year permit term as listed in Section B.2.2 is not feasible. The previous MS4 General Permits allowed 48 months from the approval date of the TMDL (March 2018) for permittees to complete their assessments to determine compliance with the TMDL wasteload allocations. March 31, 2022 would be an appropriate and feasible deadline for permittees to notify DNR of whether full compliance with the TMDL will be met within this permit term or not.

Response: The deadline for section B.4.1 was updated to March 31, 2022, to reflect the same date that the assessment is due. Language was clarified so the permittee would determine whether full compliance with the TMDL would be achieved during the permit term or not.

Comment 67 (B.4.2)

League, MMWQC, R&M, SWWT– Revise section B.4.2.a date to March 31, 2020 to match schedule from previous permit. Revise sections B.4.2.b and B.4.2.c dates to March 31, 2022 to match previous permit schedule. B.4.2.b and B.4.2.c should be completed together.

Response: The dates for sections B.4.2 were revised to comply with the previous permit schedule. Note, this only resulted in a change in section B.4.2.b, revising the date from March 31, 2021 to March 31, 2022. However, the Department encourages permittees to submit the tabular summary (B.4.2.b) in advance before completing the plan if possible, because then the Department will be able to conduct a preliminary review of the tabular summary and provide comments before the TMDL Implementation Plan is submitted.

Comment 68 (B.4.2.c(2))

MMWQC, R&M, Watertown – Suggestion to reduce planning for 20% TSS and 10% phosphorus reductions in next 5-year permit term to 3% TSS and 2% phosphorus.

Response: As stated in the permit, this is the planning goal and is to be pursued to the maximum extent practicable. While it may not be feasible for all MS4s to meet reductions of 20% over the next permit term, the expectation is that the communities will develop their plans to achieve this goal. This provides a consistent timeframe analysis for comparison of efforts. The expectation for future permit terms will be based upon the analysis and proposed schedules.

Comment 69 (B.4.3)

CW-MRK – We support this section that requires “in addition to the planning requirements contained in Section B.4.2” that municipalities during the next 5-year permit will have to implement a minimum of 3 activities focused on optimizing existing BMPs or practices or enacting ordinances to reduce TSS and TP. We’d encourage consideration of additional options that could focus on improving or creating riparian buffers or other practices that could reduce runoff from the land to area waterways.

Response: Education and outreach on Stream and Shoreline Management (Riparian Buffers) is required by section 2.1.1 of the Permit.

Comment 70 (B.4.3)

MMWQC, R&M – We recommend allowing the communities to choose 3 options from the TMDL Compliance Plans rather than this limited list. In addition, if prescriptive measures will be used, a compliance date should be established, no sooner than 2023, after the communities complete the TMDL planning documents.

Response: Section B.4.3.f was revised to allow for municipalities to implement multiple structural BMPs to satisfy the three required actions for implementation. Section B.6.3 establishes the compliance date of October 31, 2023, for final documentation of section B.4. The compliance date was also added directly into section B.4.3.

Comment 71 (B.5.2)

CW-MRK – We support the requirement in B.5.2 that the permittee shall develop and submit to the Department a bacteria source identification and elimination plan that identifies sources of bacteria, develops a strategy including design, cost estimates, funding sources, and a schedule to eliminate sources by March 31, 2022.

League – Bacteria source identification and elimination plan provision is unclear, more explanation on expectations is needed.

Response: Section B.5.2 was updated and clarified so that the permittee would first develop an inventory and map of potential bacteria sources by March 31, 2022, and then develop a bacteria source elimination plan by October 31, 2023.

Comment 72 (B.5.3)

CW-MRK – We support the WDNR’s requirement for municipalities subject to a bacteria TMDL to pass local ordinances to reduce bacteria pollution in storm water runoff, and in particular, requiring ordinances that would require “property owners to cooperate with identifying and eliminating illicit sanitary sewerage cross-connections with the MS4” as well as address other sources of bacteria (e.g. refuse, etc.). We suggest that some references to draft or model ordinances be included to facilitate municipalities’ adoption and implementation of such policies, if available.

Response: The Department currently does not have models for these types of ordinances.

Comment 73 (Table B1)

West Bend – TSS percent reductions and TP percent reductions listed in Table B1 are different than the percent reductions listed in the approved TMDL document. Provide clarification on how percentages listed Table B1 were calculated.

Response: Correct, the percent reductions found in Table B1 of the permit differ from those found in

the TMDL report because the reductions listed in Table B1 of the permit are measured from “no controls”. The percent reductions listed in Tables A.28 and A.29 of the TMDL are measured from the baseline condition in the TMDL. The baseline condition in the TMDL reflects compliance with the requirements contained in s. NR 151.13 Wis. Adm. Code. See Section 4.3.2.4 of the report titled, “Total Maximum Daily Loads for Total Phosphorus, Total Suspended Solids, and Fecal Coliform Milwaukee River Basin, Wisconsin”, March 2018, for more details on the baseline assumptions of the TMDL. The percent reductions contained in Table B1 do not account for the reductions obtained through implementation of NR 151, reflecting no-controls, and are therefore higher than the reductions in the TMDL; however, yield the same result.

APPENDIX C: MS4 PERMITTEES SUBJECT TO A TMDL APPROVED AFTER MAY 1, 2019

Comment 75 (Appendix C)

Appleton – Clarify if this appendix applies this permit term or next permit term. If not until next, delete appendix.

League – The TMDL guidance for MS4 permits states that “once EPA has approved a TMDL that contains permitted MS4s, the next permit issued must contain an expression of the waste load allocations consistent with the assumptions and requirements contained in the TMDL.” As currently drafted, the MS4 permit requires municipalities to begin planning for and taking steps toward compliance with a TMDL that has not year been EPA approved. Appendix C should be either removed or the dates revised so as to require MS4s to begin planning for and implementation of WLAs in the permit reissuance.

Response: Appendix C was written to apply to permittees that are subject to a TMDL that is approved by the USEPA during this permit term. Please note that the Wisconsin River Basin TMDL was approved by the USEPA on April 26, 2019. Consequently, Appendix C has been amended to specifically include the Wisconsin River Basin TMDL. Appendix C is intended to require permittees to begin planning for TMDL implementation as soon as the USEPA approves a TMDL so when the wasteload allocations are written into subsequent permits, those permittees have a plan for making progress toward those wasteload allocations. It is possible for the planning conditions to carry over to subsequent permit terms, similar to how Appendix B was drafted.

Comment 76 (C.4)

NEWSC – Clarify the difference between the phrase “TMDL Compliance Plan” used in A.3 and the phrase “TMDL Implementation Plan” used in C.4. Are these two phrases the same intent? For clarity, use the same terminology in each appendix.

Response: The reference to “TMDL Implementation Plan” in Appendix C will remain. Section A.3 was clarified per Comment 54 regarding “TMDL Compliance Plan.”

Comment 77 (C.4.1 and C.4.2)

Appleton – Consider allowing 18 months from the TMDL approval date for submittal of an updated map.

NEWSC – Consider allowing 24 months from the TMDL approval date for submittal of an updated map.

Appleton, League, NEWSC – Consider allowing 48 months from the TMDL approval date for submittal of an updated map. C.4.2 and C.4.3 should be done together.

Response: The Department found that both the map and modeling documents were submitted at the same time during the previous permit term, and the maps were reviewed with the modeling. Therefore,

the submittal dates have been updated to correlate with what the Department experienced. Section C.4.1 was changed from 12 months to 36 months. Sections C.4.2 and C.4.3 remained at 36 months and 48 months, respectively.

CHANGES MADE BY THE DEPARTMENT

The Department made several non-substantive changes to correct editing errors, use consistent language and abbreviations, and correct cross-references. The Department also made some minor changes to clarify intent.

This document was prepared by Suzan Limberg and Jim Bertolacini, Runoff Management Section, Wisconsin Department of Natural Resources