UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. THE MUNICIPALITY OF SAN JUAN, THE PUERTO RICO DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES, THE PUERTO RICO DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS, and THE COMMONWEALTH OF PUERTO RICO, Defendants.	)	CIVIL ACTION NO.

COMPLAINT

The United States of America ("United States"), by the authority of the Attorney General of the United States, acting on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF THE ACTION

1. This civil action is brought against the Municipality of San Juan, Puerto Rico ("San Juan") pursuant to Sections 309(b) and (d) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1319(b) and (d), for injunctive relief and civil penalties for unauthorized, illegal and persistent discharges of pollutants in violation of Section 301 of the Act, 33 U.S.C. § 1311, and violations of the November 6, 2006 National Pollution Discharge Elimination System General Permit for

Discharges from Small Municipal Separate Storm Sewer Systems ("MS4 General Permit"). A true and correct copy of the MS4 General Permit is attached hereto as Exhibit 1.

2. This civil action is brought against the Puerto Rico Department of Natural and Environmental Resources ("DNER"), pursuant to Sections 309(b) and (d) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1319(b) and (d), for injunctive relief and civil penalties for unauthorized, illegal and persistent discharges of pollutants in violation of Section 301 of the Act.

3. This civil action is brought against the Puerto Rico Department of Transportation and Public Works ("DTPW") pursuant to Sections 309(b) and (d) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1319(b) and (d), for injunctive relief and civil penalties for unauthorized, illegal and persistent discharges of pollutants in violation of Section 301 of the Act, 33 U.S.C. § 1311, and violations of the MS4 General Permit attached as Exhibit 1.

4. This civil action is also brought against Defendants pursuant to Section 504 of the Act, 33 U.S.C. § 1364, to require Defendants to take such action as may be necessary to abate the imminent and substantial endangerment to the health and welfare of persons presented by the Defendants' discharges of pollutants.

5. Based upon observations and results of sampling, Defendants have created and maintained an imminent and substantial endangerment to human health or welfare and Defendants have also violated the Act in a number of ways, including, but not limited to: San Juan's violation of its MS4 General Permit requirements, including discharging unpermitted non-storm water to waters of the United States and failing to fully implement an adequate Storm Water Management Program by November 6, 2011; DNER's unpermitted discharges of pollutants from at least three of its pump stations; and DTPW's violation of its MS4 General

Permit requirements, including discharging unpermitted non-storm water to waters of the United States.

JURISDICTION, AUTHORITY, AND VENUE

6. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Sections 309(b), (d), and/or 504(a) of the Act, 33 U.S.C. §§ 1319(b), (d), and/or 1364(a), and pursuant to 28 U.S.C. §§ 1331, 1345 and 1355.

7. Venue is proper in this judicial district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395.

8. Notice of the commencement of this action has been given to the Commonwealth of Puerto Rico pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

PLAINTIFF

9. Plaintiff is the United States of America, acting by the authority of the Attorney General and on behalf of the Administrator of the EPA.

DEFENDANTS

10. Defendant San Juan is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

11. San Juan is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) because it is a "municipality."

12. San Juan owns and/or operates a Municipal Separate Storm Sewer System ("MS4") in the Municipality of San Juan.

13. Defendant DNER is an executive department of the Commonwealth of Puerto Rico ("Puerto Rico") under the Laws of Puerto Rico, P.R. Ann., Title 3, § 152.

14. DNER is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

15. DNER owns and/or operates several storm water pump stations in Puerto Rico, including the Baldorioty de Castro, De Diego and Stop 18 pump stations, as described in greater detail below.

16. Defendant DTPW is an executive department of Puerto Rico under the Laws of Puerto Rico, P.R. Ann., Title 3, § 411.

17. DTPW is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

18. DTPW owns and/or operates an MS4 with certain functions performed by and through subsidiary agencies, authorities or directorates, including but not limited to the Highway and Transportation Authority and the Public Works Directorate.

19. Portions of DTPW's MS4 are located within the municipal boundaries of San Juan, including but not limited to those sewers servicing Puerto Rico State Roads PR-25, PR-26, and PR-37.

20. Section 309(e) of the Act, 33 U.S.C. § 1319(e), provides:

> Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment or any expenses incurred as a result of complying with any such judgment entered against the municipality in such action, to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

21. Puerto Rico is a "State" for the purposes of Section 502(3) of the Act, 33 U.S.C. §1362(3).

22. Puerto Rico is joined in this action pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e) and because DNER and DTPW are instrumentalities of Puerto Rico.

STATUTORY AND REGULATORY BACKGROUND

23. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants into navigable waters of the United States by any person except in compliance with the requirements of that section, including as authorized by and in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

24. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to mean, among other things, "any addition of any pollutant to navigable waters from any point source . . . ."

25. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines the term "person" as: "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body."

26. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term "pollutant" to include sewage, biological materials, and municipal waste.

27. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines the term "navigable waters" to be "waters of the United States, including its territorial seas." EPA regulations

promulgated pursuant to the Act define the term "waters of the United States" to include, among other things: (1) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (2) all interstate waters; (3) all other waters such as intrastate lakes, rivers and streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; (4) tributaries of waters of the United States; and (5) certain wetlands (including wetlands adjacent to these waters). 40 C.F.R. § 122.2.

28. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term "point source" as "any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants may be discharged."

29. Under Section 402(a) of the Act, 33 U.S.C. § 1342(a), the Administrator of the EPA ("Administrator") may issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, provided that all discharges meet the applicable requirements of Section 301 of the Act, 33 U.S.C. § 1311, or such other conditions as the Administrator determines are necessary to carry out the provisions of the Act.

30. Section 402(p) of the Act, 33 U.S.C. § 1342(p), sets forth the requirements for the discharge of storm water, including discharges of storm water from MS4s.

31. 40 C.F.R. §122.26(b)(8), defines an MS4 as a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a city, town, borough, county, parish, district, association, or other public body (created by State law) . . . that discharges into waters of the United States; (ii) designed or used for collecting or conveying

storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works. . ."

32. 40 C.F.R. § 122.26(b)(16)(ii) defines a "small municipal separate storm sewer system," in part, as "not defined as 'large' or 'medium' municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section, or designated under paragraph (a)(1)(v) of this section."

33. Pursuant to 40 C.F.R. § 122.32(a)(1), all small MS4s located in an "urbanized area" (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s. 40 C.F.R. § 122.33(a) and (b) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the permitting authority, by submitting a notice of intent for coverage under such permit.

34. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction when any person violates, among other things, Section 301, 33 U.S.C. § 1311, or violates any of the terms or conditions of an NPDES permit, issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

35. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates, among other things, Section 301 of the Act, 33 U.S.C. § 1311 or violates any of the terms or conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed $25,000 per day for each violation.

36. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2641 note: Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701 note: Pub. L. 101-134, enacted

April 26, 1996, 110 Stat. 1321), EPA promulgated the Civil Monetary Penalty Inflation Adjustment Rule. Under that rule, EPA may seek civil penalties of up to $32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009, up to $37,500 per day for each violation occurring after January 12, 2009 through December 6, 2013, and up to $37,500 per day for each violation occurring after December 6, 2013. See 61 Fed. Reg. 69,364 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 73,345 (Dec. 11, 2008); 78 Fed. Reg. 66,643 (Nov. 6, 2013).

37. Section 504(a) of the Act, 33 U.S.C. § 1364(a), authorizes the Administrator to commence a civil action for injunctive relief upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health or welfare of persons.

GENERAL ALLEGATIONS

38. On or about September 2, 2006, pursuant to Section 402 of the Act, 33 U.S.C. § 1342, EPA issued the NPDES General Permit for Discharges from Small MS4s, effective November 6, 2006 ("MS4 General Permit").

39. Under Section 6.2 of the MS4 General Permit, the permit expired on November 6, 2011, but remains in full force and effect because EPA has not replaced or re-issued it or determined that it will not be replaced or reissued.

40. Under Section 1.5.1 of the MS4 General Permit, all regulated small MS4s must submit a notice of intent to be covered under the permit, or to apply for an individual permit by February 5, 2007.

Municipality of San Juan's System

41. San Juan owns and operates a small MS4 in Puerto Rico that flows into various bodies of water including bodies of water within and comprising the San Juan Bay Estuary.

42. The San Juan Bay Estuary is a federally-identified national estuary under Clean Water Act Section 320, 33 U.S.C. § 1330, indicating that it has been recognized as an estuary of national significance and is subject to comprehensive conservation management.

43. San Juan's MS4 includes but is not limited to the Barrio Obrero Pump Station; storm sewers on Calle 10 and Calle 13 south of Avenida Rexach; the Buena Vista Santurce Pump Station ("Buena Vista Pump Station"); storm sewers that discharge to the Puerto Nuevo Channel, the Martín Peña Channel, San Jose Lagoon, Buena Vista Creek, and the Rio Piedras River; and storm sewers tributary to the DNER Baldorioty de Castro Pump Station, storm sewers tributary to the DNER Stop 18 Pump Station, and storm sewers tributary to the DNER De Diego Pump Station.

44. San Juan's MS4 is intended to convey storm water runoff to surface waters to prevent flooding during wet weather events.

45. San Juan's MS4 is a regulated small MS4 pursuant to 40 C.F.R. § 122.32(a)(1).

46. San Juan submitted its notice of intent to have discharges from its MS4 covered under the MS4 General Permit on March 7, 2008.

47. The MS4 General Permit at Sections 1.3.1 and 1.4 does not authorize San Juan to discharge non-storm water from its MS4 unless the non-storm water discharges are among particular exceptions listed in the MS4 General Permit, including landscape irrigation, diverted stream flow, groundwater, dechlorinated swimming pool discharges, and street wash water.

DTPW's System

48. DTPW owns and operates a small MS4 in Puerto Rico a portion of which flows into San Juan's MS4 storm sewers and/or DNER pump stations, which ultimately discharge to various bodies of water including bodies of water within and comprising the San Juan Bay Estuary.

49. DTPW's MS4 includes storm sewers constructed and operated as part of transportation related infrastructure in Puerto Rico, including but not limited to storm sewers that service the Baldorioty de Castro Expressway (PR-26) (formerly known as the North Expressway), De Diego Avenue (PR-37), and Ponce de León Avenue (PR-25), storm sewers tributary to the DNER Baldorioty de Castro Pump Station, storm sewers tributary to the DNER Stop 18 Pump Station (also known as Barriada Figueroa Pump Station), and storm sewers tributary to the DNER De Diego Pump Station.

50. DTPW's MS4 is intended to convey storm water runoff to surface waters to prevent flooding during wet weather events.

51. DTPW's MS4 is a regulated small MS4 pursuant to 40 C.F.R. § 122.32(a)(1).

52. DTPW submitted its notice of intent to have discharges from its MS4 covered under the MS4 General Permit on November 4, 2011.

53. The MS4 General Permit at Sections 1.3.1 and 1.4 does not authorize DTPW to discharge non-storm water from its MS4 unless the non-storm water discharges are among particular exceptions listed in the MS4 General Permit, including landscape irrigation, diverted stream flow, groundwater, dechlorinated swimming pool discharges, and street wash water.

DNER's System

54. DNER owns and operates several storm water pump stations in Puerto Rico, including the Baldorioty de Castro Pump Station, the De Diego Pump Station, and the Stop 18 Pump Station.

55. The Baldorioty de Castro, De Diego, and Stop 18 Pump Stations discharge all flow entering the pump stations without treatment for pollutants; bar screens in the pump stations remove large debris and solids only to reduce the risk of damage to the pumps; sorbent booms in the pump stations remove some floatables and sheens when properly operated and maintained.

56. DNER's discharge of pollutants from its storm water pump stations is not covered under any NPDES permit.

Studies

57. In August 2006, Science Applications International Corporation ("SAIC") provided support to EPA by conducting sampling at several storm water pump stations (the "August 2006 Sampling Inspection").

58. In August 2008, SAIC provided support to EPA by conducting sampling at various locations within the Municipality of San Juan, including San Juan's MS4 and DTPW's MS4 (the "August 2008 Sampling Inspection").

59. In December 2009, CSA Architects and Engineers, LLP issued a final report of a flood control study to San Juan entitled, "Estudio del Problema de Inundaciones en el Municipio de San Juan, Puerto Rico" ("CSA Report").

60. In March and April 2011, Eastern Research Group, Inc. ("ERG") provided support to EPA, including, but not limited to, conducting sampling at various locations within the Municipality of San Juan and receiving waters (the "March 2011 Sampling Event").

61. In June 2011, EPA conducted a Reconnaissance Inspection of San Juan's Barrio Obrero and Buena Vista Pump Stations (the "June 2011 Reconnaissance Inspection").

62. In February, March and April 2012, EPA conducted Reconnaissance Inspections of portions of the Juan Méndez Creek and the DNER Baldorioty de Castro Pump Station drainage area, Monroig Avenue, Buena Vista Creek, Rio Piedras River, San Antón Creek, Puerto Nuevo Channel, and Doña Ana Creek watersheds (the "Spring 2012 Reconnaissance Inspections").

63. In April and May 2012, DNER conducted sampling at the De Diego, Baldorioty de Castro, and Stop 18 Pump Stations at the United States' request and provided the results to EPA (the "May 2012 DNER Sampling Event").

64. In June, July, August, and October 2012, EPA conducted Reconnaissance Inspections of portions of the Rio Piedras River, Doña Ana Creek, San Antón Creek, Juan Méndez Creek, Puerto Nuevo Channel, Sabana Llana Creek, Josefina Creek, Mongil Creek, Del Ausubo Creek, Buena Vista Creek, and the DNER De Diego Pump Station watersheds (the "Summer/Fall 2012 Reconnaissance Inspections").

65. Between October 2012 and August 2013, San Juan conducted sampling events at various outfalls in the San Juan municipal area, including but not limited to San Juan's Buena Vista Pump Station, storm sewers outfalls to the Martin Peña Channel at Calle 10, Calle 13 and the Barrio Obrero Pump Station (the "2012 San Juan Sampling Events")

66. In December 2012, DNER conducted sampling events at three DNER pump stations (the "December 2012 DNER Sampling Event")

67. In April, July, and September 2013, EPA conducted Reconnaissance Inspections of storm sewers in and around the Condado watershed and of storm sewers along the Baldorioty

de Castro Expressway (PR-26) and De Diego Avenue (PR-37) and the Stop 18 Pump Station (the "2013 Reconnaissance Inspections").

Affected Waters

68. Martín Peña Channel is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

69. Los Corozos Lagoon is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

70. The Puerto Nuevo Channel is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

71. The Rio Piedras River is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

72. The Buena Vista Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

73. The Sabana Llana Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

74. The Doña Ana Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

75. The Mongil Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

76. The Del Ausubo Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

77. The Josefina Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

78. The San Antón Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

79. The San Jose Lagoon is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

80. The Buena Vista Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

81. The San Juan Bay is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

82. The Atlantic Ocean is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

San Juan's Unpermitted Discharges of Non-Storm Water from the Barrio Obrero Pump Station

83. San Juan owns and operates an MS4 including, but not limited to, the Barrio Obrero Pump Station, located on Avenida Rexach between Calle Valparaiso and Avenida Barbosa.

84. San Juan discharges flow entering the Barrio Obrero Pump Station into the Martín Peña Channel without treatment for pollutants; bar screens in the pump station remove large debris and solids only to reduce the risk of damage to the pumps.

85. The August 2008 Sampling Inspection established the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in influent entering the Barrio Obrero Pump Station.

86. Based on sampled levels of ammonia, surfactants, and fecal bacteria, and the measured biological oxygen demand, the August 2008 Sampling Inspection established that San

Juan was discharging untreated industrial and/or domestic wastewater ("raw sewage") from the Barrio Obrero Pump Station.

87. The June 2011 Reconnaissance Inspection confirmed the continued presence of wastewater in the Barrio Obrero Pump Station influent and discharge.

88. Sampling conducted between October 2012 and August 2013 confirmed the presence of pollutants, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing to the Barrio Obrero Pump Station which ultimately flows into the Martín Peña Channel.

89. The discharge pipe or outfall of the Barrio Obrero Pump Station is a "point source" within the meaning of Section 504(14) of the Act, 33 U.S.C. §1362(14), because it is a discernible, confined and discrete conveyance from which pollutants are or may be discharged.

90. Based on sampling and inspections, San Juan has discharged non-allowable wastewater from the Barrio Obrero Pump Station into waters of the United States.

San Juan's Unpermitted Discharges of Non-Storm Water from the Buena Vista Pump Station

91. San Juan owns and operates an MS4 including, but not limited to, the Buena Vista Pump Station, located on Calle 2 where it intersects with the Martín Peña Channel.

92. San Juan discharges flow entering the Buena Vista Pump Station into the Martín Peña Channel without treatment for pollutants, by operating a portable pump to the Buena Vista Pump Station during flood events.

93. The June 2011 Reconnaissance Inspection confirmed the presence of sewage in the Buena Vista Pump Station.

94. Sampling conducted in October 2012 confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the wet pit of the Buena Vista Pump Station.

95. The discharge pipe or outfall of the Buena Vista Pump Station is a "point source" within the meaning of Section 504(14) of the Act, 33 U.S.C. §1362(14), because it is a discernible, confined and discrete conveyance from which pollutants are or may be discharged.

96. Based on sampling and inspections, San Juan has discharged non-allowable wastewater from the Buena Vista Pump Station to waters of the United States.

San Juan's Unpermitted Discharges of Non-Storm Water from the Calle 10 and 13 Outfalls

97. San Juan owns and operates an MS4 including, but not limited to, storm sewers on both sides of Calle 10 and Calle 13 that discharge via gravity into the Martín Peña Channel.

98. The storm sewers on Calle 10 and Calle 13 were designed to prevent flooding by collecting storm water and conveying it to the Martín Peña Channel.

99. Other than the Vacuum Sewer, and prior to its installation, there are no sanitary sewers to collect sanitary wastewater from certain homes along Calle 10 and Calle 13 south of Rexach Avenue, and these residences discharge sewage directly to San Juan's MS4.

100. The March 2011 Sampling Event established the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharges from the Calle 10 and Calle 13 storm sewer outfalls.

101. Sampling between October 2012 and August 2013 confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing out of the Calle 10 and Calle 13 outfalls.

102. The discharge pipe or outfall at the end of Calle 10 and/or at the end of Calle 13 are "point source[s]" within the meaning of Section 504(14) of the Act, 33 U.S.C. §1362(14), because they are discernible, confined and discrete conveyances from which pollutants are or may be discharged.

103. Based on sampling and inspections, San Juan has discharged non-allowable wastewater from the Calle 10 and Calle 13 outfalls to waters of the United States.

San Juan's Unpermitted Discharges of Non-Storm Water to San José Lagoon and the Rio Piedras River/Puerto Nuevo Channel

104. San Juan owns and operates an MS4 including, but not limited to, storm sewers discharging to tributaries flowing to the San José Lagoon and into the Rio Piedras River and Puerto Nuevo Channel and San Juan Bay including, but not limited to, the Doña Ana Creek, San Antón Creek, Juan Méndez Creek, Sabana Llana Creek, Josefina Creek, Mongil Creek, Del Ausubo Creek, and the Buena Vista Creek.

105. The storm sewers investigated in the Spring 2012 Reconnaissance Inspections and the Summer/Fall 2012 Reconnaissance Inspections ("2012 San José Lagoon/Rio Piedras River Study Areas") were designed to prevent flooding by collecting storm water and conveying it to receiving waters and ultimately San Juan Bay.

106. The Spring 2012 Reconnaissance Inspection and the Summer/Fall 2012 Reconnaissance Inspections confirmed the continued presence of raw sewage in the discharges from San Juan's MS4 system in the 2012 San José Lagoon/Rio Piedras River Study Area.

107. The discharge pipes or outfalls discharging from San Juan's storm sewers within the 2012 San José Lagoon/Rio Piedras River Study Area are "point source[s]" within the meaning of Section 504(14) of the Act, 33 U.S.C. §1362(14), because they are discernible, confined and discrete conveyances from which pollutants are or may be discharged.

108. Based on inspections, San Juan has discharged non-allowable wastewater from its MS4 into waters of the United States, including the San José Lagoon, the Rio Piedras River/Puerto Nuevo Channel, and San Juan Bay.

San Juan's Unpermitted Discharges of Non-Storm Water through the Baldorioty de Castro Pump Station

109. A portion of San Juan's MS4 conveys flow into the Baldorioty de Castro Pump Station.

110. San Juan's flow to the Baldorioty de Castro Pump Station is discharged without treatment for pollutants to the Los Corozos Lagoon; bar screens in the pump stations remove large debris and solids only to reduce the risk of damage to the pumps; sorbent booms in the pump stations remove some floatables and sheens when properly operated and maintained.

111. The August 2008 Sampling Inspection established the presence of pollutants, including raw sewage, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in a portion of San Juan's MS4 conveying flow to the Baldorioty de Castro Pump Station.

112. The March 2011 Sampling Event established the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharges from the Baldorioty de Castro Pump Station.

113. The February 2012 Reconnaissance Inspection identified the presence of sewage indicator(s), using field tests, in a portion of San Juan's MS4 that conveys flow into the Baldorioty de Castro Pump Station.

114. The May 2012 DNER Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the Baldorioty de Castro Pump Station.

115. The December 2012 DNER Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the Baldorioty de Castro Pump Station.

116. The discharge pipe channel or outfall of the Baldorioty de Castro Pump Station is a "point source" within the meaning of Section 504(14) of the Act, 33 U.S.C. §1362(14), because it is a discernible, confined and discrete conveyance from which pollutants are or may be discharged.

117. Based on sampling and inspections, San Juan has discharged non-allowable wastewater through the Baldorioty de Castro Pump Station to waters of the United States.

San Juan's Unpermitted Discharges of Non-Storm Water through the De Diego Pump Station

118. A portion of San Juan's MS4 conveys flow into the De Diego Pump Station.

119. San Juan's flow to the De Diego Pump Station is discharged without treatment for pollutants to Condado Beach where it flows into the Atlantic Ocean; bar screens in the pump stations remove large debris and solids only to reduce the risk of damage to the pumps; sorbent booms in the pump stations remove some floatables and sheens when properly operated and maintained.

120. The August 2008 Sampling Inspection established the presence of pollutants, including raw sewage, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in a portion of San Juan's MS4 conveying flow to the De Diego Pump Station.

121. The March 2011 Sampling Event established the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharges from the De Diego Pump Station.

122. The May 2012 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the De Diego Pump Station.

123. The June 2012 Reconnaissance Inspection confirmed the continued presence of sewage in a portion of San Juan's MS4 that conveys flow into the De Diego Pump Station.

124. The December 2012 DNER Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the De Diego Pump Station.

125. The discharge pipe or outfall of the De Diego Pump Station is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), because it is a discernible, confined and discrete conveyance from which pollutants are or may be discharged.

126. San Juan has discharged non-allowable wastewater through the De Diego Pump Station to Condado Beach and the Atlantic Ocean.

San Juan's Unpermitted Discharges of Non-Storm Water through the Stop 18 Pump Station

127. A portion of San Juan's MS4 conveys flow into the Stop 18 Pump Station.

128. San Juan's flow to the Stop 18 Pump Station is then discharged without treatment for pollutants to a channel that flows into the Martín Peña Channel; bar screens in the pump stations remove large debris and solids only to reduce the risk of damage to the pumps; sorbent booms in the pump stations remove some floatables and sheens when properly operated and maintained.

129. The August 2008 Sampling Inspection established the presence of pollutants, including raw sewage, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in a portion of San Juan's MS4 conveying flow to the Stop 18 Pump Station.

130. The March 2011 Sampling Event established the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharges from the Stop 18 Pump Station.

131. The May 2012 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the Stop 18 Pump Station.

132. The December 2012 DNER Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the Stop 18 Pump Station.

133. The discharge channel or outfall of the Stop 18 Pump Station is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), because it is a discernible, confined and discrete conveyance from which pollutants are or may be discharged.

134. Based on sampling and inspections, San Juan has discharged non-allowable wastewater through the Stop 18 Pump Station to the Martín Peña Channel.

San Juan's Failure to Implement SWMP in Violation of its Permit

135. The MS4 General Permit Section 4 requires the permittee to submit a Storm Water Management Program/Plan ("SWMP") which must include, among other things, the practices and techniques the permittee will use to comply with permit conditions, as well as measurable goals and dates on which required actions will be completed.

136. San Juan submitted its initial SWMP to EPA in March 2008.

137. Because the initial SWMP was inadequate, EPA requested that San Juan submit a revised SWMP.

138. San Juan submitted a revised SWMP in June 2011 and partial re-revised SWMPs in March 2012 and June 2012.

139. The MS4 General Permit at Section 5.3 requires the permittee to submit annual reports indicating the permittee's progress toward reaching the measurable goals and milestones set out in its SWMP.

140. San Juan submitted annual reports to EPA in November of 2008, 2009, 2010, 2011, 2012, and 2013.

141. Section 4.1.2 of the MS4 General Permit requires each regulated small MS4 to fully implement its SWMP by November 6, 2011.

142. Section 4.2.3.1.2 of the MS4 General Permit requires San Juan to "[d]evelop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls."

143. In its SWMP submitted to EPA on March 7, 2008, at Section 5.1.3.11, San Juan stated that it would complete the storm sewer system map in Year 2.

144. In its 2009 annual report at page 14, San Juan stated that "it is expected that the [storm sewer system] map will be completed by the end of 2010."

145. In its 2010 annual report at page 18, San Juan stated that "[t]he MS4-1 brigade is still identifying and locating infrastructure and providing data to the San Juan Dept. of Planning and Land Use for inclusion in the MS4 map."

146. In its 2011 annual report, San Juan stated that the municipality was continuing to inspect its infrastructure for mapping purposes and had hired a geographic data management company in order to "speed up the data collection process."

147. In its 2011 revised SWMP, San Juan stated that it "has begun a comprehensive infrastructure map of the MS4. Once completed, this map will aid the municipality in targeting outfalls with dry weather flows and other suspicious discharges . . . and will help coordinate management activities to remove illicit connections . . . ."

148. In its June 2012 revised SWMP, San Juan again stated that it "has begun" the map but would not finish mapping all areas of its MS4 until November 2015.

149. In its 2013 annual report, San Juan modified its mapping objectives and anticipates that it will complete a portion of its map by September 2014.

150. Based upon its annual reports and SWMPs, San Juan has never completed a storm sewer system map showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls as required by MS4 General Permit Section 4.2.3.1.2.

151. Based upon EPA inspections of San Juan's storm drains and storm water outfalls, San Juan's existing maps of its storm water collection system are incomplete and inaccurate.

152. Without a complete and accurate storm sewer system map, San Juan will not be able to identify the source and location of illicit discharges of sanitary sewage into its MS4, or identify MS4 outfalls that are discharging storm water contaminated with sanitary sewage into waters of the United States.

153. Section 4.2.3.1.1 of the MS4 General Permit (Illicit Discharge Detection and Elimination ("IDDE")), as part of the requirement to develop and fully implement a SWMP by November 6, 2011, requires San Juan to "[d]evelop, implement and enforce a program to detect and eliminate illicit discharges (as defined in 40 CFR § 122.26(b)(2))."

154. Section 4.2.3.2.4 of the MS4 General Permit requires the IDDE portion of the SWMP to "include dry weather field screening for non-storm water flows and field tests of selected chemical parameters as indicators of discharge sources."

155. San Juan's annual reports prior to the June 2012 did not include the results of field testing or other sampling of any kind.

156. In its June 2012 SWMP, San Juan stated that sampling in order to determine the source of dry weather flows would commence at the start of Fiscal Year 2012, or July 1, 2012.

157. On information and belief, San Juan has failed to develop a complete and accurate map of its MS4 system.

158. San Juan's failure to develop a complete and accurate map of its MS4 and its failure to implement a plan for dry weather field screening by November 6, 2011 constitute a failure to develop and fully implement its SWMP by the deadline established in the permit.

159. Because San Juan has failed to fully implement a SWMP meeting all requirements of its permit by November 6, 2011, San Juan is in violation of the MS4 General Permit.

DNER's Unpermitted Discharges from the Baldorioty de Castro Pump Station

160. DNER owns and operates the Baldorioty de Castro Pump Station, located adjacent to the Baldorioty de Castro Expressway in San Juan, Puerto Rico.

161. DNER discharges flow entering the Baldorioty de Castro Pump Station into the Los Corozos Lagoon without treatment for pollutants; bar screens in the pump stations remove large debris and solids only to reduce the risk of damage to the pumps; sorbent booms in the pump stations remove some floatables and sheens when properly operated and maintained.

162. The August 2008 Sampling Inspection established the presence of pollutants, including raw sewage, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in influent entering the Baldorioty de Castro Pump Station.

163. The March 2011 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing out of the Baldorioty de Castro Pump Station.

164. The May 2012 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the Baldorioty de Castro Pump Station.

165. The December 2012 DNER Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the Baldorioty de Castro Pump Station.

166. The discharge channel or outfall of the Baldorioty de Castro Pump Station is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), because it is a discernable, confined and discrete conveyance from which pollutants are or may be discharged.

167. Based on sampling and inspections, DNER has discharged raw sewage from the Baldorioty de Castro Pump Station to waters of the United States.

DNER's Unpermitted Discharges from the De Diego Pump Station

168. DNER owns and operates the De Diego Pump Station, located on De Diego Avenue, just north of the Baldorioty de Castro Expressway in Santurce, Puerto Rico.

169. DNER discharges flow entering the De Diego Pump Station into the Condado Beach which flows to the Atlantic Ocean without treatment for pollutants; bar screens in the

pump stations remove large debris and solids only to reduce the risk of damage to the pumps; sorbent booms in the pump stations remove some floatables and sheens when properly operated and maintained.

170. The August 2008 Sampling Inspection established the presence of pollutants, including raw sewage, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in influent entering the De Diego Pump Station.

171. The March 2011 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing out of the De Diego Pump Station.

172. The May 2012 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing out of the De Diego Pump Station.

173. The December 2012 DNER Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing out of the De Diego Pump Station.

174. The discharge pipe or outfall of the De Diego Pump Station is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), because it is a discernible, confined and discrete conveyance from which pollutants are or may be discharged.

175. Based on sampling and inspections, DNER has discharged raw sewage from the De Diego Pump Station to waters of the United States.

DNER's Unpermitted Discharges from the Stop 18 Pump Station

176. DNER owns and operates the Stop 18 Pump Station, located on Villamil Street in Santurce, Puerto Rico.

177. DNER discharges flow entering the Stop 18 Pump Station into the Martín Peña Channel without treatment for pollutants; bar screens in the pump stations remove large debris and solids only to reduce the risk of damage to the pumps; sorbent booms in the pump stations remove some floatables and sheens when properly operated and maintained.

178. The August 2008 Sampling Inspection confirmed the presence of pollutants, including raw sewage, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in influent entering the Stop 18 Pump Station.

179. The March 2011 Sampling Event detected the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing out of the Stop 18 Pump Station.

180. The May 2012 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing out of the Stop 18 Pump Station.

181. The December 2012 DNER Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing out of the Stop 18 Pump Station.

182. The discharge pipe or outfall of the Stop 18 Pump Station is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), because it is a discernable, confined and discrete conveyance from which pollutants are or may be discharged.

183. Based on sampling and inspections, DNER has discharged raw sewage from the Stop 18 Pump Station to waters of the United States.

DTPW's Unpermitted Discharges of Non-Storm Water from the Vacuum Sewer System

184. DTPW, acting either on its own behalf or through its subsidiary agency the Highway and Transportation Authority, designed and constructed an Vacuum Sewer System to service certain areas in the Barrio Obrero Marina community within the municipality of San Juan, including residences located along Argentina Street.

185. A Vacuum Sewer System is designed to convey sanitary and other wastewaters, under negative pressure and through pipes ranging between 4 and 6 inches in diameter, from the source of the wastewater to a wastewater treatment facility.

186. Some of the pipes comprising the Vacuum Sewer System cross storm sewer pipelines of San Juan's MS4, thereby obstructing the flow of storm water in San Juan's MS4 and rendering that system more susceptible to blockages and delaying efforts to clean and maintain the San Juan MS4.

187. A reconnaissance inspection conducted jointly by EPA and San Juan on September 5, 2012 identified a broken Vacuum Sewer System pipe on Argentina Street that, because it crosses San Juan's MS4, discharges wastewater directly into the San Juan MS4.

188. EPA and San Juan also identified other Vacuum Sewer System pipes on Argentina Street that cross San Juan's MS4.

189. Based on inspections, DTPW has discharged non-allowable wastewater from the broken Vacuum Sewer System pipe to flow through the San Juan MS4 and into the Martín Peña Channel at the end of Argentina Street.

DTPW's Unpermitted Discharges of Non-Storm Water through the Baldorioty de Castro Pump Station

190. A portion of DTPW's MS4 conveys flow into the DNER Baldorioty de Castro Pump Station.

191. Investigations indicate that the box sewer that contributes flows to the Baldorioty de Castro wet well was designed and built by DTPW's predecessor agency, the Department of Public Works.

192. Influent to the Baldorioty de Castro Pump Station is discharged without treatment for pollutants to the Los Corozos Lagoon.

193. The August 2008 Sampling Inspection established the presence of pollutants, including raw sewage, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in pipes flowing into the Baldorioty de Castro Pump Station.

194. The March 2011 Sampling Event detected the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the Baldorioty de Castro Pump Station.

195. The May 2012 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the Baldorioty de Castro Pump Station.

196. The December 2012 DNER Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing out of the Baldorioty de Castro Pump Station.

197. The discharge channel or outfall of the Baldorioty de Castro Pump Station is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), because

it is a discernable, confined and discrete conveyance from which pollutants are or may be discharged.

198. Based on sampling and inspections, DTPW has discharged non-allowable wastewater through the Baldorioty de Castro Pump Station to waters of the United States, including the Los Corozos Lagoon.

DTPW's Unpermitted Discharges of Non-Storm Water through the De Diego Pump Station

199. A portion of DTPW's MS4 conveys flow into the DNER De Diego Pump Station.

200. Influent to the De Diego Pump Station is discharged without treatment for pollutants to Condado Beach where it flows into the Atlantic Ocean.

201. The August 2008 Sampling Inspection established the presence of pollutants, including raw sewage, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in pipes flowing into the De Diego Pump Station.

202. The March 2011 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing from the De Diego Pump Station.

203. The May 2012 Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the De Diego Pump Station.

204. The December 2012 DNER Sampling Event confirmed the presence of pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), in the discharge flowing through the De Diego Pump Station.

205. Reconnaissance Inspections conducted by EPA on July 11, 2013 and on September 24, 2013 identified a DTPW MS4 storm sewer located along De Diego Avenue that also contributes dry weather flows to the De Diego Pump Station.

206. Based on sampling and inspections, DTPW has discharged non-allowable wastewater through the De Diego Pump Station to the Atlantic Ocean.

DTPW's Unpermitted Discharges

207. Under Section 1.5.1 of the MS4 General Permit, all regulated small MS4s must submit a notice of intent to be covered under the permit, or to apply for an individual permit by February 5, 2007.

208. DTPW submitted its notice of intent to have discharges from its MS4 covered under the MS4 General Permit on November 4, 2011.

Defendants' Imminent and Substantial Endangerment of Health or Welfare

209. San Juan owns and operates an MS4 including but not limited to the Barrio Obrero and Buena Vista Pump Stations.

210. San Juan's MS4 conveys large volumes of water, including water contaminated with raw sewage, via San Juan's Barrio Obrero and Buena Vista Pump Station outfalls and other outfalls, into the Martín Peña Channel and also into the Rio Piedras River, and the Puerto Nuevo Channel.

211. San Juan's MS4 conveys large volumes of water, including water contaminated with raw sewage into portions of the Rio Piedras River watershed, including but not limited to, the Buena Vista Creek, the Del Ausubo Creek, Doña Ana Creek and the Puerto Nuevo Channel, and ultimately into San Juan Bay.

212. San Juan's MS4 conveys large volumes of water, including water contaminated with raw sewage, into DNER's Stop 18, Baldorioty, and De Diego Pump Stations.

213. DNER conveys large volumes of water, including water contaminated with raw sewage, via DNER's Stop 18 Pump Station, into the Martín Peña Channel.

214. DNER conveys large volumes of water, including water contaminated with raw sewage, via DNER's Baldorioty Pump Station, into the Los Corozos Lagoon.

215. DNER conveys large volumes of water, including water contaminated with raw sewage, via DNER's De Diego Pump Station, onto Condado Beach, where it flows into the Atlantic Ocean.

216. DTPW conveys large volumes of water, including water contaminated with raw sewage, via DNER's Stop 18 Pump Station, into the Martín Peña Channel.

217. DTPW conveys large volumes of water, including water contaminated with raw sewage, via DNER's Baldorioty Pump Station, into the Los Corozos Lagoon.

218. DTPW conveys large volumes of water, including water contaminated with raw sewage, via DNER's De Diego Pump Station, onto Condado Beach, where it flows into the Atlantic Ocean.

219. Puerto Rico has classified the Los Corozos Lagoon and the Martín Peña Channel as "Class SB" waters, pursuant to Section 303 of the Act, 33 U.S.C. § 1313.

220. Class SB waters in Puerto Rico are coastal waters intended for uses such as swimming where the human body comes into prolonged and direct contact with the water, and for use in propagation and preservation of desirable species.

221. San Juan Bay, surrounded by a highly urbanized area, is used extensively for commercial and recreational activities and is used for the propagation and preservation of desirable species.

222. Condado Beach is used for fishing, boating, swimming, surfing and other recreational activities.

223. Los Corozos Lagoon is used for fishing, boating, swimming, and other recreational activities.

224. Martín Peña Channel is used for fishing, boating, swimming, and other recreational activities.

225. Fishing, boating, swimming, and otherwise recreating in water contaminated with raw sewage can cause exposure to bacteria, viruses, parasitic organisms, intestinal worms and boroughs (inhaled molds and fungi). The diseases these may cause in humans range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. Groups facing greater risks include children, the elderly, immuno-compromised groups, and pregnant women.

226. Exposure to untreated sewage, therefore, presents an "imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish," who come into contact with it as provided in Section 504 of the Act, 33 U.S.C. § 1364.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

San Juan's Non-Storm Water Discharges - Section 301 of the Act

227. Paragraphs 1 through 226 are realleged and incorporated herein.

228. San Juan's MS4 General Permit imposes the following conditions:

1.3 **Limitations on coverage**

The following storm water discharges are not authorized by this permit:

1.3.1 Discharges that are mixed with sources of non-storm water unless such non-storm water discharges are:
– In compliance with a separate NPDES permit, or
– Determined not to be a substantial contributor of pollutants to waters of the U.S.

Ex. 1, MS4 General Permit at ¶ 1.3

229. San Juan has discharged pollutants from its MS4, including, but not limited to the Barrio Obrero Pump Station, Buena Vista Pump Station, the Calle 10 and Calle 13 outfalls, outfalls located within the 2012 San José Lagoon/Rio Piedras River Study Area, and storm sewers tributary to the Baldorioty de Castro, Stop 18, and De Diego Pump Stations.

230. These discharges by San Juan are not in compliance with the MS4 General Permit because they are discharges of non-storm water and have not been determined not to be a substantial contributor of pollutants to waters of the United States.

231. These discharges by San Juan are not in compliance with any other NPDES permit.

232. By discharging non-storm water that has not been determined not to be a substantial contributor of pollutants to waters of the United States from its MS4, San Juan is in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

233. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), San Juan is liable for civil penalties of up to $32,500 per day for each violation occurring after March 15, 2004 and $37,500 per day for each violation occurring after January 12, 2009.

234. Upon information and belief, San Juan will continue to discharge non-storm water from its MS4 and into the waters of the United States in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Pursuant to Section 309(b) of the Act 33 U.S.C. § 1319(b), the Administrator is entitled to seek injunctive relief to secure the Defendant San Juan's compliance with the Act.

SECOND CLAIM FOR RELIEF

San Juan's Failure to Develop and Implement Complete SWMP by November 6, 2011 Permit Violations - Section 402 of the Act

235. Paragraphs 1 through 226 are realleged and incorporated herein.

236. The MS4 General Permit requires San Juan to "develop and fully implement" a SWMP meeting all permit requirements by November 6, 2011.

237. Each failure by San Juan to comply with the requirement to develop and fully implement a SWMP as described in Section 4 of the MS4 General Permit has been a daily violation of the permit from November 6, 2011 to present.

238. Unless enjoined by an order of the Court, San Juan will continue to violate the requirement to develop and fully implement a SWMP consistent with Section 4 of the MS4 General Permit.

239. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), San Juan is liable for civil penalties of up to $37,500 per day for each violation.

THIRD CLAIM FOR RELIEF

DNER's Unpermitted Discharges – Section 301 of the Act

240. Paragraphs 1 through 226 are realleged and incorporated herein.

241. DNER has discharged storm water mixed with sanitary sewage into waters of the United States from the Baldorioty de Castro Pump Station, the De Diego Pump Station, and the Stop 18 Pump Station.

242. The discharges of storm water mixed with sanitary sewage from the Baldorioty de Castro, De Diego, and Stop 18 Pump Stations are discharges of pollutants within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12).

243. Each of the discharges of storm water mixed with sanitary sewage from the Baldorioty de Castro, De Diego, and Stop 18 Pump Stations without a permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

244. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), DNER is liable for civil penalties of up to $32,500 per day for each violation occurring after March 15, 2004 and $37,500 per day for each violation occurring after January 12, 2009.

245. Upon information and belief, DNER will continue to discharge pollutants from its pump stations into the waters of the United States in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Pursuant to Section 309(b) of the Act 33 U.S.C. § 1319(b), the Administrator is entitled to seek injunctive relief to secure DNER's compliance with the Act.

FOURTH CLAIM FOR RELIEF

DTPW's Non-Storm Water Discharges - Section 301 of the Act

246. Paragraphs 1 through 226 are realleged and incorporated herein.

247. DTPW's MS4 General Permit imposes the following conditions,

1.3 **Limitations on coverage**

The following storm water discharges are not authorized by this permit:

1.3.1 Discharges that are mixed with sources of non-storm water unless such non-storm water discharges are:
– In compliance with a separate NPDES permit, or
– Determined not to be a substantial contributor of pollutants to waters of the U.S.

Ex. 1, MS4 General Permit at ¶ 1.3The following storm water discharges

248. DTPW has discharged non-allowable pollutants from its MS4, including, but not limited to its Vacuum Sewer System and the storm sewers tributary to the Baldorioty de Castro, Stop 18, and De Diego Pump Stations.

249. These discharges by DTPW are not in compliance with the MS4 General Permit because they are discharges of non-storm water and have not been determined not to be a substantial contributor of pollutants to waters of the United States.

250. These discharges by DTPW are not in compliance any other NPDES permit.

251. By discharging non-storm water that has not been determined not to be a substantial contributor of pollutants to waters of the United States from its MS4, DTPW is in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

252. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), San Juan is liable for civil penalties of up to $32,500 per day for each violation occurring after March 15, 2004 and $37,500 per day for each violation occurring after January 12, 2009.

253. Upon information and belief, DTPW will continue to discharge non-storm water from its MS4 and into the waters of the United States in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Pursuant to Section 309(b) of the Act 33 U.S.C. § 1319(b), the

Administrator is entitled to seek injunctive relief to secure the Defendant DTPW's compliance with the Act.

FIFTH CLAIM FOR RELIEF

DTPW's Unpermitted Discharges

254. Paragraphs 1 through 226 are realleged and incorporated herein.

255. Under Section 1.5.1 of the MS4 General Permit, all regulated small MS4s, including DTPW, were required to submit a notice of intent to be covered under the permit, or to apply for an individual permit by February 5, 2007.

256. DTPW submitted its notice of intent to have discharges from its MS4 covered under the MS4 General Permit on November 4, 2011.

257. Each discharge of pollutants by DTWP into navigable waters of the United States until submission of its notice of intent to be covered under the MS4 General Permit constitutes a separate violation of Section 301 of the Act, 33 U.S.C. § 1318.

258. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), San Juan is liable for civil penalties of up to $32,500 per day for each violation occurring after March 15, 2004 and $37,500 per day for each violation occurring after January 12, 2009.

SIXTH CLAIM FOR RELIEF

Defendants' Imminent and Substantial Endangerment – Section 504(a) of the Act

259. Paragraphs 1 through 226 are realleged and incorporated herein.

260. Section 504(a) of the Act, 33 U.S.C. § 1364(a) states:

Emergency Powers.

Notwithstanding any other provision of this chapter, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons, such as inability to

market shellfish, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.

261. San Juan has discharged raw sewage, including but not limited to fecal coliform, total coliform, enterococci and other "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from its MS4, including but not limited to the Barrio Obrero Pump Station and Buena Vista Pump Stations, which discharge effluent to the Martín Peña Channel, and ultimately to the San Juan Bay.

262. San Juan has discharged raw sewage, including but not limited to fecal coliform, total coliform, enterococci and other "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from its MS4 into DNER's Stop 18, Baldorioty, and De Diego Pump Stations.

263. DNER has discharged raw sewage, including but not limited to fecal coliform, total coliform, enterococci and other "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362 (6), from its Stop 18 Pump Station, which discharges effluent to the Martín Peña Channel, and ultimately to the San Juan Bay.

264. DNER has discharged raw sewage, including but not limited to fecal coliform, total coliform, enterococci and other "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from its Baldorioty Pump Station, which discharges effluent to the Los Corozos Lagoon.

265. DNER has discharged raw sewage, including but not limited to fecal coliform, total coliform, enterococci and other "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from its De Diego Pump Station, which discharges effluent onto Condado Beach, where it flows into the Atlantic Ocean.

266. DTPW has discharged raw sewage, including but not limited to fecal coliform, total coliform, enterococci and other "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from its MS4, portions of which discharge effluent to the Martín Peña Channel, and ultimately to the San Juan Bay.

267. DTPW has discharged raw sewage, including but not limited to fecal coliform, total coliform, enterococci and other "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from its MS4 into DNER's Stop 18, Baldorioty, and De Diego Pump Stations.

268. Untreated sewage is "pollution" as that term is defined in Section 502(19) of the Act, 33 U.S.C. § 1362(19).

269. Defendant San Juan's Barrio Obrero Pump Station, including its outfall or discharge point, is a "pollution source" within the meaning of Section 504(a).

270. Defendant San Juan's Buena Vista Pump Station, including its outfall or discharge point, is a "pollution source" within the meaning of Section 504(a).

271. Defendant DNER's Baldorioty de Castro, De Diego, and Stop 18 Pump Stations, including their outfalls and discharge points, are a "pollution source" or a "combination of sources" within the meaning of Section 504(a).

272. Defendant DTPW's Vacuum Sewer System, including its outfalls and discharge points, are a "pollution source" or a "combination of sources" within the meaning of Section 504(a).

273. Untreated sewage may carry bacteria, viruses, parasitic organisms, intestinal worms and boroughs (inhaled molds and fungi). The diseases these may cause range in severity

from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

274. Because the Atlantic Ocean at Condado Beach, the Los Corozos Lagoon, San Juan Bay, and the Martín Peña Channel are all used for fishing, boating, swimming, wading and/or other recreational and commercial activities, and because San Juan Bay is used for the propagation and preservation of desirable species, these pollution sources or combination of sources present an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons.

275. Pursuant to Section 504(a), 33 U.S.C. § 1364(a), the United States seeks an order enjoining San Juan to: (a) take measures to prevent, minimize, or mitigate, to the greatest extent possible, the discharge of sewage from its MS4 into the Martín Peña Channel and the discharge of sewage from its MS4 into any other waters of the United States; (b) develop a comprehensive illicit discharge detection and elimination program that includes a response plan to follow when discharges of sewage occur from San Juan's MS4; (c) improve public outreach and communications to notify the public about the risks associated with contacting sewage, and how to contact San Juan in the event of a sewage discharge; (d) take other actions as may be necessary to abate and mitigate discharges of sewage from San Juan's MS4; and (e) fully comply with its MS4 Permit.

276. Pursuant to Section 504(a), 33 U.S.C. § 1364(a), the United States seeks an order enjoining DNER to take actions as may be necessary to abate the endangerment resulting from discharges of sewage from its Baldorioty de Castro, Stop 18, and De Diego Pump Stations including, for instance, disinfection, floatables controls, conveying sewage to sanitary systems with capacity, communications to notify the public about the risks associated with contacting

sewage, and restrictions on commercial and recreational uses of the waters receiving contaminated discharges from these stations.

277. Pursuant to Section 504(a), 33 U.S.C. § 1364(a), the United States seeks an order enjoining DTPW to: (a) take measures to prevent, minimize, or mitigate, to the greatest extent possible, the discharge of sewage from its MS4 into the Martín Peña Channel and the discharge of sewage from its MS4 into any other waters of the United States; (b) develop a comprehensive illicit discharge detection and elimination program that includes a response plan to follow when discharges of sewage occur from DTPW's MS4; (c) take other actions as may be necessary to abate and mitigate discharges of sewage from DTPW's MS4; and (d) fully comply with its MS4 Permit.

278. On information and belief, Defendants San Juan, DNER and DTPW will continue to discharge pollutants into the waters of the United States unless enjoined by the Court. Pursuant to Section 504(a) of the Act 33 U.S.C. § 1364(a), the Administrator is entitled to seek injunctive relief to secure the Defendants' compliance with the Act.

RELIEF SOUGHT

WHEREFORE, Plaintiff United States of America respectfully requests that the Court grant the following relief:

1. Order that San Juan be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), civil penalties of up to $32,500 per day for each violation of its MS4 General Permit, occurring after March 15, 2004 and up to $37,500 per day for each violation occurring after January 12, 2009.

2. Order that San Juan be permanently enjoined, pursuant to Section 504(a), of the Act, 33 U.S.C. § 1364(a), from discharging pollutants except as authorized by permit under Section 402 of the Act, 33 U.S.C. § 1342.

3. Order that San Juan, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), undertake a program and develop a schedule to achieve permanent and consistent compliance with the Clean Water Act and regulations promulgated thereunder throughout its MS4.

4. Order that DNER, as an instrumentality of Puerto Rico, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), be assessed civil penalties of up to $32,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311 occurring after March 15, 2004 and up to $37,500 per day for each violation occurring after January 12, 2009.

5. Order that DNER, as an instrumentality of Puerto Rico, be permanently enjoined, pursuant to Section 504(a) of the Act, 33 U.S.C. § 1364(a), from discharging pollutants except as authorized by permit under Section 402 of the Act, 33 U.S.C. §1342.

6. Order that DNER, as an instrumentality of Puerto Rico, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), undertake a program and develop a schedule to achieve permanent and consistent compliance with the Clean Water Act and regulations promulgated thereunder at the Baldorioty, De Diego, and Stop 18 Pump Stations.

7. Order that DNER, as an instrumentality of Puerto Rico, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), study its other pump stations for the presence of pollutants and provide the study results to EPA.

8. Order that DTPW, as an instrumentality of Puerto Rico, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), be assessed civil penalties of up to $32,500 per day for

each violation of Section 301 of the Act, 33 U.S.C. § 1311 occurring after March 15, 2004 and up to $37,500 per day for each violation occurring after January 12, 2009.

9. Order that DTPW, as an instrumentality of Puerto Rico, be permanently enjoined, pursuant to Section 504(a) of the Act, 33 U.S.C. § 1364(a), from discharging pollutants except as authorized by permit under Section 402 of the Act, 33 U.S.C. §1342.

10. Order that DTPW, as an instrumentality of Puerto Rico, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), undertake a program and develop a schedule to achieve permanent and consistent compliance with the Clean Water Act and regulations promulgated thereunder.

11. Order that DNER and/or DTPW, as instrumentalities of Puerto Rico, and/or San Juan be ordered to reimburse the United States for the costs and disbursements of this action.

12. Order such other relief as the Court deems just and proper.

Respectfully submitted,

SAM HIRSCH
Acting Assistant Attorney General
Environment and Natural Resources Division

Date: 6/16/2014

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Keith T. Tashima, United States Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, PO Box 7611, Ben Franklin Station, Washington, DC 20044; (202) 616-9643

DEFENDANTS
Municipality of San Juan, Puerto Rico Department of Natural and Environmental Resources, Counsel for Puerto Rico Department of Transportation and Public Works, Commonwealth of Puerto Rico

County of Residence of First Listed Defendant San Juan
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Please see Appendix A, attached hereto.

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☒ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

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- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
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V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
Clean Water Act, 33 U.S.C. Sections 1251-1387

Brief description of cause:
Environmental enforcement matter seeking civil penalties and injunctive relief for violations of the Clean Water Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
06/16/2014

SIGNATURE OF ATTORNEY OF RECORD
Keith T. Tsia

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Appendix A to
Civil Cover Sheet

United States v. Municipality of San Juan, Puerto Rico Department of Natural and Environmental Resources, Puerto Rico Department of Transportation and Public Works, and the Commonwealth of Puerto Rico

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Hon. César R. Miranda-Rodríguez
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Exhibit 1 to the
Complaint

United States v. Municipality of San Juan, Puerto Rico Department of Natural and Environmental Resources, Puerto Rico Department of Transportation and Public Works, and the Commonwealth of Puerto Rico

November 6, 2006 National Pollution Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer Systems ("MS4 General Permit")

Permit No. PRR040000
Permit No. PRR04000F

National Pollutant Discharge Elimination System
General Permit for Discharges from Small Municipal Separate Storm Sewer Systems

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part 1.3 of this permit, operators of small municipal separate storm sewer systems, located in the area specified in Part 1.1, Commonwealth of Puerto Rico, and who submit a Notice of Intent and a storm water management plan in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit becomes effective on **November 6, 2006**.

This permit and the authorization to discharge expire at midnight, **November 6, 2011**.

Region 2

Signed and issued this 21 day of September 2006.

Carl-Axel P. Soderberg
Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency
Region II

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1 Coverage Under this Permit

1.1 Permit Area

Area of Coverage: Small municipal separate sewer systems (MS4s) located within:
A. Commonwealth of Puerto Rico (PRR040000);
B. Federal Facilities within Commonwealth of Puerto Rico (PRR04000F)

1.2 Eligibility Criteria

1.2.1 This permit authorizes discharges of storm water from small municipal separate storm sewer systems (MS4s), as defined in 40 CFR §122.26(b)(16). This includes small MS4s designated under 40 CFR §122.32(a)(1) and 40 CFR §122.32(a)(2). The permittee is authorized to discharge under the terms and conditions of this general permit if:

1.2.1.1 The permittee is the operator of a small MS4 within the permit area described in Section 1.1;

1.2.1.2 The permittee is not a "large" or "medium" MS4 as defined in 40 CFR §122.26(b)(4) or (7), and

1.2.1.3 The permittee submits a Notice of Intent (NOI) in accordance with Part 2 of this permit, and

1.2.1.4 The municipality is located fully or partially within an urbanized area as determined by the latest Decennial Census by the Bureau of Census.

Small municipal separate storm sewer system means all separate storm sewers that are:

(a) owned or operated by the United States, a State, city town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity and Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

(b) not defined as large or medium municipal separate storm sewer systems pursuant to 40 CFR §122.26(b)(4) and (b)(7) or designated under 40 CFR §122.26(a)(1)(v).

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospitals or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

1.3 Limitations on Coverage

The following storm water discharges are not authorize by this permit:

1.3.1 Discharges that are mixed with sources of non-storm water unless such non-storm water discharges are:

- In compliance with a separate NPDES permit, or
- Determined not to be a substantial contributor of pollutants to waters of the U.S.

1.3.2 Storm water discharges associated with industrial activity as defined in 40 CFR §122.26(b)(14)(i)-(ix) and (xi).

1.3.3 Storm water discharges associated with construction activity as defined in 40 CFR §122.26(b)(14)(x) or 40 CFR §122.26(b)(15).

1.3.4 Storm water discharges currently covered under another permit, including discharges covered under other regionally issued general permits.

1.3.5 Discharges or discharge-related activities that are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA

1.3.5.1 Coverage under this permit is available only if storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to jeopardize the continued existence of any species that are listed as endangered or threatened ("listed") under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA ("critical habitat"). Submission of a signed NOI will be deemed to also constitute a certification of eligibility.

1.3.5.2 "Discharge-related activities" include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

1.3.5.3 In order to demonstrate eligibility, the permittee must use the most recent Endangered and Threatened Species County-Species List available from EPA and the process in **Addendum A** (ESA Screening Process) to determine their eligibility ***prior*** to submittal of their NOI. The most current list is available at: http://www.epa.gov/npdes/. The permittee must meet one or more of the criteria in 1.3.5.3.1 through 1.3.5.3.5 below for the entire term of coverage under the permit. The permittee must include a certification of eligibility and supporting documentation on the eligibility determination as part of their Storm Water Management Program.

1.3.5.3.1 Criteria A: No endangered or threatened species or critical habitat are in proximity to the MS4 or the point where authorized discharges reach the receiving water; or

1.3.5.3.2 Criteria B: In the course of a separate federal action involving the MS4, formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service (the "Services") under Section 7 of the Endangered Species Act (ESA) has been concluded and that consultation:

- Addressed the effects of your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat and

- The consultation resulted in either a no jeopardy opinion or a written concurrence by the Service on a finding that your storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to adversely affect listed species or critical habitat; or

1.3.5.3.3 Criteria C: The activities are authorized under Section 10 of the ESA and that authorization addresses the effects of your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat; or

1.3.5.3.4 Criteria D: Using best judgement and knowledge, the effects of your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat have been evaluated. Based on those evaluation a determination is made by the permittee that there is no reason to believe the storm water discharges, allowable non-storm water discharges and discharge related activities will jeopardize the continued existence of any species or result in the adverse modification or destruction of critical habitat.

1.3.5.3.5 Criteria E: The storm water discharges, allowable non-storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Part 1.3.5.3.1 through 1.3.5.3.4 which includes the

MS4 activities. If certification is under this criteria, the permittee agrees to comply with any measures or controls upon which the other operator's certification was based.

1.3.5.4 The permitting authority may require any permittee or applicant to provide documentation of the determination of eligibility for this permit using the procedures in Addendum A where the EPA or the Fish and Wildlife Services (FWS) and/or National Marine Fisheries Services (NMFS) determine that there is a potential impact on listed species or critical habitat.

1.3.5.5 A discharge is not authorized if the discharges or discharge-related activities cause a prohibited "take" of endangered or threatened species (as defined under Section 3 of the Endangered Species Act and 50 CFR 17.3), unless such takes are authorized under sections 7 or 10 of the Endangered Species Act.

1.3.5.6 Discharges are not authorized where the discharges or discharge-related activities are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA.

1.3.6 Discharges and discharge-related activities with unconsidered adverse effects on historic properties.

1.3.6.1 Determining eligibility: In order to be eligible for coverage under this permit, the permittee must be in compliance with the National Historic Preservation Act. Your discharges may be authorized under this permit only if:

1.3.6.1.1 Criteria A: your storm water discharges, allowable non-storm water discharges, and discharge-related activities do not affect a property that is listed or is eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior; or

1.3.6.1.2 Criteria B: the permittee has obtained and is in compliance with a written agreement with the state Historic Preservation Officer (SHPO) that outlines all measures you will undertake to mitigate or prevent adverse effect to the historic property.

1.3.6.2 Addendum B of this permit provides guidance and references to assist the permittee with determining your permit eligibility concerning this provision.

1.3.7 Discharges to territorial seas, the contiguous zone, and the oceans unless such discharges are in compliance with the ocean discharge criteria of 40 CFR Part 125, Subpart M.

1.3.8 Discharges that would cause or contribute to instream exceedances of water quality standards. Your storm water management program must include a description of the BMPs that the permittee will be using to ensure that this will not occur. EPA may require corrective action or an application for an individual permit or alternative general permit if an MS4 is determined to cause an instream exceedance of water quality standards.

1.3.9 Discharges of any pollutant into any water for which a Total Maximum Daily Load (TMDL) has been either established or approved by the EPA unless your discharge is consistent with that TMDL. This eligibility condition applies at the time the permittee submit a Notice of Intent for coverage. If conditions change after the permittee has permit coverage, the permittee may remain covered by the permit provided the permittee comply with the applicable requirements of Part 3. The permittee must incorporate any limitations, conditions and requirements applicable to your discharges, including monitoring frequency and reporting required, into your Storm Water Management Program in order to be eligible for permit coverage. For discharges not eligible for coverage under this permit, the permittee must apply for and receive an individual or other applicable general NPDES permit prior to discharging.

1.3.10 Discharges prohibited under 40 CFR Part 122.4. This includes discharges that do not comply with your state's anti-degradation policy for water quality standards. State anti-degradation policies can be obtained from the appropriate state environmental office or their Internet sites.

1.3.11 Discharges to Water Quality Impaired Waters

A. The permittee must determine whether storm water discharges from any part of the MS4 contribute, either directly or indirectly, to a 303(d) listed water body.

B. The storm water management program must include a section describing how the program will control the discharge of the pollutants of concern and ensure that the discharges will not cause or contribute to instream exceedance of the water quality standards. This discussion must specifically identify control measures and BMPs that will collectively control the discharge of the pollutant(s) of concern. Pollutant(s) of concern refer to the pollutant identified as causing the impairment.

1.3.12 Total Maximum Daily Load Allocations

If a TMDL has been approved for any water body into which the MS4 discharges, the permittee must:

A. Determine whether the approved TMDL is for a pollutant likely to be found in storm water discharges from the MS4.

B. If the MS4 is required to implement storm water waste load allocation provisions of the TMDL, the permittee must assess whether the WLA is being met through implementation of existing storm water control measures or if additional control measures are necessary. The permittee's assessment of whether the WLA is being met is expected to focus on the adequacy of the permittee's storm water controls (implementation and maintenance), not on the response of the receiving water.

C. Highlight in the storm water management program and annual reports all control measures currently being implemented or planned to be implemented to control pollutants of concern identified in approved TMDLs. Also include a schedule of implementation for all planned controls. Document the assessment which demonstrates that the WLA will be met including any calculations, maintenance log books, or other appropriate controls.

1.4 Allowable Non-Storm Water Discharges

The following non-storm water discharges are authorized provided it has been determined by the permittee that they are not significant contributors of pollutants to the MS4.

1. water line flushing
2. landscape irrigation,
3. diverted stream flows
4. rising ground waters,
5. uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)),
6. uncontaminated pumped ground water,
7. discharge from potable water sources,
8. foundation drains,
9. air conditioning condensation,
10. irrigation water, springs,
11. water from crawl space pumps,
12. footing drains,
13. lawn watering,
14. individual resident car washing,
15. flows from riparian habitats and wetlands,
16. dechlorinated swimming pool discharges,

17. street wash water, and
18. Residential building wash waters, without detergents

Discharges or flows from fire fighting activities occur during emergency situations. The permittee is not expected to evaluate fire fighting discharges with regard to pollutant contributions. Therefore these discharges are excluded from the list of allowable non-storm water discharges.

1.5 Obtaining Authorization

1.5.1 To be authorized to discharge storm water from small MS4s, the permittee must submit a notice of intent (NOI) and a description of their storm water management program in accordance with the deadlines presented in Section 2.1 of this permit.

1.5.2 The permittee must submit the information required in section 2.2 on the latest version of the NOI form (or photocopy thereof) contained in Addendum C. Your NOI document must be signed and dated in accordance with section 6.7 of this permit.

1.5.3 Unless notified by EPA to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from small MS4s under the terms and conditions of this permit thirty (30) days after the date that the NOI is postmarked. The Agency may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Section 6.16).

1.5.4 Where the operator changes, or where a new operator is added after submittal of an NOI under Part 2, a new NOI must be submitted in accordance with Part 2 prior to the change or addition.

2 Notice of Intent Requirements

2.1 Deadlines for Notification

2.1.1 If the permittee is automatically designated under 40 CFR §122.32(a)(1) or designated by the permitting authority in this permit, then the permittee is required to submit an NOI and a description of your storm water management program or apply for an individual permit by **February 5, 2007**.

2.1.2 *Additional designations after the date of permit issuance.* If the permittee is designated by the permitting authority after the date of permit issuance, then the

permittee is required to submit an NOI and the storm water management program, including an electronic copy, to the permitting authority within 180 days of notice.

2.1.3 *Submitting a Late NOI*. The permittee is not prohibited from submitting an NOI after the dates provided in 2.1. If a late NOI is submitted, your authorization is only for discharges that occur after permit coverage is granted. The permitting authority reserves the right to take appropriate enforcement actions for any unpermitted discharges.

2.2 Contents of the Notice of Intent

The Notice of Intent document requirements are specified in Appendix C of the permit, the NOI must be signed in accordance with Part 6.7 of this permit and must include information as:

2.2.1 *Information on the Permittee*:

2.2.1.1 The name of your municipal entity/name of person responsible for overall coordination/state agency/federal agency, mailing address, and telephone number;

2.2.1.2 An indication of whether the permittee is a Federal, State, private, or other public entity;

2.2.2 *Information on the Municipal Separate Storm Sewer System:*

2.2.2.1 The Urbanized Area or Core Municipality (if the permittee is not located in an Urbanized Area) where your system is located; the name of your organization, county(ies) or parish(es) where your MS4 is located, and the latitude and longitude of an approximate center of your MS4;

2.2.2.2. The name of the major receiving water(s) and an indication of whether any of your receiving waters are on the latest CWA §303(d) list of impaired waters. If you have discharges to 303(d) waters, a certification that your Storm Water Management Program complies with the requirements of Part 3.1;

2.2.1.3 If the permittee is relying on another governmental entity regulated under the storm water regulations (40 CFR 122.26 & 122.32) to satisfy one or more of your permit obligations (see Part 4.4), the identity of that entity(ies) and the element(s) they will be implementing.

2.2.1.4 Information on your chosen best management practices (BMPs) and the measurable goals for each of the storm water minimum control measures in Part 4.2 of this permit,

your time frame for implementing each of the BMPs, and the person or persons responsible for implementing or coordinating your Storm Water Management Program.

2.2.1.5 Certification of whether you have met eligibility criteria for protection of threatened or endangered species, critical habitat, historic properties, and marine fisheries.

2.3 Where to Submit

You are to submit your NOI, signed in accordance with the signatory requirements of Section 6.7 of this permit, to EPA at the following address:

United States Environmental Protection Agency
Multi-Media Permits and Compliance Branch
Centro Europa Building, Suite 417
1492 Ponce de Leon Ave.
San Juan, PR 00907

2.4 Co-Permittees Under a Single NOI

The permittee may partner with other MS4s to develop and implement your storm water management program. The permittee may also jointly submit an NOI with one or more MS4s. Each MS4 must fill out the NOI form in Addendum C. The description of your storm water management program must clearly describe which permittees are responsible for implementing each of the control measures.

3 Special Conditions

3.1 Discharges to Water Quality Impaired Waters

3.1.1 *Applicability*: The permittee must:

3.1.1.1 Determine whether storm water discharge from any part of the MS4 significantly contributes directly or indirectly to a 303(d) listed (i.e., impaired) waterbody. If the permittee has discharges meeting this criteria, the permittee must comply with Part 3.1.2; if the permittee does not, Part 3.1 does not apply to the permittee.

3.1.1.2 If the permittee has “303(d)” discharges described above, the permittee must also determine whether a TMDL has been developed and approved by EPA for the listed waterbody. If there is a TMDL, the permittee must comply with both Parts 3.1.2 and 3.1.3; if no TMDL has been approved, Part 3.1.3 does not apply until a TMDL has been approved.

3.1.2 *Water Quality Controls for Discharges to Impaired Waterbodies*. Your storm water management program (SWMP) must include a section describing how your program will control the discharge of the pollutants of concern and ensure your discharges will not cause or contribute to instream exceedances of the water quality standards. This discussion must specifically identify measures and BMPs that will collectively control the discharge of the pollutants of concern.

3.1.3 *Consistency with Total Maximum Daily Load (TMDL) Allocations*. If a TMDL has been approved for any waterbody into which the permittee discharges, the permittee must:

3.1.3.1 Determine whether the approved TMDL is for a pollutant likely to be found in storm water discharges from your MS4.

3.1.3.2 Determine whether the TMDL includes a pollutant wasteload allocation (WLA) or other performance requirements specifically for storm water discharge from your MS4.

3.1.3.3 Determine whether the TMDL address a flow regime likely to occur during periods of storm water discharge.

3.1.3.4 After the determinations above have been made and if it is found that your MS4 must implement specific WLA provisions of the TMDL, assess whether the WLAs are being met through implementation of existing storm water control measures or if additional control measures are necessary.

3.1.3.5 Document all control measures currently being implemented or planned to be implemented. Also include a schedule of implementation for all planned controls. Document the calculations or other evidence that shows that the WLA will be met.

3.1.3.6 Describe a monitoring program to determine whether the storm water controls are adequate to meet the WLA.

3.1.3.7 If the evaluation shows that additional or modified controls are necessary, describe the type and schedule for the control additions/revisions. Continue Parts 3.1.3.4-7 until two continuous monitoring cycles show that the WLAs are being met or that WQ standards are being met.

4 Storm Water Management Program (SWMP)

4.1 Requirements

4.1.1 The permittee must develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your small MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management program should include management practices; control techniques and system, design, and engineering methods; and such other provisions as the permitting authority determines appropriate for the control of such pollutants. The permittee storm water management program must include the following information for each of the six minimum control measures described in Section 4.2 of this permit:

4.1.1.1 The best management practices (BMPs) that the permittee or another entity will implement for each of the storm water minimum control measures;

4.1.1.2 The measurable goals for each of the BMPs including, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the action; and

4.1.1.3 The person or persons responsible for implementing or coordinating the BMPs for the permittee storm water management program.

4.1.2 In addition to the requirements listed above, the permittee must provide a rationale for how and why the permittee selected each of the BMPs and measurable goals for the permittee storm water management program. The information required for such a rationale is given in Section 4.2 for each minimum measure. The permittee must develop and fully implement your program by [insert date five years from permit issuance].

4.1.2.1 The permittee must submit to EPA a hard and electronic copy of the SWMP by **August 6, 2007**. The storm sewer system map(s) are not required electronically.

4.1.2.2 *Additional designations after the date of permit issuance.* If the permittee is designated by the permitting authority after the date of permit issuance, then the permittee is required to submit an NOI and the storm water management program, including an electronic copy, to the permitting authority within 180 days of notice.

4.1.3 The following EPA websites may be used in the development of BMPs and measurable goals,

EPA's BMP menu found at:
http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm, and

EPA's guidance on measurable goals, found at:
http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm, may be used in the development of the storm water management program.

4.2 Minimum Control Measures

The six minimum control measures that must be included in the permittee storm water management program are:

4.2.1 Public Education and Outreach on Storm Water Impacts

4.2.1.1 *Permit requirement.* The permittee must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

4.2.1.2 *Decision process.* The permittee must document the decision process for the development of a storm water public education and outreach program. The rationale statement must address both the permittee overall public education program and the individual BMPs, measurable goals and responsible persons for the program. The rationale statement must include the following information, at a minimum:

4.2.1.2.1 How the permittee plan to inform individuals and households about the steps they can take to reduce storm water pollution.

4.2.1.2.2 How the permittee plan to inform individuals and groups on how to become involved in the storm water program (with activities such as local stream and beach restoration activities).

4.2.1.2.3 Who are the target audiences for the permittee's education program who are likely to have significant storm water impacts (including commercial, industrial and institutional entities) and why those target audiences were selected.

4.2.1.2.4 What are the target pollutant sources the permittee public education program is designed to address.

4.2.1.2.5 What is the permittee outreach strategy, including the mechanisms (e.g., printed brochures, newspapers, media, workshops, etc.) the permittee will use to reach your target audiences , and how many people does the permittee expect to reach by the outreach strategy over the permit term.

4.2.1.2.6 Who is responsible for overall management and implementation of the permittee storm water public education and outreach program and, if different, who is responsible for each of the BMPs identified for this program.

4.2.1.2.7 How will the permittee evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.

4.2.2 Public Involvement/Participation

4.2.2.1 *Permit requirement.* The permittee must at a minimum, comply with State and local public notice requirements when implementing a public involvement/participation program.

4.2.2.2 *Decision process.* The permittee must document the decision process for the development of a storm water public involvement/participation program. The rationale statement must address both the permittee overall public involvement/participation program and the individual BMPs, measurable goals, and responsible persons for the program. The rational statement must include the following information, at a minimum:

4.2.2.2.1 How the permittee has involved the public in the development and submittal of your NOI and storm water management program.

4.2.2.2.2 What is the permittee's plan to actively involve the public in the development and implementation of the program.

4.2.2.2.3 Who are the target audiences for the permittee's public involvement program, including a description of the types of ethnic and economic groups engaged. The permittee is encouraged to actively involve all potentially affected stakeholder groups, including commercial and industrial businesses, trade associations, environmental groups, homeowners associations, and educational organizations, among others.

4.2.2.2.4 What are the types of public involvement activities included in the program. Where appropriate, consider the following types of pubic involvement activities:

4.2.2.2.4.1 Citizen representatives on a storm water management panel

4.2.2.2.4.2 Public hearings

4.2.2.2.4.3 Working with citizen volunteers willing to educate others about the program

4.2.2.2.4.4 Volunteer monitoring or stream/beach clean-up activities

4.2.2.2.5 Who is responsible for the overall management and implementation of the storm water public involvement/participation program and, if different, who is responsible for each of the BMPs identified for this program.

4.2.2.2.6 How the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.

4.2.3 Illicit Discharge Detection and Elimination

4.2.3.1 *Permit requirement.* The permittee must:

4.2.3.1.1 Develop, implement and enforce a program to detect and eliminate illicit discharges (as defined in 40 CFR §122.26(b)(2)) into the permittee small MS4;

4.2.3.1.2 Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

4.2.3.1.3 To the extent allowable under State or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the permittee storm sewer system and implement appropriate enforcement procedures and actions;

4.2.3.1.4 Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the permittees' system;

4.2.3.1.5 Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste; and

4.2.3.1.6 Address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if the permittee identify them as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR §35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing

drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

4.2.3.1.7 The permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g., non-commercial or charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on information available to the permittees) to be significant sources of pollutants to the Municipal Separate Storm Sewer System, because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the permitted MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, BMPs on the wash water, etc.). The permittee must document in their SWMP any local controls or conditions placed on the discharges. The permittee must include a provision prohibiting any individual non-storm water discharge that is determined to be contributing significant amounts of pollutants to their MS4.

4.2.3.2 *Decision process.* The permittee must document the decision process for the development of a storm water illicit discharge detection and elimination program. The rationale statement must address both the overall illicit discharge detection and elimination program and the individual BMPs, measurable goals, and responsible persons for their program. The rational statement must include the following information, at a minimum:

4.2.3.2.1 How the permittee will develop a storm sewer map showing the location of all outfalls and the names and location of all receiving waters. Describe the sources of information the permittee used for the maps, and how the permittee plan to verify the outfall locations with field surveys. If already completed, describe how the permittee developed this map. Also, describe how the map will be regularly updated.

4.2.3.2.2 The mechanism (ordinance or other regulatory mechanism) the permittee will use to effectively prohibit illicit discharges into the MS4 and why the permittee choose that mechanism. If the permittee need to develop this mechanism, describe the plan and a schedule to do so. If the ordinance or regulatory mechanism is already developed, include a copy of the relevant sections with the program.

4.2.3.2.3 The plan to ensure through appropriate enforcement procedures and actions that the illicit discharge ordinance (or other regulatory mechanism) is implemented.

4.2.3.2.4 The plan to detect and address illicit discharges to the system, including discharges from illegal dumping and spills. The plan must include dry weather field screening for non-storm water flows and field tests of selected chemical parameters as indicators of discharge sources. The plan must also address on-site sewage disposal systems that flow into your storm drainage system. The description must address the following, at a minimum:

4.2.3.2.4.1 Procedures for locating priority areas which includes areas with higher likelihood of illicit connections (e.g., areas with older sanitary sewer lines, for example) or ambient sampling to locate impacted reaches.

4.2.3.2.4.2 Procedures for tracing the source of an illicit discharge, including the specific techniques the permittee will use to detect the location of the source.

4.2.3.2.4.3 Procedures for removing the source of the illicit discharge

4.2.3.2.4.4 Procedures for program evaluation and assessment.

4.2.3.2.5 How the permittee plan to inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste. Include in the description how this plan will coordinate with the public education minimum measure and the pollution prevention/good housekeeping minimum measure programs.

4.2.3.2.6 Who is responsible for overall management and implementation of the permittee's storm water illicit discharge detection and elimination program and, if different, who is responsible for each of the BMPs identified for this program.

4.2.3.2.7 How the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.

4.2.4 Construction Site Storm Water Runoff Control

4.2.4.1 *Permit requirement.* The permittee must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to their small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with § 122.26(b)(15)(i), the permittee is not required to develop, implement,

and/or enforce a program to reduce pollutant discharges from such sites. The program must include the development and implementation of, at a minimum:

4.2.4.1.1 An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State or local law;

4.2.4.1.2 Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

4.2.4.1.3 Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

4.2.4.1.4 Procedures for site plan review which incorporate consideration of potential water quality impacts;

4.2.4.1.5 Procedures for receipt and consideration of information submitted by the public; and

4.2.4.1.6 Procedures for site inspection and enforcement of control measures.

4.2.4.2 *Decision process.* The permittee must document the decision process for the development of a construction site storm water control program. The rationale statement must address both the overall construction site storm water control program and the individual BMPs, measurable goals, and responsible persons for the program. The rationale statement must include the following information, at a minimum:

4.2.4.2.1 The mechanism (ordinance or other regulatory mechanism) the permittee will use to require erosion and sediment controls at construction sites and why the permittee choose that mechanism. If the permittee needs to develop this mechanism, describe the plan and a schedule to do so. If the ordinance or regulatory mechanism is already developed, include a copy of the relevant sections with your storm water management program description.

4.2.4.2.2 The plan to ensure compliance with the erosion and sediment control regulatory mechanism, including the sanctions and enforcement mechanisms the permittee will use to ensure compliance. Describe the procedures for when the permittee will use certain sanctions. Possible sanctions include non-monetary penalties (such a stop work orders), fines, bonding requirements, and/or permit denials for non-compliance.

4.2.4.2.3 The requirements for construction site operators to implement appropriate erosion and sediment control BMPs and control waste at construction sites that may cause adverse impacts to water quality. Such waste includes discarded building materials, concrete truck washouts, chemicals, litter, and sanitary waste.

4.2.4.2.4 The procedures for site plan review, including the review of pre-construction site plans, which incorporate consider of potential water quality impacts. Describe the procedures and the rationale for how the permittee will identify certain sites for site plan review, if not all plans are reviewed. Describe the estimated number and percentage of site that will have pre-construction site plans reviewed.

4.2.4.2.5 The procedures for receipt and consideration of information submitted by the public. Consider coordinating this requirement with the public education program.

4.2.4.2.6 The procedures for site inspection and enforcement of control measures, including how the permittee will prioritize sites for inspection.

4.2.4.2.7 Who is responsible for overall management and implementation of the construction site storm water control program and, if different, who is responsible for each of the BMPs identified for this program.

4.2.4.2.8 Describe how the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.

4.2.5 Post-Construction Storm Water Management in New Development and Redevelopment

4.2.5.1 *Permit requirement.* The permittee must:

4.2.5.1.1 Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the permittee small MS4. The permittee's program must ensure that controls are in place that would prevent or minimize water quality impacts;

4.2.5.1.2 Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the permittee's community; and

4.2.5.1.3 Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State or local law; and

4.2.5.1.4 Ensure adequate long-term operation and maintenance of BMPs.

4.2.5.2 *Decision process.* The permittee must document their decision process for the development of a post-construction storm water management program. Their rationale statement must address both their overall post-construction storm water management program and the individual BMPs, measurable goals, and responsible persons for their program. The rational statement must include the following information, at a minimum:

4.2.5.2.1 Their program to address storm water runoff from new development and redevelopment projects. Include in this description any specific priority areas for this program.

4.2.5.2.2 How their program will be specifically tailored for their local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions.

4.2.5.2.3 Any non-structural BMPs in your program, including, as appropriate:

4.2.5.2.3.1 Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation;

4.2.5.2.3.2 Policies or ordinances that encourage infill development in higher density urban areas, and areas with existing storm sewer infrastructure;

4.2.5.2.3.3 Education programs for developers and the public about project designs that minimize water quality impacts; and

4.2.5.2.3.4 Other measures such as minimization of the percentage of impervious area after development, use of measures to minimize directly connected impervious areas, and source control measures often thought of as good housekeeping, preventive maintenance and spill prevention.

4.2.5.2.4 Any structural BMPs in your program, including, as appropriate:

4.2.5.2.4.1 Storage practices such as wet ponds and extended-detention outlet structures;

4.2.5.2.4.2 Filtration practices such as grassed swales, bioretention cells, sand filters and filter strips; and

4.2.5.2.4.3 Infiltration practices such as infiltration basins and infiltration trenches.

4.2.5.2.5 What are the mechanisms (ordinance or other regulatory mechanisms) the permittee will use to address post-construction runoff from new developments and redevelopments and why did the permittee choose that mechanism. If the permittee need to develop a mechanism, describe the plan and a schedule to do so. If the ordinance or regulatory mechanism is already developed, include a copy of the relevant sections with your program.

4.2.5.2.6 How the permittee will ensure the long-term operation and maintenance (O&M) of their selected BMPs. Options to help ensure that future O&M responsibilities are clearly identified include an agreement between the permittee and another party such as the post-development landowners or regional authorities.

4.2.5.2.7 Who is responsible for overall management and implementation of the post-construction storm water management program and, if different, who is responsible for each of the BMPs identified for this program.

4.2.5.2.8 How the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.

4.2.6 Pollution Prevention/Good Housekeeping for Municipal Operations

4.2.6.1 *Permit requirement.* The permittee must:

4.2.6.1.1 Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations; and

4.2.6.1.2 Using training materials that are available from EPA, the State or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

4.2.6.2 *Decision process.* The permittee must document their decision process for the development of a pollution prevention/good housekeeping program for municipal operations. The rationale statement must address both their overall pollution prevention/good housekeeping program and the individual BMPs, measurable

goals, and responsible persons for their program. The rationale statement must include the following information, at a minimum:

4.2.6.2.1 The operation and maintenance program to prevent or reduce pollutant runoff from the municipal operations. The program must specifically list the municipal operations that are impacted by this operation and maintenance program. The permittee must also include a list of industrial facilities the permittee own or operate that are subject to EPA's Multi-Sector General Permit (MSGP) or individual NPDES permits for discharges of storm water associated with industrial activity that ultimately discharge to their MS4. Include the EPA permit number or a copy of the Industrial NOI form for each facility.

4.2.6.2.2 Any government employee training program the permittee will use to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. Describe any existing, available materials the permittee plan to use. Describe how this training program will be coordinated with the outreach programs developed for the public information minimum measure and the illicit discharge minimum measure.

4.2.6.2.3 The program description must specifically address the following areas:

4.2.6.2.3.1 Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the MS4.

4.2.6.2.3.2 Controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt/sand storage locations and snow disposal areas the permittee operate.

4.2.6.2.3.3 Procedures for the proper disposal of waste removed from the MS4 and their municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris.

4.2.6.2.3.4 Procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices.

4.2.6.2.4 Who is responsible for overall management and implementation of the pollution prevention/good housekeeping program and, if different, who is responsible for each of the BMPs identified for this program.

4.2.6.2.5 How the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.

4.3 Sharing Responsibility

Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. The permittee may rely on another entity only if:

4.3.1 The other entity, in fact, implements the control measure;

4.3.2 The particular control measure, or component of that measure, is at least as stringent as the corresponding permit requirement.

4.3.3 The other entity agrees to implement the control measure on your behalf. Written acceptance of this obligation is expected. This obligation must be maintained as part of the description of the permittee storm water management program. If the other entity agrees to report on the minimum measure, the permittee must supply the other entity with the reporting requirements contained in Section 5.3 of this permit. If the other entity fails to implement the control measure on your behalf, then the permittee remain liable for any discharges due to that failure to implement.

4.4 Reviewing and Updating Storm Water Management Programs

4.4.1 *Storm Water Management Program Review:* The permittee must do an annual review of their Storm Water Management Program in conjunction with preparation of the annual report required under Part 5.3

4.4.2 *Storm Water Management Program Update:* The permittee may change their Storm Water Management Program during the life of the permit in accordance with the following procedures:

4.4.2.1 Changes adding (but not subtracting or replacing) components, controls, or requirements to the Storm Water Management Program may be made at any time upon written notification to the Permitting Authority.

4.4.2.2 Changes replacing an ineffective or unfeasible BMP specifically identified in the Storm Water Management Program with an alternate BMP may be requested at any time. Unless denied by the Permitting Authority, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented 60 days from submittal of the request. If request is denied, the permitting Authority will send the

permittee a written response giving a reason for the decision. Your modification requests must include the following:

4.4.2.2.1 An analysis of why the BMP is ineffective or infeasible (including cost prohibitive),

4.4.2.2.2 Expectations on the effectiveness of the replacement BMP, and

4.4.2.2.3 An analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.

4.4.2.3 Change requests or notifications must be made in writing and signed in accordance with Part 6.7.

4.4.3 *Storm Water Management Program Updates Required by the Permitting Authority*: The Permitting Authority may require changes to the Storm Water Management Program as needed to:

4.4.3.1 Address impacts on receiving water quality caused, or contributed to, by discharges from the Municipal Separate Storm Sewer System;

4.4.3.2 Include more stringent requirements necessary to comply with new Federal statutory or regulatory requirements; or

4.4.3.3 Include such other conditions deemed necessary by the Permitting Authority to comply with the goals and requirements of the Clean Water Act.

4.4.3.4 Changes requested by the Permitting Authority must be made in writing, set forth the time schedule for the permittee to develop the changes, and offer the permittee the opportunity to propose alternative program changes to meet the objective of the requested modification. All changes required by the Permitting Authority will be made in accordance with 40 CFR 124.5, 40 CFR 122.62, or as appropriate 40 CFR 122.63.

4.4.4 *Transfer of Ownership, Operational Authority, or Responsibility for Storm Water Management Program Implementation:* The permittee must implement the Storm Water Management Program on all new areas added to their portion of the municipal separate storm sewer system (or for which the permittee became responsible for implementation of storm water quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

4.4.4.1 Within 90 days of a transfer of ownership, operational authority, or responsibility for storm water management program implementation, the permittee must have a plan for implementing your Storm Water Management Program on all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the Storm Water Management Program must be included in the annual report.

4.4.4.2 Only those portions of the Storm Water Management Programs specifically required as permit conditions shall be subject to the modification requirements of 40 CFR Part 124.5. Addition of components, controls, or requirements by the permittee(s) and replacement of an ineffective or infeasible BMP implementing a required component of the Storm Water Management Program with an alternate BMP expected to achieve the goals of the original BMP shall be considered minor changes to the Storm Water Management Program and not modifications to the permit.

4.5 SWMP Availability

You must retain a copy of the current SWMP required by this permit, and it must be immediately available to EPA; a State or local agency approving storm water management plans; and representatives of the U.S. Fish and Wildlife Services (USFWS) or the National Marine Fisheries Service (NMFS) at the time or upon request. Also, in the interest of the public's right-to-know, you must allow to view a copy or provide a copy of the SWMP to anyone who makes such a request in writing. Confidential Business Information (CBI) may not be withheld from regulatory agencies, but may be withheld from the public. All portions of the SWMP not justifiably considered CBI, must be provided to the public.

5 Monitoring, Recordkeeping, and Reporting

5.1 Monitoring

5.1.1 The permittee must evaluate program compliance, the appropriateness of identified best management practices, and progress toward achieving identified measurable goals. If the permittee discharge to a water for which a TMDL has been approved, the permittee will have additional monitoring requirements under Part 3.1.3.6.

5.1.2 When the permittee conduct monitoring at their permitted small MS4, the permittee is required to comply with the following:

5.1.2.1 *Representative monitoring.* Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

5.1.2.2 *Test Procedures.* Monitoring results must be conducted according to test procedures approved under 40 CFR part 136

5.1.3 Records of monitoring information shall include:

5.1.3.1 The date, exact place, and time of sampling or measurements;

5.1.3.2 The names(s) of the individual(s) who performed the sampling or measurements;

5.1.3.3 The date(s) analyses were performed;

5.1.3.4 The names of the individuals who performed the analyses;

5.1.3.5 The analytical techniques or methods used; and

5.1.3.6 The results of such analyses.

5.1.4 *Discharge Monitoring Report.* Monitoring results must be reported on a Discharge Monitoring Report (DMR)

5.2 Record keeping

5.2.1 The permittee must retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES permit, and records of all data used to complete the application (NOI) for this permit, for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the permitting authority at any time.

5.2.2 The permittee must submit their records to the permitting authority only when specifically asked to do so. The permittee must retain a description of the Storm Water Management Program required by this permit (including a copy of the permit language) at a location accessible to the permitting authority. The permittee must make their records, including the notice of intent (NOI) and the description of the storm water management program, available to the public if requested to do so in writing.

5.3 Reporting

The permittee must submit annual reports to the Director by [insert date] of each year of the permit term. The report must include:

5.3.1 The status of permittee's compliance with permit conditions, an assessment of the appropriateness of the identified best management practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, and the measurable goals for each of the minimum control measures;

5.3.2 Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;

5.3.3 A summary of the storm water activities the permittee plan to undertake during the next reporting cycle (including an implementation schedule);

5.3.4 Proposed changes to your storm water management program, including changes to any BMPs or any identified measurable goals that apply to the program elements; and

5.3.5 Notice that the permittee is relying on another government entity to satisfy some of your permit obligations (if applicable).

6 Standard Permit Conditions

6.1 Duty to Comply

6.1.1 The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

6.1.2 *Penalties for Violations of Permit Conditions*.

The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (Federal Register: December 31, 1996, Volume 61, Number 252, pages 69359-69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as

necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

6.1.2.1 *Criminal Violations.*

6.1.2.1.1 *Negligent Violations*. The CWA provides that any person who *negligently* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. In the case of a second, or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than two (2) years, or both.

6.1.2.1.2 *Knowing Violations*. The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second, or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or by imprisonment of not more than six (6) years, or both.

6.1.2.1.3 *Knowing Endangerment*. The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction be subject to a fine not more than $250,000 or by imprisonment for not more than 15 years, or both. In the case of a second, or subsequent conviction for a knowing endangerment violation, a person shall be subject to criminal penalties of not more than $500,000 per day of violation, or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA shall, upon conviction of violating the

imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

6.1.2.1.4 *False Statement.* The CWA provides that nay person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309(c)(4) of the Clean Water Act).

6.1.2.2 *Civil Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to a civil penalty not to exceed $32,500 per day for each violation.

6.1.2.3 *Administrative Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to an administrative penalty as follows:

6.1.2.3.1 *Class I penalty*. Not to exceed $11,000 per violation nor shall the maximum amount exceed $32,500.

6.1.2.3.2 *Class II penalty*. Not to exceed $11,000 per day for each day during which violation continues nor shall the maximum amount exceed $157,500.

6.2 Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to

the expiration date will automatically remain covered by the continued permit until the earlier of:

6.2.1 Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

6.3.2 Issuance of an individual permit for your discharges; or

6.3.3 A formal permit decision by the permitting authority not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

6.3 Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

6.4 Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

6.5 Duty to Provide Information

The permittee must furnish to the permitting authority any information that is requested to determine compliance with this permit or other information.

6.6 Other Information

If the permittee becomes aware that they have failed to submit any relevant facts in your Notice of Intent or submitted incorrect information in the Notice of Intent or in any other report to the permitting authority, the permittee must promptly submit such facts or information.

6.7 Signatory Requirements

All Notices of Intent, reports, certifications, or information submitted to the permitting authority, or that this permit requires be maintained by the permittee shall be signed and certified as follows:

6.7.1 *Notices of Intent*. All Notices of Intent shall be signed by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

6.7.2 *Reports and other information.* All reports required by the permit and other information requested by the permitting authority or authorized representative of the permitting authority shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

6.7.2.1 *Signed authorization*. The authorization is made in writing by a person described above and submitted to the permitting authority.

6.7.2.2 *Authorization with specified responsibility*. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility for environmental matter for the regulated entity.

6.7.3 *Changes to authorization*. If an authorization is no longer accurate because a different operator has the responsibility for the overall operation of the MS4, a new authorization satisfying the requirement of (6.7.2.2) above must be submitted to the permitting authority prior to or together with any reports, information, or notices of intent to be signed by an authorized representative.

6.7.4 *Certification*. Any person (as defined above in (6.7.2.1 and 6.7.2.2)) signing documents under section 6.7 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

6.8 Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations

6.9 Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by you to achieve compliance with the conditions of this permit and with the conditions of your storm water management program. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by you only when the operation is necessary to achieve compliance with the conditions of the permit.

6.10 Inspection and Entry

The permittee must allow the permitting authority or an authorized representative (including an authorized contractor acting as a representative of the Administrator) upon the presentation of credentials and other documents as may be required by law, to do any of the following:

6.10.1 Enter the premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

6.10.2 Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

6.10.3 Inspect at reasonable times any facilities or equipment (including monitoring and control equipment) practices, or operations regulated or required under this permit; and

6.10.4 Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

6.11 Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. Your filing of a request for a permit modification, revocation and reissuance, or termination,

or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6.12 Permit Transfers

This permit is not transferable to any person except after notice to the permitting authority. The permitting authority may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

6.13 Anticipated Noncompliance

The permittee must give advance notice to the permitting authority of any planned changes in the permitted small MS4 or activity which may result in noncompliance with this permit.

6.14 State/Tribal Environmental Laws

6.14.1 Nothing in this permit shall be construed to preclude the institution of any legal action or relieve you from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.

6.14.2 No condition of this permit releases you from any responsibility or requirements under other environmental statutes or regulations.

6.15 Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

6.16 Procedures for Modification or Revocation

Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

6.17 Requiring an Individual Permit or an Alternative General Permit

6.17.1 *Request by permitting authority*. The permitting authority may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the permitting authority to take action under this paragraph. Where the permitting authority requires you to apply for an individual NPDES permit, the permitting authority will notify you in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for you to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications must be submitted to the appropriate Regional Office (see Part 2.3). The permitting authority may grant additional time to submit the application upon request of the applicant. If you fail to submit in a timely manner an individual NPDES permit application as required by the permitting authority under this paragraph, then the applicability of this permit to you is automatically terminated at the end of the day specified by the permitting authority for application submittal.

6.17.2 *Request by permittee*. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, you must submit an individual application in accordance with the requirements of 40 CFR 122.33(b)(2), with reasons supporting the request, to the permitting authority at the address for the appropriate Regional Office (see Part 2.3). The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee is adequate to support the request.

6.17.3 *General permit termination*. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an operator otherwise subject to this permit, or the operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the permitting authority.

7 Permit Conditions Applicable to Specific State or Territory

No additional requirements.

8 Reopener Clause

8.1 Procedures for Modification or Revocation

Permit modification or revocation will be conducted according to 40 CFR §122.62, §122.63, §122.64 and §124.5.

8.2 Timing of Permit Modification

EPA may elect to modify the permit prior to its expiration (rather than waiting for the new permit cycle) to comply with any new statutory or regulatory requirements, such as for effluent limitation guidelines, that may be promulgated in the course of the current permit cycle.

9 Definitions

All definition contained in Section 502 of the Act and 40 CFR 122 shall apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of some regulatory/statutory definitions have been provided, but in the even of a conflict, the definition found in the Statute or Regulation takes precedence.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Control Measure as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

CWA or The Act means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

Discharge, when used without a qualifier, refers to “discharge of a pollutant” as defined at 40 CFR 122.2.

Illicit Connection means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illicit Discharge is defined at 40 CFR 122.26(b)(2) and refers to any discharge to a municipal separate storm sewer that is not entirely composed of storm water, except

discharges authorised under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from fire fighting activities.

MEP is an acronym for "Maximum Extent Practicable," the technology-based discharge standard for Municipal Separate Storm Sewer Systems to reduce pollutants in storm water discharges that was established by CWA §402(p). A discussion of MEP as it applies to small MS4s is found at 40 CFR 122.34.

MS4 is an acronym for "Municipal Separate Storm Sewer System" and is used to refer to either a Large, Medium, or Small Municipal Separate Storm Sewer System (e.g. "the Dallas MS4"). The term is used to refer to either the system operated by a single entity or a group of systems within an area that are operated by multiple entities (e.g., the Houston MS4 includes MS4s operated by the city of Houston, the Texas Department of Transportation, the Harris County Flood Control District, Harris County, and others).

Municipal Separate Storm Sewer is defined at 40 CFR 122.26(b)(8) and means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

NOI is an acronym for “Notice of Intent” to be covered by this permit and is the mechanism used to “register” for coverage under a general permit.

Permitting Authority means the EPA Regional Administrator or an authorized representative.

Small Municipal Separate Storm Sewer System is defined at 40 CFR 122.26(b)(16) and refers to all separate storm sewers that are owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or

similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States, but is not defined as "large"' or "medium" municipal separate storm sewer system. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

Storm Water is defined at 40 CFR 122.26(b)(13) and means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Management Program (SWMP) refers to a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system.

SWMP is an acronym for "Storm Water Management Program."

Urbanized Area comprises a place and the adjacent densely settled surrounding territory that together have a minimum population of 50, 000 people. The "densely settled surrounding territory" adjacent to the place consists of:

1. Territory made up of one or more contiguous census blocks having a population density of at least 1,000 people per square mile that it is:

   a. Contiguous with and directly connected by road to other qualifying territory, or

   b. Noncontiguous with other qualifying territory, and:
      (1) Within 1 ½ road miles of the main body of the urbanized area and connected to it by one or more nonqualifying census blocks that [a] are adjacent to the connecting road and [b] together with the outlying qualifying territory have a total population density of at least 500 people per square mile, or

      (2) Separated by water or other undevelopable territory from the main body of the urbanized area, but within 5 road miles of the main body of the urbanized area, as long as the 5 miles include no more than 1 ½ miles of otherwise nonqualifying developable territory.

2. A place containing territory qualifying on the basis of criterion 1 [above] will be included in the urbanized area in its entirety (or partially, if the place is an extended city) if that qualifying territory includes at least 50 percent of the population of the place. If the place does not contain any territory qualifying on the basis of the

above criterion, or if that qualifying territory includes less than 50 percent of the place's population, the place is excluded in its entirety.

3. Other territory with a population density of less than 1,000 persons per square mile, provided that it:
   a. Eliminates an enclave of no more than 5 square miles in the territory otherwise qualifying for the urbanized area when the surrounding territory qualifies on the basis of population density, or

   b. Closes an indentation in the boundary of the territory otherwise qualifying for the urbanized area when the contiguous territory qualifies on the basis of population density, provided that the indentation is no more than 1 mile across the open end, has a depth at least two times greater than the distance across the open end, and encompasses no more than 5 square miles.

Appendix A
Eligibility and screening procedures relating to species listed and critical habitat designated under the Endangered Species Act

Appendix A. Eligibility and screening procedures relating to species listed and critical habitat designated under the Endangered Species Act.

You must meet one or more of the following six criteria (A-F) to be eligible for coverage under the permit:

Criterion A. No federally-listed threatened or endangered species or their designated critical habitat are in proximity to your facility as defined in Addendum G; or

Criterion B. Consultation between a Federal agency and the Fish and Wildlife Service and/or the National Marine Fisheries Service (together, the "Services") under section 7 of the ESA has been concluded. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action (e.g., during application for an individual wastewater discharge permit, the issuance of a wetlands dredge and fill permit, or as a result of a NEPA review).

The consultation must have addressed the effects of the facility's stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities on federally-listed threatened or endangered species and federally-designated critical habitat, and resulted in either:

> i. a biological opinion finding no jeopardy to federally-listed species or destruction/adverse modification of federally-designated critical habitat, or
>
> ii. written concurrence from the Service(s) with a finding that the facility's stormwater discharges associated with industrial activity and allowable non-stormwater discharges are not likely to adversely affect federally-listed species or federally-designated critical habitat; or

Criterion C. The industrial activities are authorized through the issuance of a permit under section 10 of the ESA, and that authorization addresses the effects of the stormwater discharges associated with industrial activity and allowable non-stormwater discharges on federally-listed species and federally-designated critical habitat; or

Criterion D. Coordination between the operator and the Fish and Wildlife Service and/or the National Marine Fisheries Service has been concluded. The coordination must have addressed the effects of the facility's storm water discharges associated with industrial activity and allowable non-storm water discharges on federally-listed threatened or endangered species and federally-designated critical habitat. The result of the coordination must be a written statement from the Services that there are not likely to be any adverse affects to federally-listed species or federally-designated critical habitat. Any conditions or prerequisites deemed necessary to achieve no adverse effects become eligibility conditions for Small MS4 General Permit coverage; or

Criterion E. Stormwater discharges associated with industrial activity and allowable non-stormwater discharges are not likely to adversely affect any federally-listed endangered and threatened ("listed") species or designated critical habitat ("critical habitat"); or

Criterion F. The facility's stormwater discharges associated with industrial activity and allowable non-stormwater discharges were already addressed in another operator's valid certification of eligibility under Criteria A-E which included the industrial activities and there is no reason to believe that federally-listed species or federally-designated critical habitat not considered in the prior certification may be present or located in proximity to the facility. To certify eligibility under this criterion there must be no lapse of coverage in the other operator's certification. By certifying eligibility under this criterion, you agree to comply with any measures or controls upon which the other operator's certification was based. You must comply with any applicable terms, conditions, or other requirements developed in the process of meeting the eligibility requirements of the criteria in this section to remain eligible for coverage under this permit. Such terms and conditions must be documented and incorporated into your Stormwater Management Program (SWMP).

Assessing Your Facility Discharges

You must follow the procedures in this addendum to assess the potential effects of stormwater discharges and stormwater discharge-related activities on listed species and their critical habitat. When evaluating these potential effects, you must evaluate your entire facility. For purposes of this Addendum, the term "facility" is inclusive of the term "Action Area." Action area is defined in 50 CFR §402.02 as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. This includes areas beyond the footprint of the facility that may be affected by stormwater discharges and stormwater discharge related activities. "Facility" is defined in Appendix A. Note that dischargers who are eligible and able to certify eligibility under Criterion B, C, D, or F because of a previously issued ESA section 10 permit, a previously completed ESA section 7 consultation, or because their activities were already addressed in another discharger's certification of eligibility may proceed directly to Step Four.

Step One: *Determine if Listed Threatened or Endangered Species and Critical Habitat are Present On or Near Your Facility.*

You must first determine whether federally-listed species commonly reside in your area. Federally-listed threatened and endangered species are usually found in county-specific or sometimes township-specific listings. The local offices of the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and State or Tribal Heritage Centers often maintain such lists on their internet sites. The types of species that may be present determine which Service office you should contact (in general, NMFS has jurisdiction over marine, estuaries, and anadromous species). Visit www.epa.gov/npdes/stormwater/cgp to find the appropriate site

for your state or check with your local office. If there are listed species in your county or township, you must then determine, as best you are able, whether any of the species are located on or near your property (use the Services or Heritage Centers, as necessary).

You must also check to see if critical habitat has been designated and whether such areas overlap or are near your facility by contacting your local FWS, NMFS, or State or Tribal Heritage Center. Critical habitat areas may be designated independently from the listed species for your county, so even if there are no listed species in your county or township, you must still contact one of the agencies mentioned above to determine if there are any critical habitat areas on or near your project area. You can also find critical habitat designations and associated requirements at 50 CFR Parts 17 and 226 http://www.access.gpo.gov.

If there are no listed species in your county or township, no critical habitat areas on or near your project area, or if your local FWS, NMFS, or State or Tribal Heritage Center indicates that listed species are not a concern in your part of the county or township, you have satisfied your eligibility obligations under Criterion A (check box A on the Notice of Intent Form). If there are listed species and if your local FWS, NMFS, or State or Tribal Heritage Center indicates that these species could exist on or near your project area, you will need to do one or more of the following:

- Conduct visual inspections. This method may be particularly suitable for facilities that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat, or for facilities that discharge directly into municipal separate storm sewer systems.

- Conduct a formal biological survey (typically performed by environmental consulting firms). In some cases, particularly for larger facilities with extensive stormwater discharges, biological surveys may be an appropriate way to assess whether species are located on or near the project area and whether there are likely adverse effects to such species. A biological survey may in some cases be useful in conjunction with Steps Two, Three or Four of these instructions.

- Conduct an environmental assessment under the National Environmental Policy Act (NEPA). Such reviews may indicate if listed species are in proximity to the facility. Coverage under this Small MS4 General Permit may trigger such a review for new sources (that is, dischargers subject to New Source Performance Standards under section 306 of the Clean Water Act). Other facilities might require review under NEPA for other reasons, such as federal funding or other federal involvement in the facility. If listed threatened or endangered species or critical habitat are present in the project area, you must look at impacts to species and/or habitat when following Steps Two through Four. Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, meeting the eligibility requirements of this Small MS4 General Permit may require measures to protect critical habitat that are separate from those to protect listed species.

Step Two: *Determine if your facility's Stormwater Discharge Associated With Industrial Activity or Allowable Non-Stormwater Discharges Are Likely to Adversely Affect Listed Threatened or Endangered Species or Designated Critical Habitat*

To receive Small MS4 General Permit coverage, you must assess whether your stormwater discharges associated with industrial activity or allowable non-stormwater discharges are likely to adversely affect listed threatened or endangered species or designated critical habitat that are present on or near your facility. Potential adverse effects from stormwater discharges associated with industrial activity include:

- **Hydrological.** Stormwater discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of stormwater discharged and the volume and condition of the receiving water. Where a stormwater discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely. Industrial activity itself may also alter drainage patterns on a site where construction occurs that can impact listed species or critical habitat.

- **Habitat.** Site development, grading or other surface disturbances from industrial activities, including storage of materials and the installation or placement of stormwater BMPs, may adversely affect listed species or their habitat. Stormwater may drain or inundate listed species habitat.

- **Toxicity.** In some cases pollutants in stormwater may have toxic effects on listed species.

The scope of effects to consider will vary with each site. If you are having difficulty determining whether your facility is likely to adversely affect listed species or critical habitat, or one of the Services has already raised concerns to you, you must contact the appropriate office of the FWS, NMFS or Natural Heritage Center for assistance. If adverse effects are not likely, you have satisfied your eligibility obligations under Criterion E (check box E on the NOI form) and can apply for coverage under the Small MS4 General Permit. If your stormwater discharge may adversely affect listed species or critical habitat, you must follow Step Three.

Step Three: *Determine if Measures Can Be Implemented to Avoid Adverse Effects*

If you make a preliminary determination that adverse effects to listed species and/or critical habitat are likely to occur, you can still receive coverage under Criterion E if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for Small MS4 General Permit coverage. These measures may be relatively simple, e.g., re-routing a stormwater discharge to bypass an area where species are located, relocating BMPs, or changing the "footprint" of the industrial activity. If you cannot ascertain which measures to implement to avoid the likelihood of adverse effects, you must follow Step Four (iii).

Step Four: *Determine if the Eligibility Requirements of Criterion B, C, D or F Can Be Met*

Where adverse effects are likely and you are uncertain about how to avoid or eliminate the likelihood of adverse effects, you must contact the FWS and/or NMFS (see subpart iii below). However, you may still be eligible for Small MS4 General Permit coverage if any likely adverse effects can be addressed through meeting Criterion B, C, D, or F as follows:

i. A consultation under ESA Section 7 has been performed for your industrial activity (see Criterion B).

ii. An incidental taking permit under Section 10 of the ESA has been issued for your activity (see Criterion C). Stormwater discharges from your industrial facility may be authorized by this Small MS4 General Permit if some activity is authorized through the issuance of a permit under section 10 of the ESA and that authorization addressed the effects of your stormwater discharges on federally-listed species and designated critical habitat. You must follow FWS and/or NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR §17.22(b)(1) for FWS and §222.22 for NMFS). Application instructions for section 10 permits for FWS and NMFS can be obtained by accessing the FWS and NMFS websites (http://www.fws.gov and http://www.nmfs.noaa.gov) or by contacting the appropriate FWS and NMFS regional office.

iii. You have coordinated your activities with the appropriate Service office (see Criterion D). In the absence of any other conditions set forth in Step Four, you may still be able to qualify for coverage under this Small MS4 General Permit if you coordinate with the FWS or NMFS and the Service provides a letter or memorandum concluding that the direct and indirect effects of permitting your stormwater discharges will be unlikely to adversely affect listed species or to adversely modify designated critical habitat. If you adopt measures to avoid or eliminate adverse effects, per the Service's requirements or recommendations, you must abide by those measures for the duration of your coverage under the Small MS4 General Permit. Any such measures must be described in the Storm Water Management Program (SWMP) and are enforceable Small MS4 General Permit conditions and/or conditions for meeting the eligibility criteria in Subpart 1.3.5.3.

iv. You are covered under the eligibility certification of another operator for the project area (see Criterion F). Your stormwater discharges were already addressed in another discharger's certification of eligibility under Criteria A through E, which also included your facility and determined that federally listed endangered or threatened species or designated critical habitat would not be jeopardized. To certify eligibility under this criterion there must be no lapse of coverage in the other operator's certification. By certifying eligibility under Criterion F, you agree to comply with any measures or controls upon which the other discharge certification under Criterion B, C, or D was based.

Certification under Criterion F is discussed in more detail in the Fact Sheet that accompanies this permit.

You must comply with any terms and conditions imposed under the eligibility requirements of Criterion A through F to ensure that your stormwater discharges are protective of listed species and/or critical habitat. Such terms and conditions must be incorporated in the project's Stormwater Management Program (SWMP). If the eligibility requirements cannot be met, then you are not eligible for coverage under this small MS4 general permit. In these instances, you may consider applying to EPA for an individual permit.

Appendix B
Eligibility and screening procedures relating to historic properties and the National Historic Preservation Act

Appendix B – Eligibility and screening procedures relating to historic properties and the National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal "undertakings" on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term Federal "undertaking" is defined in the NHPA regulations to include a project, activity, or program of a Federal agency including those carried out by or on behalf of a Federal agency, those carried out with Federal financial assistance, and those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. See 36 CFR 800.16(1).

EPA's issuance of the Small Municipal Separate Storm Sewer System (MS4) General Permit is a Federal undertaking within the meaning of the NHPA regulations. To address any issues relating to historic properties in connection with issuance of the permit, EPA has included criteria for certifications by applicants that potential impacts of their covered activities on historic properties have been appropriately considered and addressed. Although individual applications for coverage under the general permit do not constitute separate Federal undertakings, the screening criteria and certifications provide an appropriate site-specific means of addressing historic property issues in connection with EPA's issuance of the permit. Applicants seeking coverage under the Small MS4 General Permit are thus required to make certain certifications regarding the potential effects of their stormwater discharge, allowable non-stormwater discharge, and discharge-related activities on properties listed or eligible for listing on the National Register of Historic Places.

You must meet one or more of the following four criteria (A- D) to be eligible for coverage under this permit:

> Criterion A. Your stormwater discharges and allowable non-stormwater discharges do not have the potential to have an effect on historic properties and you are not constructing or installing stormwater BMPs – or, for existing facilities seeking renewal of previous permit coverage, new BMPs – on your site that cause less than 1 acre of subsurface disturbance; or
>
> Criterion B. Your discharge-related activities (i.e., construction and/or installation of stormwater best management practices that involve subsurface disturbance) will not affect historic properties; or
>
> Criterion C. Your stormwater discharges, allowable non-stormwater discharges, and discharge-related activities have the potential to have an effect on historic properties, and you have obtained and are in compliance with a written agreement with the State Historic

Preservation Officer (SHPO) that outlines all measures you will carry out to mitigate or prevent any adverse effects on historic properties; or

Criterion D. You have contacted the State Historic Preservation Officer in writing regarding your potential to have an effect on historic properties, and you did not receive a response within 30 days.

Activities with No Potential to Have an Effect on Historic Properties

A determination that a Federal undertaking has no potential to have an effect on historic properties fulfills an agency's obligations under the NHPA. EPA has reason to believe that the vast majority of activities authorized under the Small MS4 General Permit have no potential to have effects on historic properties. The purpose of this permit is to control pollutants that may be transported in stormwater runoff from industrial facilities. EPA does not anticipate effects on historic properties from the pollutants in the stormwater and allowable non-stormwater discharges from municipal separate storm sewer systems. Thus, to the extent EPA's issuance of this general permit authorizes discharges of such constituents, confined to existing stormwater channels or natural drainage areas, the permitting action does not have the potential to cause effects on historic properties.

In addition, EPA is not aware of any impacts on historic properties under other storm water general permits (i.e., Construction and Multi-Sector General Permits) that provide coverage to the regulated community of Puerto Rico.

Activities with Potential to Have an Effect on Historic Properties

EPA believes this permit may have some potential to have an effect on historic properties where the Small MS4 General Permit authorizes the construction and/or installation of stormwater best management practices (BMPs) that involve subsurface disturbance and impact less than 1 acre of land. (Ground disturbances of 1 acre or more require coverage under a different permit, the Construction General Permit.) Where you have to disturb the land through the construction and/or installation of BMPs, there is a possibility that underground artifacts, records, or remains associated with historic properties could be impacted. Therefore, if you are establishing new or altering existing BMPs to manage your stormwater that will involve subsurface ground disturbance of less than 1 acre, you will need to ensure that historic properties will not be impacted by your activities or that you are in compliance with a written agreement with the SHPO that outlines all measures you will carry out to mitigate or prevent any adverse effects on historic properties.

Examples of BMPs Which Involve Subsurface Disturbance

EPA reviewed all BMPs currently employed to determine which practices involve some level of earth disturbance. The following is a non-inclusive list of BMPs that are presumptively expected to cause subsurface ground disturbance:

Dikes	Berms	Catch Basins
Ponds	Ditch	Trench
Culvert	Land manipulation: contouring, sloping, and grading	Channels
Perimeter Drain	Swales	Other

EPA cautions dischargers that this list is non-inclusive. Any installation and/or construction of BMPs that involve earth disturbing activities that are not on this list will need to be further examined for the potential to affect historic properties.

Historic Property Screening Process

You should follow the following screening process in order to certify your compliance with historic property eligibility requirements under this permit (see Section 1.3.6.1). The following three steps describe how applicants can meet the permit eligibility criteria for protection of historic properties under this permit:

Step 1: Are You Constructing or Installing Any Stormwater BMPs That Require Subsurface Disturbance of Less Than 1 acre?

If, as part of your coverage under this permit, you are not building or installing BMPs on your site that cause less than 1 acre of subsurface disturbance, then your discharge-related activities do not have the potential to have an effect on historic properties. You have no further obligations relating to historic properties. You have met eligibility Criterion A of the Small MS4 General Permit.

If the answer to the Step 1 question is yes, then you should proceed to Step 2.

Step 2: Have Prior Earth Disturbances Determined That Historic Properties Do Not Exist, or Have Prior Disturbances Precluded the Existence of Historic Properties?

If previous construction either revealed the absence of historic properties or prior disturbances preclude the existence of historic properties, then you have no further obligations relating to historic properties. You have met eligibility Criterion B of the Small MS4 General Permit.

If the answer to the Step 2 question is no, then you should proceed to Step 3.

Step 3: Contact the Appropriate Historic Property Authorities

Where you are building and/or installing BMPs affecting less than 1 acre of land to control stormwater or allowable non-stormwater discharges associated with this permit, and the answer to Step 3 is no, then you should contact the relevant SHPO to determine the likelihood that subsurface artifacts, records, or remains are potentially present on your site. This may involve examining local records to determine if historic artifacts have been found in nearby areas, as well as limited subsurface examination carried out by qualified professionals.

If through this process it is determined that such historic properties potentially exist and may be impacted by your construction or installation of BMPs, you should contact the relevant SHPO in writing and request to discuss mitigation or prevention of any adverse effects. The letter should describe your facility, the nature and location of subsurface disturbance activities that are contemplated, any known or suspected historic properties in the area, and any anticipated effects on such properties. The letter should also indicate that if the SHPO does not respond within 30 days of receiving the letter, you may start your subsurface activities. EPA encourages applicants to contact the appropriate authorities as soon as possible in the event of a potential adverse effect to an historic property. By entering into, and complying with, a written agreement with the SHPO regarding how to address any adverse impacts on historic properties, you have met eligibility Criterion C. In situations where an agreement cannot be reached between you and the SHPO you should contact the Environmental Protection Agency (Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce de León Avenue, San Juan, PR 00907-4127).

If you have contacted the SHPO in writing regarding your potential have an effect on historic properties and did not receive a response within 30 days, you have met eligibility Criterion D.

Addresses for State Historic Preservation Officers may be found on the Advisory Council on Historic Preservation's website (http://www.achp.gov/programs.html). For Puerto Rico you may write or call to:

State Historic Preservation Office
P.O. Box 9066581
San Juan, Puerto Rico 00906-6581
Telephone: 787-721-3737
Fax: 787-722-3622

You are reminded that you must comply with applicable State and local laws concerning protection of historic properties and include documentation supporting your determination of permit eligibility with regard to Part 1.3.6.1(Historic Places) within your implementation of BMPs. If ground disturbances are of 1 acre or more, this requires coverage under the

Construction General Permit (CGP) and documentation regarding historic properties must be included in your Stormwater Pollution Prevention Plan (SWPPP) required by the CGP.

Appendix C
EPA Region 2 NPDES Permit Applications Form Regulated Small Municipal Separate Storm Sewer Systems (MS4s) in EPA's Jurisdiction within Puerto Rico

United States Environmental Protection Agency

EPA Region 2
NPDES Permit Applications Form
Regulated Small Municipal Separate Storm Sewer Systems (MS4s) in EPA's Jurisdiction within Puerto Rico

February 2003

Introduction

The U.S. Environmental Protection Agency - Region 2 (EPA) is providing this "Question & Answer" document outlining permit application requirements to assist the operators of small municipal separate storm sewer systems (MS4s) required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for storm water discharges.

This document is intended for use only by MS4 operators in the area of Puerto Rico where EPA is the NPDES permitting authority.

EPA published the "Phase II" regulations addressing small municipal storm sewer systems on December 8, 1999.[1] This "Question & Answer" document addresses the Phase II application requirements for MS4 operators seeking NPDES permit coverage for storm water management plans to be implemented under 40 CFR 122.34 (i.e., a storm water management plan based on the "six minimum measures").[2]

EPA Region 2 has not yet issued a general NPDES permit for storm water discharges from regulated small MS4s, but does intend to issue such a permit. Until EPA issues the general permit, small MS4s must apply for individual permits as required by 40 CFR 122.33; this document outlines the individual permit application procedures described at 40 CFR 122.33(b)(2)(i). Any application information provided by MS4 operators by the deadlines outlined below will fulfill upcoming general permit application requirements.

All regulatory citations referencing the Phase II MS4 application requirements are underlined and included as an appendix starting on page 5.

Please note: there are no application forms for the Phase II MS4 permit program at this time. A permit application can be substantively completed by following the applicable regulations and by using the guideline suggestions included in this document. Other EPA-published guidance material may provide additional clarification of these requirements, and are listed at the end of this document.

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[1] 64 FR 68721.

[2] MS4 operators who seek a permit to discharge under an individual permit, either: 1) through implementing a program different from the "six minimum measures" program under 40 CFR 122.34, or 2) by participating in an existing "Phase I" NPDES municipal permit program as a limited co-permittee, must comply with the application requirements for "Phase I" municipalities contained in 40 CFR 122.26(d). These requirements are not addressed by this EPA Region 10 Q&A document. Please contact EPA Region 2 directly for more information about the "Phase I" MS4 application process.

Who Must Apply for Permit Coverage?

All "regulated small MS4s" defined at 40 CFR 122.32(a) must apply for NPDES permit coverage for their storm water discharges. The basic term "small municipal separate storm sewer system" is defined at 40 CFR 122.26(b)(16). A "regulated small MS4" is an MS4 located within an urbanized area defined by the latest Census, or an MS4 that has been specifically designated by EPA Region 2.

Can Multiple MS4 Operators Submit a Joint Permit Application?

Yes. EPA Region 2 allows multiple regulated entities to create a storm water management plan and jointly apply as co-permittees. The joint application must identify the persons or persons within each organization responsible for implementing/coordinating the storm water management program and must be signed by the responsible official of each organization. See 40 CFR 122.33, 122.34, and 122.35 for more information.

Where Should Applications be Sent?

All application packages should be mailed to the following address:

U.S. EPA Region 2
Caribbean Environmental Protection Division
Centro Europa Building, Suite 417
1492 Ponce de Leon Avenue
San Juan, Puerto Rico 00907-4127

When Must Applications be Submitted?

Operators of regulated small MS4s located within Census Bureau-defined Urbanized Areas must apply for NPDES permit coverage by March 10, 2003.

Operators of MS4s located outside of a Urbanized Area that are otherwise designated by EPA under 40 CFR 122.32(a)(2) will be required to apply for permit coverage by a date specified by EPA-Region 2 at the time of designation. See 40 CFR 122.33(c).

Who Must Sign the Application?

NPDES regulations at 40 CFR 122.22 specify that all permit applications from a municipality, state, federal or other public agency must be signed by either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes: 1) the chief executive officer of the agency, or 2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

For joint applications, representatives of each co-applicant must sign the application as described above.

All applications must be signed using the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of

the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

What Information Must be Included in the Application?

The following basic information must be included in all NPDES permit applications, as required by 40 CFR 122.21(f). Where appropriate, suggestions for addressing the requested item are included:

1) Activities by the applicant that require obtaining an NPDES permit.

(*Suggestion:* This item can be addressed by a statement such as : "The *Applicant Name* operates a municipal separate storm sewer system located in _____.")

2) Name, mailing address, and location of the facility for which the application is submitted.

(*Suggestion:* In the context of the MS4 permitting program, this item should list the name(s), title(s), affiliation(s), mailing address(es), and telephone number(s) of the operator(s) of the MS4(s).)

3) Standard Industrial Classification (SIC) Code that reflect the service provided by the facility.

(*Suggestion:* Generally speaking, the SIC code established by the federal Office of Management and Budget for public administration/general federal, state or local government activities is **9199**. For additional information on SIC codes, check the Occupational Safety and Health Administration's website at: http://www.osha.gov/cgi-bin/sic/sicser5)

4) The operator name(s), address(es), telephone number(s), ownership status, and status as a federal, state, local, Tribal or other public entity.

(*Suggestion:* This item should identify the names and titles of the primary administrative and/or technical staff contacts for the municipal operator(s), if different from item #2.)

5) A listing of any permits or construction approvals received or applied for under any of the following programs: Resource Conservation or Recovery Act; Underground Injection Control under the Safe Drinking Water Act; NPDES program under the Clean Water Act; Prevention of Significant Deterioration program under the Clean Air Act; Nonattainment program under the Clean Air Act; the National Emission Standards for Hazardous Air Pollutants preconstruction approval under the Clean Air Act, Ocean Dumping Permits under the Marine Protection Research and Sanctuaries Act; Dredge or fill permits under section 404 of the Clean Water Act; or other relevant environmental permits, including state permits.

6) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(*Suggestion:* A map of the storm sewer system(s), showing the location of all outfalls and names and location of all waters of the United States that receive discharges from those outfalls, is most appropriate for fulfilling this requirement. If a map of such detail is not available by March 2003, please include any reasonably available version of such a map and a schedule of when such a map will be available. [See 40 CFR 122.34(b)(3)(ii)(A) for a description of the mapping requirement.])

7) A brief description of the nature of the business.

(*Suggestion:* In the context of the MS4 permitting program, briefly describe the MS4 in terms of its general characteristics, such as: capacity, general operation, or other relevant information.)

The following additional information is required as part of an NPDES application from regulated small MS4(s) according to 40 CFR 122.33(b)(2)(i) and 40 CFR 122.34(d)(1):

8) An estimate of the square mileage served by the MS4(s);

9) Descriptions of the best management practices to be implemented by the applicant or another entity for each of the six storm water minimum control measures described in 40 CFR 122.34(b)(1) through (b)(6);

10) Descriptions of the measurable goals for each BMP, including (as appropriate) the months and years in which the action will be taken, including interim milestones and the frequency of the action; and

11) The person(s) responsible for implementing or coordinating the applicant's storm water management program.

(*Suggestion:* Your description of the storm water management program should identify those measures that are already in place or are underway, as well as measures that remain to be developed or implemented. As the operator of the MS4, you have the flexibility to determine the BMPs and measurable goals, for each minimum control measure, that are most appropriate for the system. It is not required that all BMPs be fully implemented and in place at the time of application. As stated in 40 CFR 122.34(a), EPA will require full implementation of the applicant's storm water management program no later than the end of the first permit term (NPDES permits are typically issued for a 5 year period). The application package should fully summarize the storm water management plan that is anticipated for the area, and should acknowledge those BMPs that remain to be developed, including time lines and milestones for implementation.)

Questions about the information contained in this document can be directed to Sergio Bosques, EPA Region 2 Storm Water Program Coordinator, at (787) 977-5838.