

Response to Stakeholder Comments on the 2017 Draft  
General NPDES Stormwater Permit No. GAG610000  
Phase II MS4

Permit Section	Comment/Requested Change	EPD Response
Part 4	Commenters requested that the current wording regarding the approved SWMP remaining in effect until the new SWMP is approved be retained, and the wording requiring compliance with the permit be deleted.	Due to the December 9, 2016 Federal Remand Rule, the Permit will serve as a Comprehensive General Permit. The SWMP will become a supporting document describing how the permittee will comply with the permit requirements. Therefore, the permit language has been further revised to clarify this requirement.
Part 4	A commenter requested that the sentence preceding each table in Section 4 be revised to be more clear, specific, and enforceable.	Revision made. The sentence now reads, "For...permittees, the program shall, at a minimum, implement the requirements in Table [X] below and include descriptions of how they are implemented in the SWMP."
4.2.1	The commenter requested that Fats, Oils and Grease (FOG) be added to the list of topics to be addressed in the public education program.	Revision made.
4.2.1 and 4.2.2	The commenter requested that the text be revised to from "The program should consider options..." to "It is recommended that the permittee's program include topics..."	The intent of the language is the same. The original text was retained.
4.2.1 and 4.2.2	The commenter questioned if the increase in the number of public educational and public involvement BMPs from 2 to 4 BMPs meant the permittee could expand the 2 existing BMPs or had to implement 2 additional BMPs.	The intent of the requirement is that the permittee expand the programs overall, not retain the existing program. Therefore, the permittees with populations exceeding 10,000 will need to implement new, additional BMPs. No change made.
4.2.1 and 4.2.2	Commenters requested that public education and public involvement requirements be aligned with the requirements of the	A large number of Phase II permittees are not located within the MNGWPD. EPD has determined that the public education and public

	Metropolitan North Georgia Water Planning District (MNGWPD).	involvement requirements of the proposed Phase II permit are reasonable and achievable. No change made.
4.2.1 and 4.2.2	The commenter requested that the public education and public involvement programs specify the percentage of the population that the permittee will reach annually and over the term of the permit. Setting a percentage would require the permittee to be creative in the techniques used to educate and involve the public.	The minimum number of public education and public involvement activities has been established in the permit. An evaluation of the effectiveness of the BMPs must be conducted annually by the permittee. No change made.
4.2.2	A commenter requested that the permit be revised to require the public to be involved in setting the stormwater budget and project priorities.	No regulatory requirement exists to support this requested revision. No change made.
4.2.3	A commenter requested that the permittee be required to quantify estimates of pollutants leaving roadways (e.g. sediment, nitrogen, phosphorus, and salt) and set a quantifiable percentage reduction over the permit term.	No regulatory requirement exists to support this requested revision. No change made.
4.2.3	A commenter requested that the permittee be required to develop a bacterial pollution control plan, which specifically addresses sanitary sewer overflows and leaking septic tanks.	Permittees already perform activities to address bacterial sources of pollution, including watershed protection plans, impaired waters plans, etc. No change made.
4.2.3	A commenter stated that permittees should be required to develop an ordinance to levy fines when illegal discharges are discovered.	An illicit discharge ordinance with the authority to levy fines is a requirement of 40 CFR Part 122. As such, this has been a requirement of the Phase II permit since inception of the program in Georgia. No change made.
4.2.3	A commenter stated that permittees should be required to identify industrial sites.	There is no regulatory requirement for Phase II permittees to address industrial users. The permit does allow the permittee to inventory and inspect industrial facilities (see Part 4.2.3.6 of the permit). No change made.
Table 4.2.3 (a), 3(a)	A commenter requested that the minimum annual inspection frequency be deleted, so	EPA has indicated that each permit activity must occur at some level annually. Annual

	that a permittee can inspect the entire MS4 within one year.	inspections of structures results in the permittee being in the field and identifying problems on a continual basis, which will help identify maintenance needs throughout the term of the permit. No change made.
Table 4.2.3 (a), 3(a)	A commenter questioned what a stream walk consists of and in a County, if the walk must be performed within the entire County or only the urbanized area.	Stream walks are optional under the permit and stream walks are performed by municipalities for various reasons. The permit defines “permitted area.” For a County, this consists of the urbanized area. Therefore, if a County decides to conduct stream walks as part of the dry weather screening program, 100% of the streams within the urbanized area receiving discharges from the MS4 must be walked within 5 years.
Table 4.2.3 (a), 3(a)	Commenters requested that the text requiring the permittee to report documentation of stream walks, when they are not required as part of the dry weather screening program, be deleted.	EPD has determined that if stream walks are conducted for a reason unrelated to the MS4 permit, the permittee does not need to provide documentation of this activity. Revision made.
Table 4.2.3 (a), 3(c)	A commenter requested the text “Ensure any identified illicit discharges are eliminated.” be deleted. A permittee can only enforce its ordinances, but cannot guarantee that a responsible party will comply.	The permittee is required to escalate enforcement against a violating responsible party until compliance with an ordinance is achieved. Illicit discharges should be prohibited by a permittee’s ordinance, so elimination of the discharge should be attainable. No change made.
4.2.3.6	A commenter requested that permittees with populations exceeding 10,000 be mandated to inventory and inspect industrial facilities.	There is no regulatory requirement for Phase II MS4s to address industrial facilities. No change made.
4.2.4 (a), 1	A commenter requested that the text be revised from “for compliance with this permit” to “if directed by EPD”. This will clarify that a determination on if an E&S ordinance complies with permit requirements is EPD’s responsibility, not determined by third party	No regulatory requirement exists to support this requested revision. No change made.

	lawsuits.	
4.2.4(b), 1(b)	A commenter requested that the words “if directed by EPD” be added to the first sentence.	The permittee must conduct the annual evaluation of the E&S ordinance, regardless if directed by EPD. No change made.
4.2.5.1	Commenters requested that the text “or replaces” be deleted from the second bullet in the section. This requirement means a property owner must retrofit or redesign a property if the owner repaves a parking lot, repairs a burnt-down structure, resurfaces a road, or replaces a roof.	This language is consistent with the Georgia Stormwater Management Manual and the Coastal Stormwater Supplement. In addition, this language has been incorporated into other MS4 permits in Georgia. Per the definition of “redevelopment” in the Permit, routine maintenance is not considered “replacement.” No change made.
4.2.5.1	A commenter requested that the words “The adoption of the minimum standards set forth in the GSMM constitutes compliance with this provision” be added to the end of the section. This would assist in third party lawsuits where plaintiffs contend that the permittee can require a higher standard.	No regulatory requirement exists to support this revision. No change made.
4.2.5.1	A commenter requested that the requirement for permittees to implement the Georgia Stormwater Management Manual (GSMM) and/or the Coastal Stormwater Supplement (CSS) “to the maximum extent practicable” be deleted. Maximum extent practicable is nebulous and if enough money is spent, then a permitted can always make additional revisions.	The permit language requiring “maximum extent practicable” is consistent with 40 CFR 122.34(a), and with other MS4 permits in Georgia. No change made.
4.2.5.1	A commenter requested that the words “Notwithstanding anything to the contrary herein, the ultimate duty and responsibility of designing, implementing, and maintaining all required best management practices shall at all times remain with the owner or developer of the property” be added to the end of the section.	Permittees are required to comply with all applicable terms of a permit. This proposed specification would be more appropriately handled at the local level through an ordinance wording revision, not through the permit. No change made.

4.2.5.1	A commenter requested that the text “stormwater runoff shall be adequately treated prior to discharge” to “stormwater runoff from new construction activity requiring a land-disturbing permit shall be adequately treated by the owner of the property upon which the construction activity occurs prior to discharge. This will clarify that the requirement only applies to new construction projects, not construction projects completed in the past.	This section of the permit does not apply to construction activities, but rather to “post-construction” sites, which clearly means construction has been completed. No change made.
4.2.5.1	A commenter requested that the paragraphs titled “Stormwater Runoff Quality/Reduction” within the section be revised to provide the flexibility provided by the GSMM. The GSMM provides the option to implement the runoff reduction requirement or to implement the water quality requirement. The permitted also expressed concern that the developer of a site should not be burdened with proving that his site can or cannot meet the runoff reduction standard.	The permit provides the flexibility outlined in the GSMM by allowing the permittee to choose between Option (a), Runoff Reduction, or Option (b), water quality, prior to December 6, 2020. The permittee has the option to develop a “feasibility program”, whereby criteria can be considered that would preclude a developer from implementing the runoff reduction standard. No change made.
4.2.5.1	A commenter indicated that the criteria used to demonstrate that the stormwater runoff quality/reduction standard is not feasible should be outlined in the permit, as opposed to permittees being allowed to make their own determination.	The determination that a performance standard cannot be applied, in part or in whole, on a project, will be made on a case-by-case basis using the GSMM. No change made.
4.2.5.1	Commenters requested that the permit include all 6 of the exemptions contained in the GSMM, instead of only the 2 exemptions.	Projects that create or add 5,000 square feet or greater of impervious surface area should have the performance standards applied due to their substantial impact on water quality. However, the MS4 is allowed to determine if it is feasible to apply the standards for a project. No change made.
4.2.5.1, 1(a)	A commenter requested the language be revised from “...the remaining runoff from a 1.2	The current wording clearly defines the intent of the performance standard. No change made.

	<p>inch rainfall event must be treated to remove at least 80% of the calculated average annual post-development total suspended solids load of equivalent as defined in the GSMM or in the equivalent manual” to “...the stormwater management system shall be designed to remove at least 80% of the calculated average annual post-development total suspended solids load of equivalent as defined in the GSMM or in the equivalent manual for rainfall events up to 1.2 inch”.</p>	
4.2.5.1	<p>A commenter questioned where the 75% credit for cisterns was derived from in the GSMM.</p>	<p>This question pertains to the GSMM, not the permit. The criterion appears to have come from a 2008 study performed by the Center for Watershed Protection. No change made.</p>
4.2.5.1	<p>A commenter questioned if a 7,000 square foot gravel driveway is paved, is the runoff reduction standard triggered.</p>	<p>This will exceed the 5,000 square feet threshold level and will result in the runoff reduction requirement having to be considered.</p>
4.2.5.2	<p>A commenter requested the text be revised to remove the word “performance” and add at the end of the paragraph, “Any linear transportation project undertaken by the permittee without application of the standards in Part 4.2.5.1 under a feasibility program duly submitted to EPD as required in this Part shall be deemed in compliance with this Permit. Upon receipt of any comments from EPD requiring any revision to the feasibility program, the permittee shall promptly revise the feasibility program and resubmit it to EPD. Any comment from EPD on the feasibility program shall have prospective application only. A project shall not be deemed in violation of this permit due to a comment from EPD sent to permittee after the date a project was initiated under a duly submitted feasibility</p>	<p>The standards are taken from the Georgia Stormwater Management Manual, which uses the term “performance standards”. The feasibility determination will be based on a site specific basis. EPD does not provide project level approval. No change made.</p>

	program”.	
4.2.5.2	A commenter requested a change in the text from “...for linear transportation projects being constructed by the permittee...” to “...for linear transportation projects being constructed by local governments or authorities”. This would allow projects by other entities, such as a County constructing a roadway within a City, to utilize the feasibility program.	Revision made.
4.2.5.2	A commenter requested that one of the exemptions from the GSMM, “land disturbing activity that consists solely of cutting a trench for utility work and related pavement replacement” be added here, if not included in Part 4.2.5.1 with other exemptions.	The feasibility determination will be based on a site specific basis by the permittee. No change made.
4.2.5.3	A commenter stated that the permittees should be required to review their local ordinances and codes to identify barriers for the use of green infrastructure/low impact development (GI/LID).	This activity was required to be completed previously by February 15, 2015, under the current permit. The proposed permit requires continual evaluation of the ordinances and codes. No change made.
4.2.5.3	A commenter indicated that permittees should be required to design flood control projects to address water quality treatment.	The permittees are required to adopt and utilize the GSMM for all projects. The GSMM addresses water quality. No change made.
4.2.5.3	A commenter stated that GI/LID requirements should be applied to all permittees, regardless of population.	Smaller permittees (<10,000 population) have limited development and construction of new projects. Requiring the smaller permittees to implement the full GI/LID program would be burdensome, without a large benefit. No change made.
Table 4.2.5(a), 2(a)	A commenter requested clarification on if the dates contained in this section are correct. The post-construction inventory must include privately-owned structures designed after December 9, 2008. Section 4(a) requires the permittee to address maintenance of those ponds with construction completed after	The dates in the permit are correct. Under a previous permit iteration, the permittee was required to inventory those post-construction structures that were in designed in accordance with the GSMM, which was required to be adopted by December 9, 2008. However, inspection and maintenance of these structures

	December 6, 2012.	was not required until issuance of the current permit, issued December 6, 2012. No change made.
Table 4.2.5(a), 4(a) and 4(b)(1)	A commenter requested that the text clarify that local governments do not have the right to maintain private property.	The intent of the permit language is to provide flexibility for all possible scenarios regarding the maintenance of structures. No change made.
Table 4.2.5(a), 4(b)(1)	<p>A commenter requested language be added that if a permittee shows good faith efforts towards obtaining maintenance agreements for publicly-owned structures owned by other entities (e.g. Board of Education), then the permittee is considered in compliance with the permit. Since permittees sometimes have difficulty compelling other government agencies to comply with maintenance requirements, a good faith effort should mean permit compliance.</p> <p>Another commenter requested that we retain the current language.</p>	Permittees must either conduct maintenance or require maintenance agreements. Permittees should document attempts to execute maintenance agreements and any resulting enforcement action. EPD may consider good faith efforts when determining permit compliance. No change was made.
Table 4.2.5(a), 4(b)(1)	A commenter requested clarification on if publicly-owned structures “owned by other entities” included other MS4 drainage areas.	This requirement only applies to post-construction structures (e.g. detention/retention ponds), not to other MS4 structures (e.g. catch basins). However, if another municipality has a post-construction structure located within the permittee’s jurisdiction (e.g. a detention pond located at a City facility within a County’s urbanized area), then the two municipalities should enter into a maintenance agreement. No change made.
Table 4.2.5(a), 6	A commenter requested that EPD clarify the requirements of a GI/LID program.	EPD is preparing guidance to assist permittees in the development of a GI/LID program. Upon completion, the guidance will be provided to permittees. No change made.
Table 4.2.5(a), 7(a)	A commenter requested that the inspection frequency for GI/LID structures be increased to	EPD has determined that once every 5 years is a reasonable, achievable inspection frequency



	greater than once every 5 years.	for all types of structures. A permittee is able to conduct inspections at a greater frequency if they identify this need. No change made.
Table 4.2.6(a), 2(a)	A commenter stated that the inspection frequency of catch basins should be increases from once every 5 years to once every 2 years. This would reduce the amount of litter entering waterways.	EPD has determined that once every 5 years is a reasonable, achievable inspection frequency for all types of structures. A permittee is able to conduct inspections at a greater frequency if they identify this need. No change made.
Table 4.2.6(a), 2(a)	A commenter stated that the permittees should be required to estimate the amount of trash entering the waterways and develop a program to reduce trash by a specific percentage annually.	There is no regulatory requirement for this activity. No change made.
Table 4.2.6(a) and (b) 5(a)	A commenter requested that the text be expanded to suggest topics to be covered during the annual training.	Revision made.
Table 4.2.6(a), 8(a)	<p>A commenter requested that text be added to clarify the permittee has the option to retrofit existing flood management projects, but it is not mandatory. The following wording was proposed “Notwithstanding the foregoing, the decision to retrofit or not retrofit is within the legislative authority of the permittee. The failure to retrofit does not constitute a violation of permittee’s duties or of the permit”.</p> <p>A commenter requested revised wording to clarify that the assessment will evaluate retrofits that are feasible and only feasible retrofits will be implemented.</p>	The permittee is required to develop procedures for conducting the assessment of existing flood management projects and conduct retrofitting activities in accordance with those procedures. The determination on what and when retrofits will be performed is to be addressed in these procedures. No change made.
4.4.2	A commenter requested wording be added to the third bullet to clarify that the permittee makes a determination on if BMP revisions are needed, not a third party lawsuit. The following text was proposed, “If BMP revisions and/or additional BMPs are deemed necessary in the	EPD, in addition to the permittee, can make a determination that additional or revised BMPs are needed to ensure the Impaired Waters Plan is addressing the pollutants of concern. No change made.

	discretion of the permittee, then the revised Plan must be submitted to EPD for review.	
5.1	Commenters requested that language be added granting until January 1, 2018 for the reporting period to start. This would allow the reporting period to encompass an entire calendar year.	Revising the reporting period would result in permittees not being covered by an NPDES permit for 24 days. This could result in the permittee having unpermitted discharges, which would subject them to potential fines of \$50,000 per day for each of the 24 days. No change made.
5.1	A commenter requested that the text specifying what must be included in the annual report be deleted, since it is confusing and vague.	The annual report requirements are summarized in 40 CFR Part 122. In addition, the purpose of the text is to provide the basic framework for the annual report template. No change made.
6.1.1	A commenter requested that the text be revised to state that any permit noncompliance <u>may</u> constitute a violation of the Clean Water Act, as opposed to the current wording that any permit noncompliance constitutes a violation.	The wording is standard in all Georgia NPDES Permits, in accordance with 40 CFR Part 122. A minor revision was made to clarify that noncompliance may be a violation of either the Clean Water Act and/or the Georgia Water Quality Control Act.
Appendix A, Illicit Discharge	A commenter requested a revision to the definition of illicit discharge to clarify that if a discharge from the MS4 contains a pollutant and the source of the pollutant is from outside of the MS4, then the MS4 is not in violation of the permit.	The definition is for descriptive purposes and does not address all scenarios. No change made.
Appendix A, Linear Transportation Projects	A commenter requested that following wording be added to the definition of "Linear Projects", "...as well as linear utility projects that consist solely of cutting trenches for utility work and related pavement replacement".	The definition is for descriptive purposes and does not address all scenarios. No change made.
Appendix A, Maximum Extent Practicable	A commenter requested the definition of "Maximum Extent Practicable" be revised to add, "It also refers to limitations of the unchangeable physical characteristics of a site, such as the ability of the underlying soil to	Maximum extent practicable applies to many areas of the permit, not just the runoff reduction requirement. No change made.

	infiltrate stormwater.”	
General	A commenter requested that EPD review the use of “should” in the Permit and update the language to be more enforceable.	Instances of “should” used to describe Permit requirements have been changed to “must” throughout.
NA	<p>A commenter requested new sections be added to the permit:</p> <ul style="list-style-type: none"> <li>• 1.1.5 – “This permit does not create retroactive obligations. Notwithstanding anything herein to the contrary, the past actions of permittee which met then-existing requirements when the action was taken shall not be deemed a failure to comply with the terms of this permit”.</li> <li>• 1.1.7- “As to third persons and parties, permittee shall have the same immunities as are enjoyed by the EPD. Nothing herein is intended to create liability of the permittee to third parties”.</li> <li>• 4.1.6- “Notwithstanding anything to the contrary herein, the propriety of the permittee’s SWMP and its efforts thereunder are to be determined by cooperative effort between EPD and the permittee. The determination of the specific elements of a permittee’s SWMP and the efforts of permittee thereunder, are matters constituting the exercise of discretionary executive and legislative powers of the permittee”.</li> </ul>	These requests call for unrelated legal conclusions or disclaimers to be incorporated into the Permit. There is no statutory or regulatory requirement to include such conclusions or disclaimers. No changes made.