



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David W. Burchmore, Esq.
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114-1304

MAR 14 2006

Re: Government of the District of Columbia
Municipal Separate Storm Sewer System
NPDES Permit No. DC0000221, Final Amendment No. 1

Dear Mr. Burchmore:

Enclosed please find a final modification which the United States Environmental Protection Agency (EPA) has issued to the District of Columbia's existing National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit, pursuant to the NPDES Program established under the Clean Water Act, as amended, 33 U.S.C. §§1251 *et seq.* EPA's Fact Sheet and Responsiveness Summary to the comments raised during the public review and comment period are also enclosed for your information.

Pursuant to 40 C.F.R. § 124.19, the effective and expiration dates as well as the conditions and terms of the enclosed final modification (hereinafter known as Amendment No. 1) will become final unless, within thirty (30) days following issuance of Amendment No. 1, any person who filed comments on the draft amendment petitions the Environmental Appeals Board for review of any condition of the permit decision. Further, any person who failed to file comments on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. 40 C.F.R. § 124.19.



Should you have any questions concerning this correspondence or the enclosures, please contact me at (215) 814-5422 or Mr. Garrison D. Miller of my staff at (215) 814-5745.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", with a long horizontal flourish extending to the right.

Jon M. Capacasa, Director
Water Protection Division

Enclosures (3)

cc: Mr. F. Paul Calamita, Aqualaw, PLC (w/enclosures)

NPDES Permit No. DC0000221
Issuance Date: August 19, 2004
Effective Date: August 19, 2004

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MUNICIPAL SEPARATE STORM WATER SEWER SYSTEM PERMIT NO. DC0000221

AMENDMENT NO. 1

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 et seq.

Government of the District of Columbia
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

is authorized to discharge from all portions of the municipal separate storm sewer system owned and operated by the District of Columbia to receiving waters named

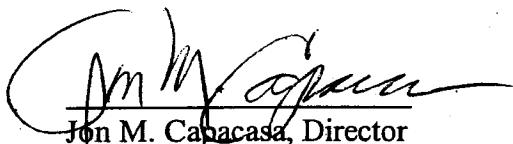
Potomac River, Anacostia River, Rock Creek,
And Tributaries

in accordance with the approved Storm Water Management(s), effluent limitations, monitoring requirements, and other conditions set forth in this Amendment No. 1 herein to Parts I, III, VII, IX, and X of Parts I through X of the previously issued Permit.

The effective issuance date of this Amendment No. 1 is *March 14, 2006*

This Amendment No. 1 to the Permit and the authorization to discharge shall expire at midnight, on August 18, 2009.

Signed this *13th* day of *March*, 2006.



Jon M. Capacasa, Director
Water Protection Division
United States Environmental Protection Agency
Region III

PART I. DISCHARGES AUTHORIZED UNDER THIS PERMIT

C. Limitations to Coverage (Prohibitions) [Replace existing language of C including Title with this]

Section 402(p)(3)(B)(ii) of the Clean Water Act specifically prohibits non-storm water entering the MS-4. The Permit does not authorize the Permittee to discharge pollutants from the MS4 as described herein:

1. Non-Storm Water and Phase I and Phase II Storm Water

Discharges of non-storm water (other than those listed in Part I.B. of this permit) are prohibited except where such discharges comply with all other terms and conditions of this permit and are:

- a. Regulated with a General NPDES permit for Phase I or Phase II storm water discharges, or
- b. Regulated with a individual NPDES permit.

2. All discharges of pollutants to or from the MS4 system, not regulated by a general or an individual NPDES permit, that cause or contribute to the lowering of water quality from current conditions within the District of Columbia are prohibited.

D. Effluent Limits

[replace existing Subpart D with the following]

1. MEP Effluent Limit - The permittee shall implement the controls, Best Management Practices (BMPs), and other activities necessary to reduce pollutants as set forth in the Upgraded Storm Water Management Plan dated October 19, 2002. Unless and until modified consistent with Part VII.P (Reopener Clause for Permits) of this Permit, the Upgraded Storm Water Management Plan requirements expressed in the form of BMPs, represent the controls necessary to reduce the discharge of pollutants to the Maximum Extent Practicable (MEP) in accordance with 40 CFR Part 122.44(k)(2).

2. WQBEL Limit - The permittee shall implement the controls, Best Management Practices (BMPs), and other activities necessary to reduce pollutants to the Maximum Extent Practicable as set forth in the Upgraded Storm Water Management Plan dated October 19, 2002, and all other requirements of this Permit (including but not limited to the narrative prohibitions on discharge of pollutants from the MS4 set forth in I.C. of this Permit). EPA reserves the authority to modify this effluent limit as described below in Part VII.P (Reopener Clause for Permits) of this Permit.

3. Effluent Limits Consistent with TMDL WLA - The permittee shall implement controls, Best Management Practices (BMPs), and other activities necessary to reduce pollutants to the Maximum Extent Practicable as set forth in the Upgraded Storm Water Management Plan dated

October 19, 2002, and to comply with all other requirements of this Permit (including but not limited to the narrative prohibitions on discharge of pollutants from the MS4 set forth in I.C. of this Permit). As further described in Part IX.B. of this Permit, in addition to complying with the effluent limits I.C. and I.D. of this Permit, the Permittee is required to submit and, unless instructed otherwise by EPA, implement the recommendations of implementation plans specific to the Anacostia River Total Maximum Daily Load (TMDL) wasteload allocations (WLAs) and Rock Creek TMDL WLAs in accordance with the schedule set forth in Part III.A. Table 1 of this Permit.

PART III. STORM WATER MANAGEMENT PLAN (SWMP)

C. Annual SWMP Reporting

The [Annual] Report shall include the following separate sections:

6. [keep existing part and add the following - remember this is cross referenced to Part III.D first paragraph] this identification shall include but not be limited to the permittee's calculation of pollutant loads and reductions from the MS4 system in those watershed(s) for which there are applicable TMDL WLAs using the methods described in Part IX.B.

PART VII. STANDARD PERMIT CONDITIONS FOR NPDES PERMITS

P. Reopener Clause for Permits

c. [replace first sentence of existing language with the following; concluding sentence of VII.P unchanged] The Permit may be modified in accordance with 40 C.F.R. Part 124.5, or revoked and reissued to incorporate additional controls in the event that EPA determines that further controls, under the iterative approach, are necessary to (1) ensure that the effluent limits are sufficient to prevent a further lowering of water quality from current conditions and/or (2) to ensure that the effluent limits are consistent with any applicable TMDL WLA allocated to discharge of pollutants from the MS4.

PART IX OTHER APPLICABLE PROVISIONS

A. Waivers and Exemptions

[unchanged, but add additional sentence] As part of its Annual Report to EPA under Part III.C. of this Permit, the permittee shall describe each and every instance in which the District authorized such an exemption and/or granted such a waiver, the nature and location of the activity for which each exemption or waiver was granted, the justification for each exemption or waiver, and the District's basis for finding that the exemption or waiver was consistent with the Federal Clean Water Act and other pertinent guidance, policies, and regulations.

B. TMDL WLA Implementation Plans and Compliance Monitoring

[replace first paragraph of 2004 Permit with the following]

In addition to the duty to comply with the narrative effluent limits in Part I of this Permit, the permittee shall demonstrate compliance as described in this Part and in Part IV (Monitoring and Reporting Requirements). In accordance with the schedule identified in Part III.A. (Compliance Schedule) and Table 1 and below, Permittee shall further submit implementation plans to reduce discharges consistent with any applicable EPA-approved waste load allocation (WLA) component of any established Total Maximum Daily Loadings (TMDL). An applicable TMDL WLA for this Permit means any MS4 WLA established on or before the effective date of this Permit for a receiving stream, segment of a stream, or other waterbody within the District of Columbia as described below.

[next 2 paragraphs, identifying applicable WLAs and associated reductions left unchanged]
[the following paragraph to replace the third paragraph of Part IX.B in 2004 permit]

Demonstration of compliance (as specified in Parts IV and VIII of the Permit) will be calculated using the procedures (i.e., Simple Method) identified in the Upgraded SWMP dated October 19, 2002 (or other procedures approved by EPA via permit modification and shown to be scientifically sound and reliable in estimating actual load reductions), and will be reported by comparing the calculated load for each pollutant to the approved pollutant specific WLAs and its associated storm water load reductions for the receiving waterbody as specified in the Fact Sheet.

[the following two paragraphs to replace the last paragraph of Part IX.B. in 2004 permit]

The TMDL Implementation Plans shall consist of documenting all previous and on-going efforts at achieving the specific pollutant reductions identified in the TMDL WLA and further demonstrating additional controls sufficient to achieve those reductions through an established performance based benchmark. This benchmark shall be applied against annual projected performance standards for purposes of achievement of adequate reductions.

The Permittee shall submit to EPA the applicable TMDL Implementation Plans for the Anacostia River TMDLs within six months of the effective date of this permit and shall implement such Plan. The Permittee shall submit to EPA the applicable TMDL Implementation Plan for the Rock Creek TMDLs within twelve months after the effective issuance date of this Permit and shall implement such Plan.

PART X. PERMIT DEFINITIONS

[Add new definitions]

“Benchmark” or “measurable performance standard”- The term when used in Parts III.C.6. (Annual SWMP Reporting), III.D. (Annual SWMP Implementation Plan) and IX.B (TMDL WLA Implementation Plans and Compliance Monitoring) of the Permit refers to a criteria-based management evaluation tool described in Part IX.B (including but not limited to the Simple Method) for the purpose of making the determination each year as required in Part III.C.6 and

Part III.D. during the term of the Permit:

“Current Conditions”- Refers to a trend analysis which compares existing or baseline data to future data collected through the MS4 monitoring program as described in Part IV (Monitoring and Reporting Requirements) of the Permit to assess the overall performance (i.e., selection of BMPs/LID projects, setting of narrative/numeric effluent limits to MEP and/or water quality based standards) of the Storm Water Management Program within the District of Columbia.

Re: Fact Sheet (To be Supplemented with Final Fact Sheet from DCMS4 NPDES Permit No. DC0000221 Dated August 19, 2004)
National Pollutant Discharge Elimination System (NPDES)
Proposed Amendment No. 1 to NPDES Permit No. DC0000221

NPDES PERMIT NUMBER: DC0000221, AMENDMENT NO. 1

FACILITY NAME AND MAILING ADDRESS:

Government of the District of Columbia
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

FACILITY LOCATION:

District of Columbia's
Municipal Separate Storm Sewer System (MS4)

RECEIVING WATERS:

Potomac River, Anacostia River,
Rock Creek, and Tributaries

FACILITY BACKGROUND AND DESCRIPTION:

The Government of the District of Columbia (the District) owns and operates a Municipal Separate Storm Sewer System (MS4) which discharges storm water during wet weather events from various outfall locations throughout the District into its waterways. On April 19, 2000, the United States Environmental Protection Agency Region III (EPA) issued the District its first Storm Water Phase I National Pollutant Discharge Elimination System (NPDES) Permit for the control and management of storm water discharges originating from these outfalls. (The collective permit for these various outfalls is known as an "MS4" permit). The Permit was issued for a three-year period and administratively extended from April 19, 2003, until August 19, 2004. (The Permit is hereafter referred to as the 2000 MS4 Permit). On August 19, 2004, EPA issued the District its second Storm Water Phase I NPDES Permit, which is valid for a five-year period and covers all discharges within the corporate boundaries of the District. This service area includes discharges served by, or otherwise contributing to, discharges from the MS4 system. The MS4 Permit does not cover the District's combined or sanitary sewer systems.

Since EPA first issued the Phase I MS4 Permit to the District in 2000, the District has made a number of accomplishments, including: (1) establishment of an infrastructure for addressing storm water activities, (2) development of a watershed-based rotating monitoring program to evaluate the chemical parameters and physical characteristics of the municipal storm water being discharged from representative outfalls in the MS4 system, (3) performance of assessments of

existing MS4 activities which contribute to the runoff being discharged into the MS4 system, (4) development of implementation measures for managing and enforcing MS4 activities within the District, and (5) upgrading its previous Storm Water Management Program (SWMP) based on these findings. The District's upgraded SWMP (which EPA approved in October 2003, and which was used as the basis for the MS4 Permit issued in August 2004) sets forth a framework for a long-term storm water management control program for determining compliance with applicable water quality standards to the maximum extent practicable through the use of best management practices (BMPs).

The current MS4 Permit requires a combination of narrative and BMP controls for addressing storm water at its sources. These mechanisms are also used to characterize storm water because of its indiscriminate nature. In general, EPA views the MS4 NPDES permit program as an iterative process requiring reexamination of ongoing controls and continued improvements to the respective storm water management programs while continuing to adequately protect the water quality of the receiving stream. The MS4 Permit builds on existing MS4 inventories, databases, baseline monitoring data, partnerships, pilot projects, and increased MS4 activity implementation as the upgraded SWMP approach for managing the quantity and enhancing the quality of storm water throughout the District. Moreover, the Permit requires measurable performance standards to be developed and assessed, and implementation plans for reducing the storm water components of waste load allocations of Total Maximum Daily Loads to be implemented, all of which are intended to evaluate the effectiveness of the District's programs.

PROPOSED ACTION TO BE TAKEN:

On July 21, 2005, EPA proposed to issue an amendment, hereafter referred to as Amendment No. 1, to the District's MS4 Permit which became effective on August 19, 2004. This action is being taken in part in response to issues raised by a permit appeal filed by petitioners Earthjustice on behalf of the Friends of the Earth and Defenders of Wildlife with the Environmental Appeals Board (EAB) on September 20, 2004. In that appeal, the petitioners argued that the District of Columbia Water and Sewer Authority (WASA or the Authority), which has been given responsibility for storm water management under the MS4 system, should be identified as a co-permittee along with the Government of the District of Columbia in the Permit. The petitioners' argument for making WASA a co-permittee was based on the fact that the WASA Board is not "directly accountable and responsible to the City Council and Mayor" and to ensure that the Authority is held legally accountable for its actions under the Permit. The petitioners also argued that the "maximum extent practicable" standard, the water quality-based effluent limits, and the total maximum daily waste load allocation narrative effluent limits specified in the MS4 Permit were not sufficient to adequately assure compliance with applicable water quality standards, let alone demonstrate that MS4 activities under the District's storm water management program will account for and reduce pollutant loadings from the MS4 system.

Furthermore, the petitioners went on to explain in the petition that the waiver, exemption, and variance provisions in the District's water quality standards and storm water regulations conflicted with the Clean Water Act and EPA rules, and that the provisions could undermine the integrity of the MS4 Permit and the District's storm water management program. Finally, the petitioners raised concerns that the monitoring program in the MS4 Permit violates EPA rules in that the program does not explicitly require monitoring from each MS4 outfall and does not require that the monitoring be representative of the monitored MS4 activity.

In October 2004, Earthjustice and EPA, Region III, began to discuss between themselves the issues on appeal, many of which had been raised during the petitioners' previous appeal of the 2000 MS4 Permit (which resulted in a decision by the EPA Environmental Appeals Board (EAB)); see Order Denying Review in Part and Remanding in Part at <http://www.epa.gov/eab/disk11/dcms4.pdf> (Feb. 20, 2002) and Order Granting Motion for Partial Reconsideration at <http://www.epa.gov/eab/orders/dcms4recon.pdf> (May 10, 2002). The parties' discussions immediately began to prove beneficial and they therefore jointly requested that the EAB defer action on the appeal to give them time to work through their differences on the issues. After several additional extensions of time, the parties reached settlement in principle on the issues on May 10, 2005, whereby the Region would propose and public notice Amendment No.1 to the current MS4 Permit and consider any comments received during the public review period before making the document final. That Permit Amendment was therefore public noticed in July 2005.

Concurrent with the review and comment period of draft Amendment No. 1 to the MS4 Permit, EPA Region III will be requesting that the District of Columbia's Department of Health certify the amendment under Section 401 of the Clean Water Act, 33 U.S.C. § 1341. EPA also has requested that the offices of the Fish and Wildlife Service (part of the Department of Interior) and the National Marine Fisheries Service (part of the National Ocean and Atmospheric Administration) review the document for compliance with the Federal Endangered Species Act, 42 U.S.C. §§ 460 *et seq.*

The proposed modifications to the August 19, 2004 MS4 Permit is summarized in the Table below:

Table 1. (Modifications to August 19, 2004, DC MS4 Permit)

Permit Part and Title	Effect of Amendment No.1
Part I.C (Limitations to Coverage)	Emphasizes that the limitations to coverage are actually prohibitions and expands on the types of discharges that are permitted to occur from the MS4 system;

Part I.D (Effluent Limits)	Clarifies the types of effluent limits to be addressed through the MS4 Permit, how these limits will be implemented through the upgraded SWMP, and the authority on which EPA will rely in implementing potential permit modifications to ensure that these limits result in an effective program as well as linking the appropriate parts of the MS4 Permit back to these limits;
Part III.C (Annual SWMP Reporting)	Describes annual reporting requirements for calculating pollutant loads and reductions from the MS4 system in those watersheds with approved total maximum daily loadings;
Part VII.P (Reopener Clause for Permits)	Describes additional requirements for opening the MS4 Permit through modifications;
Part IX.A (Waivers and Exemptions)	Requires accountability and reporting of waivers and exemptions;
Part IX.B (TMDL WLA Implementation Plans and Compliance Monitoring)	Describes how the total maximum daily loadings methodologies for complying with the effluent limits of the MS4 Permit and demonstration of compliance to ensure successful achievement of waste load reductions will be addressed;
Part X (Permit Definitions)	Adds a "measurable performance standard" definition for evaluating the effectiveness of the District's MS4 activities under their storm water management program.

During the public review period, EPA Region III received four comment letters regarding proposed Amendment No.1. The Region considered these comments, when issuing the final document, by making modifications to account for existing ambient water quality conditions, placing emphasis on reducing pollutants to the maximum extent practicable, and by adding a clarifying definition. A summary of the comments along with the EPA response is contained in the responsive summary which supplements this fact sheet. The Region received comments from the District of Columbia Department of Health through its Section 401 certification letter which is addressed in the responsiveness summary. The United States Fish and Wildlife Service and the National Ocean and Atmospheric Administration's National Marine Fisheries Service both concurred with the Region's Biological Evaluation which concluded that Amendment No.1 would not adversely affect endangered or threatened species that reside within the District of Columbia by letters dated August 18, 2005, and October 6, 2005. The draft documents along with the final documents now complete the administrative record for the project and are available to the public for review at the Martin Luther King, Jr. Public Library which is located at 901 G Street, N.W. in Washington, D.C..

For additional information, contact Mr. Garrison D. Miller, Mail Code 3WP13, District of Columbia/Maryland/Virginia Branch, Office of Watersheds, EPA Region III, United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

Re: Responsiveness Summary
National Pollution Discharge Elimination System (NPDES)
Municipal Separate Storm Sewer System (MS4) Permit
Draft Amendment No. 1

NPDES PERMIT NUMBER: DC0000221

FACILITY NAME AND MAILING ADDRESS:

Government of the District of Columbia
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

FACILITY LOCATION:

District of Columbia's
Municipal Separate Storm Sewer System

RECEIVING WATERS:

Potomac River, Anacostia River,
Rock Creek, and Tributaries

PUBLIC COMMENT PERIOD:

July 21, 2005 to August 22, 2005

EPA Region III received four comment letters during the public review period from interested parties regarding the Government of the District of Columbia (Permittee) draft Amendment No. 1 to the current Municipal Separate Storm Sewer System (MS4) NPDES Permit which was issued August 19, 2004. A summary of the comments and EPA Region's III responses to those comments are provided below. In reaching its decision regarding the issuance of the final Amendment, hereafter known as Amendment No.1, the Region considered these comments and certain modifications in response to those comments in Amendment No. 1 and the Fact Sheet.

I. Comment Letter Number 1.

A. Commentors:

Various environmental organizations from throughout the District of Columbia concerned with storm water issues signed the letter: Correspondence dated August 17, 2005, was received from

these parties (including, in part Natural Resources Defense Council, Earthjustice, and Friends of the Earth) during the public comment period. EPA Region III provides the following response to the issue raised by these interested environmental organizations.

B. General Comment:

Commentors represented by the organizations commend EPA for drafting an Amendment that will bring the Permit more in line with Clean Water Act water quality-based standard requirements.

C. EPA Response:

EPA appreciates the comment.

II. Comment Letter Number 2.

A. Commentors:

The commentors are a municipal coalition represented by Mr. David W. Burchmore, Esq. of Squire, Sanders, and Dempsey L.L.P. from Cleveland, Ohio. EPA received correspondence dated August 18, 2005, from Mr. Burchmore on behalf of the National League of Cities, the National Association of Flood and Stormwater Management Agencies, the National Association of Clean Water Agencies, the CSO Partnership, the West Virginia Municipal League, and the Virginia Municipal League during the public comment period.

B. Comment No. 1/Specific Comments on Draft Amendment No. 1-Part I.C. Limitations to Coverage:

i. Comment:

The commentors recommend that Part I.C.2 of the draft Amendment be changed back to the language in the current Permit or the proposed language be qualified by stating that such discharges are prohibited "to the maximum extent practicable" based on the Ninth Circuit Court of Appeals' decision in *Defenders of Wildlife v. Browner*, 191 F.3d 1167 (9th Cir. 1999).

ii. EPA Response:

The draft language in Part I.C.2 was intended to be consistent with the *Defenders of Wildlife* decision, as well as its progeny (both judicial and administrative). In the fact sheet accompanying the proposed amendment, EPA points out that the basis for the current MS4 Permit sets forth a framework for a long-term storm water management control program for determining compliance with applicable water quality standards "to the maximum extent practicable" through the use of best management practices. EPA is clarifying the language in the final document as it intends Amendment No.1 to be fully consistent with the basis for issuing the current MS4 Permit.

C. Comment No. 2a/Permit Part I.D.-Effluent Limits:

i. Comment:

Depending on the modification made to Part I.C.2 as discussed and for the reasons stated above for making such changes, Part I.D.2 should be qualified by the "maximum extent practicable" limitation.

ii. EPA Response:

The basis for issuing the MS4 Permit in August of 2004 was the District's Upgraded Storm Water Management Plan (SWMP) dated October 19, 2002. The fact sheet accompanying the August, 2004 MS4 Permit provides that EPA has determined that the Upgraded SWMP represents the technology-based level of pollution reduction. The fact sheet further indicates that pollution reduction should be achieved through the combination of best management practices (BMPs) controlling the quantity as well as the quality of pollutants in the MS4 to the maximum extent practicable (MEP). EPA believes that making reference to the Upgraded SWMP in Part I.D.2 accomplishes the same objective and eliminates the redundancy issue.

D. Comment No. 2b/Permit I.D.-Effluent Limits:

i. Comment:

Part I.D.3 of the draft Amendment should be revised so that the permittee is expected to implement controls for managing waste load allocations associated with the Total Maximum Daily Loadings (TMDL) Implementation Plans under development within the Anacostia River and Rock Creek subwatersheds to the maximum extent practicable.

ii. EPA Response:

The Upgraded SWMP dated October 19, 2002, provides the framework for identifying a long-term approach for managing storm water which is both practicable and reasonable. The intent of the TMDL Implementation Plan is to develop specific storm water controls and methodologies designed for that particular subwatershed to better enhance and support the framework that was identified through the Upgraded SWMP. Since the same principles of "practicable and reasonable" controls for managing storm water are the basis on which these documents have been developed, EPA believes the reference to the Upgraded SWMP in Part I.D.3 addresses this issue and any revision would be redundant.

E. Comment No. 3/Permit Part IX.B-OtherApplicable Provisions:

i. Comment:

Similar to above comment number 2b, the required submission of implemenation plans and

additional controls for addressing TMDL waste load allocations must be qualified by using the phrase, "to the maximum extent practicable".

ii. EPA Response:

See comment number 2b above for response.

III. Comment Letter 3.

A. Commentor(s):

The Government of the District of Columbia (as Permittee) and the District of Columbia Water and Sewer Authority (WASA) (as the District's Storm Water Administrator) were represented by David E. Evans, Esq. of McGuireWoods LLP from Richmond, Virginia in their August 19, 2005, comment letter.

B. General Comment II.A:

i. Comment:

The District of Columbia and WASA believe that with the exception of its failure to include the Maximum Extent Practicable (MEP) qualifier in the water quality-based requirements, the current MS4 Permit complies with the law and does not need to be modified. The parties are disappointed that they were not able to consult prior to the issuance of the draft document.

ii. EPA Response:

The intent of the draft Amendment was to resolve Earthjustice's appeal of the final permit issued in August, 2004, in such a way that the iterative process established through the MS4 Permit was supportive and not compromised. The document was shared prior to issuance and EPA's views that the draft Amendment was consistent with the iterative process were discussed, as well as expressed in the draft fact sheet.

C. Specific Comment II.B.1/Permit Part I.C-Limitations to Coverage:

i. Comment:

The District and WASA object to the words "or from" in Part I.C.2 of the draft Amendment and ask that they either be deleted or qualified by the MEP standard.

ii. EPA Response:

See comment number 1 under comment letter number 2 from the Municipal Coalition for response.

D. Specific Comment II.B.2/Permit I.D-Effluent Limits:

i. Comment:

The District and WASA are concerned that EPA's decision to remove the standards compliance language currently in the MS4 Permit in Part I.D.2 and Part I.D.3, although not as serious, suggests that the District has an ultimate unqualified obligation to meet water quality standards. The commentors thus recommend either keeping the language in the existing Permit or using an MEP standard qualifier.

ii. EPA Response:

See EPA response to comment letter number 2, comment #2a, from the Municipal Coalition for response.

E. Specific Comment II.B.3/Permit Part III.C-Annual Reporting:

i. Comment

The District and WASA have no objection to this additional annual reporting obligation.

ii. EPA Response:

EPA appreciates the comment.

F. Specific Comment II.B.4/ Permit Part VII.P-Reopener Clause for Permits:

i. Comment:

The new reopener language in Part VII.P of the draft Amendment should be qualified by the MEP standard because it suggests that the District has an unqualified obligation to meet water quality standards.

ii. EPA Response:

EPA is exercising its options to change direction through the permitting process based on the District's Upgraded SWMP should current Program controls need to be adjusted under the "iterative" approach.

G. Specific Comment II.B.5/Permit Part IX.A-Waivers and Exemptions:

i. Comment:

The District does not plan to grant any waivers and exemptions, and therefore, has no objection to the additional reporting requirement.

ii. EPA Response:

EPA appreciates the comment.

H. Specific Comment II.b.6/Permit Part IX.b-TMDL WLA Implementation Plans and Compliance Monitoring:

i. Comment:

The District and WASA are concerned that by using the permit modification vehicle for changing from procedures other than those identified in the Upgraded SWMP for demonstrating compliance unnecessarily complicates and burdens the process.

ii. EPA Response:

A permit modification, which is governed by federal regulations at 40 C.F.R. Part 124.5, formalizes the procedure in the permit and is not done arbitrarily. Prior to EPA taking such action, a scientifically defensible argument would have to be made for deviating from the procedures and method presently in place to demonstrate compliance.

I. Specific Comment II.B.7/Permit Part X-Permit Definitions:

ii. Comment:

The District and WASA have no objection to the addition of the "Benchmark" or "measurable performance standard" definition.

ii. EPA Response:

EPA appreciates the comment.

IV. Comment Letter Number 4.

A. Commentor:

The District of Columbia Department of Health (DOH) certified the draft Amendment under Section 401 of the Clean Water Act, 33 U.S.C. Part 1341, provided three modifications are included in the document. EPA received correspondence from the certifying District agency dated August 19, 2005, during the public comment period. EPA Region III provides the following responses to the issues raised by DOH.

B. Modification #1: [Amend the Draft Amendment No. 1, Part I(C)(2) Provision to Reflect Authorized Discharges].

i. Comment:

DOH recommends that EPA delete this provision and replace it with the existing language of the current MS4 Permit since Part I(C)(2) does not address the District's impaired waters and the current wording is, in effect, excluding allowed discharges.

ii. EPA Response:

EPA will be substituting replacement language in the final issued Amendment to address the points raised by DOH in its Section 401 certification letter.

C. Modification #2: [Amend Draft Amendment No. 1, Part I(D)(3) to Clarify that the Controls in the MS4 Permit are Appropriate Effluent Limits Consistent with TMDL WLAs]:

i. Comment:

DOH recommends that EPA replace this provision with the language currently in the MS4 Permit since Part I(D)(3) removes EPA's determination that the controls in the MS4 Permit "are appropriate effluent limits consistent with the assumptions and requirements of the approved waste load allocations(WLAs)" established in the District's TMDLs. Also, DOH takes issue with the requirement that EPA conduct an assessment whether further controls are necessary which "in effect" imposes more stringent compliance with effluent limits.

ii. EPA Response:

EPA is adding additional language to the provision in the final issued Amendment to address the points raised by DOH in its Section 401 certification letter.

D. Modification #3 [Delete Draft Amendment No. 1, Part VII(P)(c) Reopener Clause for Permit Provision which states that "to ensure that the effluent limits are sufficient to prevent an exceedance of water quality standards"]:

i. Comment:

DOH recommends that this phrase be deleted from this provision for reasons stated above in Modification #1 and Modification #2.

ii. EPA Response:

EPA is modifying some of the wording in the provision when the final Amendment is issued to address the concerns raised by DOH in its Section 401 certification letter.