

**General Permit for Storm Water Discharges Associated with  
Small Municipal Separate Storm Sewer Systems (MS4s)**

**MPDES Permit Number MTR040000**

**Response to Public Comment**

The Montana Department of Environmental Quality (DEQ) issued Public Notice MT-16-24 on September 16, 2016. The Public Notice provided the tentative determination to issue a state-wide wastewater discharge permit renewal for the General Permit for Storm Water Discharges Associated with Small Municipal Separate Storm Sewer Systems (MS4s), under the Montana Pollutant Discharge Elimination System (MPDES) permit MTR040000. The notice included the draft Permit, Fact Sheet, and draft Environmental Assessment (EA).

The public notice required that all written comments be received or postmarked by October 21, 2016, in order to be considered in formulation of the final determination and issuance of the permit. DEQ received the following sets of comments:

Name	Date	Media
EPA Region 8 (Colleen Rathbone)	October 19, 2016	Email
Upper Missouri Waterkeeper (Guy Alsentzer, Executive Director)	October 21, 2016	Email and letter
On behalf of the seven MS4 Cities (Submitted by the City of Billings, Vern Heisler, P.E., Deputy Public Works Director)	October 19, 2016	Email and letter
Malmstrom Air Force Base (Cody Koontz, Environmental Engineer)	October 13, 2016	Letter
City of Helena (Randall Camp, Public Works Director)	October 21, 2016	Letter

In addition, DEQ held a public hearing on October 21, 2016, at the Metcalf Building in Helena, Montana. DEQ received the following sets of verbal comments:

Name	Comment
Upper Missouri Waterkeeper (Guy Alsentzer, Executive Director)	Verbal
City of Helena (Randall Camp, Public Works Director)	Verbal
City of Bozeman (Brian Heaston, Project Engineer)	Verbal

DEQ has considered these comments in preparation of the final permit and decision. A copy of the unabridged comments is available from DEQ upon request. A synopsis of the substantive written and verbal comments and DEQ’s responses are included below. This Response to Comments is an addendum to and supersedes the Fact Sheet to the extent specific changes or clarifications are discussed herein.

Not in response to received comments, DEQ has updated the final permit as follows: corrected typographical and grammatical errors in the final permit; clarified language regarding the “application form” in Part I. Permit Coverage and Part VI. General Requirements; and corrected Sediment WLAs for the City of Kalispell in Appendix A. The aforementioned updates are insubstantial and do not change the intent of provisions in the final permit. In addition DEQ updated submission of annual reports electronically in accordance with EPA electronic reporting.

**EPA Region 8 - Colleen Rathbone**

**EPA provided 11 comments below.**

**Comment #1:** In reference to the table heading-Deadline/Implementation Schedule-used for the six minimum control measures in Part II. Storm Water Management Program (pages 10-37) of the Draft Permit: *To remove any ambiguity, deadlines in this column should say “End of [1<sup>st</sup> Permit Year]” or “Beginning of [1<sup>st</sup> Permit Year].” A firm and clear deadline is important for the Permittee.*

**Response #1:** DEQ agrees that a firm and clear deadline is important to the Permittee and the corresponding deadlines in this column have been updated.

**Comment #2:** On page 12 of the Draft Permit, citation correction needed in Part II.B.2.a.i.

**Response #2:** DEQ agrees and the citation has been corrected to reflect Part II.A.1.a.i.

**Comment #3:** On page 13 of the Draft Permit in Part II.A.2.b.i., [EPA] suggest[s] adding “A mechanism for collecting...”

**Response #3:** DEQ has modified the language to read: “A mechanism for collecting public input for the SWMP; and...”

**Comment #4:** On page 22 of the Draft Permit in Part II.A.4.a.i., “Add a bullet: The ordinance must give the Permittee the authority to inspect privately-owned construction stormwater management controls.”

**Response #4:** DEQ has added a sub-bullet and modified the language to include “provide the permittee the authority to inspect privately-owned construction storm water management controls.”

**Comment #5:** On page 25 of the Draft Permit in Part II.4.c.iii., “Suggest changing this bullet to ‘Conduct inspections using the inspection form.’ Without this change, there is no clear requirement that the Permittee actually conducted inspections.”

**Response #5:** DEQ agrees and has modified the suggested language verbatim.

**Comment #6:** On page 26 of the Draft Permit in Part II.4.c.v., “Suggest adding...’ or the occurrence of runoff from snowmelt’ after the word ‘greater.’ ... provides clarity for inspections related to snow events.”

**Response #6:** DEQ agrees and has modified the suggested language.

**Comment #7:** On page 27 of the Draft Permit, citation correction needed in Part II.A.5.a.i.

**Response #7:** DEQ agrees and the citation has been corrected to reflect Part II.A.5.b.iii.

**Comment #8:** On page 31 of the Draft Permit in Part II.A.5.c.iii., “To clarify what is meant by ‘new,’ suggest adding the clause ‘...installed since the start of the second permit year’ (assuming that’s what is meant).”

**Response #8:** DEQ agrees that clarification is needed and has modified the language to include “installed since the effective date of the permit.” Clarification is further provided for existing controls on page 31 of the Draft Permit in Part II.A.5.c.iv., and DEQ included “installed prior to the effective date of the permit.”

**Comment #9:** On page 38 of the General Permit in Part II.B.4, “suggest removing the first ‘during’.”

**Response #9:** DEQ has removed the duplicative language.

**Comment #10:** On page 38 of the General Permit in Part II.C. , “suggest replace ‘is’ with ‘to a degree.’”

**Response #10:** DEQ has modified the language.

**Comment #11:** On page 39 of the General Permit in Part II.E., “unneeded period.”

**Response #11:** DEQ has corrected the typographical error.

**Upper Missouri Waterkeeper - Guy Alsentzer, Executive Director**

**Upper Missouri Waterkeeper provided collectively 19 comments below.**

Written Comments during Public Notice: DEQ has paraphrased Waterkeeper’s comments rather than include the 19-page comment letter verbatim. The original comment letter is a public document available from DEQ upon request.

## **Section II: Draft Permit Discussion**

### **A. Permit Coverage**

**Comment #1:** “[W]e strongly encourage the Department to set workplans to be proactive in assessing what other entities must-or should- become a regulated MS4 permittee...the Draft Permit [does]...not contemplate the addition of new permittees, who are likely...required to obtain coverage.”

**Response #1:** DEQ recognizes the inevitable growth of urban areas within Montana. The Fact Sheet outlines how a small MS4 can be designated by the permitting authority as a regulated Small MS4 and how new applicants seeking authorization under the 2017 General Permit can submit an application package. In accordance with ARM 17.30.1105(1)(d), the next decennial census by the United States Census Bureau will be evaluated to determine population densities and urbanized areas potentially triggering permit coverage. No changes in the Fact Sheet or Permit in response to this comment.

### **B. Effluent Limits**

**Comment #2:** “We support the declaratory, accurate summarization of the MEP standard and the intended iterative assessment process proposed by the Department in the section’s final paragraph. In particular, we strongly support the Department’s unequivocal recognition that ‘MEP is not to be interpreted as a minimum approach for MS4 program development...’, and that ‘implementation beyond MEP may be feasible and appropriate for [certain] permittees.’ The Department has taken a huge step forward in creating momentum that will protect and improve urban waterways by clearly articulating the appropriate legal standard and such standard’s practical ramifications for permittees, and especially done a superior job in articulating prescriptive duties that are, in many cases, far more clear, specific, measurable and enforceable than previous Phase II Permits in Montana.”

**Response #2:** DEQ appreciates the commenter's support to issue a MS4 permit that meets the MEP standard and protects water quality.

### C. SWMP

**Comment #3: Illicit Discharge Detection & Elimination** - “In terms of the requirement to create and implement an Enforcement Response Plan (ERP)...DEQ should revise its ERP section to layout timeframes for action... (suggested language provided).”

**Response #3:** Permittees are required to develop an Illicit Discharge Investigation and Corrective Action Plan to include processes to investigate all illicit discharges, and the Enforcement Response Plan (ERP) describes the legal authority to eliminate and abate illicit discharges. The comment is focused on “action(s)” in response to illicit discharges; therefore, DEQ agrees that more clear and specific timeframes should be provided to consistently and effectively investigate suspected illicit discharges and connections and track subsequent compliance actions. DEQ has modified language on page 19 of the Draft Permit in Part II.A.3.f.i to include: “investigate all illicit discharges within 7 calendar days. Document circumstances that prevented this timeframe;” and on page 20 “confirmed illicit connections must be eliminated within a goal timeframe of 6 months. Document circumstances that prevented this timeframe.”

**Comment #4: Illicit Discharge Detection & Elimination** - “In order for DEQ to ensure compliance with the CWA’s MS4 requirements, there must be sufficient inspections to confirm no illicit discharges... (suggested language provided).”

**Response #4:** EPA Illicit Discharge Detection and Elimination Guidance under 40 CFR 122.34(b)(3)(iv) states that EPA recommends visually screening outfalls during dry weather. There are no quantitative dry weather screening requirements to confirm no illicit discharges. As stated in the Fact Sheet:

*The 2015 General Permit required developing, implementing and documenting an IDDE program and utilizing a self-determined method to evaluate success of the IDDE program. This 2017 General Permit renewal utilizes the previous requirements as a foundation to progress the program into a more focused approach. This focused and systematic approach qualifies non-storm water discharge categories based on significance, prioritizes outfalls susceptible to illicit discharges, outlines more specific infrastructure and outfall mapping requirements, prescribes a dry weather screening routine, and requires the development and implementation of an Enforcement Response Plan (ERP). DEQ recognized that the IDDE control measure needed more structured requirements to assist permittees in administering a comprehensive and effective IDDE program... the 2017 General Permit focuses dry weather field screening activities in priority areas that are the most common sources of illicit discharges. The permittee will prioritize outfalls based on provided criteria. The 2017*

*General Permit outlines the criteria to use in the determination of high priority outfalls and provides high priority outfall inspection and screening frequencies.*

The 2017 General Permit outlines requirements for further development of the IDDE program and the dry weather screening requirements are an effective and targeted approach to comprehensively eliminate illicit discharges within a permitted MS4. No changes in the Fact Sheet or Permit in response to this comment.

**Comment #5: Construction site storm water runoff control** – “ARM 17.30.1105(5)(b) could be misinterpreted...and misuse[d] [as to] what is intended to be a narrowly-tailored, limited exception.”

**Response #5:** DEQ provides further clarification in stating that the above-cited Administrative Rule of Montana is only specific to storm water discharges associated with construction activity. CFR 122.26(b)(15)(i)(B) provides the flexibility for the Department to waive applicable requirements in a General Permit for a storm water discharge from construction activities that disturb less than five acres where the condition of ARM 17.30.1105(5)(b) exists, and this flexibility is cited only within the applicable storm water General Permits (Storm Water Discharges Associated with Small Municipal Separate Storm Sewer Systems and Storm Water Discharges Associated with Construction Activity). The Department has not exercised this waiver in any applicable storm water General Permit.

**Comment #6: Construction site storm water runoff control** – “We encourage DEQ to...explain what an acceptable ordinance or [other regulatory mechanism] addressing and controlling construction would include... (suggested language provided).”

**Response #6:** The 2017 General Permit renewal builds upon the requirements set forth in the 2015 General Permit and outlines the minimum requirements for an ordinance or other regulatory mechanism to implement erosion and sediment controls, and controls of other construction-related pollutant sources on regulated construction projects and implement appropriate enforcement procedures and actions. These prescribed minimum ordinance requirements effectively outline the standard concepts needed to enforce a Construction Site Storm Water Management Program; and the regulated MS4s must utilize these base requirements, and build upon and customize their own ordinance language to comply with permitting requirements while also to the extent allowable under State, or local law. No additional explanation is needed within the Draft General Permit to further elaborate on what an acceptable ordinance would include.

**Comment #7: Construction site storm water runoff control** – “We request DEQ revise the language at issue to more clearly enunciate that each permit has independent, but related, significance and performance of one is not a substitute for non-performance of the other.”

**Response #7:** DEQ agrees with Waterkeeper’s clarification of overlapping requirements between construction storm water control duties as stated on page 16 of the Fact Sheet.

**Comment #8: Post-Construction Site Storm Water Management** – “...[T]he proposed permit contains no definition of ‘restoration,’ and does not otherwise establish an objective standard that DEQ can use to base its review and approval of a permittee’s plan for restoring impervious surface...”

**Response #8:** The Draft General Permit does not require a plan for restoring impervious surfaces; rather the Draft General Permit requires a performance standard within an ordinance or other regulatory mechanism and site plans that incorporate scrutiny of potential water quality impacts (Part II.A.5.b.iii). Furthermore, DEQ’s rationale for requiring the performance standard for runoff reduction for regulated projects implementing post-construction storm water control measures is located in the Fact Sheet (pages 16-18). No changes in the Fact Sheet or Permit in response to this comment.

**Comment #9: Post-Construction Site Storm Water Management** – “We strongly encourage DEQ to revise its MEP retention standard to reflect 100% retention goal [...the Draft Permit’s use[s] of the phrase ‘100% of the runoff reduction requirement’...]while at the same time, retaining its language allowing limited alternative treatment protocol/standards for permittees who cannot meet said 100% standard.”

**Response #9:** Per rationale in the Fact Sheet (page 11), DEQ (or the Department) “has determined that the achievement of MEP is an iterative and evaluative process. The Department will reassess MEP with each permit renewal cycle and this standard will continually adapt to current MS4 conditions and BMP effectiveness. To facilitate this iterative process, this 2017 General Permit renewal utilizes a more prescriptive approach with clear, specific, measurable, and enforceable requirements to allow the Department to assess whether or not storm water management plans are meeting the MEP standard.” DEQ has revised its MEP standard and per the Fact Sheet (page 17) “...has determined that Part II.A.5.B.iii meets the intent of the MEP standard to prevent or minimize water quality impacts from new and redevelopment post-construction storm water management through the updated requirements of permittee plan review and approval process with specified criteria.” No changes in the Fact Sheet or Permit in response to this comment.

**Comment #10: Post-Construction Site Storm Water Management** – “...[B]reak-up and revise in a more explicit, clear fashion expected minimum standards for [Post-Construction Site Storm Water] management...(suggested language provided).”

**Response #10:** As part of the iterative process, the 2017 Draft General Permit renewal utilizes a more prescriptive approach with clear, specific, measurable, and enforceable requirements that already include more explicit requirements and performance standard under the Post-

Construction Site Storm Water Management control measure. Please see DEQ Response #8 and DEQ Response #9 above. No changes in the Fact Sheet or Permit in response to this comment.

**Comment #11: Special Condition** - "...CWA regulations require effluent limits in NPDES permits 'consistent with assumptions and requirements of any available wasteload allocation...(40 CFR 122.44(d)(1)(vii)(B))...MS4 permits must ensure attainment of applicable WLAs...A permittee may choose specific BMPs to achieve water quality goals, [but] DEQ must set timelines, benchmarks, and assessment protocols to judge progress towards meeting water quality standards...It is not legally acceptable for MS4s to regulate TMDL-storm water controls...It is DEQ's duty to ensure compliance, and moreover create progress towards compliance 'as soon as possible.' Put another way, it is not legally acceptable for MS4s to regulate TMDL-related stormwater controls and action to the 'back-burner' of priorities... (suggested language provided that...ensures the public's right to participate in the development and approval of effluent limits in the permit)."

**Response #11:** TMDLs are a planning tool for impaired waterbodies. In the event that a TMDL establishes a numeric Wasteload Allocation (WLA) for a MS4, it would be incorporated into the 2017 Draft General Permit requirements. Further clarification on MS4 Approved WLAs is located in Appendix A of the Draft General Permit. The 2017 Draft General Permit renewal already requires TMDL targeted monitoring, and the development and implementation of a long-term impairment improvement strategy with interim milestones. Rationale for DEQ's TMDL approach is located within Section XIV. Special Conditions of the Fact Sheet. Part III of the Draft Permit outlines and provides specific timeframes for requirements of this two-step process: (1) a DEQ approved TMDL Sampling Plan with public review and (2) based on monitoring results from the aforementioned Sampling Plan, a DEQ approved long-term strategy inclusive of milestones. Additionally, once a DEQ approved long-term strategy is implemented, a MS4 must annually evaluate progress and submit results for review within corresponding Annual Reports. No changes in the Fact Sheet or Permit in response to this comment.

**Comment #12: Monitoring, Recording, and Reporting** - "...CWA regulations require MS4 permittees to submit a 'proposed monitoring program for representative data collection for the term of the permit...[in accordance with] 40 CFR 122.26(d)(2)(iii)(D) and 122.26(d)(2)(ii)(C)'."

**Response #12:** 40 CFR 122.26(d)(2) requirements pertain to application requirements for large and medium municipal separate storm sewer systems. This Draft General Permit provides requirements for small municipal separate storm sewer systems. No changes in the Fact Sheet or Permit in response to this comment.

**Comment #13: Monitoring, Recording, and Reporting** - "We believe Monitoring Option 1 represents the bare minimum monitoring that can be ostensibly provide representative data on permittee contributions to local water impairments and conversely, contribute data necessary for

evaluating progress...We strongly encourage DEQ...to require an annual ‘Storm Water Management Program effectiveness study specific to TMDL impairments...[and]...this reflection and assessment [will]...be separate from the annual report requirement...”

**Response #13:** There are no monitoring requirements specified in the Phase II Rule for small MS4s. However, the 2017 Draft General Permit has increased monitoring requirements to provide more water quality information within the MS4 area. Collectively, the permitted MS4s will submit within annual reports evaluations of these monitoring results, long-term median calculations, and a schedule and rationale for BMPs planned to improve water quality of storm water discharges based on the monitoring results. Also, the 2017 General Permit renewal requires TMDL targeted monitoring, and the development and implementation of a long-term impairment improvement strategy with interim milestones. Part III. Special Conditions of the Draft General Permit outlines requirements for both storm water discharges to impaired waterbodies with pre-TMDL approval and approved TMDL wasteload allocations. DEQ has already sufficiently required program effectiveness evaluations specific to TMDL impairments within the 2017 Draft General Permit requirements. No changes in the Fact Sheet or Permit in response to this comment.

**Comment #14: Monitoring, Recording, and Reporting** - “Monitoring Option 2... provides too much discretion to the permittee to determine how and where it will monitor...”

**Response #14:** There are no monitoring requirements specified in the Phase II Rule for small MS4s. The 2017 Draft General Permit renewal builds upon the monitoring requirements set forth in the 2015 General Permit by increasing monitoring requirements from 2 locations to 4 locations. DEQ has allowed the permittees to choose monitoring locations, which has not changed from the 2015 – 2016 monitoring requirements, because permittees have knowledge of their MS4s and can strategically choose more representative locations of discharges. Monitoring Option 2 actually maintains 1 commercial location and 1 residential location, and then the permittee has to strategically choose 2 more locations. The permittee is provided the latitude to choose the additional 2 locations because they have vast knowledge of their MS4 and the results are used to self-evaluate measures taken to improve the quality of storm water discharges. The iterative process of self-evaluation and adaptive management is vital to continuous improvement of each permittee’s program. No changes in the Fact Sheet or Permit in response to this comment.

**Comment #15: Monitoring, Recording, and Reporting** – “...General Monitoring related to the MS4 SWMP... [is] not sufficient to create representative monitoring as required by 40 CFR 122.26(d)(2)(iii)(D). Any monitoring programs designed to generate data from limited locations...falls short of the applicable legal requirements.”

**Response #15:** The regulatory citation referenced in the comment addresses application requirements for large and medium municipal separate storm sewer discharges. It does not pertain to small municipal separate storm sewer systems such as those that would be regulated under the Draft General Permit. There are no monitoring requirements specified in the Phase II Rule for small MS4s. No changes in the Fact Sheet or Permit in response to this comment.

**Comment #16: Monitoring, Recording, and Reporting** - "...Explain the intent and purpose behind the following statement: Permittees authorized under the 2015 General Permit that were not required to monitor and obtain coverage under the 2017 General Permit are required to self-monitor starting January 1, 2018."

**Response #16:** Renewing permittees that previously were not required to monitor, such as Counties, are provided a clear, specific, and reasonable timeframe to allocate resources associated with this permit requirement. No changes in the Fact Sheet or Permit in response to this comment.

**Comment #17: Monitoring, Recording, and Reporting** - "...Explain the intent and purpose behind the following statement: New authorizations under the 2017 General Permit (not authorized under the 2015 General Permit) will apply Part III.A requirements to both storm water discharges to impaired waterbodies with pre-total maximum daily load (TMDL) approval and approved TMDL wasteload allocations. *Part III. B is not applicable during this permit cycle.*"

**Response #17:** The 2017 General Permit renewal requires TMDL targeted monitoring for approved TMDL wasteload allocations, and the development and implementation of a long-term impairment improvement strategy with interim milestones. DEQ has provided clear and specific timeframes for requirements in Part III.B. New permittees that obtain permit coverage mid-cycle within the five-year permit cycle are required to identify, address, and annually report water quality controls for storm water discharges pre- TMDL approval and approved TMDL wasteload allocations. Mid-cycle, new permittees will be proactively managing pollutants of impairments as part of their storm water management program even if coverage is obtained and the timeframes of Part III.B have passed. This Response is an addendum to the associated section of the Fact Sheet. No changes made to this permit in response to this comment.

Verbal Comments during Public Hearing: DEQ has paraphrased Waterkeeper's verbal comments rather than include the transcript from the public hearing verbatim. The original transcript of the public hearing is a public document available from DEQ upon request.

**Comment #18:** "I want to express my candid support and really applaud the Department for taking some big steps in this permit."

**Response #18:** DEQ appreciates your support, active participation, and continued commitment to improving Montana's MS4 program and to the permit reissuance process.

**Comment #19:** "... We have three outstanding issues that still need to be addressed. Those issues are: What does it mean to be representative in terms of monitoring requirements, both for impaired waterways and for meeting technology-based effluent limitations? No. 2, a concern would be outstanding about what does it mean to have a meaningful pollution diet implementation plan for an MS4 permittee; which is to say, how much flexibility can permittees have to deal with their contributions that are degrading local urban waterways? And then the third would be our consideration of what does it mean to be having controls on the books and implementing a series of controls that reduces pollution to the maximum extent practicable, the MEP standard."

**Response #19:** Regarding expressed outstanding issue #1, please see Response #13 and Response #14 above. Regarding expressed outstanding issue #2, please see Response #11 above. Regarding expressed outstanding issue #3, please see Response #9 above.

**On behalf of the seven MS4 Cities (Submitted by the City of Billings, Vern Heisler, P.E., Deputy Public Works Director)**

**The MS4 Cities have collectively submitted 44 comments below.**

Written Comments during Public Notice: DEQ has paraphrased the MS4 Cities' comments rather than include the 8-page comment letter verbatim. The original comment letter is a public document available from DEQ upon request.

**Comment #1: Permitted MS4s Under the 2015-Issued Permit** - What is the permitting status of MDT? Will MDT be under equivalent obligations to ensure storm water quality discharging from their facilities as are the MS4s covered under this proposed permit?

**Response #1:** The Montana Department of Transportation submitted an application for an individual MS4 on December 10, 2014 and DEQ determined the application was complete on December 19, 2014. DEQ will public notice MDT's permit, and, at such time, accept comments on obligations under that permit. No changes in the permit in response to this comment.

**Comment #2: Effluent Limitations, Page 8** – The final paragraph states "No discharge of storm water containing pollutants from Small MS4s covered under this General Permit may cause or contribute to a violation of water quality standards." This language conflicts with part A of the same section and the Fact Sheet. The goal of this permit is to reduce the discharge of pollutants through the implementation of BMPs to the Maximum Extent Practicable (MEP) as outlined in the Clean Water Act (CWA). If left unchanged, each MS4 will be in violation of this permit every time it rains. (Suggested language provided.)

**Response #2:** DEQ notes the suggested language revisions. All MPDES permits must impose the above condition to achieve both narrative and numeric water quality standards, and permit limits must control all pollutants that may, have reasonable potential to, or will contribute to an exceedance of a narrative or numeric water quality standard. Therefore, the accurate prohibition will remain verbatim and MS4s must still reduce pollutants to the maximum extent practicable. No changes were made to the permit in response to this comment.

**Comment #3: MCM 3 – Illicit Discharge Detection & Elimination, Page 15 – part c.** - We ask that the word thoroughly be removed from the sentence, "Inventory storm water sewer infrastructure to *thoroughly* track illicit discharges, contain spills, and determine high priority areas."

**Response #3:** In order to detect and eliminate illicit discharges MS4s must thoroughly track the illicit discharges. No changes made to the permit in response to this comment.

**Comment #4: MCM 4 – Construction Site Storm Water Management, Page 24 – part b. iii.** - The "Non-Numeric Technology-Effluent Limits of the most current Montana DEQ General Permit for Storm Water Discharges Associated with Construction Activity (MTR 100000)" seems to be an overstep of the intent of the permit. The Cities are required to follow language from the Construction General Permit but also have to insure they are in compliance with the Construction Dewatering (MTG 070000) permit. Fundamentally the Cities have to regulate a permit that we do not approve and do not have any authority to approve/disapprove.

**Response #4:** MS4s are required to develop implement and enforce a program to reduce pollutants in storm water runoff to the permitted Small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre [ARM 17.30.1111(6)]. DEQ will include MS4s as stakeholders for the renewal of the General Permit for Storm Water Discharges Associated with Construction Activity. No changes made to the permit in response to this comment. Also, please see DEQ Response #6 to Waterkeeper Comment #6 above.

**Comment #5: MCM 4 – Construction Site Storm Water Management, Page 25 – part c.v** -The language in this section is unclear. Specifically, the current language states that inspections are required "once within 48-hours after a rain event of .25 inches or greater." The Cities request clarification that this requirement reads inspections will be once during the life of the project.

**Response #5:** The minimum inspection frequency for all high priority projects includes an inspection within 48-hours after "each" rain event of 0.25 inches or greater. DEQ has modified permit language to reflect this clarification.

**Comment #6: MCM 4 – Construction Site Storm Water Management-** The Permit requires that Cities regulate all construction sites greater than or equal to 1 acre or part of a larger common plan of development under terms of a local ordinance. DEQ also regulates these sites under the Construction Storm water General Permit. This can result in conflicting reporting of violations between the Cities and DEQ.

**Response #6:** DEQ notes the Cities concern. Please see DEQ Response #7 to Waterkeeper Comment #7 above.

**Comment #7: MCM 5 – Post Construction Site Storm Water Management in New and Redevelopment, Page 27 - section a. iii** - This section says, "Develop a formal ERP to ensure compliance with installation, operation and maintenance requirements for post-construction storm water management controls on regulated projects including private property." What happens in the cases where the MS4 does not have local authority on private property which affects most of the Cities?

**Response #7:** DEQ encourages frequent and open communication regarding concerns from the MS4s regarding issues of local authority. See DEQ Response #4 to EPA Comment #4 above.

**Comment #8: MCM 5 – Post Construction Site Storm Water Management in New and Redevelopment, Page 29 – section b.iii.b** – Use of offsite regional treatment in this General Permit is more restrictive than the Federal Regulations. The permit should have provisions for Cities discretion to allow for offsite or regional BMPs, which are no more stringent than federal requirements.

**Response #8:** The General Permit allows for the MS4 to provide treatment offsite, but requires that offsite treatment be consistently reviewed and considered prior to MS4 approval. No changes made to the permit in response to this comment.

**Comment #9: Part B- Training, Page 37 - part 2** - The phrase "High Priority" was removed from this section from the Working Group draft and ask that it added back into the document (language provided).

**Response #9:** Number 2 within the Training section outlines the storm water awareness training for all appropriate field staff and staff who work at permittee facilities. The requirement applies to all appropriate field staff and is not limited to staff at high priority facilities. No changes made to the permit in response to this comment.

**Comment #10: TMDL-Related Monitoring, Page 41 - number of samples:** The Cities ask for the allowance, in option 1 of the TMDL monitoring, for one of the four sampling points to be located upstream outside the MS4 Boundary to evaluate WQ entering the MS4.

**Response #10:** TMDL-Related Monitoring Option 2 already provides the flexibility for the MS4 to choose a location upstream and outside the MS4 boundary, as part of their MS4-specific monitoring strategy. Also, the MS4 can monitor upstream in addition to Option 1 sampling locations for further evaluation of water quality entering the regulated boundary. No changes made to the permit in response to this comment.

**Comment #11: B. Reporting & Evaluation of Monitoring Results, Page 45** - parts 2 and 3 should be removed from the permit. Federal regulations do require small MS4s to use monitoring results to make changes to the BMPs. Monitoring results are highly variable and there is not enough data to identify trends and make revisions to BMPs. It appears that this is in addition to the BMPs for the Cities TMDL plan.

**Response #11:** The draft permit requires MS4s to evaluate program compliance, the appropriateness of identified best management practices and progress toward achieving the identified measureable goals. DEQ has determined monitoring requirements and the requirements in Part IV.B assist in demonstrating compliance with the evaluation and assessment requirements. No changes made to the permit in response to this comment.

**Comment #12: B. Reporting & Evaluation of Monitoring Results, Page 45 – part B 3** - The word exceedance infers there's a potential violation. The document should be rephrased to "(2) *discuss potential reasons monitoring results are different than the calculated long-term median.*"

**Response #12:** DEQ disagrees with the Cities inference towards benchmark monitoring and required calculations and evaluations, but the language has been updated to remove concerns.

**Comment #13: E. Compliance Schedules, Page 46** - What constitutes non-compliance when the draft says, "Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained any compliance schedule of the permit must be submitted to DEQ in either electronic or paper format and be postmarked no later than 14 days following each schedule date unless otherwise specified in the permit.

**Response #13:** In general, and not inclusive of all conditions or situations, compliance is the timely and adequate completion of requirements outlined as part of the deadline/implementation schedules, the special conditions, and the monitoring options. DEQ encourages open communication regarding any questions or concerns from the MS4s regarding potential instances of non-compliance.

**Comment #14: E. Proper Operation and Maintenance, Page 49** – The draft states, "This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit." This language should be removed.

**Response #14:** The provision found in Part V.E. of the permit is a condition applicable to all MPDES and required by ARM 17.30.1342. No changes made to the permit in response to this comment.

**Comment #15: Appendix A: TMDLs with MS4 Approved WLAs -** The language under the City of Bozeman's TMDL section is not accurate. Specifically, the current language assigns Bear Creek's TMDL to the City of Bozeman. Bear Creek does not flow through or receive storm water discharges from the City of Bozeman's MS4. Storm water discharges to Bear Creek are received through MOT's MS4. The Cities request that MDEQ remove language tying City of Bozeman MS4 to TMDL compliance for Bear Creek.

**Response #15:** The TMDL indicates the WLA apply to all MS4s that were co-permittees at the time of TMDL development; therefore, the WLAs are aggregated and not individually assigned to each MS4. No changes made to the permit in response to this comment.

**Comment #16: General Draft Permit Comments -** There are a number of measurable requirements in the permit, and the penalties for violation are substantial. There are several areas where the Cities could unintentionally and unknowingly violate, especially without clarification and DEQ-approved guidance on issues such as defining the area for the first 0.5" requirement. How does DEQ intend to prevent such unintended consequences from becoming threats to well-intentioned MS4 programs?

**Response #16:** During the permit term, DEQ encourages frequent and open communication regarding any questions or concerns from the MS4s. No changes made to the permit in response to this comment.

**Comment #17: General Draft Permit Comments -** Mapping of illicit discharge high-priority areas was added since the working group completed their work. The Cities recognize that this item was added, but it is acceptable if the Cities determine the high-priority areas.

**Response #17:** No changes made to the permit in response to this comment.

**Comment #18: Ineligibility for Coverage, Page 3 -**The language under the Ineligibility for Coverage section is unclear. Specifically, "storm water discharge associated with industrial activity" references ARM 17.30.1102(28), but ARM 17.30.1102(29) is the correct reference. Also, "storm water discharge associated with small construction activity" references ARM 17.30.1102(29), but ARM 17.30.1102(28) is the correct reference. Finally, the word "small" as written in "stormwater discharge associated with small construction activity" is not accurate. The construction permit referenced applies to sites greater than one acre or part of a larger common plan of development.

**Response #18:** The definition citations referenced have been updated in the final permit. The term “small” regarding construction activity is not a reference to sites under one acre. The Storm water Phase II Rule automatically designated, as small construction activity (sites that result in land disturbance of equal to or greater than 1 and less than 5); and under the MPDES permitting program and more specifically, the DEQ’s General Permit for Storm Water Discharges Associated with Construction Activity, the minimum threshold for requiring permit coverage is 1 acre. To alleviate misinterpretation, the word “small” is removed.

**Comment #19: MCM 2 - Public Involvement and Participation, Page 12** - part 2.a.i calls out key target audience identified under Part 111.B.2.a. The call out seems to be inaccurate and should reference Part 111.B.1.a.

**Response #19:** See DEQ Response #2 to EPA Comment #2 above.

**Comment #20: MCM 3 - Illicit Discharge Detection & Elimination, Page 15- parts b.i. and ii.** - The second bullet in MCM 3.b.i and MCM 3.b.ii refers to and includes requirements for "*significant* contributors of pollutants"; however, this section is for "non-storm water discharges that are not reasonably expected to be significant contributors." MCM 3.a.i. covers "*significant* contributors of pollutants" which is where the aforementioned requirements should be moved.

**Response #20:** DEQ has modified the language in the second sub-bullet in MCM 3.b.i to read: “the pollutants associated with each occasional incidental; and...”

**Comment #21: MCM 3 - Illicit Discharge Detection & Elimination, Page 17** - The language under the Illicit Discharge Detection and Elimination Program 3.d.iii is unclear. Specifically, the word "with" does not fit into the sentence. Also, the second bullet includes an indented bullet that is not grammatically correct.

**Response #21:** See final permit 3.d.iii for updated language.

**Comment #22: MCM 4 - Construction Site Storm Water Management, Begins on Page 21** - The language under the Construction Site Storm water Management Program 4 requires an additional definition. The term "common plan of development" is used, but is not defined. The Cities commonly receive questions regarding the term and requests a clear definition.

**Response #22:** The term “common plan of development” is found in ARM 17.30.1102(28) and further defined within the MPDES General Permit for Storm Water Discharges Associated with Construction Activity. Please look to this general permit for a definition. No changes made to the permit in response to this comment.

**Comment #23: Part VII. Definitions, Page 56 -** Number 13. "Municipal Separate Storm Sewer" references foot note (1) which is not included in the permit

**Response #23:** The footnote reference is a typographical error and has been removed in the final permit.

**Comment #24: MCM 3 - Illicit Discharge Detection & Elimination, Page 18 - part d.v.-** The language says to implement the ERP in year 1. The ERP is due in year 2, so implementation should be year 3. In addition, the ERP timeframes of IDDE, Construction, and Post-Construction BMPs have different timeframes and the MS4 Cities are using the same form for all three.

**Response #24:** The renewal permit outlines specific requirements and timeframes for the development of an ERP in the above referenced MCMs. If the MS4 Cities use the same form for all three MCMs, please ensure that the form is developed to meet all timeframes and inclusive of all requirements. No changes made to the permit in response to this comment.

**Comment #25: MCM 3 - Illicit Discharge Detection & Elimination, Page 18 -** The language under the Illicit Discharge Detection and Elimination Program 3.e.i is unclear. Specifically, the first bullet states, "Inspect and screen all of the permittee's outfalls during dry weather..." and the second bullet states, "This process shall be completed by the end of the permit cycle." The language states that the permittee must complete "Annually". The Cities believe the intent is to inspect all outfalls once per the General Permit term and request the MDEQ clarify this section by changing "Annually" to "5<sup>th</sup> Permit Year."

**Response #25:** See DEQ Response #1 to EPA Comment #1 above. Progress is documented in Annual Reports.

**Comment #26: MCM 3 - Illicit Discharge Detection & Elimination, Page 19 - part f.i. -** The schedule for the Illicit Discharge Investigation and Corrective Action Plan should be the 2nd Permit Year.

**Response #26:** Because the Illicit Discharge Investigation and Corrective Action Plan outlines and describes the process used to consistently and effectively investigate suspected illicit discharge and connections and track subsequent compliance actions, the Plan must be developed year one for implementation at the beginning of year two. No changes made to the permit in response to this comment.

**Comment #27: MCM 4 - Construction Site Storm Water Management, Begins on Page 21 -** Ordinances/ERPs are required to be developed in the third year, which should be sufficient time to incorporate the changes to the DEQ construction permit. But, the plan review check list, required to be developed in the first years, is intended to ensure consistent review of

submitted plans in conformance with current state and local requirements. This checklist may need to be changed during the duration of the permit, depending on when DEQ adopts their updated construction permit. DEQ should change the timeline for the checklist to be after the finalization of the construction general permit.

**Response #27:** DEQ evaluated timeframes with all MS4s to balance workloads each year. All regulated construction projects must be reviewed during the entire permit term. In the event that the final Storm Water Construction General Permit results in substantial changes to the checklist; permittees must update the check list accordingly. No changes made to the permit in response to this comment.

**Comment #28: MCM 5 – Post Construction Site Storm Water Management in New and Redevelopment, Begins on Page 26** - In order to implement the requirements set for section 5.b and 5.c in the first –third years of the permit an ordinance will need to be either created or updated. However the ordinance/ERP requirement in 5.a is not required to be completed until the fourth year. For some Cities it is all the same ordinance, so it would be logical to do the ERP at the same time. We recommend the deadline date for all of 5.a and 5.b to be in the third year and all of 5.c to be in the third and fourth years.

**Response #28:** Both the MS4 General Permit effective 2010 through 2015 and the General Permit effective 2015 through 2016 required regulated MS4s to implement procedures for site plan review, site plan inspection and enforcement of post-construction BMPs, and required regulated project sites to infiltrate, evapotranspire, or capture for reuse the runoff generated from the first 0.5 inches of rainfall from a 24-hour storm preceded by 48 hours of no measurable precipitation. Therefore, permittees can continue to use policies and procedures or ordinances already in place from previous iterations of the MS4 General Permit until an updated ordinance or other regulatory mechanism is in place year 4. No changes made to the permit in response to this comment.

**Comment #29 through Comment #41 are concerning the Fact Sheet.**

**Comment #29: Permit Status, Page 1 - last paragraph:** The Working Group produced a number of Standard forms and plans created as part of the cooperative effort when used are intended to meet specific requirements throughout the permit. This effort should be recognized in the Fact Sheet.

**Response #29:** DEQ recognizes that HDR and the permitted MS4s cities developed standardized forms and plans for specific requirements in the draft permit during the working group. Fact Sheets must briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit (ARM 17.30.1371). No changes made to the permit or fact sheet in response to this comment.

**Comment #30: Background, Page 2 - bottom two bullets:** MS4s were designated automatically or by DEQ's evaluation of criteria. Portions of Counties which are physically interconnected with Small MS4s designated by DEQ evaluation meet the same designation criteria but are not identified as Small MS4s in ARM 17.30.1102(23)(b).

**Response #30:** Updating rules would need to be done by the Board of Environmental Review. This issue is beyond the scope of the draft permit. Please see DEQ Response #1 to Waterkeeper Comment #1 above. No changes made to the fact sheet or the permit in response to this comment.

**Comment #31: General Permit Authorization, Page 4 – Use of State Waters as defined by MCA 75-5-103 (34) a. exceeds the Federal requirements for Small MS4s to obtain authorization for discharge of storm water into Waters of the United States. The apparent interchangeability of the terms State Waters, Surface Water, State Surface Water, and Montana's Surface Water creates ambiguities in the General Permit. Storm water in the MS4 drainage system and upstream of an outfall which does not discharge to Waters of the U.S. is not considered a State Water.**

**Response #31:** EPA authorized Montana to administer parts of the NPDES program through the MPDES program to include the General Permits Program because the Department demonstrated that it has the legal authority, implementation procedures, and resources necessary to administer the program. MPDES is governed by the Montana Water Quality Act. In regards to the MPDES permitting program, the Montana Water Quality Act defines "state waters." ARM 17.30.1102(23) identifies small MS4s determined and designated to require permit coverage in Montana, and ARM 17.30.1111 requires owners and operators of small MS4s to obtain coverage under an MPDES permit. The BER rules identify MS4s and DEQ cannot issue a permit that goes against these rules. No changes made to the fact sheet or permit in response to this comment.

**Comment #32: Effluent Limits Rationale, Page 10 – last paragraph – The word "eliminate" should be removed from the following sentence in the draft, "*BMPs are implemented to eliminate or minimize the migration of pollutants to surface waters.*"**

**Response #32:** DEQ disagrees. BMPs are, in fact, implemented to eliminate or minimize the migration of pollutants to surface waters. To remove the word "eliminate" changes the intent of this sentence. No changes made to the fact sheet or permit in response to this comment.

**Comment #33: Effluent Limits Rationale, Page 11 – first paragraph - The statement "MEP is not to be interpreted as the minimum approach for MS4 program development, feasibility and achievability" contradicts the definition of MEP as the standard for compliance, and as the "...maximum achievable level of pollutant reductions ..." in the same paragraph. The following sentence "Therefore, implementation beyond MEP may be feasible and appropriate**

for permittees with developed storm water management programs." should be deleted from the Fact Sheet.

**Response #33:** Fact Sheets must briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit (ARM 17.30.1371). The Fact Sheet outlines the reasoning and rationale for the permit conditions. The permit requirements demonstrate MEP, but given the iterative nature and constant advancements in storm water BMPs, DEQ allows permittees to continuously improve their storm water programs. Please see DEQ Response #2 to Waterkeeper Comment #2 above. No changes made to the permit or fact sheet in response to this comment.

**Comment #34: Effluent Limits Rationale, Page 11 – first paragraph** – The draft says “Therefore, implementation beyond MEP may be feasible and appropriate for permittees with developed storm water management programs.” How can an MS4 go beyond a maximum which is the "M" in MEP?

**Response #34:** As stated in the Fact Sheet rationale preceding the commented excerpt, “During development of the MEP standard, the Department establishes General Permit requirements to reflect the determination of the maximum achievable level of pollutant reductions for all permittees...Therefore, implementation beyond MEP [as referenced for all permittees] may be feasible and appropriate for permittees [as referenced to a single, regulated MS4] with developed storm water management programs.” Also, please see DEQ Response #33 to Cities Comment #33 above.

**Comment #35: X. Storm Water Management Plan, Page 11 - second paragraph:** Clarification regarding Montana-specific storm water BMPs is needed to recognize that DEQ and the MS4s are working as an extension of the MS4 Working Group to prepare an approvable and endorsable Montana-specific storm water BMP manual by DEQ and the Cooperative Group. The reference for this comment is 40 CFR 122.35(g).

**Response #35:** The reference 40 CFR 122.35(g) does not exist. DEQ recognizes that the Cities MS4 working group formed an extension to develop a Montana-specific storm water BMP manual. DEQ is participating in the MS4 working group extension. Also, DEQ notes that EPA developed the Montana Storm water Criteria Manual. The Cities provided feedback to the EPA on the Draft version of this manual in June 2015. The Montana Storm water Criteria Manual was reviewed by an engineer with Urban Drainage and Flood Control District. EPA provided DEQ and the Cities the finalized manual in August 2015. The Cities can modify the manual specifically to their MS4. No changes made to the permit in response to this comment.

**Comment #36: XIV. Special Conditions, Page 25** – The draft says, "DEQ's TMDL WLA approach in the 2017 General Permit renewal provides the permittee with the flexibility, and a clear and specific framework to evaluate their controls specific to wasteload allocations, and

develop and adaptively manage a part of their storm water program focused on wasteload allocations through an approved long-term strategy.” The term Wasteload allocations should be replaced with pollutants of concern.

**Response #36:** TMDLs assign load allocations and wasteload allocations, not pollutants of concern. No changes made to the permit or fact sheet in response to this comment.

**Comment #37: General Comments on the Fact Sheet -** The Cities need to receive clarification on the area that must be assessed for the 0.5" requirement.

**Response #37:** When calculating the volume for the 0.5” requirement outlined in MCM 5 – Post Construction Site Storm Water Management in New and Redevelopment of the permit; at a minimum the permittee must use impervious areas from new and redevelopment projects, and must consider contiguous drainage areas that may contribute storm water. No changes made to the permit or fact sheet in response to this comment.

**Comment #38: General Comments on the Fact Sheet -** A note should be added to the Fact Sheet addressing repaving projects (in regards to first 0.5” requirement). This permit is not intended to regulate repaving projects.

**Response #38:** In general, determination of the acreage of disturbance does not typically include disturbance for routine maintenance activities on existing roads where the line and grade of the road is not being altered, nor does it include the paving of existing roads. The General Permit regulates storm water from small MS4s and the permittee shall develop, implement, and enforce a program to reduce pollutants in storm water runoff from construction activity that result in land disturbance of greater than or equal to one acre. The MS4 can assess if repaving projects affect water quality in their regulated boundaries and if these projects will be included in calculations of total land disturbance. No changes made to the permit or fact sheet in response to this comment.

**Comment #39: General Comments on the Fact Sheet -** The Fact Sheet needs to recognize the additional monitoring required in the Summary of Significant Permit Changes.

**Response #39:** The Fact Sheet recognizes additional monitoring requirements and provides rationale for these additional requirements on page 19 under the “Monitoring” section. No changes made to the permit in response to this comment.

**Comment #40: Items Requiring Correction-I. Permit Status -** Please check to ensure that the links to the MS4 agendas and meeting summaries function from the link provided at the end of Section I. <http://deq.mt.gov/Water/WPB/stormsewer>

**Response #40:** In response to this comment, DEQ updated the webpage. No changes were made to the permit or fact sheet in response to this comment.

**Comment #41: Continuing Authorizations issued under the 2015 General Permit, Page 5 -**  
The public notice period is scheduled to end on October 21st. A Storm Water Management Plan is required as part of the reapplication. Reapplication is due 30 days prior to expiration of the 2015 General Permit on December 31, 2016. This schedule does not allow sufficient time for preparation of a SWMP. The SWMP should start at the beginning of year 2. The reference section for this comment is 40 CFR 122.35(e).

**Response #41:** The reference 40 CFR 122.35(e) does not exist. The renewal permit builds upon the developed MS4 SWMPs required in the 2015 General Permit. The compliance schedule provides a timeframe for future SWMP development. The SWMP is due with the application and its development will continue throughout the permit cycle. No changes made to the permit in response to this comment.

**Comment #42: Reapplication Form, Page 4 - Storm Water Discharge Monitoring Certification.** This language can subject the Cities to a legal challenge. The Cities ask that the certification section be removed.

**Response #42:** For clarification, “Storm Water Discharge Monitoring Certification” is the heading of a section located within the reapplication form in accordance with ARM 17.30.1110(8). Removal of the word “Certification” from the heading does not change the intent of the section. Language has been modified.

**Comment #43: Reapplication Form, Storm Water Discharge Monitoring Certification –**  
The word "grand" should be replaced with the word "and" in the draft that currently reads, "Has storm water sampling grand analytical testing..."

**Response #43:** DEQ updated the language within the Storm Water Discharge Monitoring Certification section in the Reapplication Form.

**Comment #44: Annual Report Form, Page 2 -** the funding questions seem to go above & beyond the permit requirements. The Federal rules do not require small MS4s to include financial expenditures. The Cities ask that the funding questions be removed from the document. If these are removed, please provide a legal basis and rationale for including the requirements.

**Response #44:** DEQ has updated this section based on concerns. Please see the Annual Report Form.

**Malmstrom Air Force Base –Cody Koontz, Environmental Engineer and Robert Richards, Environmental Engineer**

**Malmstrom Air Force Base provided 4 comments below.**

Written Comments during Public Notice: DEQ has paraphrased Malmstrom's comments. The original comment letter is a public document available from DEQ upon request.

**Comment #1: Part IV.A.** - Are samples required to be collected during a storm event with a certain amount of precipitation? If so, does sampling need to occur during a certain time period during the storm event? What is the appropriate trigger? Title 40 CFR Part 136 does not address this issue.

**Response #1:** Monitoring requirements are during a storm event with a measurable amount of discharge. This measurable amount is non-specific, but must result in an actual discharge from the MS4 to where the permittee can adequately perform monitoring. DEQ recognizes that many factors can affect the actual discharge amount such as the size and duration of the storm event, drainage area to outfall, amount of impervious surface, saturated versus dry soils, etc. Also, a different storm event means rainfall events separated by at least 48 hours of no measurable precipitation. DEQ has modified permit language to reflect this clarification.

**Comment #2: Part IV.A.** – Are samples only required to be taken during business hours?

**Response #2:** No. DEQ has not placed such restrictions on monitoring.

**Comment #3: Part IV.A.2.** - What is an instantaneous sample?

**Response #3:** Instantaneous means the measurement, concentration, or volume (for flow) is taken and recorded on-site at the facility.

**Comment #4: Part IV.A.2** - Does composite refer to flow-weighted or time-weighted sampling? What are the criteria to choose between these two types of sampling?

**Response #4:** Composite sampling can either be flow-weighted or time-weighted. Flow-weighted composite sample is a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge. Time-weighted composite sample is a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval. The permittee has the flexibility to choose the method of composite sampling and DEQ has not provided specific criteria for the permittee to choose between the two types.

**City of Helena –Randall Camp, Public Works Director**

**The City of Helena collectively provided 20 comments below.**

Written Comments during Public Notice: DEQ has paraphrased the City of Helena’s comments rather than include the 7-page comment letter verbatim. The original comment letter is a public document available from DEQ upon request.

**Comment #1: WQS Violation Cause/Contribute Prohibition, Page 8** - DEQ should delete the prohibition of discharge causing or contributing to an exceedance of a water quality standard.

**Response #1:** Please see DEQ Response #2 to the Cities Comment #2 above.

**Comment #2:** The Reapplication Form’s Monitoring Certification is unnecessary because the application as a whole requires a true, accurate, complete certification.

**Response #2:** Please see DEQ Response #42 to the Cities Comment #42 above.

**Comment #3:** The Annual Report section Permittee’s SWMP Resources are not federally required, ignores that the permittee is the City, and is inappropriately included. DEQ should not dictate budget, but compliance with the substantive permit requirements.

**Response #3:** Please see DEQ Response #44 to the Cities Comment #44 above.

**Comment #4:** The term “State Waters” should be replaced with “Surface Waters” in all occurrences within the permit for clarity, applicability, and consistency.

**Response #4:** The City of Helena questioned the use of the term “state waters.” DEQ removed the term “state water” from the final permit due to this concern. Also, please see DEQ Response #31 to Cities Comment #31 above.

**Comment #5: Water Quality Standards (WQS) Immediate Noncompliance and Liability. Exceeds EPA requirements.** Prohibition on WQS exceedances are impossible to meet at time of permit issuance. They expose the City to immediate liability from enforcement by EPA or citizen organizations as well as by DEQ. Federal law (the CWA) does not mandate that MS4s strictly comply with WQS; rather MEP standard applies and intent is reasonable for further progress toward WQS over time. Similarly, TMDLs and TMDL WLAs assigned to MS4s are just an expression of WQS, so the same comments above regarding WQS apply equally to TMDLs/WLAs.

**Response #5:** DEQ notes that the proposed permit reissuance is the fourth iteration of the General Permit for Storm Water Discharges associated with Small MS4s and the City of Helena has been a regulated and permitted MS4 since the first iteration of the General Permit. For clarification on the reasoning and rationale of proposed effluent limitations and an explanation of

the statutory standard of MEP, please see pages 10-11 of the Fact Sheet. Also, please see DEQ Response #2 to Waterkeeper Comment #2 above; DEQ Response #2 to the Cities Comment #2 above; and DEQ Response #34 to the Cities Comment #34 above. No changes made to the permit or fact sheet in response to this comment.

**Comment #6: Pages 15-16, Minimum Control Measure 3 (IDDE )-** MCM 3 titled Illicit Discharge Detection and Elimination mapping requirements exceed the EPA requirements 40 CFR 122.34(b)(3)(ii)(A) and are too detailed. DEQ should limit mapping to know outfalls to surface waters.

**Response #6:** The requirements outlined in Illicit Discharge Detection and Elimination Minimum Control Measure (MCM) include clear, specific, measurable and enforceable requirements in order for DEQ to assess whether or not storm water management plans are meeting the MEP standard and outline reasonable means to enforce this MCM. No changes made to the permit in response to this comment.

**Comment #7: Pages 24 – 25, Minimum Control Measure 4 (Construction Storm water Management)** – Permit requires that permittees regulate all construction sites greater than or equal to 1 acre which DEQ also regulates. The permit should clarify the shared responsibility.

**Response #7:** DEQ regulates construction sites greater than or equal to 1 acres in surface area disturbance state-wide. MS4s are required to regulate construction sites within their respective MS4 boundaries. Also, please see DEQ Response #7 to Waterkeeper Comment #7 above. No changes made to the permit in response to this comment.

**Comment #8: Page 30, Minimum Control Measure 5 (Post-Construction Site Storm Water Management in new and redevelopment)** – MCM 5 exceeds the EPA requirements by restricting off-site treatment locations. Off-site treatment should be allowed at the City's discretion.

**Response #8:** The General Permit allows for the MS4 to provide treatment offsite, but requires that offsite treatment be consistently reviewed and considered prior to MS4 approval. No changes made to the permit in response to this comment.

**Comment #9: Page 34 and 37, Minimum Control Measure 6 (Pollution Prevention/Good Housekeeping for Permittee Operation)** – MCM 6 training requirements exceed EPA requirements [40 CFR 122.34(b)(6)], include onerous deadlines, and includes vague terms regarding employees who require training.

**Response #9:** The requirements, including due dates, outlined in Pollution Prevention Good Housekeeping Minimum Control Measure include clear, specific, measurable and enforceable

requirements in order for DEQ to assess whether or not storm water management plans are meeting the MEP standard. No changes made to the permit in response to this comment.

**Comment #10: Page 40, Special Conditions (Impaired Waterbodies Pre-TMDL) -** These requirements exceed EPA requirements by including BMPs specific to addressing TMDL concerns [40 CFR 122.34(e)(2)].

**Response #10:** DEQ addresses water quality controls for storm water discharges to impaired waterbodies with pre-TMDL approval because this requirement increases awareness of receiving waterbodies and proactively engages the permittee to manage pollutants of impairment and plan for implementation of future controls. This requirement establishes a TMDL foundation for the permittee's storm water management program upon WLA approval. Please see page 25 of the Fact Sheet for rationale. DEQ has clarified Pre-TMDL language in the final permit.

**Comment #11: Page 40 -** DEQ needs to insert the following language into the bottom of page 40: MS4 TMDLs are not intended to add a concentration or load limit to the permit; instead, TMDL compliance is based solely on the permittee following the monitoring and BMP requirements outlined in this permit.

**Response #11:** The insertion of the language is unnecessary. In addition, **Appendix A** of the General Permit documents the intent of each TMDL, which includes a regulated MS4. No changes made to the permit in response to this comment.

**Comment #12: Page 42 –** Monitoring, Recording and Reporting Requirements-Part IV.A states that the Department reserves the right to require additional storm water sampling, testing and reporting on a case-by-case basis. This denies the permittee due process and fair notice of permit requirements.

**Response #12:** DEQ disagrees. DEQ has the power to require additional monitoring on a case-by-case basis, but it is infrequently exercised. DEQ will coordinate with MS4s if the need for more monitoring arises. No changes made to the permit in response to this comment.

**Comment #13:** Part IV.A.1 Self-Monitoring Requirements delete the phrase “or as otherwise required by the Department” from the second sentence.

**Response #13:** Please see DEQ Response #12 to the City of Helena Comment #12 above. No changes made to the permit in response to this comment.

**Comment #14: Page 43, Monitoring Frequency –** Monitoring Locations requirements arbitrarily doubles the number of monitoring locations from 2 to 4. DEQ should consider all MS4 monitoring together as representative state wide data with two monitoring locations per MS4.

**Response #14:** Monitoring is intended to be representative of each regulated MS4 SWMP independently. Grouping all MS4 monitoring would illustrate MS4 discharges statewide but would not provide information for each MS4 to reflect, adapt, and improve. Please see section XII titled Monitoring in the Fact Sheet for reasoning and rationale for the increase in monitoring locations. Also, please see DEQ Response #11 to the Cities Comment #11 above.

**Comment #15: Page 44** – Monitoring Frequency exceeds EPA requirements by stating the permittee may not request to replace approved monitoring locations again during the same permit cycle. DEQ may approve or deny requests and the permittee should be allowed to request replacements.

**Response #15:** DEQ does allow changes, but consistent locations are needed to evaluate trends within the MS4. Also, please see DEQ Response #11 to the Cities Comment #11 above; and DEQ Response #12 to the City of Helena Comment #12 above.

**Comment #16: Page 54** - Part IV.O.3 titled Reopener Provisions, delete the phrase “for incorporation in this permit”.

**Response #16:** Part IV.O.3 titled Reopener Provisions is outlining circumstances under which the permit may be reopened and modified. The Reopener Provisions is standard language for all MPDES permits. In the event a permit is reopened, the rules for public notice for modifications apply. No changes were made to the permit in response to this comment.

**Comment #17:** How does DEQ intend to comply with this requirement in 40 CFR 123.35(e) and 40 CFR 123.35(g)?

**Response #17:** 40 CFR 123.35(e) states DEQ must specify a time period of up to 5 years from the permit issuance for regulated MS4s to fully develop and implement a SWMP. The MS4 General Permit specifies the submission due date of the initial SWMP and specifies the annual due dates for additions to the SWMP resulting in a complete and updated SWMP at the end of the 5 year permit cycle.

Regarding 40 CFR 123.35(g), DEQ notes that EPA developed the Montana Storm water Criteria Manual. Please see DEQ Response #35 to the Cities Comment #35 above. No changes were made to the permit in response to this comment.

Verbal Comments during Public Hearing: DEQ has paraphrased The City of Helena’s verbal comments rather than include the transcript from the public hearing verbatim. The original transcript of the public hearing is a public document available from DEQ upon request.

**Comment #18:** I would like to issue a warning of beware of unintended consequences; that some of these regulations will drive more development in the valley, where we have minimal control, and you will achieve the opposite of what you’re trying to do.

**Response #18:** DEQ notes the commenter's concern. Please see DEQ Response #1 to Waterkeeper Comment #1 above.

**Comment #19:** We all have an interest of clean water for the state of Montana and for the station, but there are also other things out there competing for funds from citizenry that have limited funds in these times.

**Response #19:** DEQ appreciates the commenter's commitment to improving Montana's water quality and notes the continued concerns of funding programs.

**Comment #20:** I do thank DEQ for all their work and putting up with us the last 18 months.

**Response #20:** DEQ appreciates the City of Helena's participation in the stakeholder process for the reissuance of the General Permit.

**City of Bozeman –Brian Heaston, Project Engineer**

**The City of Bozeman provided 2 verbal comments below.**

Verbal Comments during Public Hearing: DEQ has paraphrased The City of Bozeman's verbal comments rather than include the transcript from the public hearing verbatim. The original transcript of the public hearing is a public document available from DEQ upon request.

**Comment #1:** We would first like to start off by thanking the DEQ for the work in your process and all the time and the energy that the agency put forth in working in good faith on the permit.

**Response #1:** DEQ appreciates the City of Bozeman's participation in the stakeholder process for the reissuance of the general permit.

**Comment #2:** We do have concerns with one particular sentence in the effluent limitations component of the draft permit, which states that MS4 discharges shall not cause or contribute to a violation of water quality standards. We have provided suggested draft language to remove that statement of the permit that we do believe we can comply with.

**Response #2:** Please see DEQ Response #2 to the Cities Comment #2 above.