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Via Email and Regular Mail

Steve A. Watts
New York State Department of Environmental Conservation
47-40 21st Street
Long Island City, NY 11101-5407

Re: Revised Draft State Pollutant Discharge Elimination System Permit for
Stormwater Discharges from Municipal Separate Storm Sewer Systems
Owned or Operated by the City of New York

Dear Mr. Watts:

The City of New York (“City”) submits the following comments on the Revised Draft State Pollutant Discharge Elimination System (“SPDES”) Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (“MS4”) owned or operated by the City (“Revised Draft Permit”). The Revised Draft Permit was issued for public comment on March 11, 2015, and has been updated in several important respects in response to comments received on the prior draft of the permit, which was publicly noticed in February 2014. As explained below, the City supports the Revised Draft Permit and believes it appropriately balances the need for flexibility in crafting practicable, evidence-based strategies to improve water quality in and around New York City, with the goal of realizing meaningful reductions in stormwater pollutants through the many programs required under the permit.

A. The Scope of the Revised Draft Permit is Ambitious, but Feasible

The Revised Draft Permit, which will be issued to the City as Permittee, touches on programs and operations from essentially every operational agency within the City, and also implicates a number of non-operational agencies with regulatory programs that can impact stormwater controls. It requires 27 separate deliverables beginning three months after the

effective date.¹ The Stormwater Management Plan (“SWMP”) itself will be comprised of 28 separate elements,² going well beyond the six minimum control measures set forth in federal law and guidance. As just two examples of the scope of effort required under the permit, our preliminary estimates have identified over 1,000 municipal facilities in the MS4 areas of the City that will be subject to the good housekeeping and pollution prevention requirements in Part IV.G, and there could be as many as 3,000 to 4,000 private commercial and industrial facilities that will be subject to City oversight subject to the provisions in Part IV.H.³ As noted in the City’s comment letter dated April 7, 2014, regarding the prior version of the draft permit, the City has already established an interagency task force to gather relevant information and plan for the substantial effort involved in permit implementation. The various timeframes included under the permit will allow the City to complete required tasks and lay the groundwork for success.

B. The City Supports the Key Revisions to the 2014 Draft Permit that Address the Vast Majority of Stakeholder Comments

Several commenters provided comments on the prior version of the draft permit covering a broad range of issues. These included, among other things, comments seeking permit revisions to require the City to coordinate development and implementation of its SWMP with other existing or required pollution control efforts; suggestions that the timeframes for implementing various permit programs, including the floatables loading rate study, were too long; and requests to decrease the threshold for triggering post-construction controls under the construction stormwater program from the current requirement of one acre in the statewide general permit to 5000 square feet. The Revised Draft Permit has been updated with several new or modified provisions to address the vast majority of, if not all, stakeholder comments, including detailed provisions to address these three key issues. At the same time, the Revised Draft Permit still ensures that the overall program requirements are feasible for the City to implement, and consistent with applicable law. The City supports the approaches taken in the Revised Draft Permit to address these key stakeholder comments.

(a) Impaired Waters with CSO Long Term Control Plans

The Revised Draft Permit includes important provisions to ensure that the City’s program to control discharges from its MS4 complements water quality improvement efforts in impaired waters with approved Combined Sewer Overflow Long Term Control Plans (“CSO LTCPs”).⁴ These provisions respond to concerns raised by commenters that the prior version of the Draft Permit did not adequately address the interaction between the SMWP and CSO LTCPs

¹ See Revised Draft Permit Part O, Table 3.

² See Revised Draft Permit Appendix 3.

³ These figures represent preliminary estimates and will be refined as the City develops and implements the SWMP.

⁴ Revised Draft Permit Part. II.B.2.

in addressing stormwater caused impairments to waterbodies. To that end, the Revised Draft Permit requires the City to consider whether to incorporate measures to remediate Pollutants of Concern (“POCs”) identified in CSO LTCPs as part of the SWMP approval process for Priority MS4 Waterbodies: the City must identify priority source categories contributing significant levels of POCs; it must provide a list of additional best management practices (“BMPs”) to remediate POCs from the priority source categories and a schedule to implement such BMPs within the shortest reasonable time; and it must describe opportunities for implementing feasible, cost-effective green infrastructure pilot projects and other structural retrofits.⁵ The Revised Draft Permit also requires the City to include as part of its annual SWMP report information on the progress of the implementation of the aforementioned BMPs and opportunities for green infrastructure pilot projects and other structural retrofits.⁶ These provisions ensure that the SWMP will complement the CSO LTCPs in addressing POCs in impaired waters where there are no TMDLs for such POCs.

The City believes these new permit provisions ensure that the SWMP will benefit from the work in the CSO LTCPs, and are responsive to requests by commenters. This strategy is consistent with approaches taken nationally in other impaired waters. For example, U.S. Environmental Protection Agency (“EPA”) Region 3, which oversees pollution control in the nation’s largest estuary, the Chesapeake Bay, has emphasized that municipal stormwater management is an iterative process that involves continual monitoring, evaluation, and adjustment of practices.⁷ EPA Region 3’s guidance documents on stormwater management have been made available for all interested stakeholders on the EPA website.⁸ Similarly, EPA Region 1 has taken an iterative approach in its recent draft permit for small MS4s in Massachusetts, requiring municipalities that contribute to impairment of waters for which there is no established TMDL to develop and implement BMPs tailored to address pollutants causing impairment.⁹

⁵ Revised Draft Permit Part II.B.2.a.

⁶ Revised Draft Permit Part II.B.2.b.

⁷ EPA Region 3, “Evaluating the Effectiveness of Municipal Stormwater Programs” (January 2008) at 4, *available at* http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/upload/region3_factsheet_swmp.pdf.

⁸ U.S. EPA, Municipal Separate Storm Sewer System Main Page, *at* <http://water.epa.gov/polwaste/npdes/stormwater/Municipal-Separate-Storm-Sewer-System-MS4-Main-Page.cfm> (last visited April 6, 2015).

⁹ *See* U.S. EPA Region 1, General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts § 2.2.2, *available at* <http://www.epa.gov/region1/npdes/stormwater/ma/2014DraftMASmallMS4GeneralPermit.pdf>. The 2014 Draft Massachusetts Small MS4 General Permit was released for public comment on September 30, 2014.

Additionally, the challenges arising from the complexity and scope of municipal stormwater management have led EPA to recommend that BMPs, not specific numerical targets, are the appropriate means of implementing TMDL effluent limitations in SWMPs,¹⁰ and the same considerations apply to impaired waters with approved CSO LTCPs. The Revised Draft Permit grants the City necessary flexibility to implement effective and cost-efficient BMPs and other remedial measures tailored to the unique circumstances of individual water bodies on a prioritized basis. By requiring the City to implement such BMPs within the shortest reasonable time, the Draft Permit ensures that the City will take action to remediate ongoing impairment without undue delay.

(b) Construction Site Threshold Study

As set forth in the City's comments on the prior version of the draft permit, dated April 7, 2014, there are several reasons why the final MS4 permit issued to the City should retain the one acre threshold at this time rather than reducing the size threshold that triggers provisions for construction and post-construction stormwater controls. To accommodate the concerns of several commenters who sought a reduced size threshold, however, the Revised Draft Permit includes a new requirement to conduct a study to determine the appropriate reduction in lot size threshold, taking into consideration local site conditions, compliance costs, and other factors.¹¹ This provision appropriately recognizes the need to ensure that any changes to the construction and post-construction requirements are supported by evidence and careful study, and are informed by outreach to interested stakeholders. In conducting the required study, the City will seek input from a wide variety of interested parties, and will review the approaches used in other communities to identify feasible and appropriate practices as part of its recommendations. This approach will also allow the City to coordinate with DEC following the completion of the study to consider and propose any necessary changes to DEC's construction general permit so that requirements are consistent citywide.

(c) Control of Floatable and Settleable Trash and Debris

Some commenters suggested that the timeframe for conducting and completing the work plan to determine the loading rate of floatable and settleable trash and debris from the MS4 should be adjusted. Contrary to these commenters' suggestion, development of the work plan will require a two-year timeframe as it has to be scientifically sound as well as practical. The methodology not only has to describe data collection, frequency, temporal and spatial extent, and appropriate equipment for data collection but must also include the type of statistical and spatial data analysis to be utilized, along with specific recommendations. In addition, to obtain the required data, DEP must hire a consultant with appropriate expertise and resources; as noted in the Fact Sheet accompanying the Revised Draft Permit, there must be sufficient time to

¹⁰ EPA Region 3, "Understanding Impaired Waters and Total Maximum Daily Load (TMDL) Requirements for Municipal Stormwater Programs" (January 2008) at 1, *available at* http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/upload/region3_factsheet_tmdl.pdf.

¹¹ Revised Draft Permit Part IV.F.4.

procure these services under the City’s legally mandated procurement process. Moreover, a two-year period is an ambitious goal for a work plan which also includes: conducting a literature search of methods employed by other municipalities; assessing the applicability of other municipalities’ methods to New York City; assessing the conditions under which floatables materials reach the waterbodies in NYC; and explaining why the selected methodology is best for conditions in New York City.

The Revised Draft Permit has been updated to include a deadline to complete the study, which is not to exceed three years from study commencement,¹² addressing the concern raised by some commenters that the previous permit provision was too open-ended. In addition, the Revised Draft Permit now requires the City to implement an interim media campaign to educate the public on trash and debris control, in addition to the requirement to continue implementing existing or improved floatable and trash control programs as set forth in the prior version of the permit.¹³ These provisions, along with the requirement to conduct a loading rate study and to assess and implement reduction strategies, will ensure that the City’s existing measures continue while allowing appropriate time to develop robust baseline data and recommendations to improve floatables and refuse controls under the auspices of the MS4 program.

C. Miscellaneous Comments

Finally, the City has identified a number of remaining drafting issues and/or clarifications that should be addressed when the Revised Draft Permit is finalized, as follows.

(a) Requirements for MSGP Coverage for Municipal Operations and Facilities

As part of the good housekeeping and pollution prevention program for municipal operations and facilities under Part IV.G.1 of the Revised Draft Permit, municipal operations and facilities that would otherwise be subject to the statewide Multi-Sector General Permit (“MSGP”) will be required “to prepare and implement provisions in the SWMP that comply with” Parts III.A and III.C through F of the MSGP. As currently drafted, this provision implies that the SWMP will “implement” these terms of the MSGP. However, the SWMP does not implement programs; rather, it is a planning document that sets forth the various programs and BMPs that the City will implement to manage stormwater pollution, along with measureable goals and timelines for implementation. The final permit should clarify that MSGP coverage can be implemented through procedures identified in the SWMP, and that the SWPPPs required for all MSGP facilities are not required to be included in the SWMP itself.

¹² Revised Draft Permit Part IV.I, page 28.

¹³ Revised Draft Permit Part IV.I, page 28.

(b) Use of Third Parties for SWPPP Inspections

Parts IV.E.1.i and IV.F.1.g of the Revised Draft Permit requires the SWMP to describe procedures for inspections of construction sites and post-construction stormwater management practices, respectively, to ensure that the measures identified in the approved SWPPPs are in place and performing properly. As is common in other City-inspection regimes and in other jurisdictions' administration of construction stormwater requirements as part of their MS4 programs, the City understands that third party inspectors may be used to fulfill this requirement, and believes the permit allows the use of such third party inspectors.

(c) Description of Erosion and Sediment Control Requirements in Table 3

Table 3 in Part IV.O of the Revised Draft Permit includes a reference to "Part III.B.1.e" and indicates it requires development of a law, ordinance or regulatory mechanism to require basic erosion and sediment controls and good housekeeping for all construction projects.¹⁴ This item in Table 3 appears to be an error. First, there is no Part III.B.1.e in the Revised Draft Permit. There is a Part III.B.2.e, but this provision requires that the City demonstrate adequate legal authority to require measures to control water runoff, construction materials and debris, and erosion during construction or demolition activities in discharges to the MS4. The final version of the permit should update both the reference and the language in Table 3 to match the substantive requirements of Part III.B.2.e.

(d) Stormwater Management Banking and Credit System

Part IV.E.1.h of the Revised Draft Permit provides that the City may include a banking and credit system that would allow for offsite alternative stormwater management in lieu of or in addition to onsite stormwater management in development projects. The provision includes several limitations on the banking and credit system that may make it ineffective and difficult to implement and use successfully. In particular, the requirement to use a two-to-one ratio for any credit, and to only permit offsite credits within the same watershed, may undercut the value of any credit banking system for project developers. The final permit should be revised to provide additional flexibility to the City in designing a stormwater management banking and credit system.

(e) Reference to "Current Version" of Stormwater Design Manual

Parts IV.E and IV.F of the Revised Draft Permit include several references to New York State design standards, along with the phrase "most current version or its successor." We understand the intent of this language to require that the City's program require that SWPPPs be designed in accordance with the standard that is current and applicable at the time the SWPPP review application is submitted. However, as currently drafted, the reference to successor versions could be read to require that SWPPPs be redesigned after design completion if an

¹⁴ This language appears in the third item under the "III.B Legal Authority" section of Table 3, on page 35 of the Revised Draft Permit.

update the relevant design standards is issued between design and completion. As DEC recognized in an analogous situation addressed by its recently issued draft transition policy regarding the 2015 update to the Stormwater Design Manual, such a result would impose unnecessary and inappropriate economic impacts on certain construction activities that had already started the design process under the prior design standards. Thus, the final permit should be updated to make clear that SWPPP applications should meet the standards in the version in effect at the time of their submittal.

(f) Correction to Zip Code on Permit Cover Sheet

The zip code associated with the address of DEP's main offices at 59-17 Junction Boulevard in Flushing should be updated to 11373 both times it appears on page one of the Revised Draft Permit.

D. Conclusion

The City urges DEC to issue as final the Revised Draft Permit in its current form, with the minor corrections and clarifications noted above, as it fully complies with the relevant provisions of the Clean Water Act and the Environmental Conservation Law, and provides a detailed yet flexible framework for the City's development and implementation of a stormwater management program. We look forward to working with DEC, the regulated community and other stakeholders to further improve water quality through implementation of the permit conditions in the coming years.

Sincerely,



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