

Legal Authority and Program Administration

Municipal Separate Storm
Sewer Systems of New York City

SPDES Number: NY-0287890
Revised September 30, 2020



Statue of Liberty



Jamaica Bay

On August 1, 2015, the City of New York (the City) received a State Pollutant Discharge Elimination System (SPDES) permit that authorizes the discharge of stormwater from the Municipal Separate Storm Sewer System (MS4 Permit) (No. NY-0287890) from the New York State Department of Environmental Conservation (NYSDEC). The MS4 Permit requires the City to implement measures to reduce pollution in stormwater runoff, which protect and improve water quality.

Part III of the MS4 Permit requires the City to develop and implement a Stormwater Management Program (SWMP) Plan. This SWMP Plan (Plan) describes the SWMP and associated best management practices (BMPs) the City will perform to reduce, to the maximum extent practicable (MEP), the discharge of pollutants from the MS4. The federal Clean Water Act and the New York State Environmental Conservation Law established the MEP standard as the appropriate compliance standard for MS4s because of the unique nature of stormwater. Implementation of the SWMP achieves the MEP requirement.

Part III of the MS4 Permit also requires the City to:

- Develop adequate legal authority to implement and enforce the SWMP
- Establish enforcement measures and tracking
- Ensure adequate resources to comply with the MS4 Permit
- Notify entities regulated under the MS4 Permit

This chapter outlines the development of the SWMP including administrative documents; delineates City agency roles and responsibilities; describes the collaborative planning process; details the City's legal authority to implement the SWMP; and includes the Enforcement Response Plan (ERP) (Appendix 1.1), third party certification requirements, Fiscal Analysis (Appendix 1.4), and requirements for notification of entities regulated under the MS4 Permit.

1.1 Stormwater Management Program Administration

The City's SWMP planning efforts began during MS4 Permit negotiations with NYSDEC. There was coordination among agencies throughout SWMP development, and it will continue throughout SWMP implementation. The strategies designed to develop and implement the SWMP emphasize roles and responsibilities, legal structures, and collaborative efforts to ensure MS4 Permit compliance.

SWMP Development

In 2013, under Executive Order 429, the Mayor charged the New York City Department of Environmental Protection (DEP) with responsibility for coordinating efforts among City agencies with respect to all matters relating to the MS4 Permit requirements. Executive Order 429 also directed all mayoral agencies and the Department of Education (DOE) to collaborate with DEP. This collaboration included requirements that agencies:

- provide to DEP all information necessary for permit compliance;
- implement controls included in the SWMP that fall within their responsibilities and work with the New York City Office of Management and Budget (OMB) to identify funding for SWMP implementation;
- create and maintain adequate records and prepare any reports required by the MS4 Permit; and
- provide technical assistance and support to DEP within their areas of expertise, including training and education of agency staff and other parties.

Before NYSDEC issued the permit, the Mayor's Office initiated the Stormwater Controls Working Group, a team of representatives from the following New York City agencies that collaborate on MS4 programs. A subset of these agencies have obligations under the MS4 Permit.

Agencies with MS4 Permit Obligations

- Department of Citywide Administrative Services (DCAS)
- Department of City Planning (DCP)
- Department of Design and Construction (DDC)
- Department of Environmental Protection (DEP)
- Department of Buildings (DOB)
- Department of Corrections (DOC)
- Department of Education (DOE)
- Department of Health and Mental Hygiene (DOHMH)
- Department of Transportation (DOT)
- Department of Parks and Recreation (DPR)
- Department of Sanitation (DSNY)
- Fire Department (FDNY)
- Police Department (NYPD)
- Small Business Services (SBS)

Collaborators

- NYC Law Department (LAW)
- Economic Development Corporation (EDC)
- Mayor's Office of Management and Budget (OMB)
- Mayor's Office of Recovery and Resiliency (ORR)

This group regularly met to discuss permit-related matters during the City's negotiations with NYSDEC. After NYSDEC issued the MS4 Permit, DEP led the overall development of the SWMP, and the Stormwater Controls Working Group continued to meet regularly to discuss stormwater program development. The City also created technical sub-teams comprised of interagency staff with relevant responsibilities for program elements of the SWMP.

Maximum Extent Practicable (MEP) Standard

Because of the unique nature of stormwater (an MS4 has limited control of its inputs and cannot treat them as a wastewater treatment plant can treat its influent before discharging it to a waterbody), the Clean Water Act¹ established the MEP standard as the appropriate compliance standard for the MS4s. The New York State Environmental Conservation Law also establishes the same standard.² Rather than requiring strict compliance with water quality standards through traditional end-of-pipe control techniques or numeric effluent limits, the MEP standard requires that the City implement all technically-feasible and cost-effective best management practices (BMPs) that will reduce the discharge of pollutants to the MS4.

1 33 U.S.C. § 1342(p)(3)(B)(iii)

2 ECL § 17-0808(3)(c)

There are eight sub-teams for different SWMP requirements: three within DEP—Industrial and Commercial, Illicit Discharge Detection and Elimination (IDDE), and Monitoring; and five in collaboration among various City agencies—Public Outreach & Participation, Mapping, Pollution Prevention/Good Housekeeping, Construction & Post-Construction, and Floatables. The sub-teams convened as necessary to decide on approaches, policies, and specific program elements.

Additionally, the City met regularly with NYSDEC to provide updates on the status of SWMP development. The City submitted multiple deliverables prior to SWMP submittal, as documented in Appendix 1.2. The City also coordinated with NYSDEC regarding the transfer of necessary data and information related to the Industrial and Commercial and Construction and Post-Construction programs, particularly related to NYSDEC SPDES Multi Sector General Permit for Stormwater Discharges associated with Industrial Activity, Permit No. GP-0-17-004 (MSGP), and SPDES General Permit for Stormwater Discharges from Construction Activity GP-0-15-002 (Construction General Permit or CGP).

Further, throughout SWMP development, the City solicited input from stakeholders through regular public meetings, informal discussions, and targeted outreach meetings. Refer to Chapter 3: Public Involvement and Participation for more information or Appendix 3.1: Stakeholder Meeting Log with Summary of Public Comments and City Responses.

SWMP Implementation

Local Law 97 of 2017 (NYC Stormwater Law) revised section 1403 of the New York City Charter and codified DEP's role in coordinating the City's compliance with the MS4 Permit. DEP administers the overall SWMP, while each City agency is responsible for implementing specific SWMP components applicable to its own activities, facilities, and/or operations. Each Chapter of this Plan identifies the agencies responsible for implementing the initiatives and programs described. Figure 1.1 lists agencies and their corresponding roles in SWMP development and implementation. Appendix 1.3 provides an organizational chart specifying the agencies and key personnel. Email questions, comments, and suggestions for this Plan to MS4@dep.nyc.gov.

Some agencies have entered into Memoranda of Understanding (MOUs) with DEP, delineating responsibilities under the Permit. Additionally, some agencies have New York City Charter-required stormwater management responsibilities relevant to the MS4 Permit. These agencies have a more substantial role in stormwater management by virtue of their obligations and duties under the New York City Charter:

- DEP is responsible for providing water, disposing of sewage, and controlling water pollution. These responsibilities include responding to emergencies caused by releases or threatened releases of hazardous substances and managing the location, construction, alteration, repair, maintenance, and operation of DEP-owned sewers, including intercepting sewers. DEP is also responsible for planning, managing, and maintaining DEP's sewer and drainage systems, and for the management and control of discharges and runoff from public and private property, including stormwater discharges. In addition, DEP is authorized to coordinate the actions of City agencies in complying with the MS4 Permit.
- DPR is responsible for managing and caring for all parks, squares, public spaces, playgrounds, playground fixtures, and other recreation properties, except those within the jurisdiction of DOE or other agencies. Maintenance and care of these areas extends to the sidewalks that immediately adjoin them. DPR is also responsible for planting and maintaining trees and other plantings in public places belonging to the City.
- DOB is responsible for enforcing provisions of the building code, zoning resolution, multiple dwelling law, labor law, and other laws, rules, and regulations that relate to the construction, alteration, maintenance, use, occupancy, safety, sanitary conditions, mechanical equipment, and inspection of buildings or structures in NYC.
- DOT is responsible for constructing, maintaining, and repairing public roads, streets, highways, parkways, bridges, and tunnels. These responsibilities include regulating, grading, curbing, flagging, and guttering of streets; and designing, constructing, and repairing of public roads, streets, highways, and parkways. These responsibilities also include paving, repaving, resurfacing, and repairing all public roads, streets (including marginal streets and places), highways, and parkways, and the relaying of pavement.

- DSNY is responsible for keeping streets clean and disposing of waste. These responsibilities include sweeping, cleaning, sprinkling, flushing, washing and sanding streets; removing and disposing of street sweepings, recyclables, organics, garbage, refuse, rubbish, and waste; and removing ice and snow from the streets. DSNY is also responsible for planning, constructing, operating, and maintaining transfer stations, garages, salt sheds, and other facilities necessary for performing its responsibilities.

- SBS is responsible for all functions and operations of the City relating to business and economic development; the enhancement of economic development and financial opportunity for minority and women owned business enterprises; and ensuring equal employment opportunity by City contractors. These responsibilities include the power and duty to exercise the functions of the City relating to the development, redevelopment, construction, reconstruction, operation, maintenance, management, administration, and regulation of public markets, wharf property, water front property, and airports within NYC.

Agency Roles and Responsibilities Matrix
Figure 1.1

	Lead					Participating														
	Authority and Administration	Program Administration	Legal Authority	Enforcement Response Plan	Fiscal Analysis	Reliance on Third Parties	Stormwater Management Program	Public Education and Outreach	Public Involvement and Participation	Mapping	IDDE	Construction and Post Construction Controls	PP/GH	Industrial/ Commercial Sources	Control of Floatable and Settleable Trash and Debris	Monitoring and Assessment	Special Conditions for Impaired Waters	Recordkeeping and Reporting		
City Law	✓	★	✓	✓	✓	★		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
DCAS					✓	✓			✓	✓		✓							✓	
DCP						✓		✓	✓		✓								✓	
DDC					✓	✓		✓		✓		✓							✓	
DEP	★	✓	★	★	★	✓		★	★	★	★	★	★	★	★	★	★	★	★	
DOB						✓		✓		✓	✓								✓	
DOC					✓	✓		✓	✓	✓		✓							✓	
DOE					✓	✓		✓	✓	✓		✓		✓			✓		✓	
DOHMH					✓	✓		✓		✓		✓			✓				✓	
DOT					✓	✓		✓	✓	✓		✓		✓					✓	
DPR					✓	✓		✓	✓	✓		✓		✓			✓		✓	
DSNY					✓	✓		✓	✓	✓		✓		✓			✓		✓	
FDNY					✓	✓		✓	✓	✓		✓							✓	
NYPD					✓	✓		✓	✓	✓		✓		✓					✓	
SBS					✓	✓		✓	✓	✓	✓	✓							✓	

1.2 Legal Authority

This section describes the City's legal authority to implement and enforce the SWMP. The City provided NYSDEC with two prior submissions (dated February 1, 2016 and August 1, 2017), which detailed the City's existing legal authority and included a timeline to complete the remaining elements of the legal authority necessary to implement the MS4 Permit requirements.

Existing Legal Authority as of Permit Issuance

Pursuant to MS4 Permit Part III.B.1., within six months of August 1, 2015, the City was required to provide a description of its existing legal authority to control discharges to the MS4. On February 1, 2016, the City fulfilled this permit requirement by submitting a description to NYSDEC of the City's existing legal authority as of that date. The City provided an update to NYSDEC on August 1, 2017. Both of these submissions are available on the [DEP website](#).¹ The City concluded that the structure of government established in the New York City Charter provides adequate legal authority to the Mayor and mayoral agencies to manage their operations and facilities, and to ensure coordination and sharing of information for the City's compliance with the MS4 Permit.

Enhanced Legislative Authority

In the February 2016 submission to NYSDEC, the City identified three programs, which the MS4 Permit requires the City to administer, that required supplemental legislation in order to complete the development of the legal authority necessary to the City meeting its permit obligations:

- Illicit Discharge Detection and Elimination (IDDE)
- Construction Site Stormwater Runoff Control and Post-Construction Stormwater Management
- Industrial and Commercial Stormwater Sources

For all three programs, the City is required to act in a regulatory capacity to oversee and/or enforce requirements regarding activities in the MS4 area that have the potential to contribute pollutants to stormwater runoff and the waterbodies surrounding NYC. Both the Industrial/Commercial and Construction/Post-Construction programs involve the City's assumption of responsibility for administering, within the MS4 area, portions of existing New York State stormwater programs. The IDDE program continues, with minor updates, DEP's robust existing program to detect and address citywide, illicit discharges to the sewer system.

Accordingly, in its February 2016 submission, the City proposed a plan to design a comprehensive legislative and

regulatory program tailored to enable the City to implement fully these Permit-required programs.

On May 10, 2017, the New York City Council approved comprehensive legislation that consolidates, clarifies, and supplements the City's legal authority to regulate stormwater discharges, to enable the City to act in a regulatory capacity to control pollutant discharges into and from its MS4. The Mayor signed the legislation on May 30, 2017. NYC Stormwater Law is also available on the [City website](#).²

Enhanced Regulatory Authority

The NYC Stormwater Law provides the City sufficient legal authority to complete the rulemaking necessary for the three regulatory programs. The rule making process is described on the next page. The City is proceeding with rulemaking in phases:

- **IDDE**
 - » DEP published proposed IDDE rules on September 26, 2017 and held the public hearing on October 25, 2017.
 - » DEP published the [final rule](#)³, titled Regulation of Discharges into Storm Sewers and Catch Basins, on February 28, 2018. The rule took effect Friday, March 30, 2018. These rules are equivalent to the State's model IDDE law, as required by the MS4 Permit.
- **Construction Site Stormwater Runoff Control and Post-Construction Stormwater Management**
 - » DEP published proposed rules for the Construction/Post-Construction program on July 30, 2018 and expects to hold a public hearing on October 10, 2018.
 - » DEP expects to publish final rules within 30 days of Plan approval. The final rules will establish the effective date for the Construction/Post-Construction program, which must be between 45 and 180 days after Plan approval, as provided in the NYC Stormwater Law.
- **Industrial and Commercial Stormwater Sources**
 - » DEP published proposed rules for the Industrial and Commercial program on July 30, 2018 and expects to hold a public hearing on October 10, 2018.
 - » DEP expects to publish final rules in December, 2018. The final rules will establish the effective date for the Industrial/Commercial program, which must be between 45 and 180 days after Plan approval, as provided in the NYC Stormwater Law. DEP expects an effective date at the earlier end of this time range.

1 <https://www1.nyc.gov/site/dep/water/municipal-separate-storm-sewer-system.page>

2 https://www1.nyc.gov/assets/buildings/local_laws/ll97of2017.pdf

3 <https://rules.cityofnewyork.us/content/regulation-discharges-storm-sewers-and-catch-basins-0>

Rulemaking Process

Step 1: Agency drafts rule

The New York City Charter gives certain agencies the authority to propose rules. When an issue arises, agencies analyze the problem and investigate various solutions. If it is determined that a new rule would be the best course of action, a proposal will be drafted. Agencies also sometimes propose rules because they are mandated by law to do so.

Step 2: Agency notifies public of proposed rule

Before an agency can pass a rule into law, the public must be given the opportunity to review the proposed rule and provide commentary, either by submitting suggestions in writing or by speaking at a public hearing.

To that end, the agency must submit official notice to the City Record, the City Council, community boards, media outlets, and civic organizations, as well as the NYC Rules website.

The official notice must include:

- Purpose and completed text of the proposed rule
- Explanation of the legal authority given to the agency
- Time and place of public hearing
- Deadline for submitting comments on NYC Rules web site or in writing

Agencies are required to distribute notice of the rule at least 30 days prior to the scheduled public hearing, or the end of the comment period, whichever comes first.

Step 3: Agency holds public hearing

A public hearing is held by the agency to discuss the proposed rule and review all of the testimony that has been submitted. Testimony includes any written comments submitted on the NYC Rules web site or, through the mail, and spoken testimony provided at the public hearing.

Step 4: Agency publishes final rule

Once all of the testimony has been reviewed, the agency will modify the rules based on the public's feedback, if necessary, then draft a final version. A copy is posted on NYC Rules, published in the City Record, and submitted to the City Council.

Step 5: Final rule is adopted and becomes law

The rule takes effect 30 days after the final version is published.

1.3 Enforcement Response Plan

As required by MS4 Permit Part III.C, the City has developed an enforcement response plan (ERP), which sets out the permittee's potential responses to violations, as needed to achieve compliance with requirements of the following programs (Permit Parts IV.D, IV.E, IV.F and IV.H, respectively):

- IDDE
- Construction Site Stormwater Runoff Control and Post-Construction Stormwater Management
- Industrial and Commercial Stormwater Sources

The ERP (Appendix 1.1) is a protocol for investigating, documenting and, where appropriate, enforcing against unauthorized discharges into the MS4. As the agency responsible for administering the above-referenced programs on behalf of the City, DEP will implement the ERP in cooperation with other City agencies, including DCP, DOB, and SBS.

DEP has based its approach on progressive enforcement, as required by the permit Part III.C.1, addressing “persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm” through “progressively stricter responses,” taking into consideration the violator’s responsiveness and history of violations, as well as the severity and type of violation. Enforcement responses include verbal warnings, written notices of violation (NOVs), citations with civil and administrative penalties, criminal penalties, stop-work orders, cease and desist orders, and withholding of plan approvals or permits.

1.4 Reliance on Third Parties

Pursuant to the MS4 Permit, the City must provide adequate assurance, through a signed certification statement, that any third party entity (e.g., consulting firms, construction contractors, etc.) that develops or implements any portion of the SWMP complies with the MS4 Permit requirements applicable to the work performed. The MS4 Permit also requires any third-party entities performing municipal operations, including but not limited to street sweeping, snow removal, and lawn/grounds care, to comply with relevant MS4 Permit provisions.

Each City agency using a third-party entity to develop or implement any portion of the SWMP or to perform any municipal operation must provide the third party with a copy of the MS4 Permit and must ensure that the third-party entity complies with MS4 Permit requirements.

The City has developed two boilerplate certifications, a General Certification and a Certification of Deliverable, for use with third-party entities that perform, on behalf of City agencies, contracted services to develop or implement any portion of the SWMP. These certifications are also to be used by third-party entities that perform pollution prevention and good housekeeping for municipal operations, which include “any operation or facility serving a New York City governmental purpose and over which New York City has operational control.”

- **Certifications for Existing Contracts**

For existing contracts with such third parties, City agencies have provided the third parties with a copy of the MS4 Permit and have obtained a signed General Certification from each third-party contractor stating that the third party will comply with applicable MS4 Permit requirements. The General Certification also identifies the deliverables that will be subject to individual certification and for which the third party entity will need to provide a Certification of Deliverable to the agency. The Certification of Deliverable confirms that the third party developed the relevant deliverable in compliance with all applicable requirements of the MS4 Permit.

- **Certifications for Future Contracts**

For all future contracts with such third parties, City agencies will include appropriate language in each contract that requires the third party to certify that it will comply with applicable MS4 Permit requirements. Each contract will also delineate the deliverables for which the third party must provide a Certification of Deliverable.

1.5 Fiscal Analysis

Part III.D of the MS4 Permit requires the City to secure the resources necessary to meet all requirements of the permit. In addition, the Plan must include an analysis of the capital and operational and maintenance expenditures necessary to meet such requirements during the five-year permit term, including costs related to developing and implementing the SWMP. This analysis must include a description of the source of funds that are proposed to meet the necessary expenditures, including any legal restrictions on the use of such funds.

The City completed its analysis of the resources needed to meet the MS4 Permit obligations during this permit term. Based on the analysis, the City is confident that it has adequate resources to comply with the Permit's requirements. The City's fiscal analysis is provided in Appendix 1.4.

New Creek Bluebelt, Staten Island



1.6 Notification of Entities Regulated Under MS4 Permit

Part III. E of the MS4 Permit requires the City to provide notice to entities that are subject to two new regulatory programs the City will administer under the SWMP. For both programs, one relating to industrial facilities and the other to certain construction activities, the City must provide such notice within three months of submission of this Plan to NYSDEC.

Industrial and Commercial Stormwater Sources. DEP will commence implementation of its program to inspect industrial and commercial sites and to enforce the MSGP a minimum of 45 days and a maximum of six months after NYSDEC approves this Plan. In connection with this program, DEP will provide the following notifications:

- **Existing MSGP-permitted facilities.** DEP used existing facility data obtained from NYSDEC's Dropbox to obtain facility contact information and will mail a notification letter to each owner/operator indicating that DEP will be inspecting the facility for compliance with MSGP requirements. DEP will send these notifications within three months of submission of this Plan.
- **Unpermitted facilities that may require SPDES permits for stormwater discharges from industrial activities.** DEP created a list of industrial and commercial sites, as described in Chapter 8: Industrial and Commercial Stormwater Sources. DEP will send an initial notification to each facility on this list within three months of submission of this Plan. This notification states that DEP will inspect to determine for each facility whether DEP should refer it to NYSDEC for possible SPDES MSGP or individual SPDES permit coverage and whether it observed illicit discharges during the assessment. For each facility, DEP will send a subsequent notification closer to the date of DEP's assessment. DEP will send these notifications approximately every quarter.
- **Notification to facility owners of the inspection results.** After the inspections, DEP will mail letters to unpermitted facilities notifying them of the findings of the inspections. If a facility potentially needs SPDES coverage, DEP will inform that facility that it should contact NYSDEC to determine appropriate coverage. In addition, DEP will notify NYSDEC of that facility's potential need for SPDES coverage. If NYSDEC confirms that the facility needs MSGP coverage, the facility will have to file a Notice of Intent (NOI) with NYSDEC and meet the other requirements to obtain coverage under the MSGP.
- **Newly MSGP-permitted facilities.** NYSDEC will provide information on newly covered MSGP facilities to DEP, and, thereafter, DEP will include those facilities in its notifications to MSGP-permitted facilities indicating that DEP will be inspecting them for MSGP compliance.

Construction Site Stormwater Runoff Control. DEP is developing a new program to regulate stormwater discharges from construction activities, which will take effect between 45 and 180 days after NYSDEC approves this Plan, as determined by the associated rule. Once NYSDEC approves this Plan, DEP will also conduct complaint-based inspections of CGP-covered construction activities.

- **Existing CGP-permitted properties.** DEP will contact, via email or by ordinary mail if email is not available, owners and operators with coverage under the CGP, as provided by NYSDEC, to inform them that all new construction projects in the MS4 area will require them to obtain a Construction Stormwater Permit from DEP. To facilitate this requirement, DEP will offer a Fact Sheet with a general location map of the MS4 area, information to access the online application system, and information about the general requirements of the permit. Refer to Chapter 6: Construction and Post-Construction for details about this new program.
- **Future owners and operators.** DEP will offer sewer connection applicants information on obtaining a Stormwater Construction Permit in the MS4 area. By notifying applicants making storm sewer connections, DEP will confirm that future owners or operators of construction sites within the MS4 area have the information they need about the new requirements.



Dolphins in New York Harbor