

**New York City Municipal Separate Storm Sewer (MS4) Permit
(SPDES Number NY-0287890)**

Description of the City of New York's Legal Authority to Control Discharges to the MS4

Submitted Pursuant to Permit Part III.B.1

August 1, 2017

The New York State Department of Environmental Conservation's ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") Permit Number NY-0287890, effective August 1, 2015 ("Permit"), requires the City of New York ("City") to "provide a written certification statement prepared by its NYC Corporation Counsel or his designee" within two years of the effective date that the City has developed "adequate authority to control pollutant discharges into and from its MS4." Permit Part III.B.1. Permit Part III.B.2 identifies the required elements of legal authority that the City must certify.

In accordance with Permit Part III.B.1, on February 1, 2016, the City provided "a description of existing legal authority to control discharges to the MS4." Because the City's legal authority as of the date of that submission was not "sufficient to meet the criteria provided in Part III.B.2," the City's submission listed the additional authorities it must develop and included a "schedule for adoption of the necessary authorities with interim milestone dates not to exceed nine month intervals."

As set forth below, the City now has sufficient legal authority to complete the rulemaking necessary to fulfill the criteria provided in Permit Part III.B.2. This submission also updates the City's anticipated schedule for that rulemaking, and includes milestone dates that do not exceed nine month intervals.

Local Law 97 of 2017

On May 10, 2017, the New York City Council approved comprehensive legislation that consolidates, clarifies, and supplements existing legal authority, to enable the City to act in a regulatory capacity to control pollutant discharges into and from its MS4. The legislation was signed by the Mayor on May 30, 2017. Local Law 97 of 2017 ("NYC Stormwater Law") is available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2884636&GUID=C605C2B3-29BA-4D7A-83D8-392CD45C7093>.

As noted in the February 2016 submission, the City has existing legal authority for mayoral agencies to manage their own operations and facilities. Consistent with Executive Order No. 429 of 2013, which gave the City's Department of Environmental Protection ("DEP") the authority to act on behalf of the City and to coordinate efforts of City agencies with respect to all matters relating to the City's Stormwater permit requirements, the NYC Stormwater Law amends Section 1403 of the City Charter to clarify DEP's role with respect to stormwater runoff and provide DEP the power to coordinate the actions of city agencies with respect to compliance with the Permit.

In addition to provisions regarding coordination of municipal activities, the NYC Stormwater Law provides additional authority for three specific programs, which the Permit

requires the City to administer, concerning activities – both municipal and private – that have the potential to contribute pollutants to stormwater runoff and the water bodies surrounding the City. In particular:

- Illicit Discharge Detection and Elimination (“IDDE”), Permit Part IV.D. The NYC Stormwater Law clarifies and supplements DEP’s robust existing program, which applies citywide, including discharges to the City’s MS4.
- Construction Site Stormwater Runoff Control and Post-Construction Stormwater Management (“Construction/Post-Construction”), Permit Parts IV.E and F. The NYC Stormwater Law authorizes DEP to establish a new program to administer and enforce the existing State permit program for stormwater discharges from construction activities, and allows DEP to set lower thresholds than those in the State program. The NYC Stormwater Law also includes conforming provisions relating to this program in several portions of the New York City administrative code and the plumbing and building codes.
- Industrial and Commercial Stormwater Sources, Permit Part IV.H. The NYC Stormwater Law authorizes DEP to establish a new program to inspect commercial and industrial sites and to enforce the existing State permit for stormwater discharges from certain industrial activities.

The provisions of the NYC Stormwater Law concerning IDDE and the Charter amendments took effect on June 29, 2017. The effective dates for the provisions creating the two new programs – stormwater runoff from commercial and industrial activities, and the Construction/Post-Construction program – will be established by rule. Pursuant to the NYC Stormwater Law, the effective date(s) for these programs must be as early as practicable to commence implementation following NYSDEC’s approval of the City’s Stormwater Management Program Plan (“SWMP”), allowing for an appropriate assumption of regulatory authority; the effective date(s) must be between 45 and 180 days after the SWMP is approved. Effective immediately, the NYC Stormwater Law authorizes City agencies to take actions necessary for timely implementation of the Law, including the promulgation of rules.

Anticipated Schedule for Rulemaking

As noted, in order to complete the development of legal authority necessary to implement the Permit, as described in Permit Part III.B.2, the City must adopt rules to implement the NYC Stormwater Law. The City plans to pursue this rulemaking in phases, in accordance with the following interim milestones:

IDDE

- DEP to publish proposed rules on or before September 20, 2017.

- DEP to publish final rules on or before December 20, 2017.¹

Construction/Post-Construction

- City agencies² to publish proposed rules on or before June 20, 2018.
- City agencies to publish final rules within 30 days of SWMP approval.³ The final rules will establish the effective date for the Construction/Post-Construction program, which must be between 45 and 180 days after SWMP approval.

Commercial/Industrial Stormwater

- DEP to publish proposed rules on or before June 20, 2018.
- DEP to publish final rules on or before December 20, 2018.⁴ The effective date of the Commercial/Industrial Stormwater program will be established by rule after SWMP approval, in accordance with the NYC Stormwater Law.

¹ This date assumes that there are no significant changes to the rules prior to final publication.

² Agencies in addition to DEP may need to adopt or amend rules to implement the Construction/Post-Construction program.

³ This date assumes that there is no need to modify the proposed rules based on the SWMP approval; if NYSDEC imposes conditions or the City receives comments that require revisions to the rules, this date will need to be adjusted.

⁴ This date assumes that there is no need to modify the proposed rules based on input from NYSDEC in connection with its review of the SWMP; if NYSDEC imposes conditions or DEP receives comments that require revisions to the rules or if the substance of the rules is otherwise dependent on SWMP approval, this date will need to be adjusted.