

## The Stormwater Management Regulations, 314 CMR 21.00

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## Introductory Sections

### 21.01: Purpose and Authority

The Stormwater Management Regulations, 314 CMR 21.00, establish the program whereby direct and indirect discharges of stormwater to waters of the Commonwealth are regulated by the Department pursuant to the authority granted under M.G.L. c. 21, §§ 27 and 43 and M.G.L. c. 111, § 160. In addition to regulating these discharges, M.G.L. c. 21, §§ 26 through 53 requires that the Department regulate the outlets (to both surface and ground waters) for such discharges and any treatment works or best management practices associated with these discharges. By requiring dischargers to submit certifications, apply for individual permits, request coverage under general permits, or take corrective action, as provided in 314 CMR 21.00, the Department controls the discharge of pollutants to the waters of the Commonwealth to ensure that: ground waters are protected for their actual and potential use as a source of potable water; surface waters are protected for their existing and designated uses; compliance with the Massachusetts Surface Water Quality Standards is achieved and maintained; and a reliable source of fit and pure water is available to the public.

The Stormwater Management Regulations, 314 CMR 21.00, are also intended to implement the provisions of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, and the Federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as applied to surface water discharges, and to ensure that 314 CMR 21.00 confers sufficient authority on the Department to assume delegation from the EPA to administer the NPDES stormwater permit program within the Commonwealth. To this end, 314 CMR 21.00 confers authority on the Department to issue individual and general permits for surface water discharges, including, but not limited to, individual permits for discharges from large or medium municipal separate storm sewer systems and general permits for discharges from small municipal separate storm sewer systems regulated under EPA's Phase II Stormwater Regulations.

### 21.02: Definitions

Additional Performance Standards - the performance standards set forth in 314 CMR 21.08 (1), 314 CMR 21.08(2) and 314 CMR 21.08(3).

Baseline Performance Standards – the performance standards set forth in 314 CMR 21.06.

Best Management Practices or BMPs - schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the Commonwealth. BMPs include treatment requirements, operating procedures, structures, devices and/or practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.



Certification - the certification forms prescribed by the Department pursuant to 314 CMR 21.00, which include the certification requirements set forth in 314 CMR 21.00.

Critical Areas - Outstanding Resource Waters as designated in 314 CMR 4.00, Special Resource Waters as designated in 314 CMR 4.00, recharge areas for public water supplies as defined in 310 CMR 22.02 (Zone Is, Zone IIs, and Interim Wellhead Protection Areas for ground water sources, and Zone As for surface water sources), bathing beaches as defined in 105 CMR 445.000, cold-water fisheries and shellfish growing areas.

Cold-water Fishery - waters in which the mean of the maximum daily temperature over a seven-day period generally does not exceed 68°F (20°C) and, when other ecological factors are favorable (such as habitat), are capable of supporting a year round population of cold-water stenothermal aquatic life such as trout. Waters designated as cold-water fisheries by the Department in 314 CMR 4.00 and waters designated as cold-water fishery resources by the Division of Fisheries and Wildlife are cold-water fisheries. Waters where there is evidence, based on a fish survey, that a cold-water fish population and habitat exist are also cold-water fisheries. Cold-water fish include, but are not limited to, brook trout (*Salvelinus fontinalis*), rainbow trout (*Oncorhynchus mykiss*), brown trout (*Salmo trutta*), creek chubsucker (*Erimyzon oblongus*) and fallfish (*semotilus corporalis*).

Commissioner - the Commissioner of the Department.

Confined Disposal Facility - a facility created in open water or wetlands consisting of confinement walls or berms built up or extending into existing land and that is a “confined disposal facility” as defined in 314 CMR 9.02.

Conservation Commission - body comprised of members lawfully appointed pursuant to M.G.L. c. 40, § 8C, or where no conservation commission has been established under M.G.L. c. 40, § 8C, a mayor or board of selectmen.

Contiguous lots - two or more lots that directly abut each other or are separated only by a privately owned access way or driveway. Lots are also considered to be contiguous if, although separated by a public right of way, they are functioning as part of a single facility or campus.

Control Measure - as the term is used in connection with general permits issued by the Department pursuant to 314 CMR 21.19 and 314 CMR 21.29 for small municipal separate storm sewer systems, refers to any best management practice (BMP) or other method used to prevent or reduce the discharge of pollutants to waters of the Commonwealth.

Department or DEP - the Massachusetts Department of Environmental Protection.



Development of Impervious Surfaces - the construction of paved surfaces where paved surfaces do not presently exist, the construction of a roof (other than a green roof constructed in accordance with the Massachusetts Stormwater Handbook) as part of a project involving the construction of a building or structure where a building or structure does not presently exist, and the construction of a paved surface or roof (other than a green roof constructed in accordance with the Massachusetts Stormwater Handbook) as part of a project involving the demolition of a building or structure, and the replacement of that building or structure with a new paved surface, building or structure.

Discharge of Stormwater - any addition of pollutants or combination of pollutions from stormwater to waters of the Commonwealth.

Disposal Site - a structure, well, pit, pond, lagoon, impoundment, ditch, landfill, or other place or area, excluding ambient air or surface water, where uncontrolled oil or hazardous material has come to be located as a result of any spilling, leaking, pouring, ponding, emitting, emptying, discharging, injecting, escaping, leaching, dumping, discarding or otherwise disposing of such oil or hazardous material and that is a “disposal site” as defined in M.G.L. c. 21E.

Environmental Protection Agency or EPA - the United States Environmental Protection Agency.

Environmentally Sensitive Site Design - design that incorporates low impact development techniques to prevent the generation of stormwater and non-point source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat.

Federal Act - the Federal Water Pollution Control Act (FWPCA) as amended, currently known as the Clean Water Act, 33 U.S.C. § 1251 *et seq.*

Final Order or Final Order of Conditions - the Order issued by the Commissioner after an adjudicatory hearing or, if no request for hearing has been filed, the Superseding Order or, if no request for a Superseding Order has been filed, the Order of Conditions.

401 Water Quality Certification - the document issued by the Department to the applicant and the appropriate Federal agency under 33 U.S.C. § 1251, *et seq.*, M.G.L. c. 21, § 27 and 314 CMR 9.00 certifying, conditioning, or denying an activity.

Ground Water - water below the land surface in a saturated zone, including perched ground water.

Hazardous Substances - any substance designated under 40 CFR Part 116 pursuant to section 311 of the Federal Act, 33 U.S.C. 1321, or any hazardous material as defined in M.G.L. c. 21E.



Illicit Discharge or Illicit Stormwater Discharge - a discharge that is not entirely comprised of stormwater. Notwithstanding the foregoing, an illicit discharge does not include discharges from the following activities or facilities: firefighting, water line flushing, landscape irrigation, uncontaminated ground water, potable water sources, foundation drains, air conditioning condensation, footing drains, individual resident car washing, flows from riparian habitats and wetlands, dechlorinated water from swimming pools, water used for street washing, and water used to clean residential buildings without detergents.

Impervious Surface - a paved parking area, a paved access road or driveway, a paved area used for the storage and/or maintenance of vehicles and/or equipment; a paved area used for the storage of materials, products and/or waste and a roof, other than a green roof constructed in accordance with the Massachusetts Stormwater Handbook. The term “paved access road or driveway” includes an impervious surface leading to any of the following: a paved parking area; a paved area used for the storage and/or maintenance of vehicles and/or equipment; or a paved area used for the storage of materials, products and/or waste. For purposes of 314 CMR 21.00, porous pavement is considered to be an impervious surface.

Infiltration BMPs – the stormwater BMPs listed as infiltration BMPs in the Massachusetts Stormwater Handbook. Infiltration BMPs include the following: infiltration trenches, infiltration basins, subsurface structures, dry wells, leaching catch basins, exfiltrating bioretention areas and rain gardens. If configured to exfiltrate, porous pavement is also an infiltration BMP.

Interim Wellhead Protection Area or IWPA – an Interim Wellhead Protection Area as defined in 310 CMR 22.02. Generally, this is a one-half mile radius from the well or wellfield for sources with an approved pumping rate of 100,000 gallons per day or greater. For smaller sources, the radius in feet is determined by multiplying the approved pumping rate in gallons per minute by 32 and adding 400.

Land Uses with Higher Potential Pollutant Loads - land uses identified in 310 CMR 22.20B(2), 310 CMR 22.20C(2)(a) through (k) and (m), 310 CMR 22.21(2)(a)1 through 8, and 310 CMR 22.21(2)(b)1 through 6; areas within a site that are the location of activities that are subject to an individual National Pollutant Discharge Elimination System (NPDES) permit or the NPDES Multi-Sector General Permit; auto fueling facilities (gas stations); exterior fleet storage areas; exterior vehicle service and equipment cleaning areas; marinas and boatyards; parking lots with high intensity use; confined disposal facilities and disposal sites.

Lawfully Commenced - all required local, state and federal permits have been obtained and at least some construction or land disturbance activity has begun.



Local Government Unit - a town, city, district, commission, agency, authority, board or other instrumentality of the Commonwealth or any of its political subdivisions including a regional government unit.

Low Impact Development (LID) Techniques - innovative stormwater management systems that are modeled after natural hydrologic features. Low Impact Development techniques manage rainfall at the source using uniformly distributed decentralized micro-scale controls. Low Impact Development techniques use small cost-effective landscape features located at the lot level.

Manufactured Home - a structure, built in conformance to the National Manufactured Home Construction and Safety Standards, which is transportable in one or more sections, which, in the traveling mode, is eight body-feet or more in width or forty body-feet or more in length, or, when erected on-site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein and that is a manufactured home as defined in M.G.L. c. 140, § 32Q.

Manufactured Housing Community - a lot or tract of land upon which three or more manufactured homes occupied for dwelling purposes are located, including any buildings, structures, fixtures and equipment used in connection with manufactured homes, and that constitutes a manufactured housing community as defined in M.G.L. c. 140, § 32F.

Massachusetts Surface Water Quality Standards - the Massachusetts Surface Water Quality Standards (314 CMR 4.00).

Minor Repair of a Paved Surface - minor activities involving the reconstruction or rehabilitation of a previously paved surface such as fixing cracks and potholes or the resealing of paved surfaces with non-coal tar based products provided that the total area affected by such repairs does not exceed 5,000 square feet or 5% of the paved surface being repaired, whichever is less.

Municipal Separate Storm Sewer System or MS4 – all separate storm sewers that are owned or operated by the United States, the Commonwealth of Massachusetts, a city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. § 1288 that discharges to waters of the United States.

NPDES - the National Pollutant Discharge Elimination System permit program established pursuant to 33 U.S.C. § 1342.



Off-Site Mitigation Agreement (the “OSM Agreement”) - an agreement between a person who owns a lot within a RIA Site that is subject to one or more of the Additional Performance Standards set forth in 314 CMR 21.08(1) and (3) and the owner of the real property where mitigation will take place (the “OSM Site”) to compensate for the failure to meet these Additional Performance Standards at the RIA Site.

Operator of a Municipal Separate Storm Sewer System - the municipality or other local government unit that is required to obtain an individual permit or coverage under a general permit for a traditional or non-traditional municipal separate storm sewer system by 40 CFR Part 122.

Order of Conditions or Order - the document issued by a conservation commission containing conditions which regulate or prohibit an activity pursuant to the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Wetlands Protection Act Regulations, 310 CMR 10.00.

Own - to have a legal or equitable ownership interest alone or with others in real property. For purposes of 314 CMR 21.00, a person, other than a local government unit, that owns real property, includes, but is not limited to, an agent, executor, administrator, trustee, lessee or guardian of the estate for the holder of legal title. For purposes of 314 CMR 21.00, a person whose only interest in real property is as a secured lender does not own the real property. For purposes of 314 CMR 21.00, the municipality or other local government unit that is required by 40 CFR Part 122 to obtain an individual permit or coverage under a general permit for a traditional or non-traditional municipal separate storm sewer system owns the system.

Permit - an authorization issued pursuant to M.G.L. c. 21, § 43 and 314 CMR 2.00, and 3.00, 5.00, 7.00, 20.00, or 21.00 to implement the requirements of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, the Federal Act, 33 U.S.C. § 1251 *et seq.*, and the NPDES regulations, 40 CFR Part 122. Depending on the context in 314 CMR 21.00, the term “permit” applies to (a) an individual permit that regulates one or more discharges by a discharger and/or (b) a general permit that regulates one or more categories of discharges and covers multiple dischargers who have properly applied for and obtained coverage under the general permit.

Person - any agency or political subdivision of the Commonwealth, the Federal government, any public or private corporation or authority, individual, partnership or association, or other entity, including any officer of a public or private agency or organization, upon whom a duty may be imposed by or pursuant to any provisions of M.G.L. c. 21, §§ 26 through 53.

Phased Project - a project completed in two or more stages that are part of an anticipated larger project.

Plant-Associated Areas – areas on a tract of land devoted to industrial use that are connected to a plant’s industrial activities, including, without limitation, industrial plant



yards, immediate access roads, drainage ponds, refuse piles, storage piles, storage areas, and material or product loading and unloading areas. The term “plant-associated areas” excludes areas located on plant lands that are separate from the plant’s industrial activities, such as office buildings and accompanying parking lots.

Pollutant - any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or non-point source, which is or may be discharged, drained or otherwise introduced into any sewerage system, treatment works, or waters of the Commonwealth. For purposes of 314 CMR 21.00, the term “pollutant” shall also include the contaminants that are found in stormwater runoff and that are or may be introduced into a municipal separate storm sewer system, a stormwater management system, a structural stormwater best management practice or a water of the Commonwealth.

Pollutant of Concern – the pollutant identified in a Total Maximum Daily Load developed by the Department as causing or contributing to a violation of the Massachusetts Surface Water Quality Standards.

Potable Water - water from any source that has been approved by the Department for human consumption, as defined in 310 CMR 22.02.

Private Water Supply Well – a well which is utilized by a private water system. For purposes of 314 CMR 21.00, the phrase “private water system” is used to refer to a system for the provision of piped water for human consumption which has fewer than 15 service connections or does not regularly serve an average of at least 25 individuals daily at least 60 days a year.

Process Wastewater - any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, or waste product.

Qualifying Local Off-Site Mitigation Program or Qualifying Local OSM Program – a program developed and implemented by a local government unit in accordance with 314 CMR 21.12 that allows a person who owns a lot within a RIA Site that is subject to one or more of the Additional Performance Standards set forth in 314 CMR 21.08(1) and (3) to pay a mitigation fee instead of implementing all the LID techniques and stormwater BMPs needed to meet these Additional Performance Standards at the RIA Site. A Qualifying Local OSM Program may be part of a Qualifying Local RIA Program.

Qualifying Local RIA Program - a program developed and implemented by a local government unit for the regulation of stormwater discharges from RIA Sites that meets the requirements set forth in 314 CMR 21.16. A Qualifying Local RIA Program may include a Qualifying Local OSM Program.



Recreational Vehicle Parks and Campsites – establishments primarily engaged in the activities identified in Standard Industrial Classification Code 7033. These establishments include, without limitation, establishments primarily engaged in providing overnight or short-term sites for recreational vehicles, trailers, campers or tents.

Redevelopment of Impervious Surfaces – projects for the reconstruction, rehabilitation, repair or improvement of a roof that by itself or in conjunction with other work results in the substantial improvement of a building or structure and projects for the reconstruction, rehabilitation, repair, or improvement of a paved surface where a paved surface already exists. Projects for the reconstruction, rehabilitation, repair or improvement of a paved surface include:

- (a) the full depth reconstruction of previously paved surface;
- (b) the scarifying of existing pavement to lay down a new top coat; and
- (c) any repaving of a previously paved surface other than a minor repair of a paved surface.

For the purposes of 314 CMR 21.00, projects involving the reconstruction, rehabilitation, repair or improvement of a roof do not include the replacement of a roof with a green roof constructed in accordance with the Massachusetts Stormwater Handbook..

Regulated Impervious Area (RIA) - five or more acres of impervious surfaces that are located on a single lot or two or more contiguous lots aggregated in accordance with 314 CMR 21.05. A regulated impervious area may be comprised of less than five acres of impervious surfaces located on a single lot or two or more contiguous lots that are aggregated in accordance with 314 CMR 21.05, if the Department specifies in a general permit that, based on a TMDL, it has determined that control of stormwater discharges from sites with less than five acres of impervious surfaces is necessary to achieve and/or maintain compliance with the Massachusetts Surface Water Quality Standards. When measuring the impervious surfaces to determine if a site meets or exceeds the applicable acreage threshold for a regulated impervious area, the following impervious surfaces shall not be included:

- (a) impervious surfaces owned or operated by a local government unit, the Commonwealth of Massachusetts or the Federal government: and
- (b) any impervious surfaces associated solely with any of the following land uses:
  - 1. sporting and recreational camps;
  - 2. recreational vehicle parks and campsites;
  - 3. manufactured housing communities;



4. detached single-family homes located on individual lots; and
5. stand-alone multi-family houses with four or fewer units.

For the purpose of 314 CMR 21.00, a stand-alone multi-family house with four or fewer units does not include any multi-family houses that are part of a condominium, cooperative, apartment complex, townhouse, or other residential or mixed-use development with more than four dwelling units, or any multi-family houses that share private access roads, driveways or parking areas with contiguous lots containing additional dwelling units.

Regulated Impervious Area Site or RIA Site - the single lot or contiguous lots on which a RIA is located.

Required Recharge Volume - the volume that is required to be infiltrated in accordance with Standard 3 of the Stormwater Management Standards as further elaborated by the Massachusetts Stormwater Handbook.

Required Redevelopment Volume - the required recharge volume or the required water quality volume, whichever is greater.

Required Water Quality Volume - the volume that is required to be treated in accordance with Standards 4 through 6 of the Stormwater Management Standards as further elaborated by the Massachusetts Stormwater Handbook.

Residential Uses – apartment buildings, townhouses, condominiums, cooperatives, single-family and/or multi-family homes including manufactured homes, and rooming and boarding houses. Residential uses do not include the use of properties for the activities listed in the following Standard Industrial Classification Codes: 7011, hotels; 7032, sporting and recreational camps; 7033, recreational vehicle parks and camp sites; 7041, organizational hotels and lodging on a membership basis; 8051-8059, nursing and personal care facilities; 8062-8069, hospitals; and 8361, residential care facilities.

Shellfish Growing Area - land under the ocean, tidal flats, rocky intertidal shores and marshes and land under salt ponds when any such land contains shellfish. Shellfish growing areas include land that has been identified and shown on a map published by the Division of Marine Fisheries as a shellfish growing area, including any area identified on such map as an area where shellfishing is prohibited. Shellfish growing areas shall also include land designated by the Department in 314 CMR 4.00 as suitable for shellfish harvesting with or without depuration. In addition, shellfish growing areas shall include shellfish growing areas designated by the local shellfish constable as suitable for shellfishing based on the density of shellfish, the size of the area and the historical and current importance of the area for recreational and commercial shellfishing.

Small Municipal Separate Storm Sewer System or Small MS4 – all separate storm sewers that are:



(a) Owned or operated by the United States, the Commonwealth of Massachusetts, a city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. § 1288 that discharges to waters of the United States.

(b) Not defined as a large or medium municipal separate storm sewer system pursuant to 40 CFR § 122.26(b)(4) and (b)(7) or designated under 40 CFR § 122.26(a)(1)(v).

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospitals or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas such as individual buildings.

Source Control and Pollution Prevention Measures - non-structural measures for the reduction of the concentration of pollutants in stormwater.

Sporting and Recreational Camps - establishments primarily engaged in the activities identified in Standard Industrial Code Classification 7032. These activities include without limitation, boys' camps, dude ranches, fishing camps, girls' camps, hunting camps, and summer camps.

Standard 3 of the Stormwater Management Standards or Standard 3 - Loss of annual recharge to ground water shall be eliminated or minimized through the use of infiltration measures including environmentally sensitive site design, low impact development techniques, stormwater best management practices and good operation and maintenance. At a minimum, the annual recharge from the post-development site shall approximate the annual recharge from the pre-development conditions based on soil type. This Standard is met when the stormwater management system is designed to infiltrate the required recharge volume as determined in accordance with the Massachusetts Stormwater Handbook.

Standard 4 of the Stormwater Management Standards or Standard 4 - Stormwater management systems shall be designed to remove 80% of the average annual post-construction load of Total Suspended Solids (TSS). This Standard is met when:

(a) Suitable practices for source control and pollution prevention are identified in a long-term pollution prevention plan and thereafter are implemented and maintained;



(b) Structural stormwater best management practices are sized to capture the required water quality volume determined in accordance with the Massachusetts Stormwater Handbook; and

(c) Pretreatment is provided in accordance with the Massachusetts Stormwater Handbook.

Standard 5 of the Stormwater Management Standards or Standard 5 - For land uses with higher potential pollutant loads, source control and pollution prevention shall be implemented in accordance with the Massachusetts Stormwater Handbook to eliminate or reduce the discharge of stormwater runoff from such land uses to the maximum extent practicable. If, through source control and/or pollution prevention, all land uses with higher potential pollutant loads cannot be completely protected from exposure to rain, snow, snowmelt and stormwater runoff, the proponent shall use the specific structural stormwater BMPs determined by the Department to be suitable for such use as provided in the Massachusetts Stormwater Handbook. Stormwater discharges from land uses with higher potential pollutant loads shall also comply with the requirements of the Massachusetts Clean Waters Act, M.G.L. c. 21, §26 through 53, and the regulations promulgated thereunder at 314 CMR 4.00 and 314 CMR 21.00.

Standard 6 of the Stormwater Management Standards or Standard 6 - Stormwater discharges within the Zone II or Interim Wellhead Protection Area of a public water supply and stormwater discharges near or to any other critical area require the use of the specific source control and pollution prevention measures and the specific structural stormwater best management practices determined by the Department to be suitable for managing discharges to such area as provided in the Massachusetts Stormwater Handbook. A discharge is near a critical area if there is a strong likelihood of a significant impact occurring to said area, taking into account site-specific factors. Stormwater discharges to Outstanding Resource Waters and Special Resource Waters shall be removed and set back from the receiving water or wetland and receive the highest and best practical method of treatment. Stormwater discharges to a Zone I, Zone A, Zone II or IWPA shall comply with the provisions of 314 CMR 21.10.

Stormwater - stormwater runoff, snowmelt runoff, surface runoff, and drainage.

Stormwater Best Management Practice or Stormwater BMP - a structural or nonstructural technique for managing stormwater to prevent or reduce pollutants from entering surface waters or ground waters. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter or other stormwater treatment practice or measure, either alone or in combination, including, without limitation, any overflow pipe, conduit, or weir control structure that: (a) is not naturally occurring; (b) is not designed as a wetland replication area; and (c) has been designed, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater. Nonstructural stormwater best management practices include source control and pollution prevention measures.



Stormwater Management System - a system for conveying, collecting, storing, discharging, recharging or treating stormwater on-site, including stormwater best management practices and any pipes and outlets intended to transport and discharge stormwater to the ground water, a surface water, or a municipal separate storm sewer system.

Stormwater Professional - a Massachusetts Registered Professional Engineer or a Massachusetts Registered Landscape Architect experienced in stormwater management.

Substantial Improvement of a Building or Structure - a project for the reconstruction, rehabilitation, repair or improvement of a building or structure where the total cost of the project exceeds 50% of the fair market value of the building or structure before the start of construction.

Surface Waters - all waters other than ground water within the jurisdiction of the Commonwealth including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, vernal pools, and coastal waters.

Total Maximum Daily Load (TMDL) - the sum of a receiving surface water's individual waste-load allocations and load allocations and natural background which, together with a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and surface water quality, represents the maximum amount of a pollutant that a surface water body can receive and still meet the Massachusetts Surface Water Quality Standards in all seasons.

TMDL-Identified Stormwater-Impaired Surface Water - a surface water that is the subject of a Total Maximum Daily Load developed by the Department that identifies stormwater runoff from impervious surfaces as causing or contributing to a violation of the Massachusetts Surface Water Quality Standards and establishes a limit for the loadings of the pollutant of concern that come from the discharge of stormwater runoff from impervious surfaces.

Toxic Pollutants – any pollutant or combination of pollutants, including disease-causing agents, that are capable of producing an adverse effect in an organism or its offspring, including food chain effects, according to information available to the Department. The effect may be the result of direct or indirect exposure and may injure structure, function, or cause death to the organism. These pollutants include, but are not limited to, those identified in 314 CMR 3.17.

Urbanized Area – a land area comprising one or more places – central place(s) – and the adjacent densely settled surrounding area – urban fringe – that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile, as determined by the Federal Bureau of the Census.



Waters of the Commonwealth - all waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, ground waters, and vernal pools. Wetlands constructed for the sole purpose of wastewater or stormwater management on or after January 2, 2008 and lined basins constructed on or after *date* (the effective date of the wastewater reuse regulations, 314 CMR 20.00) for the sole purpose of storing reclaimed water so that it may be reused, are not considered to be waters of the Commonwealth.

Zone A - the land between a surface water source and the upper boundary of the bank, as defined in 310 CMR 22.02, to include the land within a 400-foot lateral distance from the upper boundary of a bank of a Class A surface water source as defined in 314 CMR 4.05(3)(a) and the land within a 200-foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.

Zone I - the protective radius around a public water supply well or wellfield as defined in 310 CMR 22.02. For public water supply systems with approved yields of 100,000 gallons per day (gpd) or greater, the protective radius is 400 feet. Tubular wellfields require a protective radius of 250 feet. The protective radii for all other public water system wells are determined by the following equation: Zone I radius in feet  $+ [150 \times \log \text{ of pumping rate in gpd}] - 350$ .

Zone II - the area of an aquifer that contributes water to a well under the most severe pumping and recharge conditions that can realistically be anticipated, as defined in 310 CMR 22.02.

### 21.03: Scope of Regulations

(1) The Department has determined that the following activities are significant contributors of pollutants to waters of the Commonwealth and as a result such activities are subject to regulation under 314 CMR 21.00.

(a) Activities at Regulated Impervious Area Sites. Any activity that may reasonably be expected to result in the discharge of stormwater from a RIA Site; and

(b) Municipal Separate Storm Sewer Systems. Stormwater discharges from large, medium and small municipal separate storm sewer systems.

(2) Discharges Designated by the Department as Requiring an Individual Permit or Coverage under a General Permit. The Department may determine that there are additional activities or categories of activities that may be expected to result in stormwater discharges that are significant contributors of pollutants to waters of the Commonwealth and require regulation pursuant to 314 CMR 21.00 to protect surface waters for their existing and designated uses, to achieve and maintain compliance with the Massachusetts Surface Water Quality Standards and/or to protect the ground water as



an actual or potential source of potable water. Exercising this authority as provided in 314 CMR 21.18, the Department may require persons engaged in such activities or categories of activities to request coverage under a general stormwater permit in accordance with 314 CMR 21.19 or to apply for and obtain an individual stormwater discharge permit in accordance with 314 CMR 21.20.

(3) Authority to Require Information. The Department may require any person to provide information to determine whether that person is subject to M.G.L. c. 21 §§ 26-53 and 314 CMR 21.00 or in violation of M.G.L. c. 21, §§ 26-53 or 314 CMR 21.00. It shall be a violation of 314 CMR 21.00 to fail to provide any information as required by the Department pursuant to 314 CMR 21.03(3).

(4) Severability. If any provision of 314 CMR 21.00 is held invalid, the remainder of 314 CMR 21.00 shall not be affected.

#### Regulations Governing Activities that May Reasonably be Expected to Result in Stormwater Discharges from Regulated Impervious Area Sites

##### 21.04: Request for, Renewal of, and Termination of RIA General Stormwater Permit Coverage

Except as otherwise provided in 314 CMR 21.16, no person may engage in any activity that can reasonably be expected to result in a stormwater discharge from a RIA Site, without a currently valid permit issued by Department pursuant to 314 CMR 21.00. Except as otherwise determined by the Department pursuant to 314 CMR 21.18 or 314 CMR 21.19, any person required to obtain a permit by 314 CMR 21.04 shall request coverage under the general permit for stormwater dischargers from RIAs (the “Regulated Impervious Area General Stormwater Permit” or the “RIA General Stormwater Permit”) as follows:

(1) Initial Certification. Any person that owns the RIA Site where the stormwater discharge originates, or any portion thereof, shall submit an initial certification and request for coverage under the RIA General Stormwater Permit (the “Initial Certification”) in accordance with the RIA General Stormwater Permit, 314 CMR 2.00, and 314 CMR 21.00. The Initial Certification shall be submitted on a Department-approved form, signed and certified in accordance with 314 CMR 21.17, and accompanied by the applicable fees in accordance with 314 CMR 2.00 and 310 CMR 4.00. The Initial Certification shall include any information that the Department has determined, as set forth in the RIA General Stormwater Permit and accompanying Fact Sheet, is necessary for the adequate implementation and compliance oversight of the Permit.

(2) Renewal of RIA General Stormwater Permit Coverage. Any person granted coverage under the RIA General Stormwater Permit shall request renewal of such coverage by submitting the applicable DEP-approved forms and paying the applicable fees in accordance with the RIA General Stormwater Permit, 314 CMR



2.00, 314 CMR 21.00, and 310 CMR 4.00. The request for renewal of permit coverage shall be signed and certified in accordance with 314 CMR 21.17.

(3) Termination of RIA General Stormwater Permit Coverage. If a person granted coverage under the RIA General Stormwater Permit believes he or she is no longer required to be covered under the RIA General Stormwater Permit, he or she shall request termination of general permit coverage by submitting the applicable DEP-approved forms. Any request for termination shall state the reasons for the request. The request for termination of permit coverage shall be signed and certified in accordance with 314 CMR 21.17.

#### 21.05: Aggregation of Impervious Surfaces

(1) When measuring the impervious surfaces to determine if a site meets or exceeds the applicable acreage threshold for a regulated impervious area, the impervious surfaces on contiguous lot(s) shall be included provided that:

- (a) The stormwater runoff from at least some of the impervious surfaces located on the contiguous lot(s) is directed to the same on-site stormwater management system or stormwater BMPs; or
- (b) There are agreements or practices for the shared operation, maintenance or use of any the following:
  - 1. Paved parking areas,
  - 2. Paved areas for storing and/or maintaining vehicles and/or equipment,
  - 3. Paved areas used for storing materials, product or waste,
  - 4. Structural or non-structural stormwater best management practices, or
  - 5. Buildings or structures.

(2) For purposes of 314 CMR 21.05(1)(b), shared operation, maintenance or use shall be deemed to exist when, among other things, there are shared arrangements for any of the following:

- (a) Sweeping, sealing, repairing or repaving of paved surfaces;
- (b) Management of snow and/or deicing chemicals;
- (c) Management of solid waste;
- (d) The parking of vehicles;



(e) The storage or maintenance of equipment; or

(f) The cleaning and/or maintenance of structural stormwater best management practices.

(3) For purposes of determining whether a phased project involving the development of impervious surfaces results in a RIA, the entire project shall be considered including all phases.

#### 21.06: Baseline Performance Standards

Stormwater Management Team and Stormwater Management Plan. Any person required by 314 CMR 21.04 to obtain coverage under the RIA General Stormwater Permit shall establish a stormwater management team and develop and implement a Stormwater Management Plan (SMP) in accordance with the RIA General Stormwater Permit, 314 CMR 21.06(1) through (7) and the RIA General Stormwater Permit Workbook. A copy of the SMP shall be submitted to the Department with the first Annual Compliance Certification required by 314 CMR 21.07.

(1) Stormwater Management Team. The SMP shall identify the members of the stormwater management team, including the person responsible for the overall implementation of stormwater management at the RIA Site. The SMP shall also identify the person on the stormwater management team who is responsible for implementing each individual source control and pollution prevention measure identified in the plan.

(2) Log. The SMP shall include standard operating procedures for keeping a log of all actions taken to implement the plan. The log shall detail the date of each action, the person performing the action, and the nature of the action. A copy of all logs for the past five years shall be kept at the RIA Site and made available to the Department upon request.

(3) Sweeping of Paved Surfaces. The SMP shall include a schedule for sweeping all paved surfaces at the RIA Site to keep them free of sand, litter, and any other possible pollutants. At a minimum, the schedule shall provide for sweeping at least twice a year, once between November 14 and December 15 (after leaf fall) and once during the month of April (after snow melt).

(4) Additional Source Control and Pollution Prevention Measures. At a minimum, the SMP shall include standard operating procedures and an implementation schedule for carrying out the following additional source control and pollution prevention measures:

(a) Measures to minimize the risk that the snow removal and deicing activities, including, without limitation, the storage of snow removed from paved surfaces and the application and storage of deicing chemicals, will



contribute pollutants to the stormwater discharged from the RIA Site or interfere with the proper operation of the stormwater management system;

(b) Measures for the management of solid waste and hazardous materials to minimize the risk that stormwater discharges from the RIA Site will be contaminated or interfere with the proper operation of the stormwater management system; and

(c) Measures to minimize the risk that any disturbed pervious surfaces or landscaped areas at the RIA Site will contribute pollutants to the stormwater discharges from the RIA Site. At a minimum, the standard operating procedures shall include procedures for the stabilization of disturbed areas and the proper storage, use, and disposal of fertilizers, pesticides, and herbicides.

(5) Additional Source Control and Pollution Prevention Measures for RIA Sites Devoted to Non-Residential Uses. The SMP shall also include standard operating procedures and an implementation schedule for carrying out the following additional source control and pollution prevention measures on those portions of the RIA Site that are devoted to non-residential uses:

(a) Measures to ensure that all raw materials, intermediate products, by-products, final products, accessories and equipment stored outside are covered or moved inside or maintained in a manner that avoids or minimizes the risk that these materials or their residue will contaminate a stormwater discharge;

(b) Measures for ensuring that no water from the washing of any raw materials, intermediate products, by-products, final products, waste materials, accessories, equipment, storage areas, outside sales/garden areas, loading docks, parking areas, or from the washing of vehicles or buildings with detergents shall be discharged to a stormwater management system, municipal separate storm sewer system, or a water of the Commonwealth; and

(c) Measures to address any raw materials, intermediate products, waste materials, accessories or equipment which could possibly discharge to a stormwater management system, the municipal separate storm sewer system, or waters of the Commonwealth (the "Spill Plan"). The Spill Plan shall include measures to avoid such spills in areas exposed to rain, snow, snowmelt or runoff and to keep such spills from reaching areas exposed to rainfall. The Spill Plan shall also include response measures to prevent a spill from being exposed to stormwater or entering the structural stormwater BMPs, the stormwater management system, the municipal separate storm sewer system, or waters of the Commonwealth. The Spill Plan shall also



include procedures for notifying the Department of any oil or hazardous material releases as required by M.G.L. c. 21E and 310 CMR 40.0000.

(6) Operation and Maintenance of LID Techniques and Structural Stormwater BMPs. If there are any LID techniques and/or structural stormwater BMPs at the RIA Site, the SMP shall include measures to ensure their proper operation and maintenance and to eliminate and prevent any illicit discharges. At a minimum, these measures shall include regular inspections, periodic removal of accumulated sediment, routine maintenance, and any repairs needed to eliminate any illicit discharges and ensure that the LID techniques and structural stormwater BMPs are capable of operating as designed.

(7) Development and Redevelopment of Impervious Surfaces and Construction of LID Techniques and Structural Stormwater BMPs. The SMP shall include measures to ensure that any work involving the development or redevelopment of impervious surfaces and/or the construction of low impact development techniques or structural stormwater BMPs that is required to be covered by the NPDES Construction General Permit is covered by and complies with the terms and conditions of that permit.

#### 21.07: Annual Compliance Certification

Any person required by 314 CMR 21.04 to obtain coverage under the RIA General Stormwater Permit shall submit an Annual Compliance Certification to the Department in accordance with the RIA General Stormwater Permit. The Annual Compliance Certification shall be on a form prescribed by the Department, accompanied by the fee established by the Department pursuant to 310 CMR 4.00, and address compliance with the Baseline Performance Standards set forth in 314 CMR 21.06. The Annual Compliance Certification shall:

- (1) State whether the stormwater originating at the RIA Site is being managed in accordance with the Baseline Performance Standards set forth in 314 CMR 21.06;
- (2) Identify any noncompliance with a Baseline Performance Standard set forth in 314 CMR 21.06 that occurred within the last twelve months;
- (3) If noncompliance with a Baseline Performance Standard is reported, state what steps the owner has taken or will take to return to compliance promptly, and the date by which compliance will be achieved;
- (4) Include a status report on any land disturbance or construction activity associated with the development or redevelopment of impervious surfaces that has taken place over the last twelve months;



(5) Provide any information required by the Department to assess compliance with 314 CMR 21.00 and/or to evaluate the effectiveness of 314 CMR 21.00; and

(6) Be signed and certified in accordance with 314 CMR 21.17.

#### 21.08: Additional Performance Standards

(1) Additional Performance Standard for Discharges to TMDL-Identified Stormwater-Impaired Surface Waters. Except as otherwise provided herein and in 314 CMR 21.12 through 314 CMR 21.16, any person who owns a RIA Site or portion thereof that can reasonably be expected to result in a stormwater discharge to a TMDL-identified stormwater-impaired surface water shall meet the following Additional Performance Standard.

(a) The site shall be equipped with infiltration BMPs that are capable of achieving the pollutant reductions required to meet the pollutant-loading limitations set forth in the TMDL in accordance with the RIA General Stormwater Permit Workbook; and

(b) To the extent that site constraints make it impossible to install infiltration BMPs that are fully capable of achieving the pollutant reductions required to meet the pollutant loading limitations set forth in the TMDL, other stormwater BMPs and LID techniques that are capable of meeting the applicable pollutant reductions shall be implemented.

For the purposes of 314 CMR 21.08(1), a RIA Site can reasonably be expected to result in a stormwater discharge to a TMDL-identified stormwater-impaired surface water if the RIA Site contains impervious surfaces that are located within the area that the Department has determined is reasonably expected to result in such a discharge as shown on the map developed by the Department for this purpose. If stormwater BMPs or LID techniques other than infiltration BMPs are implemented as permitted in 314 CMR 21.08(1)(b), the Stormwater Report required by 314 CMR 21.09(4) shall identify the site constraints that prevented or limited the use of infiltration BMPs.

(2) Additional Performance Standard for Development of Impervious Surfaces. Except as otherwise provided in 314 CMR 21.11 through 314 CMR 21.16, any person who owns a lot that is undergoing a project for the development of impervious surfaces that at the time that land disturbance or construction activity commences are located within an existing RIA Site, or that upon completion of the project will be located within a RIA Site, shall implement LID techniques and/or stormwater BMPs capable of meeting Standards 3 through 6 of the Stormwater Management Standards, as further elaborated by the Massachusetts Stormwater Handbook and the RIA General Stormwater Permit Workbook.

(3) Additional Performance Standard for Redevelopment of Impervious Surfaces. Except as otherwise provided in 314 CMR 21.11 through 314 CMR 21.16, any person who owns



a lot that is undergoing a project involving the redevelopment of impervious surfaces shall meet the following Additional Performance Standard.

- (a) The project shall include the implementation of LID techniques and stormwater BMPs that are capable of providing at least the same level of peak-rate attenuation, recharge and water quality treatment that was provided by the stormwater management system in existence prior to the initiation of the project for the redevelopment of impervious surfaces;
- (b) Except as otherwise provided in 314 CMR 21.08((3)(c)), the project shall include the implementation of infiltration BMPs that are capable of infiltrating at least 40% of the required redevelopment volume; and
- (c) To the extent that site constraints prevent the implementation of infiltration BMPs that are fully capable of infiltrating 40% of the required redevelopment volume, the project shall include the implementation of other stormwater BMPs, LID techniques and environmentally sensitive designs that are capable of reducing impervious surfaces and/or treating the required redevelopment volume such that:
  - 1. The combination of the percentage of the required redevelopment volume that is infiltrated and the percentage of the impervious surfaces that are reduced equals 40%; or
  - 2. The combination of the required redevelopment volume that is infiltrated and the percentage of the required redevelopment volume that is treated by means other than infiltration BMPs equals 40%; or
  - 3. The combination of the required redevelopment volume that is infiltrated, the percentage of the impervious surfaces that are reduced, and the percentage of the required redevelopment volume that is treated by means other than infiltration BMPs equals 40%.

For any project for the redevelopment of impervious surfaces that includes the implementation of stormwater BMPs or LID techniques other than infiltration BMPs as permitted in 314 CMR 21.08(3)(c), the Stormwater Report required by 314 CMR 21.09(4) shall identify the site constraints that prevented or limited the use of infiltration BMPs.

**21.09: Requirements for all LID Techniques and Structural Stormwater BMPs Used to Meet the Additional Performance Standards**

(1) Except as otherwise provided in 314 CMR 21.09(2), all LID techniques and structural stormwater BMPs used to meet one or more of the Additional Performance Standards shall be

- (a) Designed by a Stormwater Professional; and



(b) Designed, constructed, operated and maintained in accordance with the applicable provisions of the Stormwater Management Standards, the Massachusetts Stormwater Handbook, and the RIA General Stormwater Permit Workbook.

(2) A LID technique and/or structural stormwater BMP approved by a local government unit on or after November 18, 1996 in response to an application filed prior to *date* (effective date of regulations) may be used to meet some or all of the Additional Performance Standards without complying with the requirements of 314 CMR 21.09(1), provided that the local government unit approved the LID technique and/or structural stormwater BMP in response to an application that was submitted on or after November 18, 1996 and the LID technique and/or structural stormwater BMP was designed to meet requirements at least as stringent as the Stormwater Management Standards set forth in the Department's November 18, 1996 Stormwater Policy.

(3) Stormwater Professional's Certification. Any person who owns a RIA Site that is subject to one or more of the Additional Performance Standards shall submit a certification by a Stormwater Professional that the LID techniques and structural stormwater BMPs comply with all applicable requirements of 314 CMR 21.08, 314 CMR 21.09, 314 CMR 21.10, 314 CMR 21.12, and 314 CMR 21.13. The Stormwater Professional's Certification shall be prepared in accordance with the RIA General Stormwater Permit Workbook, submitted on a DEP-approved form and signed and certified in accordance with 314 CMR 21.17.

(4) Stormwater Report. The Stormwater Professional who prepares the certification required by 314 CMR 21.09(3) shall prepare a written report (the "Stormwater Report") documenting that the LID techniques and structural stormwater BMPs comply with all applicable requirements of 314 CMR 21.08, 314 CMR 21.09, 314 CMR 21.10, 314 CMR 21.12, and 314 CMR 21.13. The Stormwater Report shall be prepared in accordance with the RIA General Stormwater Permit Workbook and submitted along with the Stormwater Professional's Certification.

(5) Any person who owns a RIA Site or portion thereof that is subject to one or more of the Additional Performance Standards shall complete construction of the LID techniques and/or structural stormwater BMPs used to meet the Additional Performance Standards and submit the Stormwater Professional's Certification and accompanying Stormwater Report as follows:

(a) For any RIA Site subject to the Additional Performance Standards for the development and/or redevelopment of impervious surfaces set forth in 314 CMR 21.08(2) and 314 CMR 21.08(3), the LID techniques and structural stormwater BMPs shall be completed on or before the date the work on the impervious surfaces is complete. The Stormwater Professional's Certification and accompanying Stormwater Report shall be submitted with the first Annual Compliance Certification following completion of the work.



(b) For all other RIAs that are subject only to the Additional Performance Standard for activities that can reasonably be expected to result in a stormwater discharge to a TMDL-identified stormwater-impaired surface water set forth in 314 CMR 21.08(1):

1. The design for the LID techniques and structural stormwater BMPs shall be completed, and the Stormwater Professional's Certification and accompanying Stormwater Report shall be submitted in accordance with the schedule set forth in the first RIA General Stormwater Permit that references the TMDL; and
2. The construction of the LID techniques and structural stormwater BMPs shall be completed, and the Stormwater Professional's Certification and accompanying Stormwater Report shall be submitted in accordance with the schedule set forth in the second RIA General Stormwater Permit that references the TMDL.

#### 21.10: Requirements for Water Supply Protection

(1) Except as otherwise provided in 314 CMR 21.11, no person shall engage in an activity that commences on or after *date* (effective date of regulations) and that can reasonably be expected to result in a stormwater discharge:

- (a) To the ground water within 100 feet of a private water supply well;
- (b) To the ground water within the Zone I of a ground water source of potable water for a public water system, unless the discharge is essential to the operation of the public water system;
- (c) From a land use or activity that is listed in 310 CMR 22.21(2)(a)(1) - (8) to the ground water within a Zone II or IWPA;
- (d) From a land use that is listed in 310 CMR 22.21(2)(b)(1)-(7) to the ground water within a Zone II or IWPA unless the land use is designed to meet the performance standards set forth therein; or
- (e) Within a Zone A unless:
  1. The stormwater originates on impervious surfaces developed prior to *date* (effective date of the regulations); and
  2. The discharge does not increase the pollutant loadings to the surface water source of potable water above the loadings in existence on *date* (effective date of the regulations).



(2) There shall be no activities that can reasonably be expected to result in stormwater runoff that originates in an industrial plant or plant-associated area, that is contaminated with process wastes, raw materials, toxic pollutants, hazardous substances or oil and grease, and that can reasonably be expected to result in a discharge to the ground water within the Zone I, Zone A, Zone II or IWPA of a public water system or within 100 feet of a private water supply well.

(3) For purposes of 314 CMR 21.00, a person is engaging in an activity that can reasonably be expected to result in a stormwater discharge to the ground water within a 100 feet of a private water supply well or within the Zone I, Zone II or IWPA if he or she constructs, operates or maintains an infiltration BMP located within said area. For purposes of 314 CMR 21.00, a person is engaging in an activity that can reasonably be expected to result in a stormwater discharge within a Zone A if he or she constructs, operates or maintains stormwater BMPs that have an outlet located within the Zone A.

#### 21.11: Transition Rule

(1) The Additional Performance Standard for the development and/or redevelopment of impervious surfaces set forth 314 CMR 21.08(2) and (3) and the requirements for water supply protection set forth in 314 CMR 21.10(1) shall not apply to any projects that involve the development or redevelopment of impervious surfaces provided that:

(a) All required local, state and federal permits were obtained prior to *date* (180 days after issuance of first RIA General Stormwater Permit); or

(b) If no permits were required, at least some construction or land disturbance activity was begun prior to *date* (180 days after issuance of first RIA General Stormwater Permit); and

(c) The project proceeds continuously and expeditiously to completion.

(2) If, at any time, work on a project involving the development and/or redevelopment of impervious surfaces does not go forward for a period of six months or more, after all required final permits are obtained, or after construction or land disturbance activity begins, the project will not be considered to be proceeding continuously and expeditiously to completion. In that event, the project shall comply with all applicable standards and requirements set forth in 314 CMR 21.08(2), 314 CMR 21.08(3), 314 CMR 21.09, and 314 CMR 21.10.

#### 21.12: Off-Site Mitigation

(1) Any person that owns a RIA Site or portion thereof may use off-site mitigation to meet the Additional Performance Standard for discharges to TMDL-identified stormwater-impaired surface waters and the Additional Performance Standard for the redevelopment of impervious surfaces in accordance with 314 CMR 21.12. Off-site



mitigation may not be used to meet the Additional Performance Standard for the development of impervious surfaces.

(2) Except as otherwise provided in 314 CMR 21.12(3), any person that relies on off-site mitigation to meet the Additional Performance Standard for discharges to TMDL-identified stormwater-impaired surface waters and/or the Additional Performance Standard for the redevelopment of impervious surfaces shall comply with all of the following requirements:

- (a) A Stormwater Professional shall make a complete evaluation of all possible on-site stormwater management measures, including, without limitation, environmentally sensitive site design, LID techniques and structural stormwater BMPs, and identify the highest practicable level of on-site stormwater management.
- (b) The Stormwater Professional shall include his or her findings in the Stormwater Report required by 314 CMR 21.09(4).
- (c) The highest practicable level of stormwater management identified by the Stormwater Professional shall be implemented on-site.
- (d) The LID techniques and stormwater BMPs implemented off-site and the on-site LID techniques and stormwater BMPs shall collectively satisfy the applicable Additional Performance Standards.
- (e) All LID techniques and structural stormwater BMPs needed to provide the required level of off-site mitigation (collectively the “mitigation BMPs”) shall be designed and constructed in accordance with all applicable requirements of 314 CMR 21.09 and 314 CMR 21.10.
- (f) If an owner of the RIA Site engages in an activity that can reasonably be expected to result in a stormwater discharge to a TMDL-identified stormwater-impaired-surface water, the off-site mitigation shall reduce the loadings of the pollutant of concern in the same TMDL-identified stormwater-impaired surface water.
- (g) If an owner of the RIA Site engages in an activity that can reasonably be expected to result in a stormwater discharge within a Zone II or IWPA of a public water supply, the mitigation BMPs shall provide the required infiltration within the same Zone II or IWPA.
- (h) The stormwater discharge from the mitigation BMPs shall not cause or contribute to a violation of the Massachusetts Surface Water Quality Standards or impair the ability of the ground water to act as an actual or potential source of potable water.



(i) The Stormwater Professional's Certification and accompanying Stormwater Report shall be submitted in accordance with the requirements of 314 CMR 21.09. The Stormwater Professional's Certification shall include a certification that the mitigation BMPs comply with 314 CMR 21.12.

(j) The mitigation BMPs shall be operated and maintained in accordance with the requirements applicable to on-site LID techniques and structural stormwater BMPs set forth in 314 CMR 21.06(6).

(k) The O & M Certification. An Operation and Maintenance Certification (the "O & M Certification") shall be submitted to the Department as follows:

1. The O & M Certification shall be submitted to the Department each year, as part of the Annual Compliance Certification required by 314 CMR 21.07 and the RIA General Stormwater Permit.
2. The O & M Certification shall certify that the mitigation BMPs are being operated and maintained in accordance with the same operation and maintenance requirements that would apply to on-site LID techniques and structural stormwater BMPs set forth in 314 CMR 21.06(6); and
3. The O & M Certification shall be signed and certified by the owner of the RIA Site and the owner of the site where the off-site mitigation is to take place (the "OSM Site") in accordance with 314 CMR 21.17.

(l) The Off-Site Mitigation Agreement. The owner of the RIA Site shall enter into an Off-Site Mitigation Agreement (the "OSM Agreement") with the owner of the OSM Site. Any person that owns the OSM Site, including, without limitation, a local government unit, may enter into an OSM Agreement with the owner of the RIA Site. The owner of the RIA Site and the owner of the OSM Site shall comply with the OSM Agreement. The OSM Agreement shall:

1. provide that all mitigation BMPs are designed, constructed, operated, and maintained in accordance with the requirements and performance standards that are applicable to on-site LID techniques and structural stormwater BMPs as set forth in 314 CMR 21.08, 314 CMR 21.09, 314 CMR 21.10, and 314 CMR 21.06(6);
2. identify the persons responsible for the design, construction, operation and maintenance of the mitigation BMPs, submittal of the Stormwater Professional's Certification and accompanying Stormwater Report, and submittal of the O & M Certification;
3. provide that the owner of the RIA Site and the Department shall have access to the OSM Site for the purpose of determining whether the



mitigation BMPs have been designed, constructed, operated, and maintained in accordance with 314 CMR 21.12; and

4. provide that the OSM Agreement shall be kept at the RIA Site and the OSM Site and made available to the Department upon request.

(m) The owner of the RIA Site shall remain responsible for meeting the applicable Additional Performance Standards in the event that the owner of the OSM Site does not design, construct, operate, or maintain the mitigation BMPs in accordance with 314 CMR 21.12 and the OSM Agreement.

(3) Qualifying Local Off-Site Mitigation Program. As an alternative to complying with the requirements of 314 CMR 21.12(2), a person may rely on off-site mitigation to meet the Additional Performance Standard for discharges to TMDL-identified stormwater-impaired surface waters and/or the Additional Performance Standard for the redevelopment of impervious surfaces by participating in a Qualifying Local Off-Site Mitigation Program (a “Qualifying Local OSM Program”) established by a local government unit and by paying all mitigation fees in accordance with the requirements of the Qualifying Local OSM Program. A Qualifying Local OSM Program shall have the following elements:

(a) The local government unit shall establish a system of mitigation fees for owners of RIA Sites that are unable to meet one or more of the Additional Performance Standards on-site. The mitigation fees shall be based on the cost of providing off-site mitigation that meets the requirements of 314 CMR 21.12(2)(a) through (j).

(b) The local government unit shall use the mitigation fees to design, construct, operate and maintain mitigation BMPs that meet the requirements of 314 CMR 21.12(2)(a) through (j).

(c) Annual Report. On or before *date* (anniversary of the effective date of the regulations) of each year, the local government unit shall submit an annual report to the Department identifying all mitigation fees collected over the last year, the reason for each mitigation fee, the mitigation BMPs constructed with these fees, the location of the mitigation BMPs, and the level of treatment and/or infiltration resulting from each mitigation BMP. The report shall also contain the O & M Certification required by 314 CMR 21.12(2)(k). The report and O & M Certification shall be signed and certified in accordance with 314 CMR 21.17.

(4) Establishment of a Qualifying Local OSM Program. Any local government unit planning to implement a Qualifying Local OSM Program shall notify the Department in writing that it has established a Qualifying Local OSM Program at least 90 days prior to the date the local government unit will commence operation of the program. The notice shall include a brief summary of the program and a certification that the Qualifying Local



OSM Program complies with the requirements of 314 CMR 21.12(3). The notice shall be signed and certified in accordance with 314 CMR 21.17.

#### 21.13: Variances for Redevelopment of Impervious Surfaces

(1) Any person who owns a RIA Site or portion thereof that is subject to the Additional Performance Standard for the redevelopment of impervious surfaces set forth in 314 CMR 21.08(3) may request a variance from that Additional Performance Standard as follows:

- (a) A Stormwater Professional shall make a complete evaluation of all possible on-site stormwater management measures, including environmentally sensitive site design, LID techniques and structural stormwater BMPs, and identify the highest practicable level of on-site stormwater management.
- (b) The Stormwater Professional shall also make a complete evaluation of all possible opportunities for off-site mitigation in accordance with 314 CMR 21.12 and identify the highest practicable level of stormwater management that can be provided off-site.
- (c) The highest practicable level of treatment identified by the Stormwater Professional shall be implemented within the RIA Site in accordance with 314 CMR 21.08, 314 CMR 21.09, and 314 CMR 21.10 and through off-site mitigation in accordance with 314 CMR 21.12.
- (d) To compensate for not meeting the Additional Performance Standard set forth in 314 CMR 21.08(3), the Stormwater Professional shall identify measures to improve existing water quality conditions. Measures to improve existing water quality conditions shall include, without limitation, measures that will reduce the total volume of stormwater runoff from the RIA Site such as reduction of impervious surfaces, the installation of rain barrels, cisterns, and/or green roofs, tree plantings, soil amendments, and/or the implementation of similar volume reduction measures off-site.
- (e) The Stormwater Professional shall include his or her findings in the Stormwater Report required by 314 CMR 21.09(4).
- (f) The request for a variance shall be submitted on the Department-approved form, accompanied by the fee established by the Department pursuant to 310 CMR 4.00 and signed and certified in accordance with 314 CMR 21.17.
- (g) The request for a variance shall be submitted at least one hundred and eighty days prior to the commencement of any construction or land disturbance activity. No construction or land disturbance activity associated with a project for redevelopment of impervious surfaces that is the subject of a variance request shall proceed unless the work together with any off-site mitigation includes



environmentally sensitive site design, LID techniques and structural stormwater BMPs that meet the Additional Performance Standard set forth in 314 CMR 21.08(3) or the Department has granted a variance and the work is performed in compliance with all the terms and conditions of that variance.

(2) Upon receipt of a complete request for a variance, the Department will place a notice in the Environmental Monitor published by the Massachusetts Environmental Policy Act Office within the Executive office of Energy and Environmental Affairs informing members of the public that they have thirty days to provide written comments to the Department on the variance request. If the Department determines a public hearing to be in the public interest, the Department shall schedule and conduct a public hearing on the variance request in a community within the area affected by the stormwater discharges covered by the RIA General Stormwater Permit. If the Department holds a public hearing, the Department shall publish in the Environmental Monitor notice of the public hearing at least fourteen days prior to the hearing. If the Department holds a public hearing, the public comment period shall extend for a period of fourteen days after the close of the public hearing.

(3) After the close of the public comment period, the Department will issue a written decision denying or granting the variance. The Department may grant a variance subject to such conditions as it deems necessary to protect the ground water as an actual or potential source of potable water and to achieve and maintain compliance with the Massachusetts Surface Water Quality Standards. Any person aggrieved by a decision granting, denying or conditioning a variance may request an adjudicatory hearing in accordance with 310 CMR 1.00 and M.G.L. c. 30A.

#### 21.14: Primary Representative

(1) If more than one person is an owner of a RIA Site that is required by 314 CMR 21.04 to submit an Initial Certification, all the owners of the RIA Site shall designate and maintain a Primary Representative authorized to act on their behalf for the following purposes:

(a) To prepare, submit, sign and certify, in accordance with 314 CMR 21.17(1) and (3), on behalf of all the owners of the RIA Site, the following documents: the Initial Certification required by 314 CMR 21.04, the Annual Compliance Certification required by 314 CMR 21.07, a request for renewal of coverage under the RIA General Stormwater Permit in accordance with 314 CMR 21.19 and 314 CMR 2.00, and any other submission that is a requirement of the RIA General Stormwater Permit or 314 CMR 21.00;

(b) To receive oral and written correspondence from the Department with respect to any matters arising in connection with the Initial Certification, the Annual Compliance Certification, the renewal of coverage under the RIA General Stormwater Permit, or any submissions required by the RIA General Stormwater Permit or 314 CMR 21.00;



(c) To receive oral and written correspondence with respect to any issues pertaining to the terms and conditions of the RIA General Stormwater Permit and 314 CMR 21.00, including, without limitation, the Baseline Performance Standards set forth in 314 CMR 21.06 and, if applicable, the Additional Performance Standards set forth in 314 CMR 21.08 and the requirements for off-site mitigation set forth in 314 CMR 21.12; and

(d) To receive any statement of fee required by 310 CMR 4.00 in connection with the RIA General Stormwater Permit or any other submission in connection with 314 CMR 21.00.

(2) Primary Representative's Certification. If the owners of the RIA Site designate a Primary Representative as provided in 314 CMR 21.14(1), all documents signed by the Primary Representative on behalf of all owners of the RIA Site shall contain the following certification:

"I attest under the penalties of perjury that I am the primary representative authorized to act on behalf of all the owners of the RIA Site for the following purposes: (i) to receive oral and written correspondence from the Department with respect to any matters arising in connection with the Initial Certification, the RIA General Stormwater Permit, the Annual Compliance Certifications, the renewal of coverage under the RIA General Stormwater Permit, and any submissions required by the RIA General Stormwater Permit and/or 314 CMR 21.00; (ii) to receive oral and written correspondence with respect to any issues pertaining to the terms and conditions of the RIA General Stormwater Permit and 314 CMR 21.00, including without limitation, the Baseline Performance Standards set forth in 314 CMR 21.06 and, if applicable, the Additional Performance Standards set forth in 314 CMR 21.08 and/or the requirements for off-site mitigation set forth in 314 CMR 21.12; (iii) to receive any statement of fee in connection with the RIA General Stormwater Permit; and (iv) to prepare, submit, sign and certify this document on behalf of all owners of the RIA Site. I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate or incomplete information."

21.15: LID Techniques and/or Structural Stormwater BMPs Subject To Regulation under 310 CMR 10.00 or 314 CMR 9.00

The provisions of 314 CMR 21.08 and 314 CMR 21.09 do not apply to a RIA Site or portion thereof if all the runoff from the RIA Site or the portion thereof can reasonably be expected to result in a discharge to LID techniques and structural stormwater BMPs that are required to be approved and are approved in a Final Order of Conditions issued by a conservation commission or the Department pursuant to the Wetland Protection Act Regulations, 310 CMR 10.00, or a 401 Water Quality Certification issued by the Department pursuant to the regulations entitled "401 Water Quality Certification for



Discharge of Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States”, 314 CMR 9.00, in response to a permit application submitted on or after November 18, 1996.

#### 21.16: Qualifying Local RIA Program

(1) The provisions of 314 CMR 21.04 through 314 CMR 21.14 do not apply to any RIA Sites located in a municipality that has a Qualifying Local Program. If the municipality in which a RIA Site is located establishes a Qualifying Local Program after the owner of the RIA Site has submitted the Initial Certification required by 314 CMR 21.04, the owner shall submit to the Department on the Department-approved form a request for termination of coverage under the RIA General Stormwater Permit in accordance with 314 CMR 21.04(3).

(2) Elements of a Qualifying Local RIA Program. A Qualifying Local RIA Program shall include the following elements:

(a) Measures to ensure that the persons who own RIA Sites implement the standard operating procedures and source control and pollution prevention measures that are required by 314 CMR 21.06(3) through (5);

(b) Measures to ensure the proper operation and maintenance of all LID techniques and structural stormwater BMPs located on RIA Sites in accordance with 314 CMR 21.06(6);

(c) Measures requiring that all RIA Sites that can reasonably be expected to result in stormwater discharges from a RIA to TMDL-identified stormwater-impaired surface waters meet the Additional Performance Standard set forth in 314 CMR 21.08(1) and the requirements of 314 CMR 21.09;

(d) Measures requiring all RIA Sites that can reasonably be expected to result in stormwater discharges within a Zone I, Zone A, Zone II or IWPA of a public water system or within 100 feet of a private water supply well comply with 314 CMR 21.10;

(e) Measures requiring all projects for the development or redevelopment of impervious surfaces to meet the applicable Additional Performance Standard set forth in 314 CMR 21.08(2) and (3) and the requirements of 314 CMR 21.09; and

(f) An ordinance or other regulatory mechanism to require compliance with the requirements of 314 CMR 21.16(2)(a) through (e) to the extent allowable under state and local law.

(3) Establishment of a Qualifying Local RIA Program. A local government unit planning to establish a Qualifying Local RIA Program shall notify the Department in



writing at least 90 days prior to the date that it will begin implementing the Program. Such notice shall include a summary of the program and a certification that the program meets all the requirements of 314 CMR 21.16. The notice shall be signed and certified in accordance with 314 CMR 21.17.

(4) Termination of a Qualifying Local RIA Program. If a local government unit that establishes a Qualifying Local RIA Program seeks to terminate the program, the local government unit shall notify the Department in writing at least 180 days before the program is terminated. Such notice shall include information on all RIA Sites subject to the Qualifying Local Program and be signed and certified in accordance with 314 CMR 21.17.

(5) Annual Report. On or before *date* (anniversary of the effective date of the regulations) of each year, a local government unit with a Qualifying Local RIA Program shall submit a report to the Department summarizing all actions taken over the past year to implement the Program. The report shall be signed and certified in accordance with 314 CMR 21.17.

## Regulations Governing All Stormwater Discharges

### 21.17: Signature and Certification Requirements

(1) Signatures. All applications for an individual permit, requests for coverage under a general permit, requests for renewal of an individual permit or coverage under a general permit, requests for termination of general permit coverage, and certifications shall be signed as follows:

- (a) For a corporation or limited liability corporation: by a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function and duly authorized by the Board of Directors, or any other person who performs similar policy or decision-making functions for the corporation or to whom authority to sign documents has been assigned or delegated in accordance with corporate procedures;
- (b) For a partnership or limited partnership: by a general partner;
- (c) For a sole proprietorship: by the proprietor;
- (d) For a trust: by the trustee;
- (e) For a municipality, local government unit or political subdivision of the State or Federal government: by a principal executive officer, ranking elected official, or other person with legal authority to sign such document; and



(f) For a RIA Site that is owned by more than one person: by a primary representative in accordance with 314 CMR 21.14.

(2) Reports: All reports and submittals required by permits or 314 CMR 21.00 shall be signed by a person described in 314 CMR 21.17(1) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in 314 CMR 21.17(1);

(b) The authorization identifies a Stormwater Professional or an individual or a position with responsibility for the overall operation of stormwater management such as the position of plant manager, superintendent, or a position of equivalent responsibility; and

(c) The written authorization is submitted to the Department.

(3) Certification: Any person signing a document in accordance with 314 CMR 21.17(1) or (2) shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. I further certify that this document has been signed as required by the Department. Based on my diligent inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

#### 21.18: Designation Authority

(1) The Department may designate the following activities as requiring an individual permit or coverage under a general permit issued by the Department pursuant to 314 CMR 21.00:

(a) Any activity that may reasonably be expected to result in a discharge that is contaminated by contact with process wastes, raw materials, toxic pollutants, hazardous substances, or oil and grease;

(b) Any activity that may reasonably be expected to result in a stormwater discharge that is subject to effluent limitations guidelines or toxic pollutant effluent standards; and



(c) Direct or indirect stormwater discharges associated with construction activity that are located on real property where one or more acres of land are undergoing construction or land disturbance activity and that are not being adequately controlled by the National Pollutant Discharge Elimination System Construction General Permit.

(2) In addition to the discharges identified in 314 CMR 21.18(1), the Department may designate any activity that results in a stormwater discharge as requiring an individual permit or coverage under a general permit or any category of stormwater discharges as requiring coverage under a general permit, when the Department determines that a particular stormwater discharge or a category of stormwater discharges is or may be a significant contributor of pollutants to the waters of the Commonwealth. In making this determination, the Department shall consider the following factors:

(a) The location of the discharge or category of discharges with respect to waters of the Commonwealth;

(b) The size of the discharge or category of discharges;

(c) The quantity and nature of the pollutants reaching surface waters of the Commonwealth and the Massachusetts Surface Water Quality Standards;

(d) Any Total Maximum Daily Load developed by the Department;

(e) The quantity and nature of the pollutants reaching ground waters of the Commonwealth and the impact of the discharge on the actual or potential use of the ground water as a source of potable water;

(f) Compliance with the requirements of 314 CMR 21.00; and

(g) Other relevant factors.

(3) The Department shall notify any person who is engaging in an activity that the Department, pursuant to 314 CMR 21.18, has designated as requiring an individual permit or coverage under a general permit. Any such notice shall include the reasons for the designation and the deadline for submitting the application for the individual permit or request for coverage under the general permit.

(4) The Department shall issue a draft general permit whenever it designates a category of activities as requiring coverage under a general permit. Public notice of the general permit shall be provided in accordance with 314 CMR 2.00.

(5) In lieu of exercising its authority to designate an activity identified in 314 CMR 21.18(1) or (2) as requiring an individual permit or coverage under a general permit, the Department may require additional control measures, stormwater BMPs or other actions to achieve or maintain compliance with the Massachusetts Surface Water Quality



Standards, to protect the use of the ground water as an actual or potential source of potable water, or to protect the public health, safety, welfare or the environment. The Department may exercise its authority to require the discharger to take the above actions by taking an enforcement action against the discharger or by other means.

#### 21.19: General Permits

(1) Authority to Issue General Permits. The Department may issue general permits that authorize one or more types of stormwater discharges along with the construction, operation, and maintenance of associated stormwater management systems and/or structural stormwater BMPs by multiple dischargers who have properly applied for and obtained coverage under the appropriate general permit. The Department may issue general permits to one or more categories or subcategories of activities that can reasonably be expected to result in stormwater discharges, if it determines that such activities:

- (a) involve the same or similar types of operations;
- (b) may reasonably be expected to result in stormwater discharges containing the same types of pollutants;
- (c) require the same effluent limitations or operating conditions;
- (d) require the same or similar monitoring or inspection requirements; and
- (e) are more appropriately controlled under a general permit than under individual permits.

Based on the factors set forth above, the Department will issue general permits for stormwater discharges from RIA Sites that are required to submit the Initial Certification and request coverage under the RIA General Stormwater Permit in accordance with 314 CMR 21.04. The Department will also issue general permits for the construction, installation, modification, operation, and maintenance of certain traditional and non-traditional municipal separate storm sewer systems required to obtain coverage under a general permit under 40 CFR Part 122 and 314 CMR 21.29. The Department may issue general permits for additional categories of stormwater discharges if it determines in accordance with 314 CMR 21.18 and/or 314 CMR 21.19 that such discharges require a permit and can be adequately controlled by a general permit.

(2) The Department may limit the scope of a general permit to stormwater discharges within a particular geographic area. Likewise, the Department may exclude stormwater discharges in a specified geographic area from coverage under a general permit.

(3) The Department may issue, modify or revoke a general permit in accordance with the applicable provisions of 314 CMR 2.00 and 314 CMR 21.00. The Department may modify a general permit by issuing an alternative general permit.



(4) Coverage under a General Permit. Dischargers who have previously obtained an individual permit who seek to be covered by a general permit in lieu of an individual permit, and proposed dischargers who seek to be covered by a general permit, shall submit to the Department a request for coverage under the general permit in accordance with the requirements of the appropriate general permit, 314 CMR 2.00 and 314 CMR 21.19, by submitting the applicable forms and paying the applicable fees as required by 314 CMR 2.00, 314 CMR 21.19, and 310 CMR 4.00. A discharger who fails to submit a request for coverage in accordance with the terms of the general permit, 314 CMR 2.00, and 314 CMR 21.19 is not authorized to discharge under the general permit.

(5) The Department will specify the contents of the request for coverage in the general permit and require the submission of the information deemed necessary by the Department for its adequate implementation and compliance oversight of the general permit.

(6) The Department will specify in the general permit and/or 314 CMR 21.00 the deadlines for submitting requests for coverage and the date(s) when a discharger is authorized to discharge under the general permit.

(7) The Department will specify in the general permit whether a discharger that has submitted a complete and timely request for coverage and that is eligible for coverage under the general permit is authorized to discharge in accordance with the general permit either upon the receipt of the request for coverage by the Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification by the Department.

(8) The Department may require any person seeking coverage under a general permit or authorized to discharge under a general permit to apply for and obtain an individual permit or an alternative general permit. Circumstances in which the Department may require an individual permit or an alternative general permit include, but are not limited to, the following:

(a) The discharger is not in compliance with the terms and conditions of the general permit and/or has not met the eligibility requirements for coverage under the general permit.

(b) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants associated with the direct or indirect stormwater discharges covered by the general permit.

(c) The Department determines, based on a Total Maximum Daily Load developed by the Department or otherwise, that: the stormwater discharge is not appropriately or adequately controlled under the general permit; or that more stringent limits than, or stormwater best management practices in addition to those required by the general permit are necessary to achieve or maintain



compliance with the Massachusetts Surface Water Quality Standards; to protect the ground water as an actual or potential source of potable water; or to protect the public health, safety, welfare or the environment.

(d) The entity seeking coverage under the general permit has failed to provide sufficient information for the Department to determine that coverage under the general permit will adequately protect the public health, safety, welfare and the environment.

(e) The Department determines that the activities that can reasonably be expected to result in the stormwater discharges authorized under the general permit:

1. No longer involve the same or substantially similar types of operations as the permittees granted coverage under the general permit;
2. No longer can reasonably be expected to result in stormwater discharges containing the same types of pollutants as the permittees granted coverage under the general permit;
3. No longer require the same effluent limitations or operating conditions as the permittees granted coverage under the general permit;
4. No longer require the same or similar inspection or monitoring as the permittees granted coverage under the general permit; or
5. Are more appropriately controlled under an individual permit.

(9) In lieu of requiring a discharger covered or seeking coverage under a general permit to obtain an individual permit, the Department may direct such discharger to undertake additional control measures, stormwater best management practices or other actions to ensure compliance with the general permit, to achieve or maintain compliance with the Massachusetts Surface Water Quality Standards, to protect the use of the ground water as an actual or potential source of potable water, or to protect the public health, safety, welfare, or the environment. The Department may exercise its authority to require the discharger to take the above actions by requiring the discharger to request coverage under an alternative general permit, by taking an enforcement action against the discharger or by other means.

(10) Where the Department requires a discharger covered or seeking coverage under a general permit to apply for an individual permit or request coverage under an alternative general permit, the Department shall notify the permittee in writing that an individual permit or alternative general permit application is required, as applicable. The Department's notification will include a brief statement of the reasons for the Department's action, the applicable form, a statement setting a deadline for the permittee to file the application for an individual permit or submit the request for coverage under the alternative general permit, and a statement that on the effective date of issuance or



denial of the individual permit or alternative general permit as it applies to the particular permittee, coverage under the general permit shall automatically cease. The Department may grant additional time to submit the application or request for coverage upon request of the applicant. If a permittee fails to submit an individual permit application or request for coverage under a general permit within the deadline set forth in its notification, the effectiveness of the general permit as applied to the discharger may be terminated as follows:

- (a) For a permittee seeking renewal of coverage under a general permit the effectiveness of the general permit as applied to the discharger is automatically terminated at the end of general permit term;
- (b) To terminate coverage prior to the end of the permit term, the Department may revoke the general permit coverage in accordance with 314 CMR 2.10.

(11) At least one hundred and eighty (180) days prior to the expiration of a general permit, a permittee covered by a general permit shall file a request for continued coverage under the general permit or file an application for an individual permit.

(12) Continuation of an Expired General Permit. In the event that the Department does not reissue a general permit prior to its expiration date, the general permit will be administratively continued and remain in full force and effect as to any particular permittee as follows. The Department may grant coverage under the general permit to any person who submitted a request for coverage under the general permit prior to the expiration date of the permit. The Department may also grant coverage under a general permit to a person who submitted a request for coverage after the expiration of the permit term while the permit is administratively continued, provided said person meets all other terms and conditions for coverage under the permit. Any permittee who was granted coverage prior to the expiration date, or as provided herein, will automatically remain covered by the continued permit until the earlier of:

- (a) Reissuance of the general permit, at which time the permittee shall comply with the conditions of the new permit to maintain its authorization to discharge;
- (b) The permittee's submittal of a written notice of termination of general permit coverage to the Department;
- (c) The Department's issuance of an individual permit or an alternative general permit for the permittee's discharge; or
- (d) A formal permit decision by the Department not to reissue the general permit, at which time, the permittee shall seek coverage under an alternative general permit or apply for an individual permit.

#### 21.20: Individual Permits



(1) Pursuant to 314 CMR 21.00, the Department will issue individual permits to the owners of large and medium municipal separate storm sewer systems required by the Federal Act and 40 CFR Part 122 to obtain individual stormwater discharge permits. As provided in 314 CMR 21.18 and 314 CMR 21.19, the Department may require other persons who engage in activities that may reasonably be expected to result in certain stormwater discharges to obtain an individual permit.

(2) Any person required to obtain an individual permit as provided in 314 CMR 21.20(1) shall apply for the individual permit by completing and submitting the appropriate forms and paying the applicable fees in accordance with 314 CMR 2.00, 314 CMR 21.20, and 310 CMR 4.00. The Department may require the applicant to provide information and analyses as the Department deems necessary to determine whether the applicant and the proposed discharge meet the requirements of 314 CMR 21.00.

(3) Who Must Apply. Except as otherwise provided in 314 CMR 21.20(3) or otherwise determined by the Department, all persons who own the real property where the stormwater originates, or where the stormwater is discharged directly or indirectly to a structural stormwater best management practice, a stormwater management system, a municipal separate storm sewer system, or a water of the Commonwealth, and all persons who own the stormwater management system or the structural stormwater best management practice, shall apply for an individual permit required by 314 CMR 21.18, 314 CMR 21.19 or 314 CMR 21.20. For discharges from a municipal separate storm sewer system, the operator of the municipal separate storm sewer system shall apply.

(4) Time to Apply.

(a) Except as otherwise provided by 314 CMR 21.20(4)(a) or otherwise determined by the Department, any person required to obtain an individual permit pursuant to 314 CMR 21.18, 314 CMR 21.19 or 314 CMR 21.20, who does not have a currently effective permit shall submit an application at least 180 days before the discharge is to commence, unless permission for a later date is granted by the Department in writing. Persons required to apply for an individual permit by the Department pursuant to 314 CMR 21.18 or 314 CMR 21.19 shall apply for a permit by the deadline established by the Department when it notifies the discharger that it is required to apply for and obtain an individual permit.

(b) Any person with a currently effective individual permit shall submit a new application for an individual permit, or if applicable, request coverage under a general permit at least 180 days before the expiration date of the existing individual permit, unless permission for a later date has been granted in writing by the Department. The renewal of a permit shall be processed in accordance with 314 CMR 2.00.

(5) Completeness. The Department shall not issue an individual permit before receiving a complete application as required under 314 CMR 2.03(2). The Department will require



that a complete application include any information that the Department determines is necessary or appropriate to assess the impact of the proposed discharge on the use of the receiving ground water as an actual or potential source of potable water or the existing and designated uses of the receiving surface waters. Such additional information may include, without limitation, information on natural background conditions in the receiving ground waters and surface waters.

(6) Time to Apply for Renewal of an Individual Permit. Any person with a currently effective individual permit shall submit an application to renew the permit at least 180 days before the expiration of the existing permit, unless permission for a later date has been granted in writing by the Department

21.21: Modification, Suspension, Revocation, and Transfer of an Individual Permit or Coverage under a General Permit

(1) As provided in M.G.L. c. 21, § 43(10), the Department may suspend or revoke any outstanding individual permit or coverage under a general permit, in whole or in part, for cause, including, but not limited to, violation of any permit term, obtaining an individual permit or coverage under a general permit by misrepresentation, or failure to disclose fully all relevant facts or any changes in or discovery of conditions that call for the reduction or discontinuance of the authorized discharge or activity. The suspension or revocation of an individual permit or coverage under a general permit shall be processed in accordance with 314 CMR 2.00.

(2) The Department may modify an individual permit or coverage under a general permit at the request of the permittee upon a showing satisfactory to the Department that the requested modification is appropriate in view of circumstances for which the permittee is not at fault. Except as otherwise provided in 314 CMR 21.21(3) and (4), the modification of an individual permit or coverage under a general permit shall be processed in accordance with the provisions of 314 CMR 2.00. An individual permit or coverage under a general permit may be transferred by the permittee to a new permittee only if the individual permit or coverage under the general permit has been modified or revoked and reissued in accordance with 314 CMR 2.00, a minor modification is made in accordance with 314 CMR 21.21(4), or an automatic transfer takes place in accordance with 314 CMR 21.21(5).

(3) Minor Modification of Individual Permits. Upon the request or consent of the permittee, the Department may modify an individual permit to make the following minor modifications without following the procedures set forth in 314 CMR 2.00:

- (a) Requirements for additional monitoring by the permittee, including monitoring for additional parameters or at additional location; and
- (b) Changes in an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing



permit and does not interfere with attainment of the final compliance date requirement.

(4) Additional Minor Modifications of Individual Permits or Coverage under a General Permit. Upon the request or consent of the permittee, the Department may modify an individual permit or coverage under a general permit to make the following minor modifications without following the procedures set forth in 314 CMR 2.00:

(a) Correction of typographical errors; and

(b) Transfer of the permit to a new permittee, if the following conditions are satisfied:

1. The Department receives written notice of the transfer from the current permittee at least 30 days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new permittee, which includes a specific date for transfer of the permit and the proposed new transferee's assumption of responsibility for compliance with all the terms and conditions of the permit; and
3. The Department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the individual permit or coverage under the general permit or that it requires additional information before the transfer may take effect. In that event, the transfer is effective on the date set forth in the written agreement described in 314 CMR 21.21(5)(b).

#### 21.22: Effect of a Permit

Issuance of an individual permit or coverage under a general permit under 314 CMR 21.00 and 2.00 shall be deemed to allow, to the extent specified in the permit and 314 CMR 21.22, the permittee to discharge stormwater directly or indirectly to waters of the Commonwealth, to engage in an activity that can reasonably be expected to result in a stormwater discharge and to construct, install, modify, operate and maintain an outlet for such discharge and any associated stormwater management systems and structural stormwater best management practices.

#### 21.23: Restrictions on the Issuance of a Permit

The Department shall not issue a permit pursuant to 314 CMR 21.00 when the stormwater discharge or the activity that can reasonably be expected to result in a stormwater discharge will cause or contribute to a violation of the Massachusetts Surface Water Quality Standards or impair the use of ground water as an actual or potential source of potable water.



#### 21.24: Duration of Individual and General Permits

All individual and general permits issued pursuant to 314 CMR 21.00 shall be effective for a fixed term not to exceed five years. The Department may issue any permit for a lesser duration.

#### 21.25: Schedules of Compliance

An individual or general permit may, when appropriate, specify a schedule leading to compliance with M.G.L. c. 21, §§ 26 through 53 and regulations thereunder.

#### 21.26: Monitoring

(1) An individual or general permit may, when appropriate, require monitoring to assess compliance with M.G.L. c. 21, §§ 26 through 53, 314 CMR 21.00, and the permit.

(2) If Monitoring is required the individual or general permit shall include the following conditions:

(a) Monitoring. Samples and measures taken for the purpose of monitoring shall be representative of the monitored activity. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures are specified in the permit.

(b) Recordkeeping. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and all records of all data used to complete the application for the permit, for a period of at least five years from the date of the sample, measurement, report, or application. Records of monitoring information shall include:

- (a) The date, exact place and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurement;
- (c) The date(s) analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used; and
- (f) The results of such analyses.

#### 21.27: General Conditions



The following conditions apply to all individual and general permits issued by the Department pursuant to 314 CMR 21.00:

- (1) No discharge authorized in the permit shall cause or contribute to a violation of the Massachusetts Surface Water Quality Standards or impair the ability of the ground water to act as an actual or potential source of potable water.
- (2) Duty to comply. The permittee shall comply at all times with the terms and conditions of the permit, 314 CMR 21.00, M.G.L. c. 21, §§ 26 through 53, and all applicable State and Federal statutes and regulations.
- (3) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any adverse impact on human health or the environment resulting from non-compliance with the permit.
- (4) Duty to provide information. The permittee shall furnish to the Department within a reasonable time as specified by the Department any information which the Department may request to determine whether cause exists for modifying, revoking, reissuing or terminating the permit or to determine whether the permittee is complying with the terms and conditions of the permit. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.
- (5) Inspection and entry. The permittee shall allow the Department or its authorized representatives to:
  - (a) Enter upon the permittee's premises where the stormwater is being discharged to a municipal separate storm sewer system, a stormwater management system, a structural stormwater best management practice, or a water of the Commonwealth, or where records required by the permit are kept;
  - (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
  - (c) Inspect at reasonable times any low impact development techniques, structural or non-structural stormwater best management practices, stormwater management systems, or stormwater discharges regulated or required under the permit; and
  - (d) Sample or monitor at reasonable times for the purpose of determining compliance with the permit, 314 CMR 21.00, and M.G.L. c. 21, §§ 26 through 53.



(6) Signature requirements. All applications, reports, or information submitted to the Department shall be signed and certified in accordance with 314 CMR 21.17.

(7) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all low impact development techniques, structural stormwater best management practices and other facilities and equipment installed or used to achieve compliance with the terms and conditions of the permit, and in accordance with 314 CMR 21.00.

(8) Duty to reapply. If the permittee wishes to continue an activity regulated by a permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit or coverage under a general permit. The permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Department in writing.

(9) Property rights. The permit does not convey any property rights of any sort or any exclusive privilege.

(10) Other laws. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

(11) Oil and hazardous substance liability. Nothing in the permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Federal Act, 33 U.S.C. § 1321 and M.G.L. c. 21E.

(12) Severability. The provisions of the permit are severable, and if any provision of the permit, or the application of any provision of the permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of the permit, shall not be affected thereby.

(13) Reopener clause. The Department reserves the right to make appropriate revisions to the permit in order to establish any appropriate schedules of compliance, or other provisions which may be authorized under the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 or the Federal Act, 33 U.S.C. §1251 *et seq.* in order to bring all discharges into compliance with said statutes.

(14) Permit compliance fees. Except as otherwise provided, any permittee required to obtain a stormwater discharge permit pursuant to M.G.L. c. 21, § 43 and 314 CMR 21.00, shall be required to submit the annual compliance assurance fee established in accordance with M.G.L. c. 21A, § 18 and 310 CMR 4.00 as provided in 314 CMR 2.12. The requirement to submit the annual



compliance fee does not apply to any local government unit other than an authority.

#### 21.28: Violations

(1) It shall be a violation of 314 CMR 21.00 for any person to:

- (a) Fail to submit a timely certification, application for an individual permit, or request for coverage under a general permit in accordance with 314 CMR 21.00;
- (b) Make any false, inaccurate, incomplete or misleading statements in any submission required by 314 CMR 21.00 and/or a permit issued pursuant to 314 CMR 21.00, including, without limitation, any required certification, application for an individual permit, or request for coverage under a general permit;
- (c) Make any false, inaccurate, incomplete or misleading statement in any record, report, plan, file, log, register, or other document which the person is required to keep by 314 CMR 21.00 and/or a permit issued pursuant to 314 CMR 21.00;
- (d) Fail to comply with the applicable performance standards set forth in 314 CMR 21.00; or
- (e) Violate any provision of 314 CMR 21.00 and/or any requirement of an individual or general permit issued pursuant to 314 CMR 21.00.

(2) Persons violating 314 CMR 21.00 shall be subject to the full range of actions authorized under M.G.L. c. 21, §§ 42 and 44, including, without limitation, criminal fines, civil and administrative orders and/or penalties.

#### Regulations Governing Small MS4s

##### 21.29: General Permits for Phase II Storm Water Discharges from Small MS4s.

(1) Scope of Coverage. All operators of small municipal separate sewer systems (small MS4s), as provided in EPA's Phase II Storm Water Regulations at 40 CFR Part 122 Subpart B, located within the boundaries of an urbanized area of Massachusetts, are required to obtain coverage under the general permit for small municipal storm sewer systems, unless the Department determines that such an automatically designated small MS4 meets the criteria for a waiver, as determined by the Department, or is subject to an individual stormwater discharge permit issued pursuant to 314 CMR 21.20.

(2) Additional Department Authority to Designate Other MS4s. The Department may designate an operator of a small MS4 located outside of an urbanized area as a regulated small MS4, if the Department determines that the system's discharges cause, or have the potential to cause, an adverse impact on water quality. Any such designation shall be based on criteria developed by the Department that considers factors such as whether the



discharge is to sensitive waters, high population density, high growth or potential growth, continuity to an urbanized area, whether the discharge is a significant contributor of pollutants to the receiving waters, and ineffective protection of water quality concerns by other programs. The Department shall apply its designation criteria, at a minimum, to all small MS4s located outside of an urbanized area serving a jurisdiction with a population of at least 10,000 and a population density of at least 1,000 persons per square mile. The Department may also designate any small MS4 located outside of an urbanized area that contributes substantially to the pollutant loadings of a physically interconnected MS4 regulated by the general permit or an individual permit issued by the Department pursuant to 314 CMR 21.20.

(3) Waiver of Coverage for Certain Automatically Designated Small MS4s. The Department may waive the requirement that an automatically designated MS4 obtain coverage under the general permit in the following circumstances:

(a) The jurisdiction served by the system is less than 1,000 people, the system is not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4, and if the small MS4 discharges any pollutants identified as a cause of impairment of any water body to which it discharges, stormwater controls are not needed based on wasteload allocations that are part of a TMDL established by the Department that addresses the pollutant(s) of concern; or

(b) The jurisdiction served by the system is less than 10,000 people, an evaluation of the waters that receive a discharge from the system shows that stormwater controls are not needed based on wasteload allocations that are part of a TMDL established by the Department that addresses the pollutant(s) of concern or an equivalent analysis, and the Department determines that future discharges from the small MS4 do not have the potential to result in exceedances of water quality standards.

(c) At least once every five years, the Department shall review any waivers that it granted to small MS4 operators to determine whether any information required for granting the waiver has changed.

(4) Stormwater Management Program Requirements for MS4s. An operator of a small MS4 covered under the general permit shall develop, implement and enforce a stormwater management program designed to reduce the discharge of pollutants from its small MS4 to the maximum extent practicable to protect water quality, and to satisfy the water quality requirements of M.G.L. c. 21, §§ 26 through 53 and 314 CMR 4.00. An operator's stormwater management program must include the minimum control measures described in 314 CMR 21.29(5), unless the operator applies for and is issued an individual stormwater discharge permit pursuant to 314 CMR 21.20. For the purposes of 314 CMR 21.00, narrative effluent limitations requiring implementation of BMPs are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements, including reductions of pollutants to the maximum extent



practicable, and to protect water quality. Implementation of BMPs consistent with the provisions of the stormwater management program required pursuant to the provisions of 314 CMR 21.29(4), including the proper maintenance of BMPs, generally constitutes compliance with the standard of reducing pollutants to the “maximum extent practicable.” However, consistent with its authority under 314 CMR 21.00, the Department reserves the right to require an operator of a small MS4 to undertake additional control measures, BMPs, and other actions beyond the scope of the operator’s existing stormwater management program to ensure compliance with the general permit, 314 CMR 21.00 and the Massachusetts Surface Water Quality Standards, preserve the ground water as an actual or potential source of potable water, and/or protect the public health, safety, welfare, or the environment. The Department may also condition the general permit to require measurable verification of the effectiveness of BMPs and additional operational and maintenance activities associated with BMPs, and other control measures in the operator’s stormwater management program, including water quality monitoring.

(5) Minimum Control Measures. The stormwater management program of an operator of a small MS4 covered under the general permit shall include the following six minimum control measures:

(a) Public Education and Outreach. The operator shall implement a public education program to distribute educational materials to the community, or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff, such as ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. In addition, some of the educational materials or outreach programs should be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.

(b) Public Participation/Involvement. The operator shall, at a minimum, comply with applicable Department and other state and local public notice requirements when implementing a public involvement/participation program. The operator shall include the public in developing, implementing and reviewing its stormwater management program and the public participation process shall make efforts to reach out and engage all economic and ethnic groups.

(c) Illicit Discharge Detection and Elimination. The operator shall develop, implement and enforce a program to detect and eliminate illicit discharges into its small MS4, that provides that the operator *inter alia* shall:

1. Develop, if not already completed, a storm sewer system map showing the locations of all outfalls and the names and location of all waters of the Commonwealth that receive discharges from those outfalls;



2. To the extent allowable under state and local law, effectively prohibit, through ordinance or other regulatory mechanism, non-stormwater discharges into its storm sewer system and implement appropriate enforcement procedures and actions;
3. Develop and implement a plan to detect and address non-stormwater discharges, including illegal dumping, to its system;
4. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of wastes; and
5. Address the following categories of non-stormwater discharges or flows (*i.e.*, illicit discharges) only if the operator has identified them as significant contributors of pollutants to its small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated groundwater infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from firefighting activities are excluded from the effective prohibition against non-stormwater discharges and need only be addressed by the operator where they are identified as significant sources of pollutants to waters of the Commonwealth).

(d) Construction Site Runoff Control. The operator shall develop, implement and enforce a program to reduce pollutants in any stormwater runoff to its small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of stormwater discharges from construction activity disturbing less than an acre shall be included in the operator's program, if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Department waives requirements for stormwater discharges associated with small construction activity in accordance with 314 CMR 21.29(3), the operator is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. The operator shall include the development and implementation of, at a minimum:

1. An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state and local law;
2. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;



3. Requirements for construction site operators to control wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site, that may cause adverse impacts to water quality;

4. Procedures for site plan review which incorporate consideration of potential water quality impacts;

5. Procedures for receipt and consideration of information submitted by the public; and

6. Procedures for site inspection and enforcement of control measures.

(e) Post-construction Site Runoff Control. The operator shall develop, implement and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects that disturb less than one acre and that are part of a larger common plan of development or sale, that discharge into its small MS4. The program shall ensure that controls are in place that would prevent or minimize water quality impacts. The operator shall also:

1. Develop and implement strategies that include a combination of structural and/or non-structural BMPs appropriate for the community;

2. Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state and local law; and

3. Ensure adequate long-term operation and maintenance of BMPs.

(f) Pollution Prevention/Good Housekeeping. The operator shall develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing stormwater pollution from activities such as park and open space maintenance, new construction and land disturbances, and stormwater system maintenance.

(6) Ability to Share Responsibility to Implement the Minimum Control Measures. An operator of a small MS4 may rely on another entity to satisfy its general permit obligation to implement a minimum control measure if:

(a) The other entity, in fact, implements the control measure;

(b) The particular control measure, or component thereof, is at least as stringent as the corresponding general permit requirement;



(c) The other entity agrees to implement the control measure on behalf of the operator of the small MS4. In reports that the operator of the small MS4 is required to submit to the Department pursuant to 314 CMR 21.00, the operator shall specify that it relies on another entity to satisfy some of its general permit obligations and shall identify such other entity; and

(d) The operator of the small MS4 remains responsible for compliance with its general permit obligations if the other entity fails to implement the control measure, in whole or in part.

(7) Evaluation and Assessment of the Storm Water Management Program.

(a) Evaluation. The operator of a small MS4 shall evaluate the compliance of its stormwater management program with the general permit, the appropriateness of its best management practices, and progress towards achieving its identified measurable goals, in accordance with the general permit and Department requirements.

(b) Recordkeeping. The operator of the small MS4 shall keep records required by the general permit for at least three years. The operator shall submit such records to the Department only when specifically asked to do so by the Department. The operator shall make its records, including a description of its stormwater management program, available to the public at reasonable times during regular business hours, subject to the provisions of M.G.L. c. 66, § 10, the state public records law.

(8) Reporting. Unless the operator of a small MS4 is relying on another entity to satisfy its general permit obligations under 314 CMR 21.29(6), it shall submit annual reports to the Department during the first term of the general permit. For subsequent permit terms, the operator shall submit reports in years two and four, unless the Department requires more frequent reports. The report shall include:

(a) The status of compliance with the conditions of the general permit, an assessment of the appropriateness of its best management practices, and progress towards achieving its identified measurable goals, in accordance with the general permit and Department requirements;

(b) The results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(c) A summary of stormwater activities that the operator plans to undertake during the next reporting cycle;

(d) A change in any identified BMPs or measurable goals for any of the minimum control measures; and



(e) If applicable, notice that the operator is relying on another entity to satisfy some of its general permit obligations.

(9) Compliance with More Stringent Effluent Limits. The operator shall comply with any more stringent effluent limitations, including permit requirements that modify, or are in addition to, the minimum control measures based on a TMDL or equivalent analysis approved by the Department. The Department may include in the general permit such more stringent limitations based on a TMDL or equivalent analysis that it determines are needed to protect water quality.

(10) Applying for Coverage under the Small MS4. Operators of small MS4s regulated under the Phase II Storm Water Rule and 314 CMR 21.00 shall submit to the Department a written request to be covered by the general permit. In its request for coverage, the operator shall identify and submit the following minimum information:

(a) The BMPs that the operator or another entity will implement for each of the stormwater minimum controls identified in 314 CMR 21.29(5);

(b) The measurable goals for each of the BMPs including, as appropriate, the months and years in which the operator will undertake required actions, including interim milestones and the frequency of action; and

(c) The person or persons responsible for implementing or coordinating the operator's stormwater management program.

(11) An operator of a regulated small MS4 is not covered by any general permit for Phase II Storm Water Discharges issued by the Department pursuant to 314 CMR 21.19 and 314 CMR 21.29 unless the operator submits a timely and complete request for coverage to the Department; and the Department notifies the operator in writing that its MS4 is covered by the general permit. Operators of regulated MS4s who fail to submit a request for coverage to the Department and receive no written notification of permit coverage, or those who are denied coverage by the Department, are not authorized under the general permit to engage in activities that require coverage under the general permit for small MS4s issued by the Department pursuant to 314 CMR 21.19 and 314 CMR 21.29.