



**Response Summary for Draft  
Vermont Multi-Sector General Permit (3-9003)**

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## Introduction

ANR thanks everyone who took the time to review and comment on the draft Multi-Sector General Permit (MSGP). The final permit is a better document as a result of your efforts. Our responses to significant comments are provided below.

## Individuals Submitting Public Comment

<u>Name</u>	<u>Organization</u>
Tim Burke	Conservation Law Foundation
John Brabant	Vermont Resident
Mike Wickersham	Luzenac America
Robin Reilly	Luzenac America
Joe Gluzelak	Precision Industrial Maintenance
Mary Jeanne Packer	Vermont Wood Manufacturers Association
Parker M. Riehle	Ski Vermont
Ryan Bates	Vermont Resident
Daniel Dutcher	Vermont Resident
James Lathrop	Claire Lathrop Band Mill, Inc.
James Jutras	Essex Junction Vermont
Andrew Geffert	SVE Associates
Charles Mayhood	Superior Technical Ceramics Corporation
Anthony Iarrapino	Conservation Law Foundation, Vermont Natural Resources Council, and Lake Champlain Committee
Paul Frederick	Vermont Department of Forest, Parks and Recreation
Tuthill Doane	Target Enterprises, Inc.
Jeff Nelson	Pioneer Environmental Associates, Greater Burlington Industrial Corporation (GBIC) and the Lake Champlain Regional Chamber of Commerce
Tony Barbagallo	Chittenden Solid Waste District
John Armstrong	VTrans
Michael Rainville	Vermont Wood Manufacturers Association
Bill Driscoll	Associated Industry of Vermont <sup>1</sup>

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<sup>1</sup> The Agency received extensive written “comments” submitted by the Associated Industries of Vermont which in fact were copies of comments from national industry groups such as the American Forest and Paper Association, the National Mining Association, the Treated Wood Council, and others. These “comments” were on the letterhead of the national industry groups and were directed to EPA regarding EPA’s draft 2006 MSGP. As such, the “comments” often referenced sections and parts of the EPA MSGP which did not coincide with the sections and parts of Vermont’s proposed MSGP. The “comments” also raised issues regarding EPA’s authority under the Clean Water Act, requested that EPA clarify and/or revise provisions of the federal draft permit, addressed regulatory impacts for industries in such areas as “mining operations located in the arid west,” “coal mining operations,” and “60,000 small facilities,” (presumably a national statistic). The “comments” further made reference to EPA’s administrative record and urged compliance with federal laws which govern federal agencies. These “comments” were on behalf of entities other than AIV and directed to EPA and not ANR. Such “comments” were not appropriately addressed to ANR regarding the Vermont MSGP and are therefore not be responded to herein. Comments which AIV made to ANR pertaining to the Vermont MSGP are responded to appropriately.

## Public Comment & Public Notice

1. *Please extend the public comment period on the draft MSGP to provide industry with additional time to review the permit and offer comment. [Mary Jeanne Packer, Parker M. Riehle]* **Response:** The original public comment period, which ran from December 30, 2005 to February 16, 2006, was extended until April 3, 2006. In total the MSGP was on public notice for 94 days. During that time two (2) public hearings and numerous public informational meetings were held in locations throughout the state.
2. *Consider adjoiner notification during permit public comment period. [John Brabant]* **Response:** There are no Federal or State requirements for adjoiner notification for MSGP coverage.
3. *Provisions for public comment on SWPPPs must be provided in the MSGP. [Anthony Iarrapino]* **Response:** Aside from providing for the public participation required by 10 VSA § 1263[b] with respect to the Notice of Intent (NOI), as set forth in MSGP section 1.6.2.2, ANR is following EPA's model set forth in the draft federal MSGP, which does not require public comments on SWPPPs. The Agency does not know if EPA will require pre-authorization public comment on SWPPPs. If EPA ultimately revises its MSGP to require pre-authorization public comment on SWPPPs, Vermont will amend its MSGP accordingly. For present purposes, however, Section 1.6.2 of the MSGP has been changed to reflect the provisions of Section 2.5 of the Draft MSGP (which remains unchanged) and to apply the provisions of Section 2.5 to provisions for Permit Coverage. Section 2.5 of the permit provides that the Secretary may notify a permittee at any time that their SWPPP, BMPs or other components of their stormwater program do not meet one or more of the requirements of the MSGP. Such notification “may be the result of comments on your SWPPP that the Secretary receives from the public.” The notification will identify specific provisions of the permit that are not being met, and may include required modifications to the SWPPP, stipulated deadlines, additional monitoring requirements and special reporting requirements. Since permittees are required to provide their SWPPPs to the Agency and the public (*see* Sections 2 and 2.4, which were amended to require submission of SWPPPs to the Agency in response to public comments) the public can request a copy of the SWPPP from either the Agency or the permittee. Sections 1.6.2 was likewise amended in response to public comments to provide, *inter alia*, that the Agency may require that the SWPPP be modified based on comments received from the public, or determine that the permittee is not eligible for coverage under the MSGP, in which case coverage would be deemed void retroactive to the date of initial issuance (subject to the permittees rights to notice and hearing under 3 VSA § 814).
4. *The MSGP currently states that a facility's SWPPP must be provided upon request, but does not provide a timetable to ensure that the SWPPP is provided in a reasonable amount of time that allows for appropriate review. The MSGP should require that the SWPPP will be provided within 10 days of the request.*

*[Anthony Iarrapino]* **Response:** ANR is following EPA's model set forth in the draft federal MSGP, which does not require a timetable for SWPPP availability (see EPA 2006 MSGP Fact Sheet at 3.4). Consistent with EPA's draft MSGP, Vermont's MSGP requires that SWPPPs must be provided to the public in a timely fashion. As is set forth in the EPA Fact Sheet, no more than two weeks from the request should be entirely adequate unless there are extenuating circumstances. The Agency will be requiring that SWPPPs be submitted to the Water Quality Division. The public can contact the Water Quality Division regarding SWPPPs for review.

5. *How many staff will it take DEC staff to process MSGP permits? How long will it take to process an application? What does DEC do in reviewing permits?*

*[Paul Frederick]* **Response:** When the MSGP is finalized, all permit review staff in the stormwater section will process permit applications. In most cases, DEC will grant coverage, deny eligibility or request additional information within **30 days** of the end of the public comment period.

6. *Sections 1.6.2.2 and 1.6.2.3 appear to morph a notification/certification process into an individual permit review, which is contrary to the intent of a general permit program. It is unclear why these public comment and hearing provisions are included for projects seeking coverage under the general permit. It is also unclear why the current comment period has been expanded from 10 days to 30 days.*

*[Jeff Nelson]* **Response:** The Agency agrees. While it may be EPA's eventual intent to provide for formal comment and hearings on NOIs or perhaps even SWPPPs, EPA's draft MSGP has instead proposed a "Discharge Authorization Waiting Period" of thirty (30) days which, according to EPA, is not a formal comment period (see EPA 2006 MSGP Fact Sheet at 3.3.). EPA's draft MSGP does not provide for a hearing. According to EPA, the 30-day waiting period is twofold: (1) to provide the US Fish & Wildlife Service and the National Marine Fisheries Service an opportunity to review the proposed discharge for Endangered Species Act concerns, and; (2) to allow the public to comment on an NOI (see *id*). Vermont law already provides for a formal public comment period on NOIs for general permit coverage, which, as the commenter notes, is ten (10) days rather than thirty (30) days (see 10 VSA § 1263[b]). Pursuant to 10 VSA § 1263[b], however, the Secretary may require an applicant to submit any additional information, and may refuse to grant permission to discharge under the terms of a general permit until such information is furnished and evaluated. Accordingly, Vermont law and Vermont's MSGP are consistent with the objectives of EPA's proposed waiting period, and go further by providing for formal public comment and vesting the discretion in the Secretary to provide for such time as may be required for the applicant to furnish and for the Agency to evaluate information pertinent to coverage. 10 VSA § 1263[b] does not require, but rather precludes public hearings on applications for permission to discharge under the terms of a general permit. The policy basis for not requiring hearings on NOIs is that the information provided in an NOI requesting coverage under a general permit is limited, and because the formal public comment and hearing process takes place with respect to the general permit itself. The hearings held on Vermont's MSGP, the

comments herein and the Agency's responses all reflect and constitute the formal public process for the general permit. This is the reason why 10 VSA § 1263[b] expressly limits the comments on an application to discharge under a general permit to "whether the application complies with the terms of the general permit." Nonetheless, other commenters have suggested that recent federal case law requires public participation procedures for general permits which is identical to the comment and hearing requirements for individual permits. EPA issued its 2006 draft MSGP subsequent to such court decisions, however, and has not required a formal public comment period or hearings on NOIs under the federal MSGP. The Agency does not know what EPA will eventually decide to do. EPA has not amended its NPDES regulations or issued a final version of its MSGP to require a formal public comment period or hearings for MSGP coverage. Vermont law requires a ten (10) day comment period on general permit NOIs. Vermont law requires a formal comment period which EPA does not. Vermont's MSGP is consistent with that requirement. If EPA were to create a general permitting program which required a formal 30-day comment period and a public hearing, the Agency would amend its MSGP accordingly, consistent with the authority granted under 10 VSA § 1263. Based on this comment and foregoing analysis, the Agency has changed the public comment period to ten (10) days and removed the provisions in Section 1.6.2.3 for public hearings on NOIs. Section 1.6.2.2 has been revised to reflect the requirements of 10 VSA § 1263[b].

## Application Deadlines

- 7. A pollution control program that is already sixteen years overdue should not be further delayed by the long phase-in schedules proposed in the draft permit. These delays are not justified. The regulated community has long been on notice of its Clean Water Act obligations. DEC has worked for several years to alert the regulated community of its obligations under this permit. Moreover, the structure of the general permit provides DEC with sufficient flexibility to implement the program without phase-ins. The long, well-publicized process of MSGP development and implementation in Vermont and its neighboring states provided ample notice of the Clean Water Act's requirements for industrial stormwater pollution clean-up. DEC issued a press release, conducted public hearings, and accepted comments from interested parties on the 2002 draft Vermont MSGP. Industrial trade groups such as Associated Industries of Vermont and the Greater Burlington Industrial Corporation offered comments at that time. In addition, various public records demonstrate that the DEC conducted extensive MSGP-related outreach to the regulated community in 2002. DEC has undertaken similar outreach efforts in connection with this latest draft. In addition, DEC has, at the request of the regulated community, extended the notice and comment period on the proposed draft by more than one month and held another public hearing. There are differences between the 2002 draft and the current proposal, but the core obligations for dischargers remain the same. The regulated community has been provided with substantial*

*notice of its general obligations for industrial stormwater clean-up; months of additional phase-in time are not required. [Tim Burke, Anthony Iarrapino]*

**Response:** The Agency has eliminated the sector-specific roll-out schedule for NOI submission which was contained in Section 1.6.1 and reduced the SWPPP implementation schedule to in Table 2-1 in Section 2 for all sectors to 270 days in response to this comment. The Agency has further clarified that facilities which did not exist before the effective date of this permit must prepare and implement a SWPPP before submitting an NOI for permit coverage. All existing facilities are required to submit their NOIs immediately (*see* revised Table 1-2). The Agency disagrees with this comment's assertion that facility-specific and detailed SWPPPs are "general obligations," however, and believes that regulated entities will require some lead time to meet the extensive facility-specific obligations required by the MSGP. Accordingly, Vermont's final MSGP adopts the exact same phased-in SWPPP implementation schedule which the EPA used when it issued the first federal MSGP in 1992 (*see* 57 Fed. Reg. 41236, 41307, *Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity* [Wednesday, September 9, 1992]), and when it re-issued the MSGP in 1995 (*see* 60 Fed. Reg. 50804, 50812, *Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity* [September 9, 1995]). Similar to EPA's phased-in implementation schedules, Vermont's MSGP requires compliance as expeditiously as practicable, and in no event later than three (3) years after the issuance thereof. It should be noted that the provision for three (3) years to comply represents the outmost limit of the time to implement the SWPPP and would only apply in the rare circumstances where the permittee can demonstrate to the satisfaction of the Secretary that such an extension is justified based upon a demonstrated need for three years to construct structural BMPs. Notwithstanding the timetables set forth in Table 2-1, the Agency encourages permittees to implement BMPs prior to completion and submit their SWPPPs. DEC Water Quality Division MSGP Program Staff may review SWPPPs for compliance upon receipt, and that Staff will provide technical assistance and compliance assurance in the field following receipt of SWPPPs. Section 2 has further been revised to provide, in cases where construction is necessary to implement measures required by the SWPPP, the SWPPP shall contain a schedule that provides compliance with the plan as expeditiously as possible, but no later than three (3) years from the effective date of this permit. Permittees wishing to include such a schedule of compliance must demonstrate to the Secretary's satisfaction that such a schedule is justified. Where a construction compliance schedule is included in the SWPPP, the schedule shall include appropriate non-structural and/or temporary controls to be implemented in the affected portion(s) of the facility prior to completion of the permanent control measure. Upon a showing of good cause, the Secretary may establish a later date in writing for preparing and compliance with a SWPPP.

8. *The current schedule for compliance is not realistic or attainable. It does not give facilities enough time to develop a SWPPP and file an NOI. The current schedule requires that these items be prepared within 90 to 270 days,*

*depending upon the sector of the facility. This could be problematic for a number of reasons including: DEC staffing levels, seasonal limitations, and the fact that large sites will require significant field work. Is there a procedure to get an extension for filling a SWPPP if more than the allotted time is needed? [Paul Frederick, Jeff Nelson, Bill Driscoll] Response:* See response to Comment # 7.

9. *With limited time to prepare the SWPPP, and limited assistance available from ANR, is it preferable to file a simple SWPPP and amend it later, or does DEC have staff who can visit a facility to offer help and advice? Is it going to be realistic to have the permitting in place by fall 2006? It might be more realistic to extend phase-in to 1 to 1 ½ years. [Paul Frederick] Response:* See response to Comment # 7. ANR believes that this implementation schedule provides ample time for the preparation and filing of a SWPPP. The DEC is developing an online SWPPP submittal program to assist applicants in completing individual facility SWPPPs. In addition, numerous fact sheets and assistance documents are available on the ANR website.
10. *The deadline for SWPPP implementation is unrealistic and may be unattainable for sites where other federal, state, or local permits may be needed to implement BMPs. DEC should provide flexibility to allow for this circumstance. [Jeff Nelson, Tony Barbagallo] Response:* See response to Comment # 7. The Agency anticipates that the construction of structural BMPs during the SWPPP implementation phase of permit coverage may require other federal, state or local permits. The Agency will evaluate the need for regulatory flexibility on a case-by-case basis in the event that additional federal or state approvals are needed to implement BMPs. Additional requirements for compliance with local, State and federal historic preservation laws also apply and have been included in Appendix B. The Agency would prefer to have a facility provide a SWPPP which is later modified when such approvals are granted in order to allow a facility to establish such BMPs as it can within the time frame provided for SWPPP development and implementation.

## **Eligibility and SIC Codes**

11. *Who falls under MSGP? Will the DEC website show which SIC codes go in which sector? [Paul Frederick] Response:* Table D-1 in Appendix D of the permit lists the SIC codes for facilities that must apply for permit coverage. The SIC codes are grouped by sector in the table.
12. *In section 1.3, the first paragraph can appear unclear in stating only regulated sites listed are covered by this permit. The sentence can be read to mean “unpermitted discharges” are illegal rather than meaning other discharges do not require a permit. [James Jutras] Response:* The Agency believes that the above quoted language is sufficiently clear and understandable. Nothing in this permit purports to relieve dischargers from the obligation to seek other necessary permits for discharges to waters of the State which are not permitted by the MSGP.
13. *What about “small scale” operations? Is there a threshold level of business activity? Are there any exemptions for business or lot size? [Paul Frederick]*

**Response:** The MSGP is based on the type of industrial activity occurring at a facility. The only exemption regarding size is for sewage treatment works. Treatment works with a design flow of less than 1.0 mgd do not require coverage under the MSGP. The MSGP does include the Conditional Exclusion for No Exposure for facilities that certify that all industrial materials or activities are protected by a storm resistant shelter.

14. *If there is no “discharge to waters of the State”, do businesses have to seek coverage? What if particulates cannot get to the water? For example, the site is nowhere near water and any stormwater will infiltrate because of sandy or gravelly soils? [Paul Frederick]* **Response:** All industrial activities listed in Table D-1 must seek coverage under the MSGP. Proximity to surface waters and soil type do not affect the requirement for permit coverage.
15. *How will portable mills be dealt with? Will portable sawmills operating on a landing need a permit? What about portable sawmills operated only during part of the year? Will AMP’s cover processing on landings or will MSGP coverage also be needed? Portable mills are often operating on another’s land, and may be on any given site for only one to two days. The operator may not have control over the land/site. Can these operations be exempted? A general exemption for portable harvesting equipment such as portable sawmills and firewood processors should be considered. These operations represent a very small portion of the volume of wood processed but make-up a large number of operations, making regulating them a costly effort which will have limited benefits. [Paul Frederick, Tuthill Doane]* **Response:** While the EPA chose to regulate certain portable operations such as portable asphalt plants under Sector D in the MSGP, EPA did not include portable sawmills under Sector A for Timber Products. EPA believes that nonpoint source silvicultural activities not covered under the MSGP (e.g., harvesting operations, and certain other activities) are exempt from the NPDES permit program (see 60 Fed. Reg. 50804 at 51084). While portable sawmills or firewood processors were not intended to be captured under the MSGP, it is foreseeable that certain operations of particular and unusual scope, duration, intent and intensity could require permit coverage. With regard to “hobby sawmills” the major industry group for Sector 24, which includes Sector 2411, includes establishments engaged in cutting timber and pulpwood and merchant sawmills. Accordingly, a “hobby sawmill” operation which is not a business does not fall under Sector 2411. There are, however, additional requirements for the protection of water quality which apply to any sawmill activity, including, without limitation, the prohibition contained in 10 VSA § 1301 against the deposit of sawmill waste in waters, which provides that it is unlawful for a person to deposit edgings, slabs, sawdust, shavings or any other sawmill refuse in the waters of any stream, pond, reservoir, or lake in this state or on the shores or banks thereof in such a manner as to be subject to being washed in the main stream or body of water under normal high water conditions.
16. *The Department of Forests, Parks & Recreation utilizes a working definition of silviculture which we would recommend be adopted for the purposes of this permit. Silviculture includes all operations related to harvesting forest*

products, including but not limited to pre-sale site preparation and road building, active harvesting, stockpiling of harvested materials, processing of harvested materials on the landing, and post-sale site stabilization. The *Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont* carry the force of law and cover these “silvicultural” operations. The working definition uses the transportation of harvested materials off-site as the point at which “silviculture” ends. Use of this definition would insure consistency and clearly separate silviculture from manufacturing. [Paul Frederick] **Response:** SIC code 2411 is included in the MSGP and includes establishments primarily engaged in cutting timber and in producing rough, round, hewn, or riven primary forest or wood raw materials, or in producing wood chips in the field. However, certain non-point source silvicultural activities (as defined by 40 CFR 122.27[b][1]) are not required to seek stormwater permit coverage under NPDES regulations. EPA characterizes harvesting operations as non-point source silvicultural activities (40 CFR § 122.27[b][1]). EPA has determined that such harvesting activities include: the felling, skidding, preparation, loading and initial transport of forest products from an active harvest site (see *Final National Pollutant Discharge Elimination System Storm Water Multi-Sector General Permit for Industrial Activities*, 60 Fed. Reg. 50804, 50835 [September 29, 1995]). According to EPA, “an active harvest site is considered to be an area where harvesting operations are actually on-going.” (*Id.*). EPA also interprets the definition of “harvesting operations” to include incidental stacking and temporary storage of harvested timber on the harvest site prior to its initial transport to either an intermediate storage area or other processing site, which are inherent parts of harvesting operations see (*see id.*). EPA does not, however, intend the definition of “active harvesting operations” to include sites that are processing, sorting, or storing harvested timber which has been transported there from one or more active harvesting sites (*see id.*). EPA considers those site activities a point source under 40 CFR 122.27[b][1], and operators of these sites must seek coverage under the MSGP (*see id.*). Under EPA’s view (which is consistent with the view Vermont has taken of silvicultural activities), the crucial factor for determining whether an activity is a silvicultural activity is whether it occurs on-site as a harvesting-related activity. SIC Code 2411, “Logging” includes fuel wood harvesting, logs, saw, logs, timber, veneer logs and wood chips produced in the field.

17. *A logger’s primary business activity falls under the definition of silviculture (silviculture is exempt). Is the logger’s maintenance garage, which is often physically located away from the harvest site, covered? Can we certify this is the case – tell them they do not need a permit for the garage? [Paul Frederick]* **Response:** The offsite vehicle maintenance facility supporting one logging operation would not be required to apply for a permit if that company is not primarily engaged in providing transportation services and therefore would not be classified as SIC code 42. The maintenance facility would be considered an auxiliary operation to the logging operation.
18. *Will towns, municipalities and the State of Vermont be held to same standards? Storing & spreading sand etc. [Paul Frederick]* **Response:** Coverage under the

MSGP is determined by a facility's SIC code. If a municipality conducts an activity that is listed in Table D-1 of the permit, then the municipality must seek coverage for that activity. For example, a municipal sewage treatment plant with a design flow of 1.0 mgd or more is included in Table D-1 and must seek coverage under the MSGP. Municipal and highway garages are classified under SIC code 1611. This SIC code is not included in table D-1 of the permit, therefore, these facilities do not need to seek coverage under the MSGP.

19. *The permit suggests that some discharges may not be eligible for coverage under the general permit and that these discharges may need an individual permit. DEC should provide specific criteria for when such a permit would be required and guidance as to what the application and review process would entail. [Jeff Nelson, Tony Barbagallo]* **Response:** The Secretary will determine on a case by case basis, based on the particular facts and circumstances, whether there is a need for individual permit coverage. DEC has provided specific criteria for when such a permit would be required in the DEC Water Pollution Control Permit Regulations, Section 13.12[D]. Pursuant thereto, the Secretary may require any permittee authorized by a general permit to apply for an individual discharge permit. Cases where an individual permit may be required include, without limitation, the following:
- (a) The discharge(s) is a significant contributor of pollution as determined by the following factors:
    - i. the location of the discharge with respect to waters of the State of Vermont;
    - ii. the size of the discharge;
    - iii. the quantity and nature of the pollutants reaching waters of the State of Vermont and the impacts of the pollutants on the receiving water and;
    - iv. other relevant factors.
  - (b) The discharger is not in compliance with the terms and conditions of the general permit or does not qualify for a general permit.
  - (c) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of wastes applicable to the discharge.
  - (d) Federal effluent limitation guidelines are promulgated for discharges covered by the general permit.
  - (e) If necessary to implement a waste management strategy contained in any applicable basin plan.

The application and review process would entail requirements which are similar with, but by no means identical to (i.e., requiring BMPs for stormwater rather than concentration-based effluent limitations which may be required for a wastewater discharge) the requirements for an individual NPDES permit under Vermont's Water Pollution Control Permit Regulations and federal regulations for NPDES stormwater permits.

20. *Since the MSGP does not authorize any discharges to groundwater the language found in section 1.3.2.1 of the permit referring to "stormwater discharges to groundwater containing pollutants that would violate the Vermont Groundwater Protection Rule and Strategy" is confusing. It is unnecessary and should be deleted. [Jeff Nelson].* **Response:** Duly noted and deletion made.

21. *Section 1.3.4.2 states that sectors G and J are authorized for construction activities under the MSGP. Does this statement release mining facilities from the requirements of the CGP (3-9001)? [Robin Reilly] **Response:** The MSGP covers sectors G and J for stormwater discharges associated with construction activities provided that the sector specific requirements of the permit are met.*
22. *It is unclear who obtains the permit and who the permit regulates, the land owner or the tenant. What about multi-purpose buildings? [Tony Barbagallo, Bill Driscoll] **Response:** When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit (40 CFR § 122.21[b]). Once the Operator has been identified, they need to become either sole permittees or co-permittees with the Owner. A multi-purpose building or a facility with multiple industrial activities is an example of a “co-located activity”. It is recommended that all industrial activities located at one site prepare a joint SWPPP and submit a joint MSGP application. When multiple activities are conducted by different operators at a single location, each industrial activity is assigned its own SIC code. If these Operators become co-applicants, they can become co-permittees when coverage is issued for the site.*
23. *In section K3.2, delete the parenthetical phrase “(including occasionally accepting wastes from community household hazardous waste collection events as a public service)”. Such facilities are exempt from the requirements of this permit because the State’s Agency of Natural Resources does not consider them to be a Hazardous Waste Treatment, Storage or Disposal Facility and their SIC code does not apply. [Tony Barbagallo] **Response:** The text will be deleted.*
24. *It is our understanding that solid waste transfer facilities and drop-off centers without vehicle maintenance are exempt from this rule. In order to clarify this, the following language should be inserted: “N.2.4 Excluded Types of Facilities. Section N does not apply to facilities that accept recyclables or hazardous waste for temporary storage of material from primarily non-industrial and residential sources unless such facility also processes the materials. Processing does not include minimal management efforts such as the removal of capacitors, mercury switches or refrigerants from appliances and the removal of non-recyclable components. Identification, consolidation, packaging, and labeling of hazardous wastes for the purposes of transport from the collection facilities is not covered under this permit.” [Tony Barbagallo] **Response:** Solid waste transfer facilities and drop-off centers are categorized under Sector P, SIC code 4212. Only the portions of these facilities that are involved in vehicle maintenance, equipment cleaning, or activities listed in 40 CFR §122.26 (b) (14) (i)-(vii) or (ix)-(xi) are required to seek permit coverage.*

## **Fees and Cost of Compliance**

25. *The costs associated with the MSGP including fees and water monitoring are totally unacceptable and will drive people out of business. Will State or Federal funds be available to help with construction needed to come into compliance? [James Lathrop and Paul Fredrick] **Response:** The fees associated with the Vermont MSGP are determined by the Vermont State Legislature. To ANR’s knowledge, State or Federal funds will not be available*

to offset permit compliance. The EPA has prepared a factsheet that addresses the potential costs of compliance with the MSGP. This document can be found at: [http://www.epa.gov/npdes/pubs/msgp2006\\_factsheet-proposed.pdf](http://www.epa.gov/npdes/pubs/msgp2006_factsheet-proposed.pdf)

## Water Quality Standards

26. *Vermont Water Quality Standards will now be found at: [www.nrb.state.vt.us/wrp/rules.htm](http://www.nrb.state.vt.us/wrp/rules.htm). Please update the MSGP accordingly. [Daniel Dutcher] **Response:** The Vermont Water Quality Standards web address has been updated.*
27. *If discharges at your facility cause or contribute to an exceedance of applicable water quality standards, you must take corrective action and conduct follow-up monitoring (Section 1.5.3). Does this require that discharges at each outfall surpass the applicable water quality standards? Does this require testing for each outfall as proof of compliance? [Robin Reilly] **Response:** MSGP Section 1.5.3 requires that discharges do not exceed applicable water quality standards. Pursuant to 10 VSA § 1258, the Clean Water Act § 301(b)(1)(C) and 402(p)(3)(A), as well as 40 CFR 122.44(d), the permit includes numerous provisions to ensure that discharges do not cause or contribute to exceedances of water quality standards. This permit sets technology-based limitations in the form of Best Management Practices that apply to all pollutants associated with industrial activity, and some numeric effluent limitations (effluent limit guidelines, coal pile runoff) more specifically targeted to specific activities. Corrective action and follow-up monitoring must follow any discharge at any outfall that causes or contributes to an exceedance of applicable water quality standards. Only the outfall where the exceedance occurred is subject to follow-up monitoring. While a permittee may be able to conduct visual and benchmark monitoring for representative outfalls, a permittee is required to conduct effluent limit and impaired waters monitoring (as may be applicable for discharges to impaired waters) at each outfall. If there is no applicable wasteload allocation for a discharge to impaired waters, monitoring for the pollutant of concerns is waived after one year of said pollutant is not detected in an amount expected to cause or contribute to a violation of water quality standards (MSGP § 3.2.4.1).*

## No Exposure

28. *Clarify whether filing of a NOI is required prior to filing the No Exposure certification with the Agency. [James Jutras] **Response:** If a facility qualifies for the Conditional Exclusion for No Exposure, only a No Exposure Certification must be completed and submitted to ANR.*
29. *If airborne/rooftop precipitants and/or dust escaping from cyclones is washed off by rain will it be considered in the determination of No Exposure? If the “discharge” from a dust cyclone is covered by an Air Quality permit, is it excluded from MSGP? [Charles Mayhood, Paul Frederick] **Response:** Particulate matter or visible deposits of residuals from roof stacks (dust escaping from cyclones) that are covered by an air quality control permit would not prevent a facility from claiming No Exposure (1.8.2).*

30. *Conditional No Exposure certifications should be available for public notice and comment upon request. [Anthony Iarrapino]* **Response:** A Conditional No-Exposure certification is not a permit under the Clean Water Act or Vermont law and therefore is not subject to any public notice and comment. Conditional No-Exposure certifications are public records and available upon request pursuant to Vermont's Public Records Act.
31. *Why are logs and lumber considered a pollution source that must be covered to achieve No Exposure? These materials do not give off or leach pollutants. Wood pallets can be stored outdoors, so why must lumber be covered? Can logs and lumber be exempted as an outdoor product, thus eligible for a no exposure determination? [Paul Frederick, Michael Rainville, Bill Driscoll]* **Response:** Log storage and handling areas have the potential to discharge pollutants including bark and wood debris, total suspended solids (TSS), and leachates. The leachate generated from these operations from the decay of wood products can contain high levels of TSS and biochemical oxygen demand (BOD). (See Federal Register, September 29, 1995 p.50836) Therefore, log storage and handling areas must be protected by a storm resistant shelter to qualify for the Conditional Exclusion for No Exposure. Wood pallets used for the storage or conveyance of final products may be stored outside and do not prevent a facility from qualifying for No Exposure if they are pollutant-free.
32. *Improperly maintained log and lumber yards can certainly lead to erosion and other pollution problems. However, we believe that most outside wood product transfer and storage operations should not, of themselves, automatically trigger the need for a permit and SWPPP. In order to make a claim of "no impact," there is a certain trust that operations will be handled in an appropriate way. We ask that the possibility of "no impact" be extended, under the same conditions, for forest products that are merely exposed to the elements. [Michael Rainville]* **Response:** Log storage and handling activities are required to seek coverage under the MSGP and may qualify for a Conditional Exclusion for No Exposure if all industrial materials and activities are protected by a storm resistant shelter.
33. *Log procurement yards typically receive, sort and temporarily stockpile logs and/or pulpwood before transport to a processing facility. Many do not wet-deck logs. Would these facilities qualify for "no exposure"? What would be needed? [Paul Frederick]* **Response:** See above.
34. *What happens if there is a spill or leak at the site (e.g. hydraulic leak, machine blows hose)? Could a business lose their No Exposure designation? How are spills like hydraulic oil handled? Does the soil need to be removed? [Paul Frederick]* **Response:** Sections 2.1.4.3 and 2.1.5.5 of the MSGP address spill response procedures. If a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR 110, 40 CFR 117, or 40 CFR 302, occurs during a 24-hour period, person or persons exercising control over such waste or oil must immediately report the same to the Secretary by calling the Waste Management Division at (802) 241-3888, Monday through Friday, 7:45 a.m. to 4:30 p.m. or the Department of Public Safety, Emergency Management Division at (800) 641-5005, 24

hours/day in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302 as soon as you have knowledge of the discharge. For a facility to maintain No Exposure after a spill or leak, the owner must demonstrate and certify that no materials or residuals on the ground or in stormwater inlets from spills/leaks are, or will be in the foreseeable future, exposed to precipitation (Section 1.8.2)

35. *The word “vehicle” should be defined to include all mobile equipment such as cars, trucks, motorcycles, tractors, trailers and other wheeled or towable equipment manufactured to reside outdoors and designed to be portable. Adequately maintained equipment that is intended for outdoor use should not have to be covered for a facility to achieve No Exposure. Equipment of this type should be treated the same as a vehicle. [Tony Barbagallo]* **Response:** A vehicle is a thing that is primarily used for transporting people or goods on land. As ANR considers it, the term vehicle does not include all mobile equipment such as trailers and other tow-able equipment.
36. *Section 1.8.2 is vague and allows the applicant a great deal of latitude in determining what constitutes equipment and what constitutes an adequate level of coverage of equipment and materials. [Tony Barbagallo]* **Response:** ANR will use a common sense approach for determining the difference between vehicles and equipment and expects that regulated entities will do the same. Section 1.8.2 states that to demonstrate No Exposure, you must provide a storm resistant shelter to protect industrial materials from exposure. There is no reference to an “adequate” level of coverage.
37. *Clarify that No Exposure is intended to be demonstrated by meeting either 1.8.2.1 or 1.8.2.2. [Tony Barbagallo]* **Response:** In order to demonstrate No Exposure, a facility must demonstrate that it meets the requirements of Section 1.8.2.
38. *The language in section 1.8.2.2 that describes the requirements to meet No Exposure should read, “Materials or residuals on the ground or in stormwater inlets from reportable spills/leaks.” [Tony Barbagallo]* **Response:** The standards for reportable quantities of spills/leaks are distinct from the requirements for demonstrating No Exposure under the MSGP.
39. *A used roll-off container that is empty and has been cleaned, but is open and stored outside should not be considered exposure. [Tony Barbagallo]* **Response:** A used dumpster will almost inevitably contain, in some concentration, materials from past industrial activity.
40. *What is required for a closed landfill to achieve No Exposure? This should be stated in the permit. We suggest the addition of a section: “L-7 Termination of Permit Coverage L.7.1 Termination of Permit Coverage for Inactive Sites: A landfill, land application site or dump that is inactive and has been closed in accordance with State and Federal regulations is no longer required to maintain coverage under this permit.” [Tony Barbagallo]* **Response:** Landfills may achieve No Exposure if they have 1) closed in accordance with closure plans approved by the Secretary; and 2) are currently performing or have completed post closure care in accordance with a certification, assurance of discontinuance, order or other legal document issued by or on behalf of the

Secretary. Other closed landfills may be required to comply with the MSGP permit if so ordered by the Secretary.

41. *Companies that have very limited amounts of equipment stored outside would qualify for No Exposure. [Bill Driscoll]* **Response:** A facility will not achieve No Exposure if any equipment is stored outside.

## Stormwater Pollution Prevention Plan (SWPPP)

42. *The Clean Water Act calls for public participation in the review of permitting action and therefore the SWPPP should be reviewed by the public and SWPPP should be sent to DEC with the NOI for Agency review. [Tim Burke].*  
**Response:** See response to Comment # 3, above. The Agency believes that the most effective resolution to water quality problems can be more rapidly remedied within the framework of the permit, and has issued a permit designed to bring all eligible dischargers under that framework.
43. *Section 1.3.3 - Allowable non-stormwater discharges. Please consider the addition of a line item to account for “potable water, water main breaks and restoration”. [James Jutras]* **Response:** Potable water is covered under allowable non-stormwater discharges. A water main break would likely qualify as an Upset. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond your reasonable control (See B.14). Restoration work is planned and permittees should apply temporary site specific BMPs, as needed. Section 2.1.5.8 requires erosion and sediment controls for land disturbances (e.g., construction, landscaping and site grading) activities at facilities regulated under the MSGP.
44. *Some larger facilities are involved in Federal vulnerability assessments and the Federal rules require that some critical information may be addressed, but remain confidential. Please ensure that any confidentiality requirements is addressed by the Confidential Business Information (CBI) wording. [James Jutras]* **Response:** The Agency will address any claims that a facility’s critical information remains confidential under Federal regulations in instances where the Agency is apprised of such facts by said facility.
45. *The NOI should include more pertinent information about the receiving waters of the proposed discharge. [Anthony Iarrapino]* **Response:** The NOI calls for all the information required by 40 CFR § 122.28[b][2][ii].
46. *In general, what are BMPs? How are they developed? [Paul Frederick]*  
**Response:** Generally speaking, Best Management Practices are schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
47. *What are the BMPs for chips/bark/sawdust, do they have to be covered? What is required if it is temporary storage? Do bark and logs need to be covered? [Paul Frederick]* **Response:** Example Best Management Practices for wood

chips, bark and sawdust include, but are not limited to covering or enclosing the materials to prevent exposure to stormwater; diverting stormwater around material piles with ditches, swales, or berms; installing berms around the material piles to prevent materials from leaving the site; providing collection and treatment of runoff with containment basins or sedimentation ponds. Chips, bark and sawdust piles do not have to be covered to comply with the terms of the permit. If the materials are temporarily stored on the site, Best management Practices, such as the ones listed above must be used. Bark and logs do not need to be covered, but Best Management Practices must be implemented for bark piles and log storage.

48. *What are the requirements for using power washing equipment outside?* [Paul Frederick] **Response:** You are not authorized to discharge stormwater that is mixed with sources of non-stormwater other than those listed in Part 1.3.3.
49. *The section of the VT MSGP that discusses snow management goes beyond the federal requirements and may create problematic operational situations for existing facilities. What is the best way to handle melt water from snow piles? What are the BMPs? Can you remove snow from the site? Can industries use techniques that work for AOT on highways?* [Paul Frederick, Jeff Nelson] The Agency has determined that there is sufficient existing statutory and regulatory authority to address the issue of snow which is plowed and or piled from parking areas onto lakes, ponds, rivers, streams, wetlands and associated buffers. Such snow may contain some combination of salt, sand, fluid from vehicles or other contaminants. The MSGP will not regulate snow removal. Thus, while the actions described above would not be governed under the MSGP, such actions may (at a minimum) be a violation of one or more prohibitions against discharges or impacts to wetlands, and subject to appropriate enforcement.
50. *How are buffers defined? Will the DEC buffer policy be used? It has been suggested that in cases where the permit refers to a “buffer” but leaves the term undefined, that the ANR Buffer Policy may/should be applied. The Department of Forests, Parks & Recreation strongly disagrees with this suggestion. The policy clearly states that it is intended to be used only in the context of Act 250 and Act 248 proceedings. This policy is far too restrictive to be applied to existing businesses, and was never intended to be used for such a purpose. Buffers for the purpose of this permit must be based on specific site characteristics and constraints, and in the context of other BMPs used on the site.* [Paul Frederick] **Response:** See above. The MSGP will not regulate snow removal.
51. *Can a natural wetland be used to treat stormwater? If a site surrounded by wetland, how should stormwater be handled?* [Paul Frederick] **Response:** A natural wetland may not be used to treat stormwater runoff. Appropriate Best Management Practices must be implemented on the site to prevent contamination of stormwater.
52. *The draft Vermont permit proposes to add a requirement for addressing non-stormwater discharges in Stormwater Pollution Prevention Plan (SWPPP). This seems unnecessary and beyond the federal requirements.* [Jeff Nelson]

**Response:** The difference between the SWPPP requirements for non-stormwater discharges in the Vermont MSGP and the Draft EPA MSGP is that the Vermont permit requires “an identification of the discharge(s).” (Vermont MSGP 2.1.4.5 and Draft EPA MSGP 2.1.4.5) The Agency disagrees that this is an unnecessary requirement.

53. *Preparation of the SWPPP should be performed by “qualified personnel” as described in section 3.1.2. [Jeff Nelson]* **Response:** The permit so states.
54. *In section 2.1.4.2 the phrase “reasonable potential for containing significant amounts of pollutants” is vague and provides unnecessary opportunity for litigation. [Jeff Nelson]* **Response:** The Agency disagrees and believes that a common sense and technically proficient understanding of the phrase “reasonable potential for containing significant amounts of pollutants” is sufficient to advise the regulated community of its obligations under the Clean Water Act. The description of potential pollution sources should clearly address activities, materials and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to stormwater (*see* EPA Fact Sheet at 3.22). In conducting the assessment, the facility operator must consider the following activities: loading and unloading operations, outdoor storage activities, outdoor manufacturing or processing activities, significant dust-or particulate-generating processes and on-site waste disposal practices, as well as any significant pollutants (BOD, suspended solids) associated with each source (*see id.*).
55. *The phrase in section 2.1.5 that refers to control of “discharges from your site that may not originate at your facility” is confusing and appears to expand the jurisdiction of the program into areas that are not required to have permit coverage. [Jeff Nelson]* **Response:** EPA's Fact Sheet recognizes that some operators may find that significant amounts of pollutants are running onto the facility property (*see id.* at 3.21). Such operators, according to EPA, should identify and address the contaminated run-on the SWPPP. If the run-on cannot be addressed or diverted by the permittee, ANR should be notified. If necessary, ANR may require the operator of the adjacent facility to obtain a permit (*see id.*).
56. *Section 2.1.5.5 of the permit says that “Areas where potential spills can occur, and their accompanying drainage points, must be identified clearly in the SWPPP” makes compliance impossible. Accidental spills could occur anywhere. [Jeff Nelson]* **Response:** The Agency disagrees and believes that a common sense and technically proficient method for identifying potential spill areas should suffice; for example material storage areas, material handling areas, fueling locations, bulk petroleum or chemical storage areas and so forth clearly have a higher potential for a spill to occur.
57. *Why must a SWPPP be submitted to the Agency if it is modified, yet the original SWPPP is not required to be provided (Section 2.3)? [Jeff Nelson]* **Response:** A modification of the SWPPP is required if there is an exceedance of a benchmark monitoring requirement. The Agency wants to assure that the regulated entities are in compliance with the permit terms. In any event, today’s permit requires submission of SWPPPs to the Agency.

58. *Who is required to make the demonstration of consistency, and how will they know about the existence of such other plans (Section 2.6)? [Jeff Nelson]*  
**Response:** A permittee is required to make the demonstration of consistency with applicable State and local plans. A permittee is presumed to be aware of the laws, including local laws, regulating the permittee's facility and activities.
59. *The time frame allowed for SWPPP modification is unrealistic, particularly if design work is needed. A time frame of 60 to 90 days would be more appropriate. Also, the requirement that implementation of new BMPs occur before the next storm should be further qualified to note that if this is dependent on obtaining other permits or authorizations, that implementation will not occur until such time as these are obtained. [Jeff Nelson]*  
**Response:** The Agency disagrees. SWPPP modification must be completed in 14 days. Given the fact that corrective action is required, it is imperative that actions be taken to abate and correct discharges. BMP implementation must be completed before the next anticipated storm event if possible, but no later than 60 days after discovering the deficiency, or as otherwise provided or approved by the Agency.
60. *Are all sites, whether active or inactive, contiguous or separate, to be covered under the same SWPPP? [Robin Reilly]*  
**Response:** It is recommended that all activities that are located at the same site develop and implement one SWPPP. Facilities that are located on separate sites should develop and implement separate, site-specific SWPPPs. The MSGP regulates inactive facilities unless such facilities can demonstrate No Exposure. The MSGP regulates inactive facilities where industrial activity has taken place in the past and significant materials remain and are exposed to storm water (40 CFR § 122.26[b][14]). "Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges (40 CFR § 122.26[b][12]). In the case of a mining site, an inactive site is considered to be engaging in "industrial activity" if the site discharges storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations (40 CFR § 122.26[b][14][iii]). Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator, but inactive mining sites do not include sites where mining claims are being maintained *prior* to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim (40 CFR § 122.26[b][14][iii]).
61. *The MSGP requires that a copy of the SWPPP be kept at the facility. This language should be amended to require that a copy be kept either at the facility or at a nearby administrative office. [Tony Barbagallo]*  
**Response:** The

Agency disagrees. The SWPPP must be kept onsite for many reasons, including, but not limited to: every member of the Pollution Prevention Team must have ready access to a copy of the SWPPP, the SWPPP includes monitoring data and Spill Prevention and Response Procedures, the SWPPP must be maintained on site for the immediate use for State and Federal Agencies.

## Monitoring Requirements and Sampling

62. *Consider adding VOCs (including halogenated series), oils, anti-freeze, and electrolytes to monitoring requirements for auto salvage yards and crushing operations. Only looking at metals and sediment for these industries isn't enough. [John Brabant]* **Response:** The Vermont MSGP is based on Federal requirements for monitoring for auto salvage yards and crushing operations.
63. *Monitoring in section 3.2.3 and the requirements regarding when and how to sample. The burden of sampling, specifically the how and when to sample, are too cumbersome. Are these requirements practical? [Mike Wickersham]* **Response:** The Agency believes that the monitoring requirements are practicable and, in any event, are required by Federal law. The Agency will provide a Monitoring Guide to assist facilities.
64. *Will VT ANR establish a list of qualified consultants with the ability to perform sampling? [Joe Gluzelak]* **Response:** The Agency will not provide a list of qualified consultants.
65. *What about remote sites? They are difficult to access and the time requirements for monitoring may be difficult. What about sites with no staff? [Robin Reilly]* **Response:** A facility must conduct visual and benchmark monitoring 4 times per year and effluent limitation monitoring once per year. With proper planning and awareness of the weather forecast, there is ample time to monitor a facility's discharge locations. As EPA's Fact Sheet indicates, while the grab sample must be taken during the first 30 minutes of the discharge, if the collection of the grab sample during this time period is impracticable, a grab sample may be taken in the first hour of the discharge (*see id.* at 3.14). You must then submit your DMR along with a description of why a grab sample during the first 30 minutes was impracticable (*see id.*). A facility may exercise a waiver of the visual and benchmark monitoring requirements at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to stormwater. If you exercise this waiver, you must maintain a certification with your SWPPP stating that the site is inactive and unstaffed, and that there are no industrial materials or activities exposed to stormwater.
66. *Why should a business be required to monitor the water quality of a river when pollutants from other sources are flowing to that same river? A business should not be held responsible for the untreated stormwater pollutants coming from other sources and contaminating a shared waterway. [James Lathrop]* **Response:** A facility is not required to monitor the water quality of a river; rather a facility is required to monitor the discharges from its outfalls.
67. *Monitoring may be difficult in co-mingled discharges. There may be a need for flexibility in the Agency's criteria for site specific sampling points. [James*

- Jutras*] **Response:** The applicant must ensure that the discharges from the facility meet the benchmark and effluent limitations of the permit. The Agency does provide flexibility in determining sampling locations as stated in Section 3.2.2.5. When the discharge to be sampled contains both stormwater and non-stormwater, the facility must sample the stormwater component of the discharge at a point upstream of the location where the non-stormwater mixes with the stormwater, if practicable (*see* EPA Fact Sheet at 3.14).
68. *The State could partner with a weather web site to offer storm notifications. The web site could create a custom notification that fits the storms that need to be sampled. And could automatically email a notice when such a storm is predicted within the next 8 hours. [Andrew Geffert]* **Response:** The Agency believes that existing and available sources of weather forecasting are sufficient for permittees to keep themselves apprised of storm events.
69. *Monitoring requirements must be strengthened to ensure that the MSGP helps achieve the mandate of compliance with water quality standards. The proposed MSGP's waivers of monitoring requirements undermines the protection of water quality. [Anthony Iarrapino]* **Response:** Vermont has followed the Federal requirements for monitoring under the Multi-Sector General Permit. The Secretary may require additional discharge monitoring (MSGP § 3.2.6). Furthermore, follow-up monitoring and reporting is required when monitoring results indicate that a discharge exceeds an effluent limitation or other exceedance (MSGP § 3.4).
70. *Visual monitoring and benchmark sampling at a single "Representative outfall" is insufficient to protect water quality. [Anthony Iarrapino]* **Response:** Vermont has followed the Federal requirements for monitoring under the Multi-Sector General Permit. As EPA's Fact Sheet notes, the permitting authority may determine that the discharges are not representative and may require sampling of all non-identical outfalls (*see id.* at 3.9).
71. *Why test for zinc in stormwater from sawmills? In addition, why are bark piles left exposed to rainwater considered a pollutant when the final product is intended to be spread in the landscape? [Paul Frederick]* **Response:** Vermont has followed the Federal requirements for monitoring under the MSGP. Based on the Agency's research, statistics for selected pollutants reported by general sawmills, as reported in the September 29, 1995 Federal Register, runoff from sawmills includes zinc at a mean concentration of 0.448 mg/L (grab sample). Bark piles are considered a pollutant due to the high loads of TSS and Chemical Oxygen Demand (COD) they produce. Piles of bark as opposed to bark spread on the landscape, poses a threat to water quality due to the concentration of materials.
72. *How will samples be taken from individual portable sawmill sites 4 times a year, when they are only on a site for 4 months? [Paul Frederick].* **Response:** As is set forth in responses # 15 and 16 above, silvicultural activities which take place on the harvest site are considered non-point source discharges and are not required to obtain coverage under this permit.
73. *Quarterly sample in winter: how do we sample if there is no above freezing weather? [Paul Frederick]* **Response:** Section 3.2.5.3 states that when adverse

weather conditions prevent the collection of samples according to the relevant monitoring schedule, take a substitute sample during a qualifying storm event in the next monitoring period, or two samples per monitoring year when weather conditions do not allow for samples to be spaced evenly during the year. Adverse conditions (i.e., those that are dangerous or create inaccessibility for personnel) may include events such as local flooding, high winds, electrical storms, or situations that otherwise make sampling illogical, such as drought or extended frozen conditions. As EPA's Fact Sheet explains, quarterly visual monitoring must be conducted four times per year, but not necessarily strictly quarterly (*see id.* at 3.2). In the Northeast, stormwater sampling must be designed to attempt to capture the first flush during snowmelt, with the balance of sampling distributed throughout the year (*see id.*).

74. *When is benchmark monitoring done? How much does it cost? [Paul Frederick]* **Response:** Benchmark monitoring must be conducted in each of the first four quarters of permit coverage. Quarters correspond to the 3-month intervals beginning in January, April, July and October. The cost associated with benchmark monitoring will depend on the sector specific parameters that are required to be monitored for. EPA has prepared a factsheet that addresses the potential costs of permit compliance:  
[http://www.epa.gov/npdes/pubs/msgp2006\\_factsheet-proposed.pdf](http://www.epa.gov/npdes/pubs/msgp2006_factsheet-proposed.pdf)
75. *Should businesses monitor prior to permit for their own use? [Paul Frederick]* **Response:** A facility may always monitor for potential stormwater pollution.
76. *How can stormwater be sampled if it infiltrates and does not run off? How are samples taken? Do we need to sample sheet flow? What is the discharge point? How do businesses know where to sample when doing monitoring? Where are samples taken, especially if we have sheet flow? [Paul Frederick]* **Response:** The Agency has developed a Sampling Guide that addresses all of these issues. The Guide can be found at:  
[http://www.vtwaterquality.org/stormwater/htm/sw\\_msgpswppp.htm](http://www.vtwaterquality.org/stormwater/htm/sw_msgpswppp.htm)
77. *The requirements that describe the type of storm that should be sampled and the timing associated with sampling runoff are not practical. Could this be replaced with inspections, similar to those required by the 3-9015 stormwater permit? [Paul Frederick, Tony Barbagallo]* **Response:** Vermont has followed the Federal requirements for monitoring in the MSGP.
78. *Are samples sent direct to DEC or just reports? [Paul Frederick]* **Response:** Only the Discharge Monitoring Report should be sent to DEC.
79. *Is there a specific list of tests that are needed and if so where is it? [Paul Frederick]* **Response:** Visual monitoring, Benchmark monitoring, impaired water monitoring, and Effluent Limitations for each industrial sector are listed in Section 4 of the MSGP.
80. *How do I handle stormwater flowing onto my site from another site? What about pollutants that are brought onto my site by someone else (e.g. Truckers come into a sawmill and sweep log residue off their trucks, water draining out of dumpsters when picked up by garbage trucks, stormwater flowing from public highways, etc...)? Who is responsible for these pollutants? In regards to monitoring, how would you handle this situation? [Paul Frederick]* **Response:**

EPA's Fact Sheet recognizes that some operators may find that significant amounts of pollutants are running onto the facility property (*see id.* at 3.21). Such operators, according to EPA, should identify and address the contaminated run-on the SWPPP. If the run-on cannot be addressed or diverted by the permittee, ANR should be notified. If necessary, ANR may require the operator of the adjacent facility to obtain a permit (*see id.*). In a case where truckers sweep log residue out of trucks onto your site, or water drains out dumpsters, the permittee remains responsible for contaminants flowing off their site. Such activities would be occurring regularly in the course of the industrial activities on the site and the permittee needs to address anticipated contamination of stormwater. In cases where stormwater flows onto your site from a public highway, ANR should be notified and the issue can be addressed on a case-by-case basis, but the permit generally makes the permittee responsible for stormwater which runs-on to the site (MSGP § 2.1.2).

81. *The requirement that whenever an exceedance is observed is inconsistent with the purpose of benchmark sampling and section 3.2.2.4 imposes a new requirement for changes to the SWPPP that go beyond the federal requirements. Also, it is unclear if “exceedance” refers to the average value or a single sample results. [Jeff Nelson]* **Response:** The term exceedance of a benchmark concentration refers to and exceedance of the average of the 4 quarterly samples.
82. *The additional monitoring required in impaired waters should be clarified for waters which have pollutants listed as “undefined” or “stormwater”. [Jeff Nelson]* **Response:** In the stormwater-impaired watersheds, ANR’s primary concern in remediation is reduction of sediment deposition. The vast majority of sediment is being produced by endogenous sources as a result of severely altered watershed hydrology. While ANR’s remediation efforts are thus focused on control of runoff rates and volumes of stormwater flow at certain identified sites, permittees should monitor for TSS. As to waters plagued by “undefined” pollutants, no additional monitoring requirements will be mandated until such time as DEC determines the specific pollutant of concern.
83. *It will be impossible to correctly document rainfall occurrences at remote locations. In addition, the time requirements for sampling are unattainable at remote sites. [Robin Reilly]* **Response:** The Agency believes that existing and available sources of weather forecasting are sufficient for permittees to keep themselves apprised of storm events. See also response to Comment Number 68.

## Impaired Watersheds

84. *The eligibility provisions pertaining to water quality impaired receiving waters fail to adequately protect these waters and are inconsistent with Vermont and Federal law. The self regulatory general permitting approach is inappropriate in impaired watersheds. [Anthony Iarrapino]* **Response:** As is noted in EPA’s Draft 2006 MSGP Fact Sheet, the MSGP makes it clear that the dischargers requirements for meeting water standards apply to permit requirements and not

to eligibility requirements (*see id.* at 3.5). The MSGP contains requirements to ensure that discharges do not cause or contribute to exceedences of water quality standards in the receiving water (*see id.*). Accordingly, the Secretary has determined that discharges authorized under this permit will not reduce the the quality of receiving waters below the classification established for them and will not violate any applicable provisions of state or federal laws and regulations. Today's permit contains sufficient terms and conditions to carry out the purposes of 10 VSA Chapter 47 and federal law, including, but not limited to, effluent limitations, benchmark standards to reflect current water quality criteria, SWWPP requirements, and inspection, monitoring and record keeping requirements (*see* EPA Fact Sheet at 3.5). Like EPA, the Agency believes that the most effective resolution of water quality problems and problematic discharges can be much more rapidly remedied within the framework of a permit requirement (*see id.*). Given CLF's ongoing encouragement of the Agency to issue the MSGP, the Agency assumes that CLF, as an organization whose priority is the protection and enhancement of water quality, would agree with EPA and ANR on this point. There are numerous requirements in the permit with respect to impaired waters, many of which were newly-added to EPA's Draft 2006 MSGP, and have been included in today's permit, to address the kind of concerns raised by this comment.

85. *The proposed MSGP fails to protect impaired waters with TMDLs and those impaired waters for which a TMDL has not yet been established. [Anthony Iarrapino]* **Response:** See response to above. Today's permit contains numerous provisions specifically tailored to protect pre-TMDL waters, including, without limitation, sections 1.3.4.8 (New Discharges to Water Quality Impaired Receiving Waters), 1.5.4.2 (Discharge to an Impaired Water without an Established TMDL), 2.1.3.2 (Water Quality Impaired Receiving Waters) and 3.2.4 (Discharges to Impaired Waters Monitoring and Reporting). The United States Supreme Court has cautioned against interpreting the CWA in a way that would frustrate opportunities to improve existing conditions (*see Arkansas v. Oklahoma*, 503 U.S. 91, 108, [1992]). There, the Court found that the CWA vests in the EPA and the States with "broad authority to develop long-range, area-wide programs to alleviate and eliminate existing pollution." (*Id.* at 108, citing CWA § 303[d], 33 USC § 1311[d]). Today's permit reflects such a long-range area-wide approach.

## DEC Site Inspections and Enforcement

86. *Will DEC be doing site inspections? [Paul Frederick]* **Response:** Yes, DEC will be conducting site inspections. DEC Water Quality Division MSGP Program Staff may review SWPPPs for compliance upon receipt, and will provide technical assistance and compliance assurance in the field following receipt of SWPPPs.
87. *Who will be doing enforcement? Will it be a "random" or targeted approach? What are fines? Non-compliance with permit? [Paul Frederick]* **Response:**

The Agency will be doing enforcement as appropriate. Section 1.4 of the MSGP, entitled “Permit Compliance, Enforcement and Orders to Control Discharges and Violations” provides the range of fines for violations of State and federal law. The exact amount of a fine or fines is a matter of enforcement discretion.

## Other Permits

88. *Consider the addition of co-mingled NPDES discharges to account for a common pipeline where one or more confluent flow is from an existing NPDES discharge permit. Such a case may include co-mingled stormwater and wastewater discharges such as may be experienced in the case of a wastewater treatment facility regulated under this rule. [James Jutras].* **Response:** Section 1.3.1 of Vermont’s MSGP provides for coincidental coverage if a facility is covered under a separate individual discharge permit which incorporates terms, conditions and coverage at least as stringent as this general permit.
89. *Because sources of non-stormwater discharges may include NPDES discharges section 1.3.4.1 of the permit should address other permit based discharges. [James Jutras].* **Response:** See above.
90. *Clarify sections 1.3.3 and 1.3.4 of the permit with respect to combined discharges to non-impaired waterways. [James Jutras]* **Response:** The MSGP authorizes stormwater discharges and certain allowable non-stormwater discharges. Combining non-stormwater discharges, other than those listed in Section 1.3.3, is not authorized under this permit.
91. *How will coverage under multiple permits issued by ANR with overlapping and/or contradictory requirements be sorted out? The existence of multiple stormwater regulations can lead to confusion. Many people may fail to realize that the MSGP is in addition to regulations that they may already have to comply with. There needs to be clear guidance on how the various permits relate to each other. [Paul Frederick, Jeff Nelson, Robin Reilly, Tony Barbagallo, Bill Driscoll]* **Response:** See above. The Agency will address potential contradictory permit requirements on a site by site basis. The Agency is preparing guidance materials to clarify when a particular stormwater permit is needed. These materials can be found at:  
<http://www.vtwaterquality.org/stormwater.htm>
92. *Will the MSGP be required as part of new Act 250 permits? [Paul Frederick]* **Response:** Yes, the MSGP will be included in the list of permits which a project may need to complete the Act 250 process.
93. *If you have to build something to comply with the MSGP, a company may have to open up an existing Act 250 permit. Which permit has supremacy? Can the MSGP and required BMPs be implemented without Act 250 approval? Could the stormwater permit be denied because of conflicting Act 250 requirements? Businesses may not be allowed to make required improvements or changes to comply with the MSGP in a timely fashion due to Act 250 permit requirements. In addition, opening a permit to allow needed site improvements for MSGP compliance could result in a battle with neighbors over unrelated issues or outright denial of recommended improvements. The process can be a lengthy*

*and protracted one; in some cases, it is possible that BMP implementation could be delayed to the point where recommended practices could not be implemented within the required 360 days from permit finalization. The Department of Environmental Conservation should obtain whatever jurisdictional ruling is needed to insure that required stormwater management practices are not unduly delayed by Act 250 requirements. The relatively short timeframe for MSGP permit compliance requires that Act 250 involvement be as streamlined as possible. [Paul Frederick].* **Response:** All industrial facilities listed in Table D-1 of the MSGP must comply with the terms of the Multi-Sector General Permit. The permit allows for flexibility in selecting and implementing BMPs for each of the required stormwater controls listed in Section 2.1.5. Facilities that experience a conflict in implementing the MSGP and meeting the requirements of the Act 250 process will be addressed on a site by site basis. It is expected that any necessary changes to an Act 250 permit will proceed as administrative amendments or minor applications, particularly in the light of the fact that the actions being taken to comply with the MSGP are designed to improve environmental conditions at the project site.

94. *The MSGP says that you may incorporate the terms, conditions, and coverage of this general permit by reference in an individual wastewater permit that your facility may have. Please clarify this language, specifically in regards to monitoring that is required by other permits. [Robin Reilly, Bill Driscoll].*

**Response:** This language has been revised to provide for additional clarity and to provide that you may meet the terms of this permit by providing for equivalent terms, conditions and coverage in your individual wastewater permit. The incorporation of the terms of the MSGP into a facility's existing NPDES permit does not change the monitoring requirements of the existing permit. Such terms are additional.

95. *In the interest of administrative permit streamlining without damage to the environment, VT's NPDES based MSGP permit should include provisions allowing for SWPPPs to include terms and conditions of state issued post-construction stormwater discharge permits where feasible. When conducting inspections of a regulated facility related to stormwater, it makes sense to look at all stormwater related concerns at the same time. Having more than one stormwater permits for the same facility can be confusing and results in unnecessary administrative burden. [John Armstrong]* **Response:** Storm water is regulated pursuant to separate and distinct requirements of State and federal law. The Agency will maintain a separate State Stormwater Permit and Multi-Sector General Permit. A facility may choose to address the separate permit requirements at the same time, in accordance with the conditions of each permit.

## **Outreach, Education & ANR Resources**

96. *Administration of the MSGP may require additional resources and the Agency should be provided with those resources. [Tim Burke, John Brabant].*

**Response:** The Agency may require additional resources to administer the MSGP as issued. This issue will be addressed by the agency through the annual

budget development process and through our organizational evaluation process currently underway.

97. *Put together a training program for outreach and education. That way NOIs can have attached credentials. [John Brabant]* **Response:** Facilities will not be required to submit credentials with their MSGP applications. The Agency will be conducting outreach and education on all aspects of permit compliance and implementation.
98. *Citizen suits apply to MSGP. Educate the industry that they could become subject to citizen suits. [John Brabant]* **Response:** Section 1.2 of the permit addresses citizen enforcement actions.

## Endangered Species

99. *How will the endangered species certification provisions of Appendix E work in the context of existing facilities that are now required to get MSGP coverage, where a database may show the presence of an endangered species nearby? The proposed approach could result in costly and excessive surveys for sites which have co-existed for many years. If a large buffer zone is used on potential Ecologically Sensitive Area (ESA) sites, then extensive surveys might be needed for existing sites, where the species of concern may not even exist for thousands of feet from the facility. [Jeff Nelson]* **Response:** Today's permit changes the certification for threatened and endangered species from a prerequisite to permit coverage to a condition of permit coverage (Sections 1.3.4.6 and 2.1.6.1). As always, however, the Secretary retains the authority and discretion to revoke permit coverage for non-compliance. The Agency emphasizes that nothing in this permit purports to provide compliance with the federal and State Endangered Species Acts, or to relieve permittees from the requirements to comply therewith. When preparing your SWPPP, you must first determine whether state or federally-listed species commonly reside in your area. The Vermont Agency of Natural Resources maintains a web site showing the location of all State and Federally listed species in Vermont. If you know the location or the latitude and longitude of your facility, you can visit: <http://www.anr.state.vt.us/site/html/maps.htm> and obtain the necessary information. The applicant must determine whether the species are in proximity to the storm water or allowable non-storm water discharges or discharge-related activities at the facility. In response to this comment, Appendix E of today's permit clarifies that a species is in "proximity" to a storm water or allowable non-storm water discharge when the species is located in the path or down gradient area through which or over which the point source discharge flows from industrial activities to the point of discharge into the receiving water, and once discharged into the receiving water, in the immediate vicinity of, or nearby, the discharge point. A species is also in "proximity" if it is located in the area of a site where discharge-related activities occur. If an applicant determines there are no species in proximity to the storm water or allowable non-storm water discharges, or discharge-related activities, then there is no likelihood of jeopardizing the species and the applicant is has satisfied the permit conditions (*see, e.g.,* 65 Fed. Reg. 64746, 64755, *Final Reissuance of*

NPDES MSGP [October 30, 2000] and EPA 2006 MSGP Fact Sheet at 3.18). By replacing the former interpretation of “proximity” (i.e., 3,000 feet) which was contained in Appendix E of the Draft Vermont MSGP with the federal interpretation, the Agency has conformed the Vermont MSGP to the federal requirements and simplified the permitting process while ensuring the protection of endangered and threatened species.

## Corrections & Other

100. *In section 1.3.2.2 of the permit there is a citation that may be missing a (i) after the (9). The correct site would be: 40 CFR 122.26(a)(9)(i)(C) or (D). [Daniel Dutcher]* **Response:** Duly noted and correction made.
101. *The definition of "impaired water" indicates that "a water is impaired if it does not meet its designated use(s)." A water may also be impaired if it does not meet the water quality criteria supporting a designated use. Perhaps if a water does not meet one or more criteria then by definition it does not meet its uses, but maybe it would be more accurate to say that a water is impaired if it does not meet any designated use or water quality criterion. [Daniel Dutcher]* **Response:** Vermont’s MSGP follows the definition of “impaired water” provided by EPA’s draft MSGP.
102. *The amount of pollution leaving junkyards is stunning. Having visited junkyards throughout the U.S., it is my opinion that junkyards in VT are among some of the worst. Please do whatever you can to make big and small business responsible. [Ryan Bates]* **Response:** Sector M of the MSGP specifically address potential stormwater pollution from Junk Yards. The Agency has focused its outreach and education efforts on this sector for several years.
103. *The MSGP requirements for sectors M and N should require mercury switch removal. [Anthony Iarrapino]* **Response:** Mercury switch removal is governed under another program. On April 26, 2006, Governor Douglas signed into law a bill requiring auto salvage owners to remove mercury switches from vehicles prior to crushing them. The Comprehensive Mercury Management Act, codified at 10 VSA Chapter 164 requires, *inter alia*, that auto salvage yards and scrap recyclers remove mercury switches from vehicles prior to crushing, shredding or processing such vehicles (10 VSA 7108).
104. *The Vermont draft permit should track all legally required changes to the EPA’s version. A comparison between Vermont’s draft MSGP and EPA’s current draft MSGP 2006 demonstrates that the two drafts are virtually identical in all material respects. Accordingly, it is very likely that any legally-required changes to EPA’s draft permit will necessitate changes to Vermont’s permit. The proposed Vermont draft should, therefore, make clear that it is subject to change in response to changes EPA makes to its own final MSGP either because of voluntary recognition that an aspect of the draft MSGP 2006 is legally deficient or because a court order identifies such a deficiency and mandates its correction. [Anthony Iarrapino, Jeff Nelson, Bill Driscoll]* **Response:** ANR will consider amending the Vermont MSGP to reflect any changes EPA makes to the federal MSGP. ANR, consistent with 10 VSA § 1263, shall amend the Vermont MSGP in the event that EPA issues a final

MSGP which requires SWPPP review and public comments on SWPPPs, and will further amend the Vermont MSGP consistent with any conclusive judicial resolution of any challenges to EPA's MSGP.

105. *References to the Construction General Permit (CGP) 3-9001 should be updated if DEC is planning to issue GP 3-9020 later this year. [Jeff Nelson]***Response:** Duly noted.
106. *Use of the permit the word "other" is unclear in section 1.3.4.2. [Jeff Nelson]***Response:** The use of the word "other" in Section 1.3.4.2 refers to all stormwater discharges related to construction activities, except those construction stormwater discharges associated with Sectors G and J.
107. *Section 1.4 of the permit states that "Any non-compliance with the requirements of this Permit constitutes a violation of Vermont's Water Pollution Control Law, 10 VSA Chapter 47 and the Clean Water Act". Is the reverse true (compliance with MSGP constitutes compliance with 10 VSA Ch. 47)? [Jeff Nelson]***Response:** No. The MSGP authorizes activities described therein. The MSGP cannot authorize compliance with the entirety of 10 VSA Ch. 47 (or the Clean Water Act, for that matter). Section 1.4 simply broadly references the popular names of the laws which non-compliance would result in a violation of. Non-compliance with the MSGP may result in a violation of a number of particular provisions of both Vermont's Water Pollution Control Law and the federal Clean Water Act depending on the facts and circumstances of the non-compliance at issue.
108. *Section 1.6.2: This language ignores the reality that rain will fall and snow will melt. The language should be revised to more closely follow the language of Section 1.5.2 of the federal MSGP, so that a facility is not put in the position of illegally discharging. [Jeff Nelson]***Response:** The Vermont MSGP states that the industrial activity is "not authorized to discharge stormwater associated with industrial activity under the terms of this permit until you receive a written determination by the Secretary that your NOI filing is complete, and the discharge is eligible for coverage under the terms and conditions of this general permit." This section has been revised to require immediate submission of an NOI.
109. *The requirements for re-application at least 180 days prior to the general permit seems excessive and should be accompanied by a statement that ANR will notify all existing permittees of their duty to reapply prior to the due date. [Jeff Nelson].***Response:** The duty to re-apply is a standard permit condition. The expiration date is set forth clearly in the permit. A permittee is charged with knowledge of and compliance with all the terms of their permit.
110. *The permit language is confusing, and ambiguous. This could lead to court cases over jurisdiction and should be clarified. [Tony Barbagallo].***Response:** This comment does not cite to particular permit language. The Vermont permit language was largely taken from the Federal MSGP.
111. *The following terms and phrases are undefined: permit, unpermitted, individual permit, individual discharge permit, individual construction permit, individual wastewater permit, UIC permit, NPDES permit, NPDES general permit, MSGP, general permit, alternative general permit, general operational permit,*

*stormwater permit. Please clarify or define these terms. [Tony Barbagallo]*

**Response:** The term “permit” when used alone in the document to which this Response Summary refers, means the Multi-Sector General Permit.

“Unpermitted” in the context of the Multi-Sector General Permit, means any discharge that does not have a permit. “Individual permits” are permits that are site specific and granted to the applicant in the place of a general permit. “UIC” stands for Underground Injection Control. “NPDES” is defined in Section 1.2 and stands for National Pollution Discharge Elimination System. “MSGP” stands for Multi-Sector General Permit. “General Permits” are those that many applicants can apply for and receive coverage under. The terms “General Operational Permit” and “Stormwater Permit” in the context of the MSGP, refer to General Permits 3-9010 and 3-9015. An “alternative general permit” is another general permit which the Agency could authorize, such as watershed-based general permit.

112. *How should the word “may” in section 1.3.1 be interpreted? [Tony Barbagallo]*

**Response:** This language was taken directly from the Federal MSGP. The word “may” is referring to the fact that you “possibly” receive coverage if you meet the criteria for coverage under the permit.

113. *What constitutes a “section” of the permit versus a “part” or “subsection” of the permit? [Tony Barbagallo]* **Response:** In the terms of this permit, Part and Section have the same meaning. There are 4 Parts or Sections of the MSGP. Subsections are the sub-headings in each of the 4 sections, including the Sector Specific requirements.

114. *The reference to “Region 6” in Appendix C seems to be erroneous. [Tony Barbagallo]* **Response:** Appendix C includes state rainfall data. There is no reference to Region 6.