NPDES PERMIT NO. NMR04A000
RESPONSE TO COMMENTS
RECEIVED ON THE SUBJECT DRAFT
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
PERMIT IN ACCORDANCE WITH REGULATIONS LISTED AT 40CFR124.17

APPLICANTS - POTENTIALLY ELIGIBLE MS4s:
MS4s located within the following jurisdictions and other areas, including any designated by the Director, are potentially eligible for authorization under this permit:

- City of Albuquerque
- AMAFCA (Albuquerque Metropolitan Arroyo Flood Control Authority)
- UNM (University of New Mexico)
- NMDOT (New Mexico Department of Transportation District 3)
- Bernalillo County
- Sandoval County
- Village of Corrales
- City of Rio Rancho
- Los Ranchos de Albuquerque
- KAFB (Kirtland Air Force Base)
- Town of Bernalillo
- EXPO (State Fairgrounds/Expo NM)
- SSCAFCA (Southern Sandoval County Arroyo Flood Control Authority)
- ESCAFCA (Eastern Sandoval County Arroyo Flood Control Authority)
- Sandia Laboratories, Department of Energy (DOE)
- Pueblo of Sandia
- Pueblo of Isleta
- Pueblo of Santa Ana

ISSUING OFFICE:
U.S. Environmental Protection Agency Region 6
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PERMIT ACTION:
Final permit decision and response to comments received on the proposed NPDES permit publicly noticed on May 1, 2013.

DATE PREPARED: October 8, 2014

INTRODUCTION

The discharge control conditions established in the proposed permit are based on the Stormwater Regulations (40 CFR §122.26 and §122.34) and Section 402(p)(3)(B) of the Act which mandates that a permit for discharges from MS4s must effectively prohibit the discharge of non-stormwater to the MS4; and require controls to reduce pollutants in discharges from the MS4 to the maximum extent practicable (MEP) including best management practices (BMPs), control techniques, and system, design and engineering methods, and such other provisions as the Administrator deems appropriate for the control of pollutants. The overall intent of the permit conditions is to support the statutory goals of Section 101 of the Act to restore and maintain the chemical, physical and biological integrity for the Nation's waters. The inclusion of the requirements in Part I.C and Part I. D of the Permit were required to address specific water quality issues in the Rio Grande (the river is impaired with DO, bacteria, PCBs, and other pollutants) and to address endangered species (Rio Grande silvery minnow).

For brevity, Region 6 used acronyms and abbreviated terminology in this response to comments document whenever possible. The following acronyms were used frequently in this document and attached table:

Act (Clean Water Act)
AMAFCA (Albuquerque Metropolitan Arroyo Flood Control Authority
BMP (Best Management Practice)
COA (City of Albuquerque)
CFR (Code of Federal Regulations)
DO (Dissolved Oxygen)
ESCAFCA (Eastern Sandoval County Arroyo Flood Control Authority)
EPA (Environmental Protection Agency)
EXPO (State Fairgrounds/Expo NM)
ICIS (Integrated Compliance Information System)
KAFB (Kirtland Air Force Base)
MEP (Maximum Extent Practicable)
MS4 (Municipal Separate Storm Sewer System)
MQL (Minimum Quantification Level)
NHPA (National Historic Preservation Act)
NOI (Notice of Intent)
NOT (Notice of Termination)
NMDOT (New Mexico Department of Transportation)
NMED (New Mexico Environment Department)
NMIP (New Mexico Implementation Plan)
NPDES (National Pollutant Discharge Elimination System)
OSSFs (On-Site Sewage Facilities)
PBCs (Polychlorinated Biphenyls)
RP (Reasonable Potential)
Sandia Laboratories, Department of Energy (DOE)
SSCAFCA (Southern Sandoval County Arroyo Flood Control Authority)
SWMP (Storm Water Management Program)
SWMP (Storm Water Management Program)

SWQB (Surface Water Quality Bureau)
THPO (Tribal Historic Preservation Officer)
TMDL (Total Maximum Daily Load)
UNM (University of New Mexico)
WLA (Waste Load Allocation)
WQS (Water Quality Standards)

Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of August 12, 2014.

I. PUBLIC MEETINGS AND PUBLIC HEARING

EPA held two informal public meetings and one public hearing in the Albuquerque metropolitan area on May 14 and 15, 2013. The public meetings included a presentation on the proposed general permit and a question and answer session. Written, but not oral, comments for the official permit record were accepted at the public meetings. Written and oral comments for the official permit record were accepted at the public hearing. Responses to written comments and oral comments received during the public hearing were included in Section V (Table V-1) of this document.

II. CHANGES FROM DRAFT PERMIT

The following is a summary of major changes to the draft NPDES permit publicly noticed on May 1, 2013:

Note: Responses to comments received are included in Section V (Table V-1) of this document.

Notice of Intent (NOI) Submittal – Part I.B.2

Electronic Submittal: Add an e-mail and EPA Region 6 website to submit electronic NOIs. MS4 operators seeking authorization to discharge under this general permit must submit a complete notice of intent (NOI) to EPA via e-mail at R6_MS4Permits@epa.gov (note: there is an underscore between R6 and MS4) using the suggested EPANOI format located in the EPA R6 website at http://epa.gov/region6/water/npdes/sw/ms4/index.htm.

TMDLs Alternative Sub-measurable Goals Proposals: If an individual permittee or a group of permittees seeks an alternative sub-measureable goal for TMDL controls under Part I.C.2.b.(i).(c).B, the permitee or a group of permittees must submit a preliminary proposal with the NOI. This proposal shall include, but is not limited to, the elements included in Appendix B under Section B.2. Copy of the proposal should be submitted to NMED for approval. See also NMED Comment No 2 below in Section III of this document.

Compliance with Water Quality Standards/PCB Strategy in Bernalillo County - Part I.C.1.e.

Bernalillo County must address concerns regarding PCBs in their channel drainage areas by developing a PCB Strategy. The strategy shall be submitted to EPA within two (2) years from the effective date of the permit and submit a progress report with the third and with subsequent Annual Reports.

The permit allows development and implementation of a cooperative strategy with the COA and AMAFCA to address PCBs in the COA, AMAFCA and Bernalillo County's drainage areas. If a cooperative strategy is developed, the cooperative strategy shall be submitted to EPA within three (3) years from the effective date of the permit and submit a progress report with the fourth and with subsequent Annual Reports,

Note: COA and AMFCA must continue implementing the existing PCB strategy until a new Cooperative PCB Strategy is submitted to EPA.

Endangered Species Act (ESA) Requirements – Part I.C.3.a.(ii)

Consistent with U.S. FWS Biological Opinion dated August 21, 2014, to ensure actions required by this permit are not likely to jeopardize the continued existence of any currently listed as endangered or threatened species or adversely affect its critical habitat, Part I.C.3.a.(ii) has been revised to require COA and AMAFCA to revise the remedial activities selected for the North Diversion Channel Embayment and its watershed such that there is a reduction in frequency and magnitude of all low oxygen storm water discharge events that occur in the Embayment or downstream in the Middle Rio Grande. Proposed actions taken under Part I.C.3.a.(ii) must be developed to meet specific measurable goals.

Compliance Schedules in Activity Tables 1.a through 10.

To allow time to review and approve NOIs, the schedules in Activity Tables 1.a through 10 have been modified so that the earliest compliance schedule is six (6) months from effective date of the permit for individual programs and nine (9) months from effective date of the permit for cooperative programs. With the exception of submitting the wet weather monitoring preference (see first activity in Table 10 - individual monitoring program vs. cooperative monitoring program) to EPA which must be submitted with the NOI.

Post-Construction Stormwater Management in New Development and Redevelopment – Part I.D.5.b.

The language in Part I.D.5.b.(ii).(b) has been clarified to require permittees to incorporate stormwater controls that manage on-site the 90th percentile storm event discharge volume associated with new development sites and 80th percentile storm event discharge volume associated with redevelopment sites, through stormwater controls that infiltrate and/or evapotranspire the discharge volume, except in instances where full compliance cannot be achieved, as provided in Part I.D.5.b.(v).

Estimation of the 90th or 80th percentile storm event discharge volume is included in EPA Technical Report entitled "*Estimating Predevelopment Hydrology in the Middle Rio Grande Watershed, New Mexico, EPA Publication Number 832-R-14-007*". The report can be found at http://epa.gov/region6/water/npdes/sw/ms4/index.htm.

Permittees can also estimate:

Option A: a site specific 90th or 80th percentile storm event discharge volume using methodology specified in the referenced EPA Technical Report.

Option B: a site specific pre-development hydrology and associated storm event discharge volume using methodology specified in the referenced EPA technical Report.

Language in Part I.D.5.b.(v) was revised to clarify the alternative compliance for infeasibility due to site constrains. A mitigation option "Implementation of a *Ground Water Replenishment Project"* was added to Part I.D.5.b(v) where it has been determined to provide an opportunity to replenish regional ground water supplies at an offsite location.

Monitoring and Assessment Requirements – Part III.A

Seasonal Monitoring Periods: Seasonal monitoring periods have been modified as follows: Wet Season: July 1 through October 31 and Dry Season: November 1 through June 30.

Temperature: Monitoring of temperature should be also conducted at outfalls and/or Rio Grande monitoring locations. See NMED Condition of Certification in Section II below.

Dry Weather Discharge Screening of MS4 (discharges from separate storm sewers that occur without the direct influence of runoff from storm events, e.g. illicit discharges, allowable non-stormwater, groundwater infiltration, etc.): Due to the arid and semi-arid conditions of the area, the dry weather discharges screening program may be carried out during both wet season (July 1 through October 31) and dry Season (November 1 through June 30). Temperature must be included as one of the parameters to be tested. See NMED Condition of Certification in Section II below.

Sampling Methodology: In the draft permit, the methodology described in Part III.A.5.a.(iii) was not consistent with the methodology described in Part III.A.1.c and d. For clarity, the methodology in Part III.A.5.a.(iii) and the last paragraph of Part III.A.1.d were deleted.

Analytical Method: EPA Method 900.0 should be utilized when gross alpha water column monitoring is conducted to determine compliance with permit requirements.

Reporting Requirements – Part III.D:

Annual Report: The deadline to submit the Annual Report has been changed from April 1st to December 1st so that permittees have more time to address comments received from the public and revise the report as needed. The report should cover the previous year from July 1st to June 30rd.

Signed copies of DMRs required under Part III, the Annual Report required by Part III.B, and all other reports required herein, should be submitted electronically to R6_MS4Permits@epa.gov.

Pueblo of Isleta Water Quality Standards Notification – Part III.D.4

The permittee shall notify the Pueblo of Isleta in writing as soon as practical but not later than thirty (30) calendar days following each Pueblo of Isleta water quality standard exceedance at an in-stream sampling location. See Pueblo of Isleta Condition of Certification No 2 in Section III below.

III. STATE CERTIFICATION:

In a letter from James Hogan, Bureau Chief, Surface Water Quality Bureau (NMED), to William K. Honker, Director, Water Quality Protection Division (EPA) dated September 13, 2013; the NMED certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the CWA and with appropriate requirements of State law upon inclusion of the following condition in the permit.

CONDITION OF CERTIFICATION

Condition:

Temperature is limited in the Standards for Interstate and Intrastate Surface Waters in segments 20.6.4.105 and 20.6.4.106 NMAC for the designated use of marginal warmwater aquatic life at a maximum of 32.2° C. As noted in the 2012-2014 303(d) list, the Middle Rio Grande in segment 20.6.4.105 NMAC (specifically at the Isleta Pueblo to Alameda Bridge Assessment Unit) is impaired for the temperature water quality standard, which contributes to the non-attainment of the marginal warmwater aquatic life use. To NMED's knowledge the EPA did not perform a reasonable potential analysis to ensure that discharges authorized under this permit will not cause or contribute to this documented impairment. Therefore New Mexico requires that temperature monitoring be included in the NPDES MS4 Watershed Based Permit at Part III.A.1 and Part III.A.2 in order to ensure compliance with New Mexico Water Quality Standards. This condition is also consistent with the New Mexico Implementation Guidance which states in Appendix C that if a waterbody is impaired, a limit must be drafted in accordance with the Water Quality Management Plan (WQMP). NMED notes that a TMDL for temperature in the middle Rio Grande is currently scheduled for 2016.

Response:

Parts III.A.1.a and b have been modified to include the following statement: *Monitoring of temperature shall be also conducted at outfalls and/or Rio Grande monitoring locations.*

Part III.A.2.b has been modified as follows: *Screen for, at a minimum, BOD_5, sediment or a parameter addressing sediment (e.g., TSS or turbidity), E. coli, Oil and Grease, nutrients, any pollutant that has been identified as cause of impairment of a waterbody receiving discharges from that portion of the MS4, including temperature.*

COMMENTS THAT ARE NOT CONDITIONS OF CERTIFICATION

Comment No 1:

NMED's 2010 Total Maximum Daily Load for *E. coli* assigned a waste load allocation (WLA) in aggregate form in two assessment units of the Middle Rio Grande in the Albuquerque area. This aggregate calculation covers all Phase I and Phase II permittees in both segments.

In the proposed permit in Part I.C.2.b (i) (c) B, it provides that the permittees are allowed "in consultation with/and the approval of NMED, to determine an alternative sub-measurable goal derived from the WLA for the pollutant(s) of concern for their respective MS4."

Language has been placed in the draft permit in Appendix B that uses tables and formula taken from the *E. coli* TMDL for the two Albuquerque stream segments of the Rio Grande. NMED recommends the following language be inserted in place of this language. We believe our proposed language will provide clarity on TMDL loading calculations and ease of understanding the process of setting alternative goals for the permittees and the public.

"If an individual permittee or a group of permittees seeks an alternative sub-measureable goal NMED will review and approve these requests as part of the SWMP; however NMED requests that preliminary proposals be submitted with the Notice of Intent (NOI) according to the due dates specified in the permit. This proposal shall include, **but is not limited to**, the following items:

I. Determine base loading for subwatershed areas consistent with TMDL

   a. Using the table below, the permittee must develop a target load consistent with the TMDL for any sampling point in the watershed (even if it includes area outside the jurisdictional area of the permit).

E. coli loading on a per area basis (cfu/sq mi/day)

	high	moist	mid	dry	low
Alameda to Isleta	1.79E+09	4.48E+08	3.02E+08	1.11E+08	2.58E+07
Angostura to Alameda	3.25E+09	9.41E+08	5.19E+08	3.37E+08	1.74E+08

   b. An estimation of the pertinent, subwatershed area that the permittee is responsible for and the basis for determining that area, including the means for excluding any tributary inholdings;

   c. Using the total loading for the watershed (from part a) and the percentage of the watershed area that is part of the permitee(s) jurisdiction (part b) to calculate a base WLA for this subwatershed.

II. Set Alternative subwatershed targets

   a. Permittee(s) may reallocate WLA within and between subwatershed based on factors including:

      - Population density within the pertinent watershed area;
      - Slope of the waterway;
      - Percent impervious surface and how that value was determined;
      - Stormwater treatment, installation of green infrastructure for the control or treatment of stormwater and stormwater pollution prevention and education programs within specific watersheds

   b. A proposal for an alternative subwatershed target must include the rationale for the factor(s) used

III. Ensure overall compliance with TMDL WLA allocation

a. The permitee(s) will provide calculations demonstrating the total WLA under the alternative proposed in (Part II) is consistent with the baseline calculated in (Part I) based on their total jurisdictional area. Permittee(s) will not be allowed to allocate more area within the watershed than is accorded to them under their jurisdictional area. For permittees that work cooperatively, WLA calculations may be combined and used where needed within the sub-watershed amongst the cooperating parties.

WLA calculations must be sent as part of the Notice of Intent, and must be sent to:

Sarah Holcomb
Industrial and Stormwater Team Leader
NMED Surface Water Quality Bureau
P.O. Box 5469,
Santa Fe, NM 87502

Response No 1:

The following note was added in Part I.B.2.k*: If an individual permittee or a group of permittees seeks an alternative sub-measureable goal under Part I.C.2.b (i) (c) B, the permitee or a group of permittees must submit a preliminary proposals with the NOI. This proposal shall include, but is not limited to, the elements included in Appendix B under Section B.2.*

Appendix B has been revised to include Section B.2 as follows:

B.2. Alternative Sub-measurable Goals

Individual permittees or a group of permittees seeking alternative sub-measureable goals under C.2.b.(i).(c).B should consult NMED. Preliminary proposals should be submitted with the Notice of Intent (NOI) under Part I.B.2 according to the due dates specified in Part I.B.1.a of the permit. This proposal shall include, but is not limited to, the following items

B.2.1 Determine base loading for subwatershed areas consistent with TMDL

a. Using the table below, the permittee must develop a target load consistent with the TMDL for any sampling point in the watershed (even if it includes area outside the jurisdictional area of the permit).

E. coli loading on a per area basis (cfu/sq mi/day)

	high	moist	mid	dry	low
Alameda to Isleta	1.79E+09	4.48E+08	3.02E+08	1.11E+08	2.58E+07
Angostura to Alameda	3.25E+09	9.41E+08	5.19E+08	3.37E+08	1.74E+08

b. An estimation of the pertinent, subwatershed area that the permittee is responsible for and the basis for determining that area, including the means for excluding any tributary inholdings;

c. *Using the total loading for the watershed (from part a) and the percentage of the watershed area that is part of the permitee(s) jurisdiction (part b) to calculate a base WLA for this subwatershed.*

B.2.2 Set Alternative subwatershed targets

a. *Permittee(s) may reallocate WLA within and between subwatershed based on factors including:*

- Population density within the pertinent watershed area;
- Slope of the waterway;
- Percent impervious surface and how that value was determined;
- Stormwater treatment, installation of green infrastructure for the control or treatment of stormwater and stormwater pollution prevention and education programs within specific watersheds

b. *A proposal for an alternative subwatershed target must include the rationale for the factor(s) used*

B.2.3 Ensure overall compliance with TMDL WLA allocation

The permitee(s) will provide calculations demonstrating the total WLA under the alternative proposed in (Part II) is consistent with the baseline calculated in (Part I) based on their total jurisdictional area. Permittee(s) will not be allowed to allocate more area within the watershed than is accorded to them under their jurisdictional area. For permittees that work cooperatively, WLA calculations may be combined and used where needed within the sub-watershed amongst the cooperating parties.

WLA calculations must be sent as part of the Notice of Intent to EPA via e-mail at R6_MS4Permits@epa.gov. *These calculations must also be sent to:*

Sarah Holcomb
Industrial and Stormwater Team Leader
NMED Surface Water Quality Bureau
P.O. Box 5469,

Comment No 2:

NMED notes that there is no discussion of waste load allocations or other *E. coli* related requirements assigned to the three tribal entities included under this permit. NMED must ensure that the State's water quality standards are protected and requests that EPA address the issue of NMED's *E. coli* TMDL downstream of all three tribal lands in conjunction with the requirements in 40 CFR §131.10(b). Although the TMDL does not include tribal lands in the jurisdictional area calculation, the calculations themselves are based on tribal standards, which are more protective than the State's. NMED suggests that a benchmark value based on the Sandia Pueblo water quality standard is placed in the permit for the tribal entities to ensure that their discharges do not violate downstream water quality requirements. A benchmark is not considered an enforceable numeric limit, but as in the Multi-Sector General Permit, it is used as an indication of the need to reevaluate and/or apply more appropriate Best Management Practices to control the discharge.

Response 2:

Discharges from the Pueblos MS4s would discharge primarily if not exclusively into acequias and drains and only reenter the Rio Grande outside the Pueblo's jurisdiction via these waters of the United States. EPA has not confirmed any direct discharges into the Rio Grande from Tribal MS4s. Although the Rio Grande above and below Tribal jurisdictional areas are listed as impaired by the State of New Mexico, receiving waters for Pueblos MS4 discharges have not been listed as impaired and the State's TMDL does not apply to waters of the Tribe.

Part III.A.1.a. (ii) and Part III.A.1.b require all permittees including tribal entities to monitor for *E. coli* (pollutant listed in NMED TMDL). Part I.D.1 has been modified to clarify that SWMP requirement regarding protection of water quality does include downstream state and tribal waters. Part III.A.1.h. of the permit requires a response to monitoring results indicating discharges are may be contributing to exceedance of WQS so that sources of pollutants may be addressed by the SWMP. Part I.D.6 requires program assessment and modification when the SWMP is not effective in meeting permit requirements. In combination, these permit conditions would require the assessment of impacts of bacteria loads from discharges on Tribal lands to downstream State waters and SWMP modifications where discharges are contributing to downstream impairments. Note that Part I.C.1.c. also allows EPA to require modification of SWMPs to address water quality impairments.

Comment No 3:

In the proposed permit at Part I.B.1.a, Table 1, deadlines are given for the submittal of permittees' NOIs. As currently written, for example, there is a requirement to submit an NOI by 90 days after permit issuance if working individually, or 180 days from permit issuance if working cooperatively with other jurisdictions for the Class A permittee type. There must be a requirement to submit notification by the initial 90 day deadline to indicate that a permittee is anticipating working cooperatively so that NMED staff can adjust workload to accommodate this schedule. NMED will accept notification via email to bruce.yurdin@state.nm.us AND sarah.holcomb@state.nm.us.

Response No 3:

It is anticipated most permittees will submit NOIs with cooperative programs. No changes are made to the final permit as a result of this comment.

Comment No 4:

According to Part 5 of the *Procedures for Implementing National Pollutant Discharge Elimination System Permits in New Mexico*, dated March 15, 2012, that "All reports shall be sent concurrently to EPA and NMED. The addresses and phone numbers will be located in the permits."

In numerous places in the fact sheet and permit documented in the following table, EPA references the fact that information *may* need to be submitted to the State. Per the Implementation Guidance, NMED requests that any report, notification or DMR submitted to EPA also be sent to NMED. The information shall be mailed to:

Bruce Yurdin, Program Manager
NMED Surface Water Quality Bureau

Point Source Regulation Section
P.O. Box 5469
Santa Fe, NM 87502

Locations where a report is required to be sent to EPA and NMED
Part I.A.6.b(iii)(f)---Notice of Termination
Part I.B.3----------Where to submit reports
Part I.C.1.d(iv)------Progress and annual reports
Part III.A.1----------Wet weather monitoring

Response No 4:

The following underlined text has been added to Part III.D.4

Additional Notification. Permittee(s) shall also provide copies of NOIs, DMRs, annual reports, NOTs, requests for SWMP updates, items for compliance with permit requirements for Compliance with Water Quality Standards in Part I.C.1, TMDL's reports established in Part I.C.2, monitoring scheme, reports, and certifications required in Part III.A.1, programs or changes in monitoring locations, and all other reports required herein, to:

New Mexico Environment Department
Attn: Bruce Yurdin, Program Manager
Surface Water Quality Bureau
Point Source Regulation Section
P.O. Box 5469
Santa Fe, New Mexico 87502

The following underlined text was also added to Part I.B.3

Where to Submit. *The MS4 operator must submit the signed NOI to EPA via e-mail at R6_MS4Permits@epa.gov (note: there is an underscore between R6 and MS4) and NMED to the address provided in Part III.D.4. See also Part III.D.4 to determine if a copy must be **p**rovided to a Tribal agency.*

Comment No 5

In the proposed permit fact sheet, page 15 of 78, EPA incorrectly states that the 90th percentile storm event for the City of Albuquerque was determined to be 0.35 inches. The study, conducted by Mr. Chuck Easterling of Easterling Consultants, LLC, actually determined that the 90th percentile event was 0.44 inches. A copy of the calculation is included as Appendix A to this certification letter.

Response No 5:

According to an EPA study carried out in the area, the 90th percentile storm event for the City of Albuquerque and regulated area in the Middle Rio Grande Watershed was calculated as 0.6 inches. See document entitled "*Estimating Predevelopment Hydrology in the Middle Rio Grande Watershed, New Mexico*"**.** EPA Publication Number 832-R-14-007. Part I.D.5.b.(ii) of the permit has been modified to reference the EPA Study.

Comment No 6

In the proposed permit at Part I.A.4, Authorized Non-Stormwater Discharges, EPA states that uncontaminated pumped groundwater is an allowable non-stormwater discharge. NMED has responded to a number of unauthorized discharges from drinking water well facilities that have discharged their purge water to a Water of the United States as an unpermitted NPDES discharge. If excluded under this MS4 permit, those discharges that are currently occurring from groundwater purge operations may not be required to obtain NPDES permits in the future. EPA should carefully consider what impact this will have on future permitting needs. "Contaminated" and "Uncontaminated" should also be included in the definitions in Part VII.

Response No 6:

A definition of contaminated discharges was included in the definitions in Part VII as follows:

Contaminated discharges: The following discharges are considered contaminated:

- *Has had a discharge resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or*
- *Has had a discharge resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or*
- *Contributes to a violation of an applicable water quality standard.*

Comment No 7:

In the proposed permit at Part I.A.6.a(i) under Obtaining Permit Coverage, it states that numerous items must be included in the Notice of Intent to prove eligibility for permit coverage. Among those items are information required at I.B.2 (General contents of NOI), I.A.3 (public participation and National Historic Preservation Act requirements), I.D.5.h(i) (local public notice documentation), and I.A.5.f (documentation of compliance with requirements of applicable TMDLs). There is, however, no requirement for documentation to ensure eligibility requirements under the Endangered Species Act are met. In Part I.C.3 of the permit, permittees are specifically required to address dissolved oxygen and sediment concerns, and this information shows a permittee's eligibility to qualify for permit coverage and NMED therefore suggests that this should be required to be submitted in the initial Notice of Intent.

Response No 7:

Consistent with U.S. FWS Biological Opinion (BO) dated August 21, 2014, EPA has included requirements to ensure actions required by this permit are not likely to jeopardize the continued existence of any currently listed as endangered or threatened species or adversely affect its critical habitat. The proposed permit requires the permittees to implement a sediment pollutant load reduction strategy to assess and reduce pollutant loads associated with sediment. The ESA provisions also require the permittees to develop/revise a strategy to address dissolved oxygen at the North Diversion Channel as well as continue identifying structural elements, natural or man-made topographical and geographical formations, MS4 operations, or oxygen demanding pollutants contributing to reduced dissolved oxygen in the receiving waters of the Rio Grande. Eligibility requirements to address ESA under Part I.A.3 were not included as the Service has identified specific reasonable and prudent measures (RPMs) (see U.S. FWS BO) needed to

minimize impacts of incidental take of the silvery minnow resulting from the proposed action. Part I.C.3 of the permit includes the terms and conditions to implement those RPMs.

No changes are made to the final permit as a result of this comment.

Comment No 8:

In the proposed permit in Part I.C.2.b.(i)(d), EPA states that the annual report "must include an analysis of how the selected BMPs will be effective in contributing to achieving the measureable goal…" NMED questions whether EPA means "will be" or "have been" effective. In previous permits, there have been requirements for permittees to assess their impact on the receiving waters through analysis of pollutant loading. It does not appear that there is a requirement in this permit to do the same. EPA may want to clarify language here to indicate that information is needed on how the selected BMPs have been performing, not a projection of how they are anticipated to perform.

Response No 8:

Part I.C.2.b.(i)(d) has been modified as follow: "*must include an analysis of how the selected BMPs have been effective in contributing to achieving the measureable goal…"*

Comment No 9:

In the proposed permit in Part I.C.2.b.(ii)(a)A, EPA states, " Determine whether the MS4 may be a source of the pollutant(s) of concern by referring to the CWA §303(d) list and then determining if discharges from the MS4 would be likely to contain the pollutant(s) of concern at levels of concern." NMED is concerned that this language is vague, and may lead to arbitrary decisions as to whether the MS4 is a source of pollutants of concern. More specific language should be added here to indicate that this decision should be based on data collected from routine or illicit discharge monitoring previously conducted within the permittee's jurisdiction.

Response No 9:

Part I.C.2.b.(ii).(a).A has been revised to indicate that evaluation of CWA §303(d) list parameters should be carried out based on an analysis of existing data (e.g. Illicit Discharge and Improper Disposal Program) conducted within the permittee's jurisdiction.

Comment No 10:

In the proposed permit, in Part I.C.2.b.(ii)(b) Impairment for Bacteria, EPA requires the permittee to identify potential pollutant sources and then develop and implement targeted BMPs to address the source. NMED has a formal notification process to identify probable sources as well, and would appreciate the information to be submitted on the following form: ftp://ftp.nmenv.state.nm.us/www/swqb/Surveys/PublicProbableSourceIDSurvey.pdf. This data may then be considered during the development of the 303(d) list.

Response No 10:

The following language has been added to Part I.C.2.b.(ii).(b):

Note: Probable pollutant sources identified by permittees should be submitted to NMED on the following form:
ftp://ftp.nmenv.state.nm.us/www/swqb/Surveys/PublicProbableSourceIDSurvey.pdf.

Comment No 11:

In the proposed permit, in Part I.C.3.b.(h) (as currently written), NMED suggests that perhaps section (h) was meant to be subpart (vi).

Response to No 11:
Part I.C.3.b.(h) has been changed to PartI.C.3.b.(vi).

Comment No 12:

In the proposed permit, in Part III.A.1 Wet Weather Monitoring, it should be clarified in the permit language that these monitoring requirements apply to **each** water of the US that runs in each entity's jurisdiction. From the current wording of the permit, there is nothing to indicate that these requirements apply to more than one waterbody.

Response No 12:

The following underlined text has been added to Part III.A.1:

Wet Weather Monitoring shall be conducted at outfalls, internal sampling stations, and/or in-stream monitoring locations at each water of the US that runs in each entity or entities' jurisdiction(s).

Comment No 13:

In the proposed permit in Part III.A.1.g, EPA indicates that an alternative monitoring location can be substituted for just cause during the permit term, with EPA approval. As NMED is required to approve the permittee's monitoring plan under this permit NMED requests that the State also be involved in the determination of whether that new site is appropriate. NMED has experience with the permitted watershed to assess whether the new site is adequately chosen to capture the characteristics of that basin.

Response No 13:

Part III.A.1.g has been changed to include NMED in the approval process.

Comment No 14:

In the proposed permit in Part III.A.1.g, as the permit is currently written, the last sentence of the paragraph states that "Six (3) samples shall be collected during the first year of monitoring at substitute monitoring locations." NMED asks that EPA clarify whether three or six samples are required in this part. We also ask EPA to determine if this frequency of sampling is consistent with the approach to sampling specified in Part III. A.1.a (Option A) and Part III.A.1.b (Option B).

Response No 14:

Part III.A.1.g has been revised as follows: At least six (6) samples shall be collected during the first year of monitoring at substitute monitoring locations

Comment No 15:

In the proposed permit in Part III.A.2.b, EPA states that during wet and dry weather discharge screening, a number of parameters are to be addressed, including pollutants that have been identified as the cause of an impairment of a waterbody receiving discharges from that portion of the MS4 (pollutants on the CWA 303(d) list).

NMED's Human Health-Organism Only criterion for PCBs in the Standards for Interstate and Intrastate Water Quality at 20.6.4.900 NMAC is set at 0.00064 µg/L. Because there is an impairment for PCBs in the Rio Grande, NMED requires the use of EPA Method 1668 for compliance purposes since it is the only analytical method with a Method Detection Limit (MDL) that is below NMED's water quality standard. Sampling conducted at the compliance points in this permit shall be conducted using EPA Method 1668 (latest revision), as is currently required at Part III.5.b. If a problem is indicated in the wet weather compliance tests, screening conducted further into the watershed is required to determine the source of the problem as per the permit language at Part III.A.1.h. NMED has allowed tests with higher method detection limits (MDLs) such as EPA Method 8082 (Aroclor method) or USGS Method 8093 for watershed screening purposes in the currently active Phase I MS4 permit issued to the City of Albuquerque, AMAFCA, NMDOT and UNM. NMED approves the continuation of this practice in the proposed MS4 Watershed Based Permit. However, if a source is identified using methods with higher detection levels, the use of EPA Method 1668 is required to provide confirmation and determination of the PCB levels and specific congeners at that location.

For dry weather screening purposes, the permittees can use EPA Method 8082 or USGS Method 8093 for screening purposes, but must use EPA Method 1668 (latest revision) for confirmation and determination of specific PCB levels at that location.

Response No 15:

The underlined text has been added to Part III.A.5.b:

EPA Method 1668 shall be utilized when PCB water column monitoring is conducted to determine compliance with permit requirements. For purposes of sediment sampling in dry weather as part of a screening program to identify area(s) where PCB control/clean-up efforts may need to be focused, either the Arochlor test (EPA Method 8082) or USGS test method (8093) may be utilized, but must use EPA Method 1668 (latest revision) for confirmation and determination of specific PCB levels at that location.

Comment No 16:

In the proposed permit in Appendix H, the standard list of MQLs for applicable test methods is given. In the list in the permit as written, there is no MQL given for PCBs. The MQL in the EPA Method 1668 latest revision test should be given in this list, still including the (**) footnote as currently written to indicate that a PCB test with higher detection limits can be used for screening purposes.

Response No 16:

The MQL of 0.2 µg/l for PCBs has been included in Appendix F (former Appendix H).

The following underlined text has been added to the (**) footnote: *but must use EPA Method 1668 (latest revision) for confirmation and determination of specific PCB levels at that location.*

Comment No 17

Generally, when EPA has included compliance timeframe tables, the deadlines are given as "x days from effective date of permit". Due to the fact that many permittees are anticipated to file NOIs under this permit, and the heavy workload this creates for EPA, it may take some time for approvals to be granted to a permittee. NMED recommends that to avoid the permittees potentially missing a deadline, the language should be modified to read instead: "x days from approval of permittee's NOI."

Response No 17:

The compliance schedules for the earliest program elements in Tables 1.a thru Table 10 have been extended to 3 months.

Comment No 18:

During the public meetings, an idea was suggested to allow different ways to monitor a regulated storm event. Due to the unique nature of rainfall frequency, intensity and location within the middle Rio Grande watershed, NMED suggests that once a monitoring location is selected in a permittee's monitoring program, a flow metering device should be placed at the outfall selected in the monitoring plan. This would be the most accurate way for a permittee to show that the storm resulted in a measureable storm event at the outfall that they are responsible for monitoring.

Response No 18:

A flow metering device will be allowed to monitor storm events. No changes are made to the final permit as a result of this comment.

Comment No 19:

In Part III.A.1.a (i), the permit states that "Phase I permittees must include additional parameters from monitoring under permit NMS000101 whose mean values are at or above a water quality standard (WQS). For ease of implementation, NMED suggests that the specific constituents that exceeded WQS over the past 10 years should be culled out and specifically mentioned in this section. EPA may also want to review pesticide data to ensure that this will not be an issue in the new permit.

Response No 19:

The following underlined text has been added to Part III.A.1.a.(i): *Phase I permittees must include additional parameters from monitoring conducted under permit NMS000101 (from last 10 years) whose mean values are at or above a WQS.*

IV. TRIBAL CERTIFICATIONS:

PUEBLO OF SANDIA CONDITION OF CERTIFICATION

In a letter from Victor Montoya, Governor of Pueblo of Sandia, to William K. Honker, Director, Water Quality Protection Division (EPA) dated July 1, 2013; the Pueblo certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301 (including 301(h) variances), 302, 303, 306, and 307 of the Clean Water Act and Tribal law upon inclusion of the following condition in the permit.

Condition:

The following conditions apply: Part I- 3. Where to Submit
The following MS4 operators: Class A -AMAFCA (Albuquerque Metropolitan Arroyo Flood Control Authority); Class B –Sandoval County, Village of Corrales, City of Rio Rancho, Town of Bernalillo, SSCAFCA (Southern Sandoval County Arroyo Flood Control Authority); and Class C - ESCAFCA (Eastern Sandoval County Arroyo Flood Control Authority) must submit the signed NOI to the Pueblo of Sandia at the following address:
Pueblo of Sandia Environment Department
Attn: Scott Bulgrin, Water Quality Manager
481 Sandia Loop
Bernalillo, New Mexico 87004

Part III- 4. Additional Notification
The following MS4 operators: Class A -AMAFCA
(Albuquerque Metropolitan Arroyo Flood Control Authority), Class B ·-Sandoval County, Village of Corrales, City of Rio Rancho, Town of Bernalillo, SSCAFCA (Southern Sandoval County Arroyo Flood Control Authority) and Class C - ESCAFCA (Eastern Sandoval County Arroyo Flood Control Authority) submit the documents in 4. to the Pueblo of Sandia at the following address:
Pueblo of Sandia
Attn: Scott Bulgrin, Water Quality Manager
481 Sandia Loop
Bernalillo, New Mexico 87004

Response:

The following underlined text was added to Part I.B.3:

Where to Submit. *The MS4 operator must submit the signed NOI to EPA via e-mail at R6_MS4Permits@epa.gov (note: there is an underscore between R6 and MS4) and NMED to the address provided in Part III.D.4. See also Part III.D.4 to determine if a copy must be* ***p****rovided to a Tribal agency.*

The following MS4 operators: AMAFCA, Sandoval County, Village of Corrales, City of Rio Rancho, Town of Bernalillo, SSCAFCA, and ESCAFCA must submit the signed NOI to the Pueblo of Sandia to the address provided in Part III.D.4

The following underlined text was added to Part III.D.4:

Additional Notification. Permittee(s) shall also provide copies of NOIs, DMRs, annual reports, NOTs, requests for SWMP updates, items for compliance with permit requirements for Compliance with Water Quality Standards in Part I.C.1, TMDL's reports established in Part I.C.2, monitoring scheme, reports, and certifications required in Part III.A.1, programs or changes in monitoring locations, and all other reports required herein, to:

Pueblo of Sandia Environment Department
Attn: Scott Bulgrin, Water Quality Manager
481 Sandia Loop
Bernalillo, NM 87004
(Note: Only those MS4s with discharges upstream of or to waters under the jurisdictional of the Pueblo of Sandia: AMAFCA, Sandoval County, Village of Corrales, City of Rio Rancho, Town of Bernalillo, SSCAFCA, and ESCAFCA)

PUEBLO OF ISLETA CONDITION OF CERTIFICATION

In letters from E. Paul Torres, Governor of Pueblo of Isleta, to William K. Honker, Director, Water Quality Protection Division (EPA) dated October 29, 2014; the Pueblo certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301 (including 301(h) variances), 302, 303, 306, and 307 of the Clean Water Act and Tribal law upon inclusion of the following condition in the permit.

Comment No 1:

The Pueblo of Isleta reserves the right to reopen and modify the permit to address new information not available or know to the Pueblo.

Response No 1:

Since EPA Region 6 is the permitting authority, any reopening and modification of the permit would have to be done by EPA Region 6. Under 40 CFR §124.5, the Pueblo of Isleta has the right to request a modification of the permit for any of the reasons specifies in 40 CFR §122.62. Part V.A of the permit states *The permit may be reopened and modified, in accordance with 40 CFR §122.62, §122.63, and §124.5, during the life of the permit to address…* Therefore, Part V.A of the permit satisfies the Pueblo of Isleta's concern.

Comment No 2:

Under Part I.C, permittees shall notify the Pueblo of Isleta in writing as soon as practical but not later than 30 calendar days following each water quality exceedance.

Response No 2:

Note that NPDES permits place requirement on permittees and not on the EPA. To address the issue raised, the following underlined text was added in Part I.C.1.c*:*

The permittee shall notify EPA and the Pueblo of Isleta in writing as soon as practical but not later than thirty (30) calendar days following each Pueblo of Isleta water quality standard exceedance at an in-stream sampling location.

Comment No 3:

EPA shall notify the Pueblo of Isleta of each water quality standards exceedance within thirty (30) days of the exceedance; and, if the permittee is required to write a report, EPA shall notify the Pueblo of Isleta within (30) days; and, the Pueblo of Isleta may request a copy of the permittee's required report.

Response No 3

Note that NPDES permits place requirement on permittees and not on the EPA. To address the issue raised, the following underlined text was added in Part I.C.1.c*:*

In the event that EPA determines that a discharge from the MS4 causes or contributes to an exceedance of applicable surface water quality standards and notifies the permittee of such an exceedance, the permittee shall, within sixty (60) days of notification, submit to EPA, NMED, Pueblo of Isleta (upon request) and Pueblo of Sandia (upon request), a report that describes controls that are currently being implemented a…

Comment No 4

Under Part III.D.4, the pueblo of Isleta requests notification in writing from all permittees and potentially eligible permittees that a Notice of Intent ("NOI") or Notice of Termination ("NOT") has been submitted to EPA.

Response No 4:

The following text has been added to Part III.D.4:

All parties submitting an NOI or NOT shall notify the Pueblo of Isleta in writing that a NOI or NOT has been submitted to EPA.

Comment No 5:

Under Part III.D.4, the Pueblo of Isleta requests that discharge monitoring reports ("DMR"), and requests for SWMP updates, items for compliance with permit requirements for TMDL established in Part I.C.2 and Part I.C.3 programs, or change(s) in monitoring location(s) from the following select permittees of potentially eligible permittees:

1. City of Albuquerque
2. Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA)
3. New Mexico Department of Transportation (NMDOT) District 3
4. Bernalillo County

Response No 5:

The following language in Part III.D.4 was modified so that the City of Albuquerque, Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), New Mexico Department of Transportation (NMDOT) District 3, and Bernalillo County are required to submit copy of the discharge monitoring reports ("DMR"), requests for SWMP updates, items for

compliance with permit requirements for TMDL established in Part I.C.2 and Part I.C.3 programs or change(s) in monitoring location(s) to the Pueblo of Isleta.:

Only the City of Albuquerque, Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), New Mexico Department of Transportation (NMDOT) District 3, and Bernalillo County). All parties submitting an NOI or NOT shall notify the Pueblo of Isleta in writing that a NOI or NOT has been submitted to EPA.

V. RESPONSE TO ALL COMMENTS

See attached Table V-1.

Table V-1 Response to Comments

NPDES General Permit No. NMR04A000

	Table V-1		Response to Comments NPDES General Permit No.	NMR04A000
#	Commenter	Section	Comment	Response
1	SSCAFCA	I.C.2.b	This part references “sections (a) and (b) below”, should this be (i) and (ii) below?	EPA agrees. Part I.C.2.b has been revised.
2	SSCAFCA	I.D.5.b.ii	Typo in second sentence. Change “police” to “policy”	EPA agrees. Part I.D.5.b.(ii).(b) has been revised.
3	SSCAFCA	I.D.5.c.ii.m	First sentence, change the term “manage” to “management”	EPA agrees. Part I.D.5.c.(ii).(m) has been revised.
4	SSCAFCA	I.D.5.g.viii	There is a numbering error on the bullets under this item (goes (d), (i), (e)).	EPA agrees. Part I.D.5.g.(viii) has been revised.
5	SSCAFCA	I.C.2.b.ii.b	Third line of this Part, depending on the acceptance of proposed changes to Part I.C.2.b(i)(e).A, Part I.C.2.b(i)(e).B and Part I.C.2.b(i)(e).E, renumber reference to Part I.C.2.b.(i)(e) A throughout E accordingly. Regardless, change the term “throughout” to “through”.	EPA agrees. Part I.C.2.b.(ii).(b) has been revised to change the word "throughout" to "through".
6	SSCAFCA	I.D.5.h.iii	This part refers to the “plan required in Part I.D.5.h.(i)”, where no such reference to a plan exists. Do you mean Part I.D.5.h.(ii), where development of a plan to encourage public involvement in the review, modification and implement of the SWMP is contained?	EPA agrees. Part I.D.5.h.(iii) has been revised.
7	SSCAFCA	III.A.1.g	The first sentence says “monitoring locations established in Part III.A.1.a and Part III.A.1.b. These two items, as written in the permit are mutually exclusive (either you are in a cooperative program or not). Please change the “and” in this sentence to an “or”. Last sentence says, “six (3)” with regard to first year monitoring at substitute monitoring locations. Is it six or three?	EPA agrees. Part III.A.1.g has been revised.
8	NMDOT	IV.F	“Duty to Provide Information”, states: “The Permittee(s) shall furnish to the EPA, within a time specified by EPA…..” The word “reasonable” should be added before the word “time”.	It is expected that the time frame specified by EPA in Part IV.F will be reasonable. If additional time is needed to gather the information requested by EPA, the permittee can always request an extension.

#	Commenter	Section	Comment	Response
9	Pueblo of Sandia	App. A	Middle Rio Grande Watershed Permittees List. The Pueblo requests that Class A: AMAFCA, the word Authority be added as part of the acronym.	EPA agrees. The word "Authority" has been added to the description of AMAFCA in Appendix A.
10	AMAFCA		*[See the marked up copy of the permit for typos and suggested changes, which was submitted as part of AMAFCA's comments on the permit.]*	Types corrected, changes made as appropriate.
11	SSCAFCA	I.D.5.b.ii.e	This seems to be an educational element that would be better suited for insertion into part I.D.5.g.	The EPA recognizes that there are education components in minimum control measures at 40 CFR 122.34(b) other than the public education and involvement measure. The permit requirements for storm water management programs group all requirements for a particular measure together, but permittees may include all education programs together and simply cross reference to the portion of the SWMP with the details of that element. Part I.D.5.b.(ii).(e) requires the permittees to develop and implement an educational program for project developers and MS4's staff on post-construction stormwater management program and GI/LID sustainability practices. The training program for plan review is directed to MS4's staff regarding stormwater standards, site design techniques and controls. The education and outreach required in Part I.D.5.g is specifically directed to the public in general on the stormwater program. Part I.D.5.b.(ii).(e) can complement Part I.D.5.g.
12	SSCAFCA	I.D.5.c.ii.h	This part seems more suited for the education outreach part of the permit. Part I.D.5.g(vii)(j) specifically discusses education and outreach of trash management. Remove this part and rely on source control outreach efforts identified in Part I.D.5.g.	The EPA recognizes that there are education components in minimum control measures at 40 CFR 122.34(b)(3)(D) other than the public education and involvement measure. The permit requirements for storm water management programs group all requirements for a particular measure together, but permittees may include all education programs together and simply cross reference to the portion of the SWMP with the details of that element. The requirement in Part I.D.5.c.(ii)(h) directly addresses litter source controls in municipal or facility operations and should be designed to reduce waste from their own areas (e.g., roads and parking lots, maintenance and storage yards, and waste transfer stations).

#	Commenter	Section	Comment	Response
13	SSCAFCA	I.D.5.c.ii.k	See response to Part I.D.5.c(ii)(h).	The EPA recognizes that there are education components in minimum control measures at 40 CFR 122.34(b)(3)(D) other than the public education and involvement measure. The permit requirements for storm water management programs group all requirements for a particular measure together, but permittees may include all education programs together and simply cross reference to the portion of the SWMP with the details of that element. The requirement in Part I.D.5.c.(ii)(k) directly addresses floatable and trash in municipal or facility operations and should be designed to reduce waste from their own areas (e.g., roads and parking lots, maintenance and storage yards, and waste transfer stations).
14	SSCAFCA	I.D.5.e.i.d	This requirement is located in Part I.D.5.g(i). Recommend removal from this part of the permit.	The EPA recognizes that there are education components in minimum control measures at 40 CFR 122.34(b)(3)(D) other than the public education and involvement measure. The permit requirements for storm water management programs group all requirements for a particular measure together, but permittees may include all education programs together and simply cross reference to the portion of the SWMP with the details of that element. One of the key elements of the Illicit Discharge Detention and Elimination Minimum Control Measure Program is to educate the public employees, businesses, property owners, and the general public regarding ways to detect and eliminate illicit discharges.
14	SSCAFCA	cont		The educational outreach efforts required in Part I.D.5.e.(i)(d) can be combined with the Public Education and Outreach Minimum Control Measure Program required in Part I.D.5.g(i).
15	SSCAFCA	I.D.5.c.i.c	The terms :"streets, roads, highways, municipal parking lots" seem out of place when considered with the rest of the facilities identified in this part. The remainder of the facilities (fleet or maintenance shops, salt/sand storage locations, snow disposal areas operated by permittee, and waste transfer stations) are generally more controlled facilities that lend themselves to having "controls for reducing or eliminating discharge of pollutants" as they are not occupied on a regular basis by the general public. Pollutants (e.g. floatables, sediment, etc.) from roads, streets, etc. will generally be handled by BMPs at stormwater facilities. Recommend removing these terms from this part.	The intent of this control measure (Part I.C.5.c Pollution Prevention/Good Housekeeping for Municipal/Permittee Operations) is to ensure that existing municipal/permittee operations are performed in ways that will minimize contamination of stormwater discharges. Permittees may examine and subsequent alter their own actions to help ensure a reduction in the amount and type of pollution that is collected in their own MS4 (e.g., streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations, snow disposal areas and other areas operated by the permittee) . Streets, roads, highways, and municipal parking lots may be part of conveyance or system of conveyance designed to collect or convey stormwater.

#	Commenter	Section	Comment	Response
16	SSCAFCA	I.D.5.g.viii.m	This part should be changed to reflect water conservation practices for home residences with regard to stormwater capture and usage in landscaping irrigation. Water conservation (as far as drinking water) education is typically conducted by the water utility authorities in the area. This part could also be considered a subset of Part I.D.5.g(viii)(f), education on sustainable practices.	Part I.D.5.g.(viii).(m) has been changed to Part I.D.5.g.(viii).(n). Part I.D.5.g.(viii).(n) was included so that the permittees will use existing programs (e.g. water conservation practices for home residents) to address the education and outreach component of the stormwater program. After agency coordination, the County or the City could use the education materials developed by local water utility authorities. Since water conservation practices cover a broad number of practices, EPA has clarified the language in Part I.D.5.g.(viii).(n) as follows: Education/outreach on water conservation practices designed to reduce pollutants in storm water for home residences.
17	AMAFCA	I.C.2.b.i.e.E	General comment: it would be helpful to have the permit organized such that all public education, involvement, etc., was included in the section titled, Public Education and Outreach on Stormwater Impacts.	The permit was organized by stormwater control measure and some of the measure include specific training to educate MS4's staff or/and specific audience (project developers).
18	SSCAFCA	I.C.2.b.i.d	This section mentions "baseline loads" and "target loads. Could you please expand on what you mean by these terms? If baseline loads have not been established, should an MS4 identify those in the first year of this permit? Would a target load be an X% of reduction on the baseline since there are no numerical standards in this permit?	A "baseline load" is the load for the pollutant of concern which is present in the waterbody before BMPs or other water quality improvement efforts are implemented. A "target load" is the load for the pollutant of concern which is necessary to attain water quality goals (e.g., applicable water quality standards). The percent load reduction necessary is the difference between the baseline load and the target load divided by the baseline load. The permit has been modified to include the definitions of Baseline Load, Target Load, and Percent Load Reduction in Part VII Definitions.
19	SSCAFCA	I.D.5.b.viii.b	This part uses the ambiguous term "unnecessary creation" with respect to impervious area. First of all, we would need to define the term "unnecessary". What does that mean? I think it depends on who is asking and answering the question. I think a better way to phrase this part is, "Evaluate the need to add impervious surface on a case-by-case basis and seek to identify alternatives that will meet the need without creating the impervious surface."	EPA has added the following sentences to Part I.D.5.b.(viii).(b): The permittee may evaluate the need to add impervious surface on a case-by-case basis and seek to identify alternatives that will meet the need without creating the impervious surface.

#	Commenter	Section	Comment	Response
20	SSCAFCA	III.A.3.c	The option for a cooperative floatable monitoring plan for Phase II MS4s is allowed under this Part, however, no definition as to what this might be is provided. Some clarification of this option would be greatly appreciated. Our assumption based on the sentence "The amount of collected material shall be estimated in yards" is that the Phase II MS4s will have to supply a volumetric measurement of materials collected at this location, not an in-depth assessment of separate floatable material types (e.g. plastic bottles/cigarette butts/etc.). Is that a valid assumption?	A cooperative floatable monitoring plan is a plan developed and implemented by a group of permittees to address the floatable materials in discharges to and/or from their MS4s and on a larger watershed basis. The amount of collected material shall be estimated in cubic yards. Although an assessment of separate floatable materials types is not required, it is recommended for final disposal purposes or to help identify sources of the floatables in order to better target controls.
21	NMDOT	IV.B	"Penalties for Violations of Permit Conditions", NMDOT is unclear as to which "Act" EPA is referring, as "Act" does not seem to be defined. Notwithstanding the foregoing, NMDOT complies with applicable federal laws and regulations. *Question from NMDOT*: Is there any clarification we need based on our logic above?	The word "Act" is referring to the Clean Water Act. In the definitions at Part VII.5., the permit states that the "Clean Water Act" or "The Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq. EPA has added the words "Clean Water Act" to the first paragraph of Part IV.
22	Bureau of Recl., Albuquerque Area Office	VII	Definitions, Page 3 of Part VII. We appreciate including the clarification that the term "point source" does not include return flows from irrigated agriculture or agricultural stormwater runoff. We request that this section include: a) the definition and citation for "waters of the United States" along with the responsible agency for designating as such; and b) a clear statement indicating that local irrigation channels and drains are not waters of the United States.	The permit includes the definition of "Point Source" at 40 CFR 122.2. See Part VII Definitions: "Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff". EPA's regulatory definition of "Waters of United States" may be found at 40 CFR 122.2. Note that a rulemaking on Waters of the United States has been announced - for more information, visit www.epa.gov/uswaters.

#	Commenter	Section	Comment	Response
22	Bureau of Recl., Albuquerque Area Office	cont.	cont.	Although the Corps of Engineers is primarily responsible for determining whether particular waters are "waters of the U.S." in the context of permit and enforcement actions arising under Section 404 of the Clean Water Act, EPA is responsible for those determinations in permit actions arising under 402 of the Clean Water Act and in enforcement actions arising under Section 309 of the Act. Those determinations are fact dependent and case-specific. EPA is responsible for federal enforcement of this MS4 permit. No "clear statement indicating that local irrigation channels and drains are not waters of the United States" would be accurate. Many, perhaps most, irrigation channels and drains in the area regulated under today's MS4 permit are considered tributaries to the Rio Grande, traditionally navigable water, under the
22	Bureau of Recl., Albuquerque Area Office	cont.	cont.	Agency's regulatory definition and views the Supreme Court expressed in the Rapanos case. Others may be considered point sources conveying non exempt stormwater to waters of the U.S. Irrigation return flows and agricultural stormwater runoff are not regulated by the permit, but that is due to the nature of those discharges, not to the nature of the channels and drains receiving them.
23	Bernalillo County	I.C.2.b.i.a	[this section] and throughout (7 instances)"Targeted Controls" *Please define*. Is there a separate list of specific controls or BMPs to which this refers? Or do you mean "controls intended for targeted pollutants"? ie, *is the Pollutant the Target or is the Control the Target?*	Targeted controls means practices implemented to address particular pollutant of concern. For example litter programs target floatables. Part VII Definitions has been revised to include the definition of "Targeted Controls".
24	City of Albuquerque	III.A.1	Wet Weather Monitoring. This terminology is unclear. Does the term "wet weather" refer to the time period during which the area typically experiences monsoons or to an actual storm event? Please clarify.	Wet weather monitoring refers to sample during or after a storm event. Due to the arid conditions and low frequency of storm events in the permitted area, the permittees must sample during both wet and dry seasons. EPA has added the following highlighted sentence to Part III.A.1: The permittees shall conduct wet weather monitoring to gather information on the response of receiving waters to wet weather discharges from the MS4 during both wet season (July 1 through October 31 and dry Season (November 1 through June 30). See response to comment No 87.

#	Commenter	Section	Comment	Response
25	City of Albuquerque	III.A.2	Dry Weather Discharge Screening of MS4. The terminology "dry weather" is unclear. Is EPA referring to the "dry season" during which there is no monsoonal flow? Or to any day that it is not raining? Please clarify.	Dry weather monitoring refers to water sampling from investigation of manholes and outfalls during dry weather (e.g. sample of runoff without the direct influence of runoff from storm events during any time of the year) to identify and investigate illicit discharges to the Municipal Separate Storm Sewer System. EPA has added the following sentence in Part III.A.2: Due to the arid and semi-arid conditions of the area, the dry weather discharges screening program may be carried out during both wet season (July 1 through October 31) and dry Season (November 1 through June 30).
26	AMAFCA		Throughout the Permit, there are references to MS4s, MS4 operators, and Permittees. It is unclear whether these are intended to have separate meanings. However, for the purpose of commenting on this Permit, AMAFCA has assumed that references to MS4s, MS4 operators, and Permittees all are intended to mean "Permittee" as that term is defined in Part VII.	EPA agrees, MS4s, MS4 operators, and Permittees are intended to mean "Permittee" as defined in Part VII.
27	SSCAFCA	I.D.5.a.ii.a	Since the State of New Mexico does not have regulatory authority (has not been promulgated by EPA to the state) over the construction site stormwater program, we believe that the local agencies also do not have the authority to enforce the CWA in this capacity. We believe an adequate response to this BMP is to have a process in place, whether statutory or otherwise, to refer construction site operators who may have potentially violated the terms of their NOI for construction site erosion and sediment controls to the EPA for enforcement action. Alternative language for this part of the permit might be, "Develop a process for the review of construction site erosion and sediment controls and reporting to EPA for enforcement action."	Permittees are required by 40 CFR 122.34(b)(4) to have a local program to reduce pollutants in storm water from construction sites disturbing one or more acres. The permittee would be acting under their own authorities to enforce this local program and not the Clean Water Act program at the federal level requiring such construction site operators to have a NPDES permit. The permittee's program must utilize all legal authorities given by the State, and may not simply rely on the Federal construction permit program except where the State has given no legal authorities.
27	SSCAFCA	cont...	cont...	Traditional MS4s (e..g municipalities) are authorized by the legislature to enact ordinances/regulations, issue permits, and/or enforce statutes or other legal mechanisms to regulate construction site stormwater management. Non-traditional MS4s (e.g, flood control authorities, universities) may develop internal procedures to control discharges from its own activities and enter into contracts/agreements with entities it contracts to perform activities/projects to control discharges. Additionally, permittees may coordinate via memorandum of understanding, cooperative agreements, or similar mechanisms (e.g. Joint Powers Agreement) with one another and/or other agencies that have the legal authority to prohibit these types of discharges. As indicated in Part I.D.5.a.(ii)(f), the permittee may request EPA enforcement assistance.

#	Commenter	Section	Comment	Response
28	SSCAFCA	I.D.5.a.ii.f	Since the State of New Mexico does not have primacy for the enforcement of the Clean Water Act, we believe that the local agencies also do not have the authority to enforce the CWA in this capacity either. When a developer is going to be disturbing greater than 1 acre of land, they are required to file a Federal Notice of Intent. While a local government may be able to identify potential non-compliance with a Federal NOI the local government does not have authority to enforce that permit by levying fines (essentially a stop work order could be construed as a fine by the private sector). We recommend substituting the term "enforcement" with "reporting to EPA enforcement".	See response to comment No 27.
29	NMDOT	I.D.5.b.ii.b	"An ordinance or other regulatory mechanism...", The NMDOT is an agency of the State of New Mexico. As such, NMDOT cannot promulgate laws or ordinances. Only the New Mexico Legislature can enact State **laws**. Thus to the extent allowable under State Law, Part 1 D.5.b.(ii) (b) is not applicable to NMDOT. Notwithstanding the foregoing, NMDOT will monitor its property and notify the governmental entity with jurisdiction over any adjacent landowner who appears to be the source of an unauthorized discharge of pollutants. Moreover, NMDOT will notify NMED of any spills, as NMED has enforcement authority and the ability to handle any spill events. As NMDOT will notify government authorities with enforcement authority, NMDOT realizes that not all authorities currently have enforcement laws or ordinances in place. *Question(s) from NMDOT* :	Permittees not authorized by the legislature to enact ordinances/regulations, issue permits, and/or enforce statutes or other legal mechanisms may develop internal procedures to control discharges from its own activities and enter into contracts/agreements with entities it contracts to perform activities/projects to control discharges. Where pollutants have been traced to locations outside a permittee's jurisdiction, the Permittee may include procedures for notifying the operator of the adjacent MS4 and/or State and Federal officials. Additionally, permittees may coordinate via memorandum of understanding, cooperative agreements, or similar mechanisms (e.g. Joint Powers Agreement) with one another and/or other agencies that have the legal authority to prohibit these types of discharges. Note that NMDOT can also coordinate with NMED. NPDES permit conditions are enforced under Section 309 of the CWA. "Upstream" MS4s that fail to comply with permit conditions are subject to enforcement by EPA. Part I.D.5.a ofr. ment. permittees from taking on long term maintenance responsibilities should they choose to do so, but does not requir
29	NMDOT	cont.	How will EPA require enforcement by such entities? NMDOT worries that without enforcement mechanisms in place, no "real" enforcement may occur which may result in the pollutants travelling onto NMDOT property. In such cases, how will EPA address the government entity who took no initial enforcement action?	

#	Commenter	Section	Comment	Response
30	NM Home Builders Assn.	I.D.5.a.iii	Requiring the MS4 Watershed Permittee to conduct annual inspections on every construction project within its jurisdiction is an overly optimistic goal that is too simplistic and fails to reflect business practices common to the construction process – especially for homebuilding. This requirement is in addition to the requirement that all projects be inspected at completion for confirmation of final stabilization, making the requirement excessive. Research has not turned up this requirement in any other MS4 permit, and yet it is being included for New Mexico's desert during a drought that has been documented to be worse than the Dust Bowl era. This requirement appears to be based upon a business model that is not utilized in New Mexico, and the erroneous assumption that rain falls year-round. Except for the period from July 15-October 15, most of the state would qualify for an Erosivity Waiver due to historical data that show the lack of rainfall.	Comment noted. The construction site inspection requirement applies to the MS4 permittee and is intended to ensure that storm water controls are being installed and maintained so as to be ready when a storm occurs. As indicated in Part I.D.5.a.(x) of the proposed permit, the construction site inspections required in Part I.D.5.a.(iii) may be carried out in conjunction with the permittee's existing building code inspections using a screening prioritization process. This would most likely result in one or more inspections during the life of the project anyway and the annual requirement would only trigger where a project lasts more than one year. In addition, the commenter is reminded that the low rainfall erosivity waiver is only available to small construction projects where the common plan of development or sale disturbs less than 5 acres and where the length of the project is shorter. Most small construction projects lasting more than one year would be unlikely to qualify for the low rainfall erosivity waiver.
30	NM Home Builders Assn.	cont.	The business practice in this state is to have the land development entity obtain a SWPPP for the initial grading and installation of infrastructure within a development. Then an N.O.T. is obtained (which requires an inspection by the MS4 Permittee), and the developer sells the individual lots to potential homebuyers. The construction of a home is then accomplished by a different construction company for each individual lot within the development, and each lot obtains its own SWPPP. Within each development there may be 25 or more projects in varying stages of construction; some commercial projects taking several years, and some residential projects that only last a few months.	

#	Commenter	Section	Comment	Response
30	NM Home Builders Assn.	cont...	This document already requires that each time any one of these projects applies for its N.O.T. the MS4 Permittee must inspect the site within the development. The requirement to also perform inspections simply because it is time to flip the calendar would greatly increase the cost of compliance for a Permittee, as they would need to hire sufficient FTEs to go to each development at least weekly to inspect one or another of the various projects within the development. As the inspector is driving through the development, the inspector may stop and investigate anything that looks to be questionable. There is no coordination with the normal N.O.T. process required in the Construction General Permit. No evidence has been presented that shows this increased level of inspection would result in any environmental gain other than providing another opportunity for an MS4 Permittee to be fined by the EPA over incomplete paperwork. Requested Action: Delete the unnecessary, redundant, and impractical annual inspection requirement.	
31	NM Home Builders Assn.	I.D.5.b.ii.b	Post-Construction Ordinance. Issue: This section includes many prescriptive land-use requirements that are beyond the purview of the Clean Water Act. References to "green roofs" in a desert are just one more example of how the MRG MS4 Watershed Permit appears to be written for a different climate than the Middle Rio Grande Watershed. Requirements that growth be directed to areas to protect areas such as floodplains and historic properties, and require Permittees to maintain or increase open space /buffers along sensitive water bodies, and encouraging infill development in higher density urban areas and areas with existing storm sewer infrastructure have no place in an MS4 permit. These requirements infringe on the land use and planning decisions of a municipality. The references in this section to "infill" once again show that the writers of this permit are unfamiliar with the Middle Rio Grande Watershed. Have the writers seen the Rio Rancho Civic Center? Where would an infill project be suggested for Corrales or Placitas?	The permit does not exert land use controls. Permittees are required to institute controls that will minimize and mitigate the impacts of storm water discharges on water quality and fulfill the statutory mandate to reduce the discharge of pollutants to the Maximum Extent Practicable (see CWA 402(p)(3)). This requirement does not mandate that permittees lose the character that makes them unique. It requires the permittee to use BMPs to address quality of storm water discharges. For clarity, EPA has moved the requirements in Part I.D.5.b.(ii).(b). B, C, and D to the Program flexibility Elements in Part I.D.5.b.(xiii).
31	NM Home Builders Assn.	cont.	For Algodones? Requested Action: Re-write this section to incorporate some realistic goals that stay out of mandating that all towns, villages and cities lose the character that makes them unique.	

#	Commenter	Section	Comment	Response
32	NM Home Builders Assn.	I.D.5.b.ii.f	Issue: In addition to being redundant to the requirements for a long-term maintenance plan in the SWPPP issued under the Region 6 Construction General Permit, instead of allowing flexibility in the maintenance of the post-construction BMPs, the MRG MS4 Watershed Permit appears to once again show a tendency to micro-manage and a general lack of understanding of construction, municipal processes, and New Mexico land law. There are a host of reasons why maintenance of some of the Low Impact Development (LID) BMPs and retention features on private property are beyond the capabilities of a homeowner or homeowners' association (HOA). The MS4s should reasonably undertake to catalog the various BMPs and retention features on private land, and then develop their own Ordinances to deal with annual inspections and methods for punishing those who fail to maintain the BMPs for which they are responsible.	Comment noted. The permit does not preclude permittees from contracting third parties to conduct inspections. Many long term post-construction storm water controls will require maintenance to remain effective over time, so it is essential that there be a plan to ensure proper operation and maintenance. Part I.D.5.b.(ii)(f), the permit includes generic language as to require the permittees to develop procedures for site inspection and enforcement to ensure proper long-term operation, maintenance, and repair of stormwater management practices that are put into place as part of construction projects/activities. The permit does not require specific process to develop the procedures to ensure long-term operation, maintenance and repair of those storm water controls. To meet the goal of proper post-construction stormwater management, the permit recommends using dedicated funds or escrow accounts for development projects or the adoption by the permittee of all privately owned control measures. The permit does not prohibit permittees from taking on long term maintenance responsibilities should they choose to do so, but does not require
32	NM Home Builders Assn.	cont.	As part of their Ordinance, MS4s should have a choice as to whether they wish to have the homeowner or HOA responsible for the maintenance of LID BMPs hire a contractor to carry out that maintenance and verify the operation of the BMP. For small communities such as Corrales, there may be too few LID BMPs to make it feasible to conduct these inspections – a contract with an outside consultant could be the best option for them as well. The state already requires proof of contracts between owners of Alternative Treatment Systems for liquid waste disposal and private Maintenance Service Providers (MSP).	them to take on this responsibility should they decide to require this of the landowner or an association.
32	NM Home Builders Assn.	cont...	Why shouldn't an MS4 be allowed to either contract for the services of a BMP MSP and then place an assessment for the costs for that contract on the property, or at least require the homeowner or HOA to provide a copy of a current contract with a BMP MSP? Requested Action: Make the language more general, giving the MS4s the option to enforce the maintenance of the BMPs by whichever process works best for their community.	

#	Commenter	Section	Comment	Response
33	Bernalillo County	I.D.5.b.ii.f	regarding Procedures for site inspection and enforcement to ensure proper long- term operation, etc. As it stands now in the permit, there is no minimum size or category. We might end up inspecting small businesses and residential development, even individual homes, for years. Instead, we currently rely upon normal codes and ordinances intended to detect and correct failures of systems. We believe this is more than adequate. Enforcement before the fact is irrational and expensive when it does not involve critical public safety. *At least, this should be qualified with a minimum commercial site size or industrial category? Even better it should be dropped altogether since there are adequate requirements for enforcement.*	Part I.D.5.b.(ii)(f) requires procedures for site inspections and enforcement to ensure proper long-term operation, maintenance, and repair of stormwater management practices that are put into in place as part of new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part or larger common plan of development or sale, that discharge into the MS4. See also Part I.D.5.b.(i).
34	Pueblo of Sandia	I.D.5.a.iii	Page 21 of Part I. The Pueblo feels that annually conducting site inspections of 100 percent of all construction projects cumulatively disturbing one (1) acre or more within the MS4 jurisdiction is unrealistic and needs to be re-written. As currently written, 100 percent inspections would be an unreasonably hard for the larger permittees, those in Class A or Class B. EPA Region 6 NPDES Compliance and Enforcement Branch and those states with NPDES primacy in Region 6 do not conduct 100 percent inspections of their regulated facilities so to therefore ask these permittees to conduct 100 percent inspections is unwarranted and burdensome. The Pueblo requests that a more realistic goal be written to satisfy this requirement. The Pueblo suggests that a high range of 80-100% be written for small projects (those disturbing 1 acre or more but less than 5 acres) or that 100 percent inspection of the larger projects (those disturbing 5 acres or more).	The regulations at 40 CFR 122.26(d)(2)(iv)(D) required the city to develop a SWMP element to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the MS4. The MS4 permit requires the permittees to have the legal authority to control the discharge of pollutants to the MS4, and to have SWMP elements to screen for, inspect, and investigate the various types of discharges to the MS4 (industrial, construction, illicit discharges). EPA believes that potentially any construction site, regardless of area of disturbance, may be included in these screening, inspection, and investigation programs, and the city may need to address some of these facilities' storm water discharges, if they are determined to be a problem. Since every site would most likely be visited by one or more building code inspectors (e.g.. plumbing, electrical, framing. etc.) anyway. A program that leverages this existing effort, together with appropriate prioritization of the level of inspection effort for different types of construction projects, could minimize the additional resources needed.
35	Tierra West, LLC	I.B.1.A	*Designations, also refers to Part I.D.1 General Requirements* Comment: The proposed permit was drafted without recommendations and review of individual development groups within the Basin Limits. This proposed permit only includes the municipalities but not the affected land owners and stakeholder groups. We believe, at a minimum, the general public needs to review the individual Storm Water Management Plan elements requiring the 145 mandated SWMP. Please show how the proposed requirements will not affect individual water rights or the violation of the Office of State Engineers requirement to release all water within 96 hours? We feel that this exceeds the authority of the EPA on this issuance of this permit.	See responses to comments No 41 and 45.

#	Commenter	Section	Comment	Response
36	Bernalillo County	I.B.1.A	Designations, also refers to PART I. D. 1. General Requirements, The proposed permit does not reflect recommendations of EPA-led working meetings Since early 2010 there have been monthly meetings at the direction of EPA permitting staff, yet these considerations and conclusions are not included in this permit, nor are the recommendations reached by the group as a whole. For example, the MRG working group created a ranking of SWMP elements, especially arid BMPs, with a count assigned to each sector level. That plan and several other collaborative efforts have not been included. Also, because the SWMP mandatory elements are essentially the same as the current City of Albuquerque Phase I permit, it appears that Phase II permittees are now effectively considered Phase I. This "re-regulation" seems beyond the intent of current, legal NPDES Phase I & Phase II regulations, again without the benefit of rulemaking review.	EPA did use input from the workgroup in crafting the form and requirements of the proposed permit. However, at several times during the workgroup meetings, EPA staff also had to remind participants that the regulatory requirements at 40 CFR 122.26 and 122.34 set some boundaries on the flexibility of the permit. For example, one recommendation by the group would have exempted some small MS4s from having to have a construction storm water program, which is a required minimum measure that cannot be waived. The discharge control conditions established by Part I.D.1 of the proposed permit are based on the Stormwater Regulations (40 CFR §122.26 and §122.34) and Section 402(p)(3)(B) of the Act which mandates that a permit for discharges from MS4s must effectively prohibit the discharge of non-stormwater to the MS4; and require controls to reduce pollutants in discharges from the MS4 to the maximum extent practicable (MEP) including best management practices (BMPs), control techniques, and system, design and engineering methods, and such other provisions as the Administrator deems appropriate for the control of pollutants.
36	Bernalillo County	cont	We suggest that the Sector based ranking of BMP's developed by the MRG working group be used to rank the SWMP elements and assign a minimum number for each sector rather than making all 145 SWMP elements mandatory for Phase II. We also recommend that the testing requirements be moderated and reduced in number and frequency, again to reflect the differences in size and resources of different agencies. We do not consider the extensions of time to file permits an adequate compensation for the extraordinary burden of what is essentially a Phase I permit upon a Phase II entity.	Since both Phase I and Phase II MS4s are subject to the same MEP standard of the Act, EPA Region 6 took into consideration the 1999 Phase II MS4 permit requirements at 40 CFR 122.34 to set the regulatory requirements for both Phase I and Phase II MS4s located in the Middle Rio Grande watershed. Phase II minimum permit requirements have been incorporated into today's permit to ensure that the MEP level of effort expected of Albuquerque, a Phase I large municipal separate storm sewer system, is no less than that required of small Phase II MS4s. EPA has incorporated some of the concepts recommended by the workgroup, for example the Type Permittees Classes: A, B, C, and D .
36	Bernalillo County	cont	cont.	In regards to the recommendation from Bernalillo County to reduce the testing requirements in number and frequency and to reflect the differences in size and resources of different agencies. The requirements of the permit in Part III.A were specifically tailored to provide a reasonable assurance that permitted activity will be conducted in a manner which will not violate applicable Water Quality Management Plans and Water Quality Standards.

#	Commenter	Section	Comment	Response
37	Bernalillo County	I.D.1	**General Requirements,** The proposed permit was intended to promote watershed cooperative efforts, but most of the 145 mandatory SWMP elements are non-cooperative by nature Part D. Stormwater Management Program (SWMP), 5. Control Measures, includes 145 mandatory program elements. Despite EPA Permitting's openly stated intention to make the new permit too burdensome for any single entity to manage individually, there are few realistic opportunities for real collaborative efforts. In fact more than 80% of these control measures require local ordinance or procedures, or are simply best suited to management by different county divisions or departments. Thus the proposed permit is not merely burdensome, but doomed to fail as a cooperative effort. (These are listed and categorized in Table 1 for reference.. It does not include the Industrial and High Risk Runoff, the Special Conditions with TMDL or sediment control, nor the monitoring requirements.)	Although the permit strongly encourages cooperative participation of municipalities, it does not mandate it. EPA R6 recognizes that some entities may not wish to be incorporated with a group and they have the option to operate autonomously. National case studies suggest that watershed cooperation offers considerable advantages (ref: 2009 National research Council Report on Urban Stormwater). The permit is flexible and allows the permittees to develop and/or implement some or all program elements individually or cooperatively. In meetings with MRG Agencies, EPA specially indicated that cooperative programs could be decided element by element and discussions on which program elements made sense to be cooperative was a local decision. See also response to comment No 36.
37	Bernalillo County	cont.	Although EPA has held more than 2 years' of meetings with MRG agencies, there is no apparent understanding of the actual operations of a municipal or county government. For example: street sweeping is a standard Part of sanitation efforts. SWMP measures might reasonably require a greater frequency, but to remove street sweeping to a separate "cooperative" agency or program is expensive and needless. In fact, most stormwater programs rely upon the efforts of multiple groups within government: Building Permits, Facilities, Parks, and Health Services to name a few. Economically, these efforts are incorporated into the normal existing work of individuals. There is not a "Stormwater Street Sweeper," only a street sweeper. To require that these things be done extra-agency as a cooperative effort completely ignores the economy possible when these activities are done "in-house." Stormwater management, as the most recent regulatory system in most city or county operations, is usually incorporated into another program at substantial cost savings.	

#	Commenter	Section	Comment	Response
37	Bernalillo County	cont.	The industrial business model of an "economy of scale" is not applicable to small government. It would create an unreasonable subdivision of labor. The goal of cooperation, simply to call something a "cooperative" program, is not the point of a watershed approach, and is a disservice to the real goal of improving stormwater quality. There must be a better way to encourage effective cooperation, such as funding a monitoring consortium to collect consistent watershed data with the assistance of Federal agencies. Since this MRG permit was begun as a pilot permit program, it seems appropriate that EPA fund implementation directly to measure the actual effectiveness of such a "watershed" approach. Such an evaluation is beyond the scope of any one agency involved directly in implementation, and would be better done by a neutral party or the regulatory agency itself, EPA. Alternately, we request that the number of mandatory elements in the SWMP (Table 1) be reduced proportionate to Phase II status, or that the reporting requirements be modified to make	
37	Bernalillo County	cont.	cooperative efforts realistic. Again, we recommend following the sector or class based ranking of BMPs developed during MRG working meetings. Despite the published intention to create a cooperative watershed permit, this permit creates few opportunities for meaningful cooperative efforts. In the 145 listed mandatory SWMP elements, the potentially cooperative elements are less than 15% of the count. The number of mandatory elements in itself increases workload significantly without contributing to water quality improvement.	
38	Tierra West, LLC	I.D.5.a	The permit includes a number of measures for controlling runoff. It would make more sense to allow the municipalities and the communities to determine the most effective control methods. Retention of water over 96 hours creates a violation and is not the best method of controlling runoff or water quality. We recommend that the permit be changed to manage the flow which will allow the water to be released and allow the communities' to determine the best method of controlling the runoff. Please address how the permit will not impact the individual and municipal water rights by the issuance of the permit?	See response to comment No 45.

#	Commenter	Section	Comment	Response
39	Tierra West, LLC	I.D.5	The entire section is set up to manage and control runoff that clearly sets land use policy and development limits. Many sections in this area exceed the jurisdiction of the EPA under the Clean Water Act. We suggest a complete rewrite of this section elimination those areas that exceed the Act. Please modify the permit deleting those sections which cover the implementation of land use and regulator control?	EPA does not agree with the commenter's assertion that the permit exceeds the authorities granted by the Clean Water Act. Section 402(p)(3)(B) of the Act establishes requirements for MS4 permits and gives the authority to require controls to reduce pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions determined appropriate for the control of pollutants. The permit does not require or include any federal regulatory program for municipal land use decisions, but merely a regulatory program to protect water quality. The permittees are regulated entities subject to the NPDES permitting program, similar to private parties with NPDES permits. The permit provisions related to control of contributed pollutants and illicit discharges (non-storm water) and materials other than storm water are directed at the ultimate discharge of pollutants that, if not otherwise controlled by the permittees, would pass through the MS4 system uncontrolled. The permit conditions are directed at a permittee's provision of storm sewer system access to third parties.
39	Tierra West, LLC	cont.	cont.	access to third parties, to the extent that such third parties otherwise freely discharge uncontrolled pollutants to the sewers.
40	NM Home Builders Assn.	I.D.5.b.ii.d	This section requires the Permittee ensure the post-construction program requirements "are constantly reviewed and revised". This is in conflict with the Construction General Permit NMR120000 Section 9.4.1.1 that requires a long-term maintenance plan be included in the SWPPP, and reported on to the state's NMED for three years following issuance of the NOT. If the MS4 Permittee is tasked with "constantly" reviewing and revising the post-construction long-term maintenance plan, then there are too many cooks in the kitchen. Whose direction is a post-construction site to follow -- NMED, or the MS4? Requested Action: Delete post-construction requirements that conflict with provisions of Region 6's approved Construction General Permit NMR120000.	Part I.D.5.b.(ii).(d) requires the permittees to ensure that the permittees 's post-construction program requirements are constantly reviewed and revised as appropriate to incorporate improvements in control techniques. It does not include specific provisions to review long-term maintenance plans/SWPPP from construction site owners or operators. Part I.D.5.b.(ii).(d) does not conflict with the provisions of the Construction General Permit.

#	Commenter	Section	Comment	Response
41	NM Home Builders Assn.	I.D.5.b.v	Projects that cannot meet the pre-development runoff values requirement Issue: These alternatives would be useful for some urban redevelopment projects where space constraints and other factors make meeting stormwater retention requirements difficult and perhaps impossible. Since the MRG MS4 Watershed permittees must "develop and apply criteria for determining the circumstances under which these alternatives will be available," representatives from the commercial development community (NAIOP) and The Home Builders Association of Central New Mexico (The HBA) should be a part of a stakeholder group to help to develop the draft criteria for Albuquerque's permit. Any alternatives for expansion of the MRG MS4 Watershed Permit outside the MRG area should include New Mexico Home Builders Association as a stakeholder to help develop criteria for the rest of the state. Requested Action: Include language in this section to ensure the residential and commercial development industries are included in the development of these criteria.	The permit (see Part I.D.5.h) encourages public involvement and provides opportunities for participation in the review, modification and implementation of permittee's stormwater programs thru the development and implementation of the Public Involvement and Participation programs. EPA encourages the NAIOP, the HBA, and other organizations to participate in those programs. As mentioned in Part I.D.5.b.(v) (f) of the permit, in a situation where the alternative options such as off-site mitigation, ground water replenishment project, payment in lieu, are not feasible, the permittees may submit to the EPA for approval, an alternative option that meets the goals of the 80th or 90th percentile pre-development hydrology values. The public can participate in the development of such as alternative options thru the Public Involvement and Participation Program.
42	Bernalillo County	I.D.5.a	Construction Site Stormwater Runoff Control. Also Part I. D. 5. b. Post-Construction Stormwater Management in New Development etc., New measures incorporating GI/LID are unproven, and possibly detrimental to river flow The proposed permit includes more than 20 new measures for Green Infrastructure/LID. While these measures are currently quite popular, there has been very little demonstration of their effectiveness in the arid Southwest. Since they rely almost entirely upon reduction of flow, not reduction of pollution, they also challenge the reality of water rights (the Rio Grande Compact) and the necessity of having water in the river if endangered species are to survive. The silvery minnow will be more challenged by the absence of water than by its quality. The Rio Grande is a river originating in the mountains of Southern Colorado and Northern New Mexico, fed largely by snow melt. Once it leaves the Santa Fe area into the flat river bottoms and bosques of central New Mexico it loses water through evaporation (even in winter), infiltration and irrigation. In fact, with our extremely low rainfall, the stormwater	Implementation of GI Practices in Arid Southwest Areas: Though many Green Infrastructure (GI) practices were first developed and applied in temperate regions, GI is perhaps even more relevant in arid and semi-arid climates. By promoting infiltration, evapotranspiration, and harvesting throughout the landscape, GI preserves and restores the natural water balance. Many communities are successfully implementing GI in arid and semi-arid conditions (e..g the Watershed Management Group in Tucson, Arizona). Additional information of GI implementation in arid Southwest can be found at http://water.epa.gov/infrastructure/greeninfrastructure/. A number of sites in Bernalillo and Sandoval counties have already GI/LID designs: e.g., Mesa del Sol (permeable pavement, depressed landscaping, water harvesting), New Mexico Court of Appeals (stormwater catchment and green roof), AMAFCA Hahn Arroyo Project (landscape watering using treated stormwater), SSCAFCA Office Building (Rooftop capture for landscape watering, pervious pavement, on-site ponding), Sandia National Laboratories (Bioswale), etc. Guidance on site design and rooftop water harvesting in NM can be found at http://www.ose.state.nm.us/publications_brochures.html.

#	Commenter	Section	Comment	Response
42	Bernalillo County	cont.	contribution of the entire Albuquerque area is estimated to be less than 0.02% of the river's flow as it leaves the area. The initial abstraction based on interception and infiltration in the South Valley of Bernalillo County is 53%, so what little rain does fall rarely makes it to the river. As it passes through the MRG the flow is additionally diminished by the ABCWUA draw of drinking water; while much of the drinking water draw is returned via the wastewater utility, there is a substantial net loss. Further reduction of flow via Green Infrastructure and LID measures are likely to produce a greater negative impact if this permit is implemented. We recommend that all GI/LID measures be made optional elements or at least reduced in number.	The goal of the post-construction program (which can use GI/LID practices) is to reduce pollutants by mimic natural hydrology. See also response to comment No 57. Implementation of GI/LID Practices and the Rio Grande Silvery Minnow: Consistent with U.S. FWS Biological Opinion dated August 21, 2014, Part I.C.3 of the proposed permit has included strategies to address dissolved oxygen and pollutant loads associated with sediment (e.g., metals, etc. adsorbed to or traveling with sediment, as opposed to clean sediment) into the receiving waters of the Rio Grande. The principal threats to these species which may be associated with the storm water discharges that would be authorized under the permits are loss or modification of habitat and materials such as pesticides and other pollutants in the discharges. The requirements of the permit (Part I.C.3) are designed to both improve the quality of existing unregulated discharges and address impacts on discharges related to future municipal growth.
42	Bernalillo County	cont.	cont.	Reduction of Flow via Green Infrastructure and LID Measures: See response to comment No 45.
43	Bernalillo County	I.D.5.a	Question: Do these provisions apply only to the Urbanized Areas of Bernalillo County? We have separate policies for the East Mountains, non-urbanized areas. This calls for different policies within different areas of Bernalillo County, so would require particular study and procedures. *Please clarify exact requirements for agencies with non-urban areas, such as Bernalillo County and Sandoval County.*	Part I.D.5.a only applies to areas located fully or partially within the Albuquerque urbanized area as determined by the 2000 and 2010 Decennial Census. Please note that the Counties should include Census Designated Places (CDPs) which lack separate municipal government. For example Town of Camuel should be part of Bernalillo County's jurisdictional area. See Table 6 of the fact sheet for a complete list of CDPs in the area. Permittees are encouraged, however, to look at implementing appropriate controls outside the permitted areas (and outside permit obligations) to help protect water quality and head off future problems. As the Urbanized Area footprint grows over time, areas outside the permit now may be regulated in the future.

#	Commenter	Section	Comment	Response
44	Bernalillo County	I.D.5.a	Construction Site Stormwater Runoff Control, in general: Currently in our master plans and development review, we can take into account certain downstream flood and stormwater control features in calculations of allowable run-off. How will this be accommodated in the new permit? These measures reflect the unique nature of arid SW conditions, in which flood control for exceptional events has created these structures. Unlike the east coast models of stormwater, MRG has no wet weather base flow. There are long periods (months) without any rain at all, but sudden storms and our steep slopes make constructed flood control structures critical for safety. The flood control features provide protection for the extremes, while allowing flexibility for development in the average dry conditions. This situation should be reflected in the permit since it is intended only for the MRG, and the pre- development standard be modified or removed.	Where both the 80th/90th percentile storm event capture requirement and flood control requirements on site cannot be met due to site conditions, the 80th/90th percentile storm event capture requirements may be met through a combination of on-site and off-site controls. In a situation where the alternative options such as off-site mitigation, payment in lieu, ground water replenishment project, are not feasible, the permittees may submit to the EPA for approval, an alternative option that meets the 80/90th percentile pre-development hydrology values, See Part I.D.5.b.(v). (f).D of the permit.
45	Bernalillo County	I.D.5.a.v	*(v) Has the State Engineer's Office been consulted specifically and given written approval or consent regarding GI/LID/Sustainable practices? If not, will EPA provide legal support for this mandated program?* Lacking a specific consultation, all projects may be tied up in burdensome and lengthy consultation with OSE, especially as noted below in Post-Construction management alternative options. *This is a problem that should have been resolved clearly without burdening MS4 permittees with extraneous conflict in state law. Please remove all references regarding reduction of flow, or obtain clear guidelines from the State Engineer's Office. (5) (v) This is the newest element to Construction, and has the shortest time line for implementation. It also requires the greatest training/learning time, and may also need regulation revisions. Please revise the implementation schedule to allow for a longer training and preparation time.*	EPA has consulted staff of the State Engineer in numerous occasions. Staff from this office participated in several meetings with EPA and stakeholders. Prior to finalizing the permit, they have also reviewed the final permit language. The permit requirements in Part I.D.5.b.(ii).(b) and Part I.D.5.b.(v) do not conflict with New Mexico Water law. For clarity, EPA had revised Part I.D.5.b.(ii).(b) and Part I.D.5.b.(v). Regarding compliance schedules to implement the post-construction program, EPA has extended the schedules in Table 3 of the permit.
46	City of Albuquerque	I.D.5.a.v	Such practices must not violate the OSE "96-hour rule" (See related comment in Part I.C.3.b), nor requirements regarding infiltration set by the Ground Water Bureau of the NM Environment Department. Also note that many accepted practices in wetter climates are not appropriate in arid southwestern regions, particularly during drought conditions. However, use of suitable practices will be encouraged.	See responses to Comments No 42, 45, and 57.

#	Commenter	Section	Comment	Response
47	AMAFCA	I.A.5.c	Construction storm water discharges are regulated through the NPDES General Construction Permit. Therefore, this permit should not include requirements associated with construction.	Phase I Final Rule (122.26(d)(2)(iv)(D)) requires an operator of a regulated MS4 to provide a description of a program to implement and maintain structural and non-structural BMPs to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system. Phase II Final Rule (122.34(b)(4)(i) and 122.34(b)(4)(ii)) requires an operator of a regulated MS4 to develop, implement, and enforce a program to reduce pollutants in stormwater runoff to their MS4 from construction activities that result in a land disturbance of greater than or equal to one acre.
48	AMAFCA	I.D.2.b	Construction discharges are regulated under the General Construction Permit.	See response to comment No 47.
49	AMAFCA	I.D.5.a.i	Construction discharges are regulated under the General Construction Permit.	See response to comment No 47.
50	AMAFCA	I.D.5.a.ii.b	These requirements are already in the General Construction Permit.	See response to comment No 47.
51	AMAFCA	I.D.5.a.ii.c	These requirements are already in the General Construction Permit.	See response to comment No 47.
52	AMAFCA	I.D.5.a.ii.e	This requirement is too broad – define specifically the type of public information provided and for what purpose, or delete altogether.	A minimum requirement of the small MS4 program for construction activity (see 40 CFR 122.34(b)(4)(ii)(E)) is the development of procedures for the receipt and consideration of public inquiries, concerns, and information submitted regarding local construction activities. This provision is intended to further reinforce the public participation component of the regulated small MS4 stormwater program (see 40 CFR 122.34(b)(2)) and to recognize the crucial role that the public can play in identifying instances of noncompliance.
53	SSCAFCA	I.D.5.b.ii.b.D	Although infill development is an excellent concept and should be encouraged from an economic development standpoint, if new sites are designed to mimic pre-development conditions, as required by I.D.5.b(ii)A, why should this "encouragement" of infill be a parameter of the permit or given preferential treatment to development in non-high density urban areas? We recommend deletion of this part as the water quality issues should be handled under site design standards for the 90th percentile storm contained in Part I.D.5.b(ii)(b)(A).	An added benefit of infill development is the opportunity to take advantage of existing roadway, utility, and other infrastructure rather than adding new supporting infrastructure with its associated impacts. Part I.D.5.b.(ii)(b)D has been moved to the Program Flexibility Elements of the Post-Construction Stormwater Management Program. See Part I.D.5.b.(xiii). This requirement encourages infill development in higher density urban areas, and areas with existing storm sewer infrastructure.

#	Commenter	Section	Comment	Response
54	SSCAFCA	I.D.5.b.vii	This part does not lend itself to any cooperative ventures (as permitted in Table 3 of the permit) with the exception of the usage of technical expertise by other agencies. Each political subdivision will have a separate budget and priority scheme for improvements within their jurisdictional area. While putting together an inventory and priority ranking for the entire watershed is possible, the ability to actually implement that priority list will be difficult if not impossible. For example, it is highly unlikely that taxpayers in Sandoval County will be willing to pay for improvements in Bernalillo County if a project in that jurisdiction is the highest priority from a watershed perspective. Part I.D.5.c(ii)(l): See response to Part I.D.5.b(vii). Same issues.	The permit simply offers the opportunity to implement cooperative programs. For example, this program element could be implemented cooperatively through the development of common ranking criteria, cooperating parties contributing staff to a joint review and ranking effort, and then each party individually proceeding with projects within their jurisdiction. The parties could inform the public of a proposed priority ranking system to implement stormwater controls to address the highest priority areas (that could benefit the population of both counties e.g. protection of a public water supply) to better assess, control pollutants, and achieve environmental improvements in the watershed. An informed and knowledgeable community is crucial to the success of a stormwater management program.
55	Bureau of Recl., Albuquerque Area Office	I.D.5.b	While we are in agreement with controls that would prevent or minimize water quality degradation, Reclamation is concerned, particularly during this period of exceptional and extended drought, that a significant reduction in stormwater runoff (water quantity) as a result of pre-development hydrology requirements (capturing the 90th percentile storm event runoff) may have a detrimental effect on our watershed. We request that any proposed measures in permittees' SWMPs which would affect the hydraulics of canals and ditches be reviewed and have input from Reclamation and other affected stakeholders. This coordination will also provide benefits for flood control and reduction on impacts to natural channels due to increases in water quantity, and opportunities to develop alternatives when proposed projects or activities perhaps cannot meet the pre-development runoff values requirement on site.	Though many Green Infrastructure (GI) practices were first developed and applied in temperate regions, GI is perhaps even more relevant in arid and semi-arid climates. By promoting infiltration, evapotranspiration, and harvesting throughout the landscape, GI preserves and restores the natural water balance. The permit recommends the implementation of GI not only to reduce runoff, but to conserve water, recharge groundwater, conserve energy, and improve air quality. A study (Estimating Predevelopment Hydrology in the Middle Rio Grande Watershed, New Mexico) performed in the regulated MS4 area of the watershed indicates that under natural/predevelopment conditions, there is little to no measureable runoff generated in the regulated area for about 95 percent of all rainfall events. The study also shows that the regulated MS4 area of the watershed is well drained, fairly flat, and has a low potential for runoff in areas with low imperviousness.
55	Bureau of Recl., Albuquerque Area Office	cont.		We agree with the Reclamation in terms of their participation in the review of the permittees' SWMPs. Consistent with 40 CFR 122.34(b)(2), Part I.D.5.h of the permit requires permittees to develop, update, and implement a public involvement/participation program as part of their comprehensive storm water management program. Interested members of the public, including the Reclamation, are encouraged to contact their local officials for information on how they can participate in the development and implementation of local storm water management programs. Throughout the permittees' public participation programs, the permit allows the public to provide comments on the proposed SWMP, on the annual reports, on the status of program implementation, and any proposed changes to the SWMP.

#	Commenter	Section	Comment	Response
56	Bernalillo County	I.D.5.b	Overall this section puts Bernalillo County and other MS4's in direct conflict with State and Federal Water Rights laws, specifically the Rio Grande Compact, of May 31,, 1939 (Public Act No. 96, 76) administered in part by the USGS and the Federal Rio Grande Compact Commission. This has been argued before EPA watershed meetings for more than 2 years, and should be resolved by EPA, not local agencies. *As a Federal Agency it is the responsibility of USEPA to resolve conflicts with other Federal laws and agencies. Please resolve before the permit is issued.*	See response to comment No 45.
57	City of Albuquerque	I.D.5.b.ii.b.A	Many standard Green infrastructure practices are not appropriate to arid climates. For example porous concrete and permeable pavers will be prone to clogging due to the prevalence of dust and blowing sand in the area. Green roofs are not appropriate due to lack of precipitation. More flexibility should be incorporated in the permit to allow for locally appropriate water quality facilities in lieu of GI/LID practices.	The permit does not mandate a particular practice or design of a practice. Permittees are free to choose or adapt practices that will work locally. Note that GI practices are being implemented successfully in arid/semi-arid parts of the country. For example the Watershed Management Group in Tucson, Arizona has implemented GI/LID successfully in arid areas. Their website can be found at http://watershedmg.org/. When designed appropriately, green roofs may offer
57	City of Albuquerque	cont.	cont.	a water-efficient approach to urban stormwater management in arid and semiarid regions. Though green roofs in these regions may require irrigation throughout their lifetimes, water efficiency can be significantly increased by adapting green roof designs with plantings appropriate to the climate. Irrigation requirements can be reduced by increasing growing media depth, planting native and drought-adapted species, and applying drip irrigation. Municipal water demand can be further reduced by installing systems that irrigate green roofs with harvested stormwater runoff and/or AC condensate. EPA is open to alternative designs during the installation of GI sites.
58	City of Albuquerque	I.D.5.b.v	["...partial compliance with a determination that full compliance cannot be achieved consistent with applicable water rights appropriations requirements..."] This alternative will more than likely be pursued in the majority of cases due to the arguments made in the comment above [comment made in PARTI.D.5.b.(iv). regarding 96-hr. rule]	Comment noted.
59	City of Albuquerque	I.D.5.b.v.a	[...retrofit or redevelopment projects, and cannot be applied to new development."] Why is this option I29xclusive of new development? The implication is that new development can always provide the necessary area required for GI/LID practices and infiltration. This will not always be the case.	In the case the design standard volume specified in Part I(D)(5)(b)(ii)(b) or a portion of the design standard volume cannot be applied to new development sites due to site constraints, the permittees may implement a Ground Water Replenishment Project (Part I.D.5.b.(v).(f).B), implement a Payment in Lieu Program (Part I.D.5.b.(v).(f).C), or submit other alternative option (Part I.D.5.b.(v).(f).D) to the EPA for approval. For clarity, EPA has revised the language in Part I.D.5.b.(v).

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60	City of Albuquerque	I.D.5.b.v.c	Unless a project has enough rooftop area to equal the 90th percentile storm volume for the entire site, it will not be able to meet this permit requirement. A written determination from the NMOSE is not feasible as they do not review private development plans. Instead a calculation can be included in the design plans that substantiates the partial compliance.	See response to comment 59.
61	City of Albuquerque	I.D.5.b.viii.b	The transportation network is never unnecessary. It is always driven by traffic loads and planned accordingly. Impervious surfaces are part of the urban environment. This requirement is inconsistent with promoting infill.	Roads and parking lots can be the most significant type of land cover with respect to stormwater. They constitute as much as 70 percent of total impervious cover in ultra-urban landscapes, and as much as 80 percent of the directly connected impervious cover. Roads tend to capture and export more stormwater pollutants than other land covers in these highly impervious areas, especially in regions of the country having mostly small rainfall events. Permittees should take advantage of locating GI/LID practices at strategic areas (e.g., existing roadways, parking lots that are directly connected to the drainage systems) where large amount on polluted runoff could be treated. Infill development creates an opportunity to use existing roadway, utility, and other infrastructure rather than adding new supporting infrastructure with its associated impacts.
62	City of Albuquerque	I.D.5.b.viii.e	The NMED Groundwater Bureau has been consulted by the COA on this issue. They have specific permitting regulations for any facility that is perceived to provide groundwater recharge. GI/LID practices do not necessarily provide such recharge.	Green infrastructure practices that reduce impervious cover and enhance infiltration can increase the flow of water to the groundwater. The Los Angeles Basin Water Augmentation Study (WAS) for instance (Ref: EPA Case Studies Analyzing the Economic Benefits of Low Impact Development and Green Infrastructure Programs), estimates that the installation of green infrastructure practices that infiltrate the first ¾" of rainfall on each parcel could increase groundwater recharge in the Los Angeles region from 16% of annual rainfall to 48%. Los Angeles WAS concluded that infiltration-based practices distributed across the region could increase groundwater recharge by 384,000 acre-feet per year—more than 1.5 times the volume captured by centralized spreading grounds.
63	City of Albuquerque	I.D.5.b.viii.f	We need more bridges and roads. The permit should not be used as a tool to discourage development.	The permit is intended to encourage sustainable development that minimized impacts on water resources. As the percent of the landscape that is paved over or compacted is increased, the land area available for infiltration of precipitation is reduced, and the amount of stormwater available for direct surface runoff becomes greater, leading to increased transportation of pollutants loads and increased frequency and severity of flooding. The permit does not discourage development, rather encourages careful thought on the used of certain types of development that can either reduce existing impervious surfaces, or at least create less associated imperviousness. Development can be used as one approach to improving water resources.

#	Commenter	Section	Comment	Response
64	City of Albuquerque	I.D.5.b.viii.g	Soil compaction is a necessary element of land development and as such should not be prevented. Compaction also reduces erosion.	The permit does not mandate a particular practice or design of a practice. Permittees are free to choose or adapt practices that will work locally.
65	City of Albuquerque	I.D.5.b.iv	Although the impediments referred to here are procedural within the City, it should be acknowledged by EPA that other impediments to the implementation of GI/LID practices exist. They are the arid climate as well as guaranteed water deliveries for the ESA, the Interstate Compacts and treaties with Mexico.	The permit is consistent with water appropriation laws to preserve downstream flows to the Middle Rio Grande through both surface flow and groundwater flow and at the same time enhances water quality. See also response to comment No 45.
66	AMAFCA	I.D.5.b.ii.b.D	This is not appropriate. If the permit requires development to mimic pre-developed conditions and requires BMPs for stormwater discharges, then this is simply discouraging development for specific landowners.	See responses to comments No 53, 63, and 84.
67	AMAFCA	I.D.5.b.ii.g	Delete from permit, because it conflicts with New Mexico State statute regarding pesticides, Section 76-4-9.1 NMSA 1978.	See response for comment number 95.
68	AMAFCA	I.D.5.b.viii.f	This is currently a requirement by FEMA for waterways with Base Flood Elevations, including the Rio Grande. FEMA allows minimal modification; therefore, this should be deleted from this permit.	See response to comment No 63. Any activity that increases the velocity and volume (flow rate), and often the timing, of runoff should be discouraged.
69	AMAFCA	I.D.5.b.viii.g	This isn't practical. It is reasonable to include erosion and sediment control in watershed protection. However, specifying protection of "native" soils is not practical in developing areas due to the engineering characteristics of certain native soils. Also, compaction of soil is required around engineered structures and helps keep the soil in place. This should be deleted from this permit.	The section on protecting native soils refers to trying to minimize impacts on areas that are not being built upon. EPA recognizes that construction activities, even including construction of Green Infrastructure Practices, could require engineering of soils. Permittees can include appropriate SWMP language related to the needs of necessary construction practices.
70	SSCAFCA	I.D.5.a.v	This part uses the term "encourage" with respect to GI/LID/Sustainable practices and goes on to state that the entities need to report the number of plans that had opportunities to implement and the number that actually did. This seems to conflict with Part I.D.5.b(ii)(b) which states that the entity needs to develop an ordinance regarding the 90^{th} percentile storm. Although I.D.5.b(ii) does not state "GI/LID/Sustainable practices" the examples cited are GI/LID based examples. Has the State Engineer's Office been consulted specifically regarding this part?	See response to comment No 45.

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71	SSCAFCA	I.D.5.b.ii.f	Using the concept of GI/LID and disbursed stormwater management facilities such as detention/retention ponds for each structure, it is a possibility that in a new subdivision (disturbing greater than 1 acre), a developer will propose using small stormwater management facilities on each lot for each single family house constructed as part of a larger development instead of one larger . Will the requirements of this part be required for each single family home if GI/LID practices are used at each home site (lot) in order to meet the 90th percentile storm runoff requirements for the larger development?	The 80/90th percentile standards can be met at the subdivision level with a combination of individual lot and common area practices. For example, rain gardens, minimizing impervious footprint, rain capture, etc. could be used at the lot level while biofilters, green space preservation, etc. could be on more of a sub-division level.
72	Amigos Bravos	VII	"Pre-development Hydrology, for the purposes of this permit, means capturing the 90th percentile storm event runoff ("***consistent with any limitations on that capture***)" (emphasis added). This definition raised several questions during the public and stakeholder meetings regarding what the "limitations" were. In various places in the proposed permit, some clarification is provided, by citing limitations due to "applicable water rights appropriations"	Yes, limitations may be due to "applicable water rights appropriations". See response to comment No 45.
73	Amigos Bravos	I.D.5.b.ii.b.A	In public meetings, EPA has also said that Rio Grande Compact delivery requirements are another limitation. The Office of the State Engineer (OSE) has been grappling with the issue of pre-development hydrology because of the increasing interest in rainwater harvesting and the use of other GI/LID measures to hold water on site. It may be useful to clarify the language in the proposed permit regarding limitations to the 90th percentile storm event capture, including referencing any available language from the OSE on this matter.	See response to comment No 45.
74	Amigos Bravos	I.D.5.b.iv	[Same as comment for I.D.5.b.ii.b.A.] In public meetings, EPA has also said that Rio Grande Compact delivery requirements are another limitation. The Office of the State Engineer (OSE) has been grappling with the issue of pre-development hydrology because of the increasing interest in rainwater harvesting and the use of other GI/LID measures to hold water on site. It may be useful to clarify the language in the proposed permit regarding limitations to the 90th percentile storm event capture, including referencing any available language from the OSE on this matter.	See response to comment No 45.

#	Commenter	Section	Comment	Response
75	NMDOT	Fact Sheet, II.F.2.a	During the Public Meeting on May 15, it was stated that the 90th percentile storm was 0.44". Page 15, II.F.2.a of the Fact Sheet states that the 90th percentile storm is 0.35". *Question from NMDOT*: Which is correct?	During the development of the existing Phase I MS4 permit, the City of Albuquerque provided a calculated number of 0.35" as the 90th percentile storm event for the area. During the development of the proposed permit, the City informed EPA that the correct number was 0.44" based on data collected by the City since the late 1890s. To confirm this value, EPA recently carried a study (Estimating Predevelopment Hydrology in the Middle Rio Grande Watershed, New Mexico, EPA Publication Number 832-R-14-007) to calculate the 90th percentile of storm event using observed precipitation data at the Albuquerque International Airport (NCDC 290234) for data collected between January 1, 1948 and December 31, 2012. The study used the procedures and recommendations of the Center for Watershed Protection (Hirshman and Kosco, 2008, Managing Stormwater in Your Community: A Guide for Building an Effective Post-Construction Program; Center for Watershed Protection). The Study reported a value of 0.615" as the 90th percentile of storm event in the regulated MS4 area. The Fact Sheet was revised to include the correct value of 0.6". The final permit references the study.
76	NM Home Builders Assn.	I.D.5.a.v	Issue: This section (and others in the draft Watershed MS4 Permit) requires the capture of all water from every "90th percentile storm event runoff" (.44 inches in this region) from a construction site. There are three major issues with this requirement: 1.) EPA is planning to publish a new stormwater rule later in 2013 that will set the federal requirements for meeting pre-development hydrology. No information is provided to show that Region 6 has obtained information from the EPA Office of Water regarding the requirement to be proposed for New Mexico. The requirements in this Watershed MS4 Permit should not exceed the new federal requirement for New Mexico, unless Region 6 can justify a more stringent requirement for the Middle Rio Grande watershed than what EPA's Office of Water will propose. 2.) This is another requirement that is unrealistic for the climate of the desert southwest.	Comment noted. Please note that the 2012 MS4 permit included these requirements. This permit provides flexibility and extends compliance deadlines for these requirements. See response to comments No 45 and 262.

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76	NM Home Builders Assn.	cont.	For 9 months of the year this portion of the state is routinely dry. 95% of the area's annual six-inch rainfall comes during the "monsoon" season. For the past four years that "monsoon" season has failed to produce more than three or four inches of rainfall. When the normal "monsoons" come, it is not uncommon for a few sections of the Middle Rio Grande watershed to get one inch or more of rainfall within two hours while the rest of the watershed remains dry. This type of scattered rainfall event reoccurs sporadically, allowing some areas to pick up the rest of the rainfall on five or six more days within the 3-month "monsoon" season, while others remain vastly below (or above) the official rainfall measurement. These "gully-washers" are aptly named, because they scour the sand and clay from the surfaces of vacant land, carve out new arroyos, and change the course of existing dry gulches. Each of the prospective MS4s included under this Watershed Permit has land (some belonging to the federal government) that is subject to this destructive	
76	NM Home Builders Assn.	cont.	force of nature. The traditional "fix" for this situation is to line each of the channels with concrete, which has its own set of problems. This new requirement would require large retention ponds in open areas between clusters of homes within a new development, necessitating filtration equipment (and associated electrical service) and safety fencing to prevent animal incursions and limit the potential for an accidental drowning. In the 1980s the City of Albuquerque tried having some of these retention ponds installed in commercial developments. They didn't work as expected, and today they are simply pits full of tumbleweeds. These features frequently end up becoming an "attractive nuisance" liability for developers, municipalities that mandate their construction, and homeowners' associations tasked with managing a pond that is attractive and dangerous to curious children. In this drought Albuquerque and Rio Rancho residents are seeing deer, bears and even free-range cows and wild horses appear in neighborhoods in search of water. Government officials have asked residents in the foothills to not leave any water sources in their backyards in order to	
76	NM Home Builders Assn.	cont.	lessen the potential for harmful human-bear interaction. With the arrival of more wildlife comes the requirement for additional filtration so their excrement does not pollute the stormwater that is released from the retention pond. 3.) There are legal water rights requirements that New Mexico annually deliver certain amounts of Rio Grande water to the State of Texas through Interstate Stream Compacts. The Office of the State Engineer (OSE) has stated any water retained on-site for a period over four days must be released to the river or the impoundment must be offset by the purchase of water rights. This would require construction sites to perform some sort of filtering or quick treatment of the retained	

#	Commenter	Section	Comment	Response
76	NM Home Builders Assn.	cont.	water prior to releasing it to the MS4 within the time limitations required by the Interstate Stream Compacts. While the OSE might look the other way on this issue, Texas has already filed a lawsuit against New Mexico for failure to provide what they perceive is their rightful volume of water during this drought. Requested Action: Ask the EPA Office of Water what they propose for BMPs that would meet this requirement in New Mexico based upon the state's extreme surge-drought fluctuations and the interstate agreements for provision of water to Texas. This Watershed Permit is supposed to be a pilot program. The EPA should provide a grant to one of the New Mexico universities to conduct an historical study of the Rio Grande Watershed to determine what amount of retention could legally be accomplished. Delete references in other sections of the draft permit that refer to the 90th percentile storm event capture requirements.	
77	Bernalillo County	I.D.5.b	Partial Implementation: Partial compliance may be implemented where there is a written determination from the New Mexico Office of the State Engineer that full compliance cannot be achieved consistent with water rights appropriations requirements. This has the potential to create a huge burden on the OSE and to hold up projects and economic development. Please stipulate approval by default, i.e., if a ruling is not issued within 30 days, the option is approved.	The following language in Part I.D.5.b.(v).(c) has been deleted: *Partial Implementation. Partial compliance may be implemented where here is a written determination from the New Mexico Office of the State Engineer that full compliance cannot be achieved consistent with water rights appropriations requirements.*
78	Bernalillo County	I.D.5.b.v.d	In a situation where alternative options (a) through (c) above are not feasible, the permittees may submit to the EPA for approval, an alternative option that meets the 90th percentile pre-development hydrology values. This again has the potential to substantially delay projects and economic development. *Will EPA guarantee rapid approval, within 30 days, to meet contractor/developer schedules? If not, please specify approval by default, i.e., if a ruling is not issued within 30 days, the option is approved.*	We note that this requirement is continued from the Albuquerque 2012 permit. EPA does not expect that option to be utilized very frequently. Alternative options will be reviewed in a timely manner.
79	WESTCAS	I.D.5.a.v	(v) and repeatedly throughout the permit requires MS4 Permit holders to "mimic the pre-development hydrology of the previously undeveloped site" by capturing water from the 90th percentile storm event runoff. Storm water runoff hydrology is influenced by many factors including slope, soil type, rainfall intensity, antecedent conditions. The permit · does not provide references or rationale for this degree of capture or the environmental benefit from this standard. WESTCAS suggests that the permit include the opportunity for the permittees to independently establish pre-development hydrology as an alternative to the 90th percentile storm event runoff.	See document entitled "Estimating Predevelopment Hydrology in the Middle Rio Grande Watershed, New Mexico". EPA Publication Number 832-R-14-007. The language in Part I.D.5.b.(ii)(b) has been modified as follows: *permittees can also estimate a site specific 90th or 80th percentile storm event discharge volume using methodology specified in the referenced EPA Technical Report* .

#	Commenter	Section	Comment	Response
80	WESTCAS	I.D.5.a.v	(v) and repeatedly throughout the permit is the recognition that retaining or capturing storm water must be consistent with water rights considerations in the state. WESTCAS appreciates EPA's effort in this permit to uphold section 101(g) of the Clean Water Act which prohibits the regulation of water rights. However, Part 1, Section D, item 5.b.(v) (c) states that to document the water rights constraint on a site-by-site basis, a letter from the Office of the State Engineer must be provided: This would create an unmanageable burden on a state agency. WESTCAS appreciates the recognition of this constraint on storm water management, but suggests that the permittees should be allowed to independently determine how that constraint will be documented.	See responses to Comments No 77 and 79
81	City of Albuquerque		The requirement to retain the 90th percentile storm volume on-site is inconsistent with ESA, NMOSE, Interstate Compacts, and treaties with Mexico. Compliance with this mandated volume may not be feasible in some (or all) cases. We acknowledge and have read the statements in this permit that attempt to clarify that compliance should not violate water rights law.	In reference to inconsistency with the State Water Law and Interstate Compacts, see response to comment No 45. In reference to inconsistency with ESA, see Final FWS Biological Opinion dated August 21, 2014.
82	City of Albuquerque		Restricting discharge of storm water through GI/LID practices is a realistic idea, but these practices should be mandated by the permit to the Maximum Extent Practicable (MEP). This would allow more flexibility in the implementation of GI/LID practices. Requiring a set volume (90th percentile storm) is problematic for all the reasons stated above.	Noted in the administrative record.
83	City of Albuquerque	I.D.5.b.ii.b.A	Determination of predevelopment conditions is difficult. However, the COA has drafted a Storm Water Drainage Ordinance that specifies management of 0.44 inches, a value that corresponds to the 90th percentile storm.	Noted in the administrative record.
84	City of Albuquerque	I.D.5.b.ii.b.D	Promoting and encouraging infill is inconsistent with capturing the 90th percentile storm since these types of projects are typically very high density (GS).	For clarity, Part I.D.5.b.(ii)(b)D. has been moved to the Program Flexibility Elements of the Post-Construction Stormwater Management Program. See Part I.D.5.b.(xiii). This requirement encourages infill development in higher density urban areas, and areas with existing storm sewer infrastructure.
85	City of Albuquerque	I.D.5.b.iii	Capturing the 90th percentile storm should be one of several strategies that are allowed. For instance, a water quality facility might be more appropriate to a site with limited area to implement GI/LID practices. There should be more flexibility to use other methods (GS).	EPA has added the following underlined language in Part I.D.5.b.(ii).(b): Options to implement the site design standard include, but are not limited to: management of runoff volume achieved by canopy interception, soil amendments, rainfall harvesting, engineered infiltration, extended filtration, other appropriate techniques, and any combination of these practices, <u>including implementation of other stormwater controls used to reduce pollutants in stormwater (e.g., a water quality facility).</u>

#	Commenter	Section	Comment	Response
86	City of Albuquerque	I.D.5.b.iv	["...procedures to maximize infiltration, recharge, water harvesting, habitat improvement, and hydrological management of stormwater runoff as allowed under the applicable water rights appropriation requirements."] This issue has not been fully addressed in the permit. The New Mexico Office of the State Engineer (NMOSE) has serious reservations/concerns about this EPA permit mandate. The only storm water that can be retained for irrigation and/or GI/LID practices is rooftop runoff. All other storm water must be allowed to leave the property within 96 hours and flow into the MS4 and eventually into the river.	See response to comment No 45.
87	Department of Energy	III.A.1.b	The "note" included under Part III.A.1.b on page 2 of Part III of the April 18, 2013 draft MS4 Permit, states "Note: Seasonal monitoring periods are: Wet Season: June 1 through September 30; Dry Season: October 1 through May 31." SFO and Sandia Corporation respectfully requests that the wet season be defined as July 1 through October 31 and the dry season be defined as November 1 through June 30. Based on average monthly rainfall data collected by SNL around Kirtland Air Force Base since 1994, the four wettest months of the year are July, August, September and October (see attachment – Reference Memorandum for Seasonal Precipitation Characteristics and NPDES Arid Classification for Sandia National Laboratories, New Mexico). Given the scarcity of precipitation in Albuquerque and the importance of monitoring storm events and their potential to impact surface water bodies, SNL is proposing a modification to the wet/dry seasons in the draft MS4 permit to allow for the greatest potential for collection of representative stormwater samples.	The wet season has been changed to July 1 - October 31 and the dry season to November 1 to June 30 as recommended by several cementers. See Part III.A.1 and Part III.A.2.
88	City of Albuquerque	II.A.1.b	Current weather patterns have shifted and suggest a "Wet" Season from July 1 through October 30 with a "Dry" Season from November 1 through June 30. However, as discussed in previous comments, drought conditions persist so that even the "Wet" season provides few, if any, rain events.	Comment noted. See response for comment number 87.

#	Commenter	Section	Comment	Response
89	SSCAFCA	I.C.2.b.i.e.A	Sanitary sewer systems are identified in the MS4 permit as being a potential source for impairment due to bacteria. Isn't each discharge from a central sewage treatment facility that discharges to the Rio Grande currently regulated under an NPDES permit? Shouldn't these concerns be dealt with in those permitting processes? Stormwater agencies may or may not have jurisdiction over the operation of these particular facilities. For example, the City of Albuquerque and Bernalillo County do not have jurisdiction over the Albuquerque sewer treatment facility as it is operated by the Albuquerque Bernalillo County Water Utility Authority, a separate political entity. We recommend striking Part I.C.2.b(i)(e).A of the permit as these facilities are currently being regulated by the EPA under separate permitting actions and renumbering the remaining elements of this part.	Discharges from separate sanitary sewer systems require an NPDES permit. The Act prohibits the point source discharge of pollutants (i.e., overflows) without a permit. The Act's overall NPDES Program statutory mandate does not negate the specific Act requirements for MS4 permits. Overflows from sanitary sewer systems are unpermitted wastewater (non-storm water) discharges, and therefore the MS4 permit does not authorize those discharges into the storm sewer system and waters of the United States. Such discharges into the MS4 are illicit discharges and must be addressed as such by the MS4 in accordance with the statutory requirement to effectively prohibit non-storm water discharges into the MS4. (Section 402(p)(3)(B)(ii) & (iii) of the Act). The permit language is intended to result in the permittees implementing appropriate Best Management Practices (BMPs) to address the issue of sanitary sewer wastewater flows entering the MS4.
89	SSCAFCA	cont.		The permittees' SWMP should include BMPs which are designed to prevent chronic dry and wet weather SSOs; respond to and eliminate, as soon as possible, those episodic SSOs that can occur in even a well designed and operated system; and limit seepage from sanitary sewers into the MS4. Such BMPs could include taking appropriate action under the illicit discharge and elimination component of the SWMP where the operator of the illicit discharge is not the operator of the MS4.
90	SSCAFCA	I.C.2.b.i.e.E	The targeting of FOG issues specifically related to their potential for contributing to sewage overflows is already addressed in the NPDES Permit (specifically NPDES permit number NM0022250) for the Albuquerque Bernalillo County Water Utility Authority's wastewater operations and there are likely similar requirements in other centralized sewer system NPDES permits within the WSB permit boundaries. Considering that this issue is already being dealt with using other regulatory mechanisms (NPDES permits issued from the EPA), we believe that the water utility authority is already conducting the needed outreach, with EPA overseeing these activities, to meet the requirements of this permit. We suggest deletion of this Part of the permit and allowing the current NPDES permit for the various centralized sewer systems to continue this education effort under their respective permits.	See response for comment number 89.

#	Commenter	Section	Comment	Response
91	Amigos Bravos	I.C.2.b.i.e	*Impairment for Bacteria* This section includes specific items for sanitary sewer systems and illicit discharges and dumping. The Albuquerque Bernalillo County Water Utility Authority (ABCWUA), which is not listed as a potential permittee, provides sanitary sewer services for the COA, much of the rest of Bernalillo County, the University of New Mexico, and Kirtland Air Force Base and Sandia National Laboratory (as well as Intel and some other customers). It is also required under its NPDES permit to develop a FOG (fats, oils, and grease) program within its service area. This would seem to require that the COA and Bernalillo County cooperate with the ABCWUA in order to meet the requirements. Note: The ABCWUA is under a strict AO for violations of its previous and current (2012) NPDES permit. Given this statutory relationship, the proposed permit should explicitly require the COA and other relevant potential permittees to develop a cooperative program with ABCWUA to address illicit discharges and the FOG issue (and other issues that may directly involve the ABCWUA).	Albuquerque Bernalillo County Water Utility Authority (ABCWUA) does not fall into the definition or a regulated MS4 (see 40 CFR 122.26(b)(8)). If the ABCWUA is an operator of the illicit discharge, permittees under the MS4 permit could take appropriate action(s) under the illicit discharge and elimination component of their SWMP. See response to comment No 89.
91	Amigos Bravos	cont.	*Is there a basis for including the ABCWUA among the "potential" permittees? If so, perhaps this should be incorporated into the permit.*	
92	City of Albuquerque	I.C.2.b.i.e.A	The sanitary sewer system within the COA is the responsibility of the Albuquerque Bernalillo County Water Utility Authority. The COA has no jurisdiction over sanitary sewer.	See response for comment number 89.
93	SSCAFCA	I.C.2.b.i.e.B	On-site sewage facilities are regulated in Sandoval County by the New Mexico Environment Department and stormwater control agencies listed in the permit do not have any regulatory authority over the issuance of on-site liquid waste disposal permits. If the intent of the identification and addressing of failing systems is to have the entities intervene directly and perform direct support (e.g. monetary expenditures on private systems) for addressing these issues, this could be a violation of the anti-donation clause of the New Mexico Constitution. We recommend either striking Part I.C.2.b(i)(e).B of the permit or moving all items associated with On-Site Sewage Facilities to Part I.D.5.g, outreach and education.	See response for comment number 89.
94	City of Albuquerque	I.C.2.b.i.e.B	The sanitary sewer system within the COA is the responsibility of the Albuquerque Bernalillo County Water Utility Authority. The COA has no jurisdiction over On- Site Sewage Facilities.	See response for comment number 89.

#	Commenter	Section	Comment	Response
95	SSCAFCA	I.D.5.b.ii.g	This part is in conflict with State of New Mexico statute. Section 76-4-9.1 NMSA 1978 states, "Except as otherwise authorized in the Pesticide Control Act, no city, county or other political subdivision of the state and no home rule municipality shall adopt or continue in effect any ordinance, rule, regulation or statute regarding the registration, labeling, distribution, sale, handling, use, application, transportation or disposal of pesticides." Pesticides and pesticide applicator licensure are the prevue of the New Mexico Department of Agriculture. The New Mexico Pesticide Control Act does allow for regulation of pesticide applicators and operators via cooperative agreements, however, at this time none exist and there is no mechanism to ensure that one or more can be created.	Part I.D.5.b.(ii).(g) discusses the requirements for the permittees to implement controls to reduce the discharge of pollutants related to pesticides, herbicides and fertilizer application and storage. The specifics of this SWMP element (e.g., education, outreach, facility inspections) are determined by the permittees. The Region does not intend to imply, nor does the language dictate, that the permittees must have a program to regulate pesticide sale or use in a manner that conflicts with state law.
95	SSCAFCA	cont.	Fertilizers in the State of New Mexico are also regulated by the New Mexico Department of Agriculture (Section 76-11-1 thru 19 NMSA 1978), although fertilizer applicators are not. No comprehensive list of fertilizer applicators could be identified. Therefore, identifying and regulating these individuals/companies will be extremely difficult. We recommend striking this part of the permit as the local entities cannot compel the State to take any action.	
96	Bernalillo County	I.D.5.b.ii.g	regarding the training and certification of Pesticide Applicators, *this conflicts with the NM State Department of Agriculture's program and licensure .* Currently the state has legal authority over this program. The county has no legal authority to enforce or countermand state statutes. *Please remove this requirement. It is already a part of the Construction General Permit, and cannot reasonably be applied to private or residential settings.*	See response for comment number 95.
97	City of Albuquerque	I.D.5.b.ii.g	Pesticide application should be covered under the Pesticide General Permit and not an NPDES permit. Applicators that meet the minimum threshold are required to obtain a PGP.	See response for comment number 95.

#	Commenter	Section	Comment	Response
98	Amigos Bravos	I.B.1.a	We understand the efficiencies that the EPA hopes can be gained through having permittees develop cooperative efforts to implement elements of a SWMP. We have some concern, however – a concern expressed repeatedly during many stakeholder meetings – that "participation with other permittees, public agencies, or private entities in cooperative efforts" will lead to complicated and wasteful (in terms of resources better directed at dealing with actual stormwater problems) litigation attempting to place accountability on those parties not fulfilling their obligations under the cooperative umbrella. Assertions by the EPA at the very last public meetings that "all the potential permittees surely have good lawyers" was not very reassuring. It has proven difficult enough to hold permittees accountable when there is just one entity and the source of the problem is self-evident. Trying to sort out accountability when lawyers from both public and private cooperators have crafted documents whose purpose is to shield them from	EPA has designed in the proposed permit a framework to accommodate cooperative programs among the permittees so that meaningful results can be obtained based on limited monitoring dollars. Entities regulated under the proposed permit would be free to implement an independent, fully functional, Stormwater Management Program (SWMP) within their jurisdiction. If a permittee elects to participate in a cooperative program, permittees may want to establish interjurisdictional agreements delineating the roles and responsibilities of the participating permittees (see Part I.B.4). Responsibilities should also be spelled out in the SWMP (see Part I.D.3). Compliance with these agreed-upon responsibilities (combined with prompt development and implementation of an alternative program element, should a cooperative program fail to be implemented fully), will be used by EPA to assess compliance for each individual permittee (see Part I.B.4).
98	Amigos Bravos	cont.	accountability wherever possible seems daunting to say the least. It would help if EPA laid out clear language on this issue. One possibility would be to declare that the entire cooperative effort will be held accountable, leaving individual accountability to be sorted out later among the parties themselves.	
99	Amigos Bravos	I.B.4	[Continuation of comment on Part I.B.1.a.] It would help if EPA laid out clear language on this issue. One possibility would be to declare that the entire cooperative effort will be held accountable, leaving individual accountability to be sorted out later among the parties themselves. This seems to be the intent of the MS4 in the language under 1.B.4 Permittees with Cooperative Elements in their SWMP: "Should one or more individual MS4s fail to comply with the joint agreement, causing the joint agreement program to fail to meet the requirements of the permit, the obligation of all parties to the joint agreement is to develop within 30 days and implement within 90 days an alternative program to satisfy the terms of the permit" [emphasis added]. The proposed permit offers another alternative, in which the individual permittee is responsible for any failures to comply by other entities with which it has agreements to implement program elements. This is spelled out more clearly in I.D.3.b(i)(c):	See responses to comments No 98 and 100.

#	Commenter	Section	Comment	Response
99	Amigos Bravos	cont.	"The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure component.". The EPA should clarify which of the alternatives is the approach embodied in the permit. We particularly do not want the alternative under which all the lawyers have crafted documents making accountability opaque and difficult to enforce.	
100	Tierra West, LLC	I.D.3	This permit mandates that all of the municipalities prepare and maintain an operating agreement. Please clarify if any one municipality is fined or has a violations will that fine and responsibility be shared by others? if that is the case how can a violation by a party in one municipal jurisdiction be remedied and enforced by any of the other permittees' who do not have jurisdiction over that violation? Please provide examples of other water shed basins permits in the nation that have implemented this approach to show how it can be implemented?	The proposed permit does not mandate cooperative programs. The permit was crafted to accommodate cooperative programs. EPA has designed in the proposed permit a framework to accommodate cooperative programs among the permittees so that meaningful results can be obtained based on limited dollars. Entities regulated under the proposed permit would be free to implement an independent, fully functional, Stormwater Management Program (SWMP) within their jurisdiction. If a permittee elects to participate in a cooperative program, permittees may want to establish interjurisdictional agreements delineating the roles and responsibilities of the participating permittees. Compliance with these agreed-upon responsibilities (combined with prompt development and implementation of an alternative program element, should a cooperative program fail to be implemented fully), will be used by EPA to assess compliance for each individual permittee.
100	Tierra West, LLC	cont.	cont.	No enforcement action would be taken against those permittees complying with their permit obligations. For example, in a recent enforcement action regarding a MS4 Permit, which has four co-permittees, EPA was able to determine that not all co-permittees were responsible for the noncompliance and ultimately pursued action against only one of the co-permittees.
101	NMDOT	I.B.4	If a fine is levied against Permittees, how will EPA allocate responsibility for payment of the fine (e.g. joint and several, proportionate share, equal distribution, etc.)? Will the EPA take measures to levy a fine against the responsible party in a joint agreement? If so, what measures will the EPA take so a co-permittee will feel comfortable entering into a joint or cooperative agreement?	All enforcement actions are fact specific, but in general, EPA would typically consider levying penalties against a Permittee if the SWMP stated a responsibility and the Permittee failed to carry out that responsibility. In the case of a joint or cooperative agreement, the Permittee who failed to carry out an agreed to responsibility would be the only one to receive a penalty. See also response to Comment No 100.

#	Commenter	Section	Comment	Response
102	Department of Defense	I.B.4	This provision requires joint-permittees to develop and implement amended permits should one of the other joint-permittees fail to comply with the terms of the permit. The amended provisions must be developed within thirty (30) days and implemented within ninety (90) days. This is an unrealistic expectation/requirement being placed on joint permittees. As identified in Table 1 of the draft permit, joint permittees have two hundred ten (210) days to complete and submit its NOI for coverage under the permit, while Part I §B.4 ignores the coordinated effort required to identify and then amend provisions of the permit associated with joint permittee non-compliance. Amendments associated with joint permittee non-compliance should be afforded the same time frame as listed in Table 1 to both identify and rectify the non-compliance of joint-permittees.	EPA believes that coming up with an alternative plan will not require the same level of effort as creating an entire program from the ground up. For example, if the joint plan was to do a given number of education events and a few were not held due to the fault of a single cooperating party, the other parties could simply hold the events at a later date using their own resources. The alternative program just has to be developed within the deadlines - but can include schedules for implementation. Assuming a joint- program fails after EPA has approved the NOI and SWMP, the permittees have an additional 30 days to develop an individual or modified joint program and 90 days to implement that program from the date EPA has determined the joint program is not in compliance. For example, in Table 9 the permit requires the permittees to develop, implement, and maintain a public involvement and participation plan as required in Part I.D.5.(ii) and Part I.D.5.h.(iii). It should be noticed that the permittee(s) must give advance notice to the permitting authority of any planned changes in the permitted MS4 or activity which may result in noncompliance with this permit (see Part IV.X).
103	AMAFCA	IV.A	AMAFCA is without jurisdiction or legal authority over the other permittees, as well as private entities who may discharge into the MS4. As a result, AMAFCA is without authority to implement many of the requirements of this MS4 Permit, although it will work with each co-permittee to ensure that the requirements of this Permit are met. However, because a co-permittee may violate this Permit in a manner in which AMAFCA is without legal authority or jurisdiction to act, actions for noncompliance should be brought against the individual permittee who is at fault for the violation, rather than all co-permittees jointly.	EPA recognizes that non-traditional MS4s such as flood control districts and military bases, and transportation department MS4s have inherently different scopes of authority, the SWMP requirements may be modified as necessary to accommodate these different kinds of MS4s. The difference in each co-permittee's jurisdiction and legal authorities may be taken into account in developing the scope of program elements. As indicated in the Part IV.A of the permit, permittee(s) must comply will all conditions of this permit insofar as those conditions are applicable to each permittee.
104	SSCAFCA	I.B.4	This Part requires that each MS4 submit a separate NOI and maintain their own SWMP. This seems to be a departure from the previous iterations of the permit. Will the opportunity to submit a joint SWMP potentially be added as part of the final permit?	The partnering MS4s may prepare one joint SWMP, but must submit separate NOIs with copy of the joint SWMP. The joint SWMP must describe which permittees are responsible for implementing which aspects of each of the minimum measures. EPA elected this approach to better assess each permittee's compliance with the permit requirements.

#	Commenter	Section	Comment	Response
105	Amigos Bravos	III.A.1.b	*Option B: Cooperative Monitoring Program* The proposed permit would allow cooperative programs to sample "for a minimum of 7 storm events per location during the permit term with at least 3 events wet season and 2 events in dry season". Class A permits require a minimum of 10 events at a location entering the MS4 jurisdictional area and a location leaving it with at least 5 in wet season and 4 in dry season. Class B, C, and D permits require a minimum of 8 events at a location entering the MS4 jurisdictional area and a location leaving it with at least 4 in wet season and 2 in dry season. Why, then, should cooperative programs be able to conduct fewer monitoring events per location when it is likely (given earlier statements that cooperative programs can consolidate monitoring locations for efficiency) that each location will collect a larger amount of stormwater from a wider area and likely across jurisdictional boundaries? Relevant here are the schematic diagrams in Appendix E (pp75-76).	During the prior permit terms, the City of Albuquerque and its co-permittees collected extensive monitoring data at five discharge points to provide representative data on the quality of discharges from the Albuquerque MS4 as a whole. The proposed permit includes monitoring requirements to both 1) continue characterizing the storm water as required in Part III.A.1.b. and 2) collect additional data within the MS4 or at additional appropriate instream locations should monitoring results indicate that MS4 discharges may be contributing to instream exceedances of WQS as required in Part III.A.1.h. The purpose of this additional monitoring effort is to identify sources of elevated pollutant loadings so they can be addressed by the SWMP. The frequency of sampling was reduced for these who elect to participate in cooperative monitoring programs as an incentive to build partnerships.
105	Amigos Bravos	cont.	As we have noted earlier, allowing monitoring over a wider area, when collection will include multiple sources and multiple jurisdictions is an invitation for delay, confusion, and conflict. We understand that the EPA is trying to encourage the creation of cooperative permits or cooperative implementation of program elements. The incentive in this case is fewer sampling locations. Allowing for fewer sampling events, as well, is overkill. At a minimum, cooperative monitoring programs should have to sample at least as often as a Class A permit, given the larger sampling area. In the Middle Rio Grande (indeed, across the arid Southwest), it is quite possible to have a large area such as is likely under a cooperative monitoring program receive only scattered precipitation with some parts receiving thunderstorms and others maybe only a trace. Reducing the monitoring events under this scenario will make it harder to determine if and where there are problems.	
106	Bureau of Recl., Albuquerque Area Office	I.D.3	Reclamation invites the EPA, NMED, and potential permittees to utilize the MRGECSP as a forum for discussing, implementing, and achieving certain measures of the SWMPs particularly those intended to maximize infiltration, recharge, habitat improvement, and hydrological management of stormwater runoff in environmentally and ecologically sensitive areas as allowed under the applicable water rights appropriation requirements.	Noted for the record. EPA encourages cooperative efforts to implement BMPs.

#	Commenter	Section	Comment	Response
107	Bureau of Recl., Albuquerque Area Office		Reclamation concurs that implementing a cooperative watershed approach to stormwater permitting in the Middle Rio Grande will more effectively and efficiently improve water quality than uncoordinated efforts.	EPA agrees.
108	Bernalillo County	I.D.3.A	[Note: The comment letter from Bernalillo County includes a table which corresponds with some of the following comments.] This section references a "Joint Powers Agreement to be entered into by the permittees." It was our understanding after meetings with EPA in spring 2013 that all cooperative programs were to be voluntary, but this seems to carry the weight of a command. Is this a mandatory separate requirement overreaching individual cooperative agreements between agencies? If so, please define the scope and the legal basis for requiring such an agreement between different sovereign governments. If not, please delete from this instance and all others. Of the mandatory SWMP control measures listed, 58% would be part of existing normal programs, such as building permits, zoning reviews, etc. These are identified as INT for Integral to existing programs.	Voluntary Programs: The permittee(s) will have the option to choose if a program element is developed and/or implemented individually or cooperatively, this process is voluntary. No permittee is required to participate in cooperative programs, but if they choose not to do so, must comply with all permit requirements on their own. Agreements between parties would clarify responsibilities and provide a tool to address the workgroup's concern that non-compliant parties not be subject to enforcement for the non-compliance of other parties. If there was a failing cooperative program without a local agreement of some sort spelling out roles and responsibilities, all parties would have to be assumed to be equally responsible for the non-compliance. To broaden the scope of what type of local agreements could be used, Part I.D.2 has been changed to replace "(i.e. Joint Powers Agreement)" with "(e.g., Joint Powers Agreement, Memorandum of Agreement, Memorandum of Understanding, etc)."
108	Bernalillo County	cont.	Particularly in pollution prevention/good housekeeping, these activities are already part of normal, existing programs; it would be both inefficient and costly if these activities were removed from their current process to some cooperative program to do lip service to the idea of cooperative programs.. For example, it would be foolish to have street sweepers pulled out as "stormwater" sweepers when they already operate for normal county sanitation efforts.	Existing Programs: The Phase II regulations at 40 CFR 122.34(c) recognize that State, Tribal or local programs may already exist which meet the requirements of one or more of the six minimum measures. In such a case, the regulations and Part I.D.8 of the proposed permit provide that the MS4 may include the local qualifying program in the SWMP instead of developing a new program in accordance with the requirements of the minimum measure. A local qualifying program must include, at a minimum, the relevant requirements of the six minimum measures described in the regulations at 40 CFR 122.34(b).
108	Bernalillo County	cont.	We recommend that EPA drop requirements for cooperative programs. Alternately, cooperative programs might be rewarded with reductions in other requirements. Of the mandatory SWMP control measures listed, 58% would be part of existing normal programs, such as building permits, zoning reviews, etc. These are identified as INT for Integral to existing programs. Particularly in pollution prevention/good housekeeping, these activities are already part of normal, existing programs; it would be both inefficient and costly if these activities were removed from their current process to some cooperative program to do lip service to the idea of cooperative programs.. For example, it would be foolish to have street sweepers pulled out as "stormwater" sweepers when they already operate for normal county sanitation efforts. We recommend that EPA drop requirements for cooperative programs.	The majority of controls included in the proposed permit were already required in the expired small MS4 permit and the existing Phase I MS4 permit. The proposed permit conditions were specifically designed to address pollutants of concern in the Rio Grande (e.g., dissolved oxygen, bacteria), to protect endangered species (e., Rio Grande Silvery Minnow), and to restore and maintain the chemical, physical and biological integrity of the local's waters. Given the overall goal of water quality protection in the Clean Water Act (see Section 402(p)(3)(B)) and the express purpose of Phase I and Phase II of the NPDES storm water program to regulate storm water discharges to protect water quality, water quality based controls are deemed appropriate for this permit.

#	Commenter	Section	Comment	Response
108	Bernalillo County	cont.	Alternately, cooperative programs might be rewarded with reductions in other requirements. Another 7% to 10% of the mandatory SWMP control measures listed cannot be shared between MS4s because of the need for an ordinance or local regulation. In some instances the regulation is directly required by permit, in others it will be necessary to implement the mandatory control measure. These are identified as RR for Requiring Regulation. It is difficult to determine without study and consultation with other divisions exactly which of these 3% might be implemented by policy without ordinance.	
108	Bernalillo County	cont.	Of the remaining listed control measures, approximately 23% are required to be done separately by the permit itself. Many/most reporting elements, especially those for in the annual report, are required to be done individually by the MS4 permittee; it would be difficult to build a cooperative effort on these items where detailed, internal tracking is required to document how many instances had been performed by the individual permittee. These are identified as SEP for Separate by definition of permit (separate tabulation per agency required by EPA. To increase the opportunities for cooperation we recommend that EPA change reporting requirements. The number of mandatory elements in itself increases workload significantly without contributing to water quality improvement. Ironically, of those 21 potentially cooperative elements (listed as CE or CP) all but two are already in practice through the efforts of the Middle Rio Grande Stormwater Quality Team.	
108	Bernalillo County	cont.	This jointly funded education/outreach/involvement program has been funded and operated cooperatively since 2004, and has as members Bernalillo County, the City of Albuquerque, the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), the Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), the University of New Mexico and the New Mexico Department of Transportation.	

#	Commenter	Section	Comment	Response
108	Bernalillo County	cont.	The current proposed permit offers virtually nothing new for cooperative SWMP elements. We recommend that many of the reporting requirements and tabulations be dropped or modified to allow more effective cooperative efforts. Also, we suggest that requiring 145 mandatory elements is excessive; the work burden of tracking and administering these elements virtually ensures that nothing new or effective will result from this permit because there will not be time or money to spend.	
109	Martin J. Haynes		The joint powers agreement is going to pit agency against agency	Cooperative programs by definition will only be used by permittees willing to cooperate with each other. Under the existing Phase I MS4 permit, the City of Albuquerque and co-permittees are already developing and implementing program elements cooperatively under joint agreements. See also response to comment number 108.
110	WESTCAS	I	Tables 2 through 10 show that the draft MS4 Permit provides an incentive of increased time to comply for entities that coordinate their compliance efforts. However, very few of the elements required in the SWMPs are amenable to cooperative implementation. WESTCAS supports the underlying concept that watershed improvements will result from coordinated and cooperative actions of entities within the watershed. This watershed-based permit falls short in implementing the watershed basis by mandating numerous compliance requirements that are not cooperative in nature.	The Phase II regulations at 40 CFR 122.35(a) recognize that one or more of the minimum measures may be implemented within a given MS4 by an entity other than the discharger (for example, a county may implement a street sweeping program in a given city within the county). As such, the regulations and Part I.D.3.b of the proposed permit provide that a given MS4 may rely on another entity to implement some of the required minimum measures. The permittee has the opportunity to choose the program elements developed and/or implemented cooperatively with other permittee or other entity.
111	Pueblo of Sandia	I	Page 9 of Part I -2. Contents of Notice of Intent. The Pueblo requests EPA rewrite this paragraph to give more leeway in finding cooperative entities since this can be a time consuming task. Also a Memorandum of Understanding (MOU), Agreement of Understanding (AOU) might or a legally binding contract might be needed thus making NOI deadlines tight as they are written.	The permit was proposed in May 1st 2013, therefore additional time has already been available to prepare joint agreements.
112	City of Albuquerque	I.B.4	The COA supports the ability to rely on partner participation in permit compliance and appreciates having the opportunity to cure permit noncompliance issues from partner nonperformance (GS). **PART I.D.3.c.** This is a stepped process. A fully integrated program cannot be done in one step. Full staffing will take time (GS).	Noted for the record.
113	AMAFCA	I.B.1.a	Please clarify if a single SWMP can be submitted for a Cooperative Program, e.g., if a Coalition is developed to cover ALL permit requirements.	See response to comment No 104.

#	Commenter	Section	Comment	Response
114	AMAFCA	I.B.4	A provision should be included which limits the liability of the other individual MS4s to development and implementation of the alternative program within the specified time period, and specifically exempts liability for the failures of the other MS4s.	Liability provisions can be included in the joint agreements. Each individual MS4 in a joint agreement implementing a permit condition will be independently assessed for compliance with the terms of the joint agreement.
115	AMAFCA	I.D.3.b.i.a	If an entity relies in good faith on implementation of a control measure by another entity, that entity's liability should be limited to implementing an alternate control measure once it should have known that the control measure was never implemented by the other permittee.	See responses to comments 100-104.
116	AMAFCA	I.D.3.b.i.c	Because AMAFCA is strictly a flood control authority, the legal authority and jurisdiction granted to it by the State is limited. As a result, this should be limited to the extent of each entity's jurisdiction and legal authority.	EPA recognizes that non-traditional MS4s such as flood control districts and military bases, and transportation department MS4s have inherently different scopes of authority, the SWMP may be modified as necessary to accommodate these different kinds of MS4s. The difference in each co-permittee's jurisdiction and legal authorities may be taken into account in developing the scope of program elements. As indicated in the Part IV.A of the permit, permittee(s) must comply will all conditions of this permit insofar as those conditions are applicable to each permittee.
117	AMAFCA	III.A.3	How does this apply to a Cooperative? Is the floatable monitoring requirement any different for a Cooperative?	The following language has been added to Part III.A.3: *A cooperative monitoring program may be established in partnership with other MS4s to monitor and assess floatable material in discharges to and/or from a joint jurisdictional area or watershed basis.*
118	SSCAFCA		Table 1 identifies that and NOI/SWMP will be filed either 90 or 180 days (depending on class of MS4 and/or cooperative efforts) "from permit issuance". All of the action tables (tables identifying when materials are elements of BMPs are to be completed) list all of the action timetables with relation to the effective date of the permit. In the event an entity desires to not enter into a cooperative agreement for permit coverage, many of the actions required in the action tables would need to occur prior to the timeframe required for filing of the NOI/SWMP. For example, in table 3, element 4, "Ensure appropriate implementation of structural controls as required in Part I.D.5.b.(ii).(c) and Part I.D.5.b.(ii).d" would need to be implemented on the effective date of the permit, a date when an NOI/SWMP is not required (NOIs and SWMPs are required to be filed within 90 days of permit issuance). We recommend that the action tables be changed to reflect timetables related to the filing of the NOI/SWMP instead of based on the date of permit issuance, adjusting timeframes for implementation as needed.	For the most part, the timelines in the SWMP's activity tables (Table 2 thru Table 9) correspond to timelines from existing program elements in the reissued 2012 Albuquerque MS4 permit (NMS000101) and the expired permits for small MS4s (NMR040000, NMR04000I) with addition of compliance schedules for MS4s implementing cooperative programs and new MS4s. Any MS4 designated as needing a permit after issuance of this permit could be given an alternate compliance schedules by the Director at the time of designation. As the commenter noted some of the program elements in the activities tables were scheduled before NOI filing deadlines, so EPA has reviewed the activity tables 1a to 10 accordingly to the NOI deadlines in table 1.

#	Commenter	Section	Comment	Response
119	SSCAFCA	I.D.5.h	General comment – the group of regulated entities agrees that public participation in this process is vital to ensuring a quality implementation of the permit. However, when comparing the timeframes for implementing this part of the permit (3 months for Class B individual and one year for individual, Table 9) it is not possible to reconcile these with the requirement to submit a SWMP with the NOI (90 days for Class B and 180 days for cooperative programs, Table 1). Will the public participation process be waived for the initial submittal of the SWMP by the regulated entities and then be incorporated later on?	The timelines in the activity tables 1a to 10 have been reviewed to accommodate public notice of NOIs. See also response to comment No 118.
120	Amigos Bravos	I.B.4	*Permittees with Cooperative Elements in their SWMP [ctd. from comment under "Accountability for Cooperative Ventures"]* : In addition, the EPA is trying to encourage cooperative permits or joint implementation of some major SWMP elements to be the main approach under the MS4 in order to get more efficiency in implementation from the large number of individual permittees. However, the most obvious incentive seems to be giving cooperative permits the longest compliance schedule for implementation of every facet of the permit except the initial NOI. This is the wrong kind of incentive. Cooperative permits should not be rewarded with a delay in implementing necessary measures to deal with known impairments in the Middle Rio Grande (MRG). For one thing, the watershed-based MS4 is a renewal permit for almost all the potential permittees, which means that they already have a substantial knowledge base to start from. Secondly, the largest contributors to the known impairments in the MRG – the COA and AMAFCA – have	EPA recognizes the complexity of developing cooperative programs as to the partnering permittee have to prepare and finalize any interagency or inter-jurisdictional agreement(s) among them (e.g., the Joint Powers Agreement to be entered into by the permittees). The implementation of the SWMP may also be achieved through participation with other public agencies, or private entities in cooperative efforts to satisfy the requirements of Part I.D in lieu of creating duplicate program elements for each individual permittee. In addition new permittees will have the opportunity to interact with already experienced permittees expediting the development and implementation of their programs. With respect to delaying the implementation of programs to address impairment of the receiving waters, the permit does not extend any compliance deadlines set forth in the previous permits (NMS000101 with effective date March 1, 2012 and permits No: NM NMR040000 and NMR04000I with effective date July 1, 2007).
120	Amigos Bravos	cont.	already been operating under a joint permit and have (or should have) the resources to expedite compliance, not delay it.	Permittees previously covered under permit NMS000101 or NMR040000 must continue existing programs, updating as necessary, to comply with the requirements of this permit.

#	Commenter	Section	Comment	Response
121	Amigos Bravos	Part I and Part III	Tables 1.a, 1.b, 2, 3, 4, 6, 7, 8, 9, 10 [various] Program Development and Implementation Schedules All of the listed schedules give the Cooperative program permittees significantly more time to develop and/or implement program elements than any other permittee class, including Class A (Phase 1), Class B (current Phase 2), Class C (new Phase 2), and Class D (Indian lands). In general, the permit gives the Phase 1 and current Phase 2 permittees the least time, new Phase 2 and Indian permittees more time (sometimes a lot more), and the Cooperative permittees the most time. However, the major permittees already have been working within a "cooperative" framework (COA/AMAFCA/UNM/DOT). Many, perhaps most, of the other potential permittees are also operating under existing permits. In either case, it shouldn't require any more time to comply with the various program elements than that given to a Phase 1 or Phase 2 permittee.	It is recognized nationally that the primary benefit of implementing a cooperative watershed framework is that it can more effectively and efficiently improve water quality than uncoordinated, single-source oriented stormwater management programs (Refs: National Research Council Report on Urban Stormwater, EPA Watershed Based NPDES Permitting website found at http://cfpub.epa.gov/npdes/wqbasedpermitting/wspermitting.cfm). The permittee may assess improvements in water quality by using available data for segment and assessment units of water bodies from other reliable sources, or by proposing and justifying a different approach such as collecting additional instream or outfall monitoring data, etc. Data may be acquired from NMED, local river authorities, partnerships, and/or other local efforts as appropriate. See also response to comment No 120.
121	Amigos Bravos	Part I and Part III	EPA goes out of their way to stress that any permittee can make use of existing data and existing program materials (from EPA and presumably from existing permittee programs) in their SWMPs, so there is not a need for extensive time to develop these. Cf "Program Flexibility Elements" boxes throughout the SWMP portion of the permit document; cf I.D.8 Qualifying State, Tribal or Local Program allowing permittees to use any BMPs and measurable goals from existing stormwater pollution control programs if they meet the "minimum control measure" requirements. Finally, the MRG is extremely well studied and doesn't require starting from scratch. We understand that EPA is trying to find a way to incentivize entering into cooperative agreements, but the reward should come from the claimed efficiencies gained through cooperation and not from delaying implementation of controls that can reduce contamination and impairments in the MRG.	

#	Commenter	Section	Comment	Response
122	NM Home Builders Assn.	I.C.2.b.iii	Issue: It is incongruous that a federal agency would expect a local political subdivision or pueblo in a state as rural as New Mexico to be able to determine the number of full-time employees (FTEs) necessary to begin work on development of many of these issues in less than two years after the approval of this MRG MS4 Watershed Permit. The process of seeking sources to fund those FTEs would be expected to take an additional 12-18 months – longer if legislative approval were needed to levy any kind of tax beyond what is allowed by current law. Allowance must be made to consider our state legislature only meets in a 30-day or 60-day session each year. A bond issue or increase in property taxation would need to be put to a vote – generally a year-long process after the governing body has chosen that funding option. Including mandated hard-line deadlines for these actions does not allow flexibility, nor does it reflect realistic expectations for cumbersome changes to the structure of political subdivisions of the state.	EPA recognizes that the process of developing and implementing a stormwater program may be complex in nature, including development of funding methods and mechanisms. This process may reflect a creation or revision of a mix of state and local programs. However, it should be noticed that the stormwater regulations have been in place since the early 1990s. In 1990, EPA promulgated rules establishing Phase I of the NPDES stormwater program and the Phase II in 1999. Most of the potential permittees were required to have Stormwater Management Programs in place by previous permits. It is been documented that low-capital income communities in New Mexico (e.g. Town of Mesilla) have created strategies to implement their program. Agua Caliente Band of Cahuilla Indians is a national example of a tribal community implementing strategies to control stormwater in their lands. Funding strategies and case studies can be found at EPA website: http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-Case-Studies.cfm.
122	NM Home Builders Assn.	cont.	Requiring political subdivisions and pueblos to rush to implement the fastest tax in order to find a solution for this unfunded mandate will only result in unintended economic consequences for New Mexico. This state is routinely ranked at the bottom of the nation in per-capita income. The economic impact of these new taxes could kill the struggling recovery of the construction industry in the state, and become a major factor in discouraging new business from relocating here. Requested Action: Put in more general language that all Permittees will be required to comply with these Program Development and Implementation items at a time negotiated with the Director, based upon the funding sources identified by the governing board of the political subdivision(s) and the potential law changes necessary to implement the funding source.	
123	Bernalillo County	I.B.1	Throughout this section and others there is confusion as to what exactly is meant by several terms: "permit issuance," "effective date of permit," "permit effective date," etc. *Please clarify whether a phrase refers to approval of the General Permit itself by EPA, or approval of a MS4 Permit, and use consistent terms throughout the permit.* As written, there are several instances where implementation might precede approval of a MS4 permit.	The phase "effective date of the permit" included in the Table 1 thru Table 10 indicates the date the proposed Middle Rio Grande Watershed Based MS4 permit (EPA NPDES Permit ID NMR04000MRG) is effective for compliance purposes. The meaning of "effective date of the permit" and "permit effective date" is the same. The proposed permit is been written consistent with other NPDES permits issued by EPA R6. The "permit issuance" (signature) and effective date of permit" are included in the Cover Page of the NPDES permit.

#	Commenter	Section	Comment	Response
124	WESTCAS	I	Tables 2 through 10 include implementation schedules for each required element in the permit. The schedules are inordinately short, particularly for permitted entities in categories B, C, and D who may be developing their first storm water program as a result of this permit. WESTCAS recommends reasonable time frames be proposed by the permittee in the SWMP, which must be submitted with the NOI and approved by EPA.	For the most part, the timelines in the SWMP's activity tables (Table 2 thru Table 9) correspond to timelines from existing program elements in the reissued 2012 Albuquerque MS4 permit (NMS000101) and the expired permits for small MS4s (NMR040000, NMR04000I) with addition of compliance schedules for MS4s implementing cooperative programs and new MS4s. It is expected that the Phase I permittees and Phase II permittees designed by the 2000 Census are already implementing those program elements. To accommodate the deadlines to submit NOIs and public participation on the proposed programs, Tables 1a to 10 have been revised. See response to comment No 118.
125	Pueblo of Sandia	I	Table I Deadlines to submit NOI: NOI Deadlines. The Pueblo requests that the statements in the table that state "180 days from permit issuance" be changed to "from date of complete NOI". This would allow all permittees to have the full time period for compliance. This permit has several entities that are potential permittees (one being the Pueblo). These entities may or may not be permitted until well after this permit is issued. As the table is currently written any compliance dates will be shorten or the permittee may become noncompliant if the permittees submit a NOI outside of the time frame when the permit is signed and issued.	See response to comment No 118
126	Pueblo of Sandia	I	Table 2. and all other Tables in permit. The Pueblo requests that the statements in the tables that state "from effective date of permit" be changed to "from date of complete NOI". This would allow all permittees to have the full time period for compliance. This permit has several entities that are potential permittees (one being the Pueblo). These entities may or may not be permitted until well after this permit. As the tables are currently written any compliance dates will be shorten or the permittee may become noncompliant if the permittees submit a NOI outside of the time frame when the permit is signed and issued.	For compliance purposes, EPA prefers to use the term "effective date of permit" in the activity tables so there is consistency among all program elements. Additional time should not be granted to those permittees submitting late NOIs. As stated in Part I.B.1.c. "Submitting a Late NOI", MS4s not able to meet the NOI deadline in Table I and Part I.B.1.b due to delays in determining eligibility should notify EPA of the circumstance and progress to date at the address in Part I.B.3 and then proceed with a late NOI. To accommodate the deadlines to submit NOIs and public participation on the proposed programs, Tables 1a to 10 have been revised. See response to comment No 118.
127	City of Albuquerque		Clarification is necessary regarding the date of issuance of the permit and the deadline for submission of the NOI. Do the compliance schedules begin after permit issuance or after submission of the NOI? The latter must be the case, but that is not how the permit reads. For example, if the permittees are given 90 days after permit issuance to submit their NOI, there cannot be other permit requirements that fall within that 90-day window, yet there are.	See response to comment No 118

#	Commenter	Section	Comment	Response
128	City of Albuquerque	I	Table 1.b. Pre-TMDL Nutrient Program Development and Implementation Schedules. [footnote: (*) During development of cooperative programs, the permittee must continue to implement existing programs] The COA believes that this statement is to prevent the halting of progress on various existing programs, the act of continuing a program while simultaneously altering it is not practical or necessary. Since the previous permit is to be terminated by the issuance of this permit, the requirements of the previous permit should not be mandated going forward. The COA would like this statement to be removed from this permit. This comment applies to all other occurrences of the same statement in the permit. Also refer to related comment in Part I.B.1.d.	The overall intent of the permit conditions is to support the statutory goals of Section 101 of the Act to restore and maintain the chemical, physical and biological integrity for the Nation's waters and provide a reasonable assurance that the permitted activity will be conducted in a manner which will not violate applicable Water Quality Management Plan and Water Quality Standards. The water quality of the receiving waters will be compromised if an existing program element(s) is placed on hold until the program(s) is revised or modified. This would be analogous to stopping use of chlorine disinfection at a wastewater treatment plant because there are plans to install UV treatment in 12 months - bacteria would impair recreational and potentially other uses of the receiving water while no treatment was being provided.
129	AMAFCA	I.A.6.a.iv	This implies that the SWMP is submitted with the NOI – please clarify. At the EPA SW Conference, Nelly said that the SWMP must be submitted within 1 year of EPA approving the NOI.	Per Part I.B.2.i, the NOI should include the information on each of the storm water minimum control measures in Part I.D.5 of this permit and how the SWMP will reduce pollutants in discharges to the Maximum Extent Practicable. For each minimum control measure, the permittee must include the following: (i) Description of the best management practices (BMPs) that will be implemented; (ii) Measurable goals for each BMP; and (iii) Time frames (i.e., month and year) for implementing each BMP; Additionally, the year one (1) and year four (4) annual report shall include submittal of a complete SWMP revision, see Part III.B. Annual Report.
130	AMAFCA	I.B.1.d	Agreed. This should also be defined as the basis for the Implementation Schedules of this permit.	Noted for the record.
131	AMAFCA	I	Table 1a. Activity "Develop (or modify an existing program ***) and implement a program to reduce the discharge of bacteria in municipal storm water contributed by other significant source identified in the Illicit Discharge Detection and Elimination program (see Part I.D.5.e)" Comment: Why is Cooperative schedule shorter than Class A and B schedules? Please increase Cooperative schedule to be greater than 2 years.	To be consistent with all the schedules in Table 1.a, the timeline will be changed from two (2) years to fourteen (14) months for Class A and Class B permittees.

#	Commenter	Section	Comment	Response
132	AMAFCA	I	Table 1b. Activity "Develop (or modify an existing program ***) and implement a program to reduce the discharge of the pollutant of concern in municipal storm water contributed by other significant source identified in the Illicit Discharge Detection and Elimination program (see Part I.D.5.e)" Comment: Why is Cooperative schedule shorter than Class A and B schedules? Please increase Cooperative schedule to be greater than 2 years.	To be consistent with all the schedules in Table 1.b, the timeline will be changed from two (2) years to one (1) year for Class A and Class B permittees.
133	AMAFCA	I	Table 2, First two activities. Comment: Because AMAFCA is strictly a flood control authority, the legal authority and jurisdiction granted to it by the State is limited. As a result, AMAFCA is unable to develop, implement, and enforce ordinances, regulatory mechanisms, and requirements for construction site operators as required by this section. However, to the extent permitted by law, AMAFCA will comply with the requirements of this section.	EPA recognizes Highway Departments and Flood Control Authorities may only have to apply the construction stormwater management program to the permittees's own construction projects. See response to comment No 103.
134	AMAFCA	I	Table 2. Comment: Change ["Upon effective date of permit"] to "Upon approved NOI". EPA can't require implementation under this permit if NOI is not approved.	The timelines in the Activity Tables 1a to 10 have been modified to accommodate EPA review process on NOIs. The earliest deadline to implement a program element in the Activity Tables 1a to 10 is 6 months of permit effective date. With the exception of Table 10, permittees should include the monitoring preference (Individual Program vrs. Cooperative Program) with NOI submittal. See also responses to comments No 118 and No 291.
135	AMAFCA	I	Table 3, First two activities. Comment: Because AMAFCA is strictly a flood control authority, the legal authority and jurisdiction granted to it by the State is limited. As a result, AMAFCA is unable to develop, implement, and enforce any ordinances or regulatory mechanisms required by this section.	EPA recognizes Highway Departments and Flood Control Authorities may only have to apply the post-construction stormwater management program to the permittees's own construction projects. See response to comment No 103.
136	AMAFCA	I	Table 3. Comment: Change ["Upon effective date of permit"] to "Upon approved NOI". EPA can't require implementation under this permit if NOI is not approved.	See response to comment number 134.
137	AMAFCA	I	Table 3, Activity 5, Part I.D.5.b.(ii).(g). Comment: Because AMAFCA is strictly a flood control authority, the legal authority and jurisdiction granted to it by the State is limited. As a result, AMAFCA is unable to comply with the requirements of this section.	See response to comment No 103.
138	AMAFCA	I	Table 3, Activity 6. Comment: AMAFCA will coordinate with all entities as necessary, however, AMAFCA does not have any internal departments or boards with jurisdiction over these matters.	See response to comment No 103.

#	Commenter	Section	Comment	Response
139	AMAFCA	I	Table 3, Activities 7-8. Comment: Because AMAFCA is strictly a flood control authority, the legal authority and jurisdiction granted to it by the State is limited. As a result, AMAFCA is unable to enact codes, ordinances, and other regulatory mechanisms set forth herein. However, to the extent permitted by law, AMAFCA will comply with the requirements of this section.	See response to comment No 103.
140	AMAFCA	I	Table 4. Comment: Change ["Upon effective date of permit"] to "Upon approved NOI". EPA can't require implementation under this permit if NOI is not approved.	See response to comment number 134.
141	AMAFCA	I	Table 4, Activity 2. Comment: AMAFCA will comply with this requirement to the extent it is permitted by law and/or this section is applicable to AMAFCA.	See response to comment No 103.
142	AMAFCA	I	Table 4, Activity 3. Comment: AMAFCA does not own or operate any industrial facilities, and this section is therefore inapplicable.	See response to comment No 103.
143	AMAFCA	I	Table 5, Class A Permittees. Comment: This only applies to City of Albuquerque. Please correct.	An industrial and high risk runoff program has been included to meet the requirements in 40 CFR 122.26(d)(2)(iv)(5). The permittee must control the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi). If no such industrial activities are in a permittees jurisdiction, that permittee may certify that this program element does not apply.
144	AMAFCA	I	Table 5, Activity 1. Comment: Because AMAFCA is strictly a flood control authority, the legal authority and jurisdiction granted to it by the State is limited. As a result, AMAFCA is unable to develop, implement, and enforce any ordinances or regulatory mechanisms required by this section.	See response to comment No 103.
145	AMAFCA	I	Table 5. Comment: Change ["Upon effective date of permit"] to "Upon approved NOI". EPA can't require implementation under this permit if NOI is not approved.	See response to comment number 134.
146	AMAFCA	I	Table 5, Activity 2. Comment: It is unclear from this whether a permittee may certify that they do not have jurisdiction over any such facilities, or whether any such facilities exist which discharge into their facilities. In addition, AMAFCA does not own or operate any industrial or high risk runoff locations and is without jurisdiction over private entities. As such, AMAFCA is without legal authority to implement the requirements of this section.	This requirement is related to storm water discharged from industrial sites as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi) to the permittee's municipal storm sewer. See response to comments No 103 and 143.

#	Commenter	Section	Comment	Response
147	AMAFCA	I	Table 6. Comment: Change ["Upon effective date of permit"] to "Upon approved NOI". EPA can't require implementation under this permit if NOI is not approved.	See response to comment number 134.
148	AMAFCA	I	Table 7. Comment: Change ["Upon effective date of permit"] to "Upon approved NOI". EPA can't require implementation under this permit if NOI is not approved.	See response to comment number 134.
149	AMAFCA	I	Table 8. Comment: Change ["Upon effective date of permit"] to "Upon approved NOI". EPA can't require implementation under this permit if NOI is not approved.	See response to comment number 134.
150	AMAFCA	I	Table 9. Comment: Change ["Upon effective date of permit"] to "Upon approved NOI". EPA can't require implementation under this permit if NOI is not approved.	See response to comment number 134.
151	AMAFCA	I	Table 10. Comment: Change ["Upon effective date of permit"] to "Upon approved NOI". EPA can't require implementation under this permit if NOI is not approved.	See response to comment number 134.
152	SSCAFCA	I.D.5.e.iii	This part requires the screening of the entire jurisdiction of an MS4 once every five years and high priority areas annually and provides the requirement for laboratory analysis and analysis evaluation of data collected. Part III.A.2.d more specifically describes the methodology by which these samples are to be taken. It is entirely possible, if not likely, that there will be no opportunity to sample a liquid within an MS4 during non-wet weather events. We recommend that any sampling requirements during dry weather events be tied directly to the investigation of an illicit discharge as these are likely to the be only times when sampling of liquids will be possible in many areas of all MS4s. An alternative to sampling within each separate MS4 would be to offer dry weather sampling within the Rio Grande as it is likely that this will be the only area with flowing surface water. The same sampling points used for the wet weather, in channel monitoring could be used for this purpose.	As described in Part III.A.2, the results of the dry weather screening assessment may be coordinated with the illicit discharge detection and elimination program required in Part I.D.5.e. With respect to developing an alternative approach, using the same sampling points used for the wet weather monitoring program. This alternative can be included in the proposed monitoring scheme required in Table 10, second activity.
153	Pueblo of Sandia	III	Page 3, Dry Weather Discharge Screening ofMS4. Again as stated in Comment 8 the Pueblo feels that due to the conditions in the arid southwest and the infrequency of wet weather that a statement concerning climate change or weather conditions be added to allow some adjustment of the dry weather monitoring.	See response to comments No 25 and 87. EPA has added the following language to the Part III.A.2: Due to the arid and semi-arid conditions of the area, the dry weather discharges screening program may be carried out during both wet season (July 1 through October 31 and dry Season (November 1 through June 30).

#	Commenter	Section	Comment	Response
154	AMAFCA	III.A.2.b	During EPA SW Conference, Nelly said that screening includes initial visual observations for IDDE, then followed by monitoring. You can't visually screen for BOD, and it's not practical to include BOD at the screening level.	Visual inspections for illicit discharges provide a quick method to determine and prioritize sampling. If dry, there are no illicit discharges suspected, if wet there is a possibility that should be followed up on - unless the source is immediately visible and is an allowable non-storm water. A second step is usually some field test parameters to give an indication of whether or not the discharge is illicit or just an allowable non-storm water (or is normally allowable but in a particular instance is contributing excessive pollutants). Typically the more expensive monitoring is reserved for follow-up on suspected illicit discharges identified by the combinations of visual, odor, and field screening tests. EPA recommends that the plan to detect and address illicit discharges include procedures for:
154	AMAFCA	cont.	cont	• Locating priority areas likely to have illicit discharges (which may include visually screening outfalls during dry weather and conducting field tests of selected pollutants) • Tracing the source of an illicit discharge • Removing the source of the discharge • Program evaluation and assessment The use of visual screening is a first step of detecting oil and other automobile-related fluids in the storm water sewer system. For additional information please visit our website at http://cfpub1.epa.gov/npdes/stormwater/idde.cfm and the manual: Illicit Discharge Detection and Elimination (IDDE): A Guidance Manual for Program Development.
155	AMAFCA	III.A.2.b	Most strains of E. coli are harmless and live in the intestines of healthy humans and animals. This should not be used as the metric for water quality if it's mostly harmless and naturally occurring. Also, e. coli should not be included at the "screening" level for dry weather monitoring.	The state of New Mexico and Pueblos of Isleta and Sandia have all adopted bacteria water quality standards based on E. coli to determine if in-stream water quality is sufficient to protect designated uses. NPDES permits are required to be protective of water quality standards. Members of two bacteria groups, coliforms and fecal streptococci, are used as indicators of possible sewage contamination because they are commonly found in human and animal feces. Although they are generally not harmful themselves, they indicate the possible presence of pathogenic (disease-causing) bacteria, viruses, and protozoans that also live in human and animal digestive systems. Therefore, their presence in streams suggests that pathogenic microorganisms might also be present and that swimming and eating shellfish might be a health risk. Since it is difficult, time-consuming, and expensive to test directly for the presence of a large variety of pathogens, water is usually tested for coliforms and fecal streptococci instead. Sources of fecal contamination to surface waters include wastewater treatment plants, on-site septic systems, domestic and wild animal manure, and storm runoff.

#	Commenter	Section	Comment	Response
155	AMAFCA	cont.	cont.	In addition to the possible health risk associated with the presence of elevated levels of fecal bacteria, they can also cause cloudy water, unpleasant odors, and an increased oxygen demand. With respect of not including e. coli in "screening" process in the dry weather monitoring program, the requirements in Part III.A.1 were specifically tailored to provide a reasonable assurance that permitted activity will be conducted in a manner which will not violate applicable Water Quality Management Plans and Water Quality Standards. No changes are made to the final permit as a result of this comment.
156	SSCAFCA	III.A.1.a	In some of the smaller jurisdictions where cooperative sampling would be more expensive than individual sampling (i.e. they have no upstream inlet and only one outfall), the geometry of the system is such that the location for sampling, especially during a rain event, could be hazardous to personnel and automated sampling equipment is either prohibitively expensive or infeasible for usage (due to the geometry). Additionally, the geographical size of the political subdivision is so small that the hydrograph is very quick and the feasibility of catching the four samples to be combined into a single composite is questionable. Will the EPA consider allowing systems with this type of size and limiting geometry on their storm sewer system to collect a single grab sample during a qualifying event?	Alternative wet weather monitoring approaches can be included in the proposed monitoring scheme required in Table 10, second activity, and will be individually (or cooperatively if a cooperative wet weather monitoring scheme is submitted) revised and approved according to the permittee(s)' constraints. EPA recommends exploring the actual cost share for a cooperative program before deciding which route to pursue. No changes are made to the final permit as a result of this comment.
157	SSCAFCA	III.A.1.c	This part of the permit defines rainfall magnitudes for wet weather monitoring as well as a methodology for conducting the sampling. A storm magnitude of 0.25 inches is identified. Considering the nature of storms in the metro area, it is EXTREMELY rare that we experience a watershed wide storm event with 0.25 inches of precipitation falling across the entire watershed. If there is a qualifying event of this magnitude within the watershed, but not necessarily across the entire watershed, does that suffice for the storm event being called for in the permit? Since whole watershed rainfall events of this magnitude are so rare, we recommend that a "qualifying event" be defined in the permit and this part be rewritten to accommodate that definition. An alternative to requiring sampling due to the magnitude of precipitation would be to allow the MS4s to sample when there is a discharge from one of the outfalls to the river. We believe that by allowing the flexibility to determine which method for determining when to sample (precipitation	More than 40 percent of the annual storm events in Albuquerque area (Ref: Data from the Albuquerque International Airport, 1948-2012) are greater than 0.25 inches. The permittee(s) should be able to collect 10 storm events (or 9 storm events for wet weather sampling cooperative programs) during the permit term (5 years). With well-draining soils in this arid environment, most likely the largest storms will generate runoff. No changes are made to the final permit as a result of this comment.

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157	SSCAFCA	cont.	event vs. discharge) we will be able to identify valid times/dates to sample upstream and downstream on the Rio Grande.	
158	SSCAFCA	III.A.1.d	This part says that in order to accommodate the timely completion of all required monitoring, there is no minimum rainfall magnitude or antecedent dry period criterion beyond the requirement that the qualifying storm events be sufficient in magnitude to generate stormwater runoff and resultant discharge at the monitoring locations…. This seems to directly conflict with the rainfall requirements in Part III.A.1.c. Additionally, Part III.A.5.(iii) identifies that samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches. Could you please clarify on the EPA's desires for storm event magnitude and sampling?	EPA agrees, EPA has modified the language in Part III.A.1.d to read: Monitoring methodology at each MS4 monitoring location shall be collected during any portion of the monitoring location's discharge hydrograph (i.e. first flush, rising limb, peak, and falling limb) after a discernible increase in flow at the tributary inlet.
159	SSCAFCA	III.A.1.e	If the regulated entities enter into a cooperative agreement for sampling, the timeline for submittal of the sampling plan is one year from the date of permit issuance, however, this part says that sampling results for wet weather monitoring must be provided in each annual report. With this timeframe in mind, we recommend adding language to the part saying that monitoring results must be included in the annual report beginning in with the second annual report.	To accommodate NOI approvals, EPA has corrected Table 10 to indicate 10 months to submit the wet weather certification and beginning sampling to Class C and D permittees and permittees with cooperative programs (element 3 of Table 10). Previously timeline in the Table shows 270 months which is outside of the permitting time frame. The permittees should be able to summary activities carried during the first year of the permit term in the Annual Report, including results, if any, from the wet weather monitoring program.
160	NMDOT	III.A.1.c	"wet weather monitoring shall be performed only when the predicted (or actual) rainfall magnitude of a storm event is greater than 0.25 inches and an antecedent dry period of at least forty-eight (48) hours after a rain event greater than 0.1 inch in magnitude is satisfied." while Part III.A.1.d states "In order to accommodate the timely completion of all required monitoring, no minimum rainfall magnitude or antecedent dry period criterion need be established beyond the requirement that qualifying storm events be sufficient in magnitude to generate storm water runoff and resultant discharge at the monitoring locations or discernible increased flow at tributary inlets to be monitored." These two statements contradict each other. The first requires a storm event greater than 0.25", and the second states that no minimum rainfall magnitude is required. Due to the highly localized nature of storms in the Albuquerque area the description in Part III.A.1.d seems more appropriate. *Question from NMDOT* : Is our logic acceptable due to our semi-arid region annual rainfall occurrences?	Noted in the administrative record. See response to comment No 158

#	Commenter	Section	Comment	Response
161	Bernalillo County	III	Monitoring, Assessment, and Reporting Requirements, Wet Weather Monitoring vs. Storm Event Discharge Monitoring. Of first concern in this document is the distinction between Wet Weather Monitoring (Sec.III.A.1) and Storm Event Discharge Monitoring (Sec.III.A.5.a). More specifically, the sampling requirements for wet weather monitoring are significantly different from the requirements for storm event monitoring. For example, wet weather sampling requires an antecedent dry period as well as minimum rainfall amounts. However, both of these requirements can be waived for storm event samples. The Albuquerque area is a semi-arid region; drainages that outfall to the Rio Grande are dry for extended periods of time and referring to these drainages even as ephemeral would be a very generous misnomer. Any notion of a defined wet-season would have to refer to Albuquerque's monsoonal months and just beyond (July through October).	For consistency and clarity, EPA has deleted Part III.A.5.a.(iii) and re-titled Part III.A.5.a as "Wet Weather (or Storm Event) Discharge Monitoring."
161	Bernalillo County	cont.	Even during this "wet season" drainages in the area are typically dry and regardless of the time of the year, discharges to the Rio Grande will almost always be the result of a storm event. What, specifically, distinguishes a wet weather sample from a storm event sample? Are the two interchangeable, i.e. can storm events be used to meet the wet weather monitoring requirements given in Sec.III.1.a-b? If the two samples are interchangeable, what is the reasoning for the significant differences between sampling methodologies?	
162	City of Albuquerque	III.A.1.a.i	We will sample the 10 events in 5 years if we get adequate rainfall. We have had no measurable rainfall for over 8 months and have been unable to obtain even Y28one sample annually at a number of locations.	Noted in the administrative record.
163	City of Albuquerque	III.A.1.c	The COA recommends elimination of the requirement for an antecedent dry period of 48 hours after a rain event. Rain events in the Middle Rio Grande are typically quite localized and of small areal extent. Therefore, two events occurring within 48 hours may result in drainage from two different areas. Why do the antecedent dry period requirements differ (48 hrs. vs. 72 hrs.) between PartIII.A.1.c and PartIII.A.5.a(iii). The requirement for an antecedent dry period should be waved for Albuquerque. Our rain events are so rare (especially in this drought) that we should be able to sample anytime we have the opportunity. Also, given the nature of our porous, highly permeable soils, this requirement is unnecessary.	Noted in the administrative record. See response to comment No 161.

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164	City of Albuquerque	III.A.1.g	Six or (3) samples? Note that even in a "good" year that exceeds rainfall average, we have been unable to collect six samples at a single location due to a dearth of qualifying rain events.	Noted in the administrative record. EPA has corrected the error in Part III.A.1.g replacing the number 3 for 6 as follows: *Six (6) samples shall be collected during the first year of monitoring at substitute monitoring locations. If there are less than six sampleable events, this should be document for reporting purposes.*
165	City of Albuquerque	III.A.1.h	The COA will include a contingency plan for monitoring within its jurisdictional boundaries. However, if it performs instream monitoring in the Rio Grande on behalf of other agencies, it cannot be responsible for collecting monitoring data within other jurisdictions. Note that there are no other perennial instream sampling locations in the Middle Rio Grande. Due to the variable nature of pollutant loading during storm events, subsequent events may not be indicative of the event causing the instream exceedance.	Part III.A.1.h will be assessed upon the type of monitoring the permittee will participate (individual vrs. Cooperative program). If the City participate in a cooperative program with the upstream permittee, a join agreement should include the roles and responsibilities to implement Part III.A.1.h, Each individual MS4 in a joint agreement implementing a permit condition will be independently assessed for compliance with the terms of the joint agreement.
166	City of Albuquerque	III.A.5.a	Storm Event Discharge Monitoring. Note that Wet Weather Discharge Monitoring is synonymous with Storm Event Discharge Monitoring in arid southwestern regions such as the Middle Rio Grande.	Noted in the administrative record.
167	City of Albuquerque	III.A.5.a.iii	Representative Storm Events. [The 72-hour storm event interval] requirement should be waived for Albuquerque. Our rain events are so rare (especially in this drought) that we should be able to sample anytime we have the opportunity.	See response to comment No 161.
168	AMAFCA	III.A.1	Wet weather monitoring should be changed to represent storm-weather flow.	EPA uses the words "wet weather monitoring" for consistency with EPA regulations and guidance. For clarity in the permit, the word "Storm Event" has been added to Part III.A.5.a.
169	AMAFCA	III.A.1	The selection of either Option A or Option B should allow Permittees to subsequently change its monitoring method to the other option.	EPA agrees. EPA has modified the underlined language in Part I.D.6.b.(ii) Program Modification as follows: *Modifications replacing or eliminating an ineffective or unfeasible component, control or requirement of its SWMP, including monitoring and analysis requirements described in Parts III.A and V, may be requested in writing at any time. If request is denied, the EPA will send a written explanation of the decision. Modification requests shall include the following…*
170	AMAFCA	III.A.1.a.i	["Monitor for TSS, TDS, COD, BOD5, DO, oil and grease, E. coli, pH, total kjeldahl nitrogen, nitrate plus nitrite, dissolved phosphorus, total ammonia plus organic nitrogen, total phosphorus, PCBs and gross alpha"] This must be specific to the 303d/305b impairments identified.	Some of those constituents are indicators (e.g., TSS, TDS, COD, BOD5) of a problem in the receiving waters, other constituents are more directly related to the 303(d) list (e.g . E. coli, total phosphorus, DO).

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171	AMAFCA	III.A.1.a.i	Remove gross alpha from the permit. Naturally occurring radioactive elements emit alpha particles as they decay (per EPA website). This is not an appropriate monitoring parameter, because it's too general. Use a monitoring parameter which more closely quantifies the pollutant of concern.	The Rio Grande in this region is impaired with gross alpha.
172	AMAFCA	III.A.1.a.i	Please clarify the type of events, e.g., storm events.	Wet weather monitoring is designed to gather information on the response of receiving waters to wet weather discharges (due to storm events) from the MS4.
173	AMAFCA	III.A.1.a.ii	["Monitor for TSS, TDS, COD, BOD5, DO, oil and grease, E. coli, pH, total kjeldahl nitrogen, nitrate plus nitrite, dissolved phosphorus, total ammonia plus organic nitrogen, total phosphorus, PCBs and gross alpha"] This must be specific to the 303d/305b impairments identified.	See response to comment No 170.
174	AMAFCA	III.A.1.a.ii	Remove gross alpha from the permit. Naturally occurring radioactive elements emit alpha particles as they decay (per EPA website). This is not an appropriate monitoring parameter, because it's too general. Use a monitoring parameter which more closely quantifies the pollutant of concern.	See response to comment No 171.
175	AMAFCA	III.A.1.b	["Monitor for TSS, TDS, COD, BOD5, DO, oil and grease, E. coli, pH, total kjeldahl nitrogen, nitrate plus nitrite, dissolved phosphorus, total ammonia plus organic nitrogen, total phosphorus, PCBs and gross alpha"] This must be specific to the 303d/305b impairments identified.	See response to comment No 170.
176	AMAFCA	III.A.1.b	Remove gross alpha from the permit. Naturally occurring radioactive elements emit alpha particles as they decay (per EPA website). This is not an appropriate monitoring parameter, because it's too general. Use a monitoring parameter which more closely quantifies the pollutant of concern.	See response to comment No 171.
177	AMAFCA	III.A.1.b	This is irrelevant. The current wet-weather monitoring requirements are so restrictive that the natural occurrence of "wet weather" has an extremely low probability of occurring in Albuquerque.	Part III.A.1.b is intended to address contributions to exceedances of applicable water quality standards from MS4 discharges resulting from storm events. See response to Comment No 167.
178	AMAFCA	III.A.1.c	The current draft is a rare occurrence in Albuquerque. Essentially, we need to have the flexibility of wet weather monitoring to include whenever it rains, which is rare enough.	See responses to comments No 24 and No 157.

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179	AMAFCA	III.A.1.c	This requires a storm to last for at least 1 hour, which is not common in Albuquerque.	The requirement to sample four times fifteen minutes apart applies to the discharge, which more than likely will continue after the storm has passed. If the discharge lasts less than one hour, this should be noted for reporting purposes.
180	AMAFCA	III.A.1.g	It is unclear whether six or three samples need to be collected during the first year of monitoring.	See response to comment No 164. Part III.A.1.g has been changed to correct this error.
181	AMAFCA	III.A.5.a	Storm Event Discharge Monitoring. How is this different than wet weather sampling? This is very confusing. This level of complexity of monitoring requirements does not work well with historic rainfall quantities and characteristics in Albuquerque.	See response to comment No 161
182	AMAFCA	III.A.5.a.i.b	Sampling Duration. Please explain what this means: "...entire discharge must be sampled."	The language on Part III.A.5.a.(i).(b) has been revised to add the underlined text as follows: Sampling Duration – *Samples shall be collected for at least the first three (3) hours of discharge. Where the discharge lasts less than three (3) hours, the permitte should report the value.*
183	AMAFCA	III.A.5.a.i.b	Sampling Duration. Based on the nature of the storms which affect the region, EPA should be aware that the majority of the discharges will last less than three (3) hours.	Noted in the administrative record. See respond to comment No 182.
184	AMAFCA	III.A.5.a.iii	Representative Storm Events. It is very common in Albuquerque for summer rain events to occur in short spurts each day. These are monsoonal-type flows that are short (< 1 hour), very intense and frequent (each afternoon). Most of the rain occurs during the summer monsoon season. Therefore, it is extremely rare to have a storm event >0.1" when it hasn't rained for 3 days.	See responses to comment Comments No 161, 182, and 183.
186	NMDOT	III.A.1.a	In Part III. A. 1. a. "Option A: Individual Monitoring", (i) and (ii), currently NMDOT District 3 has both Phase 1 and Phase 2 permits. Based on Table 1 Deadlines to Submit NOI, under Part 1. B., NMDOT District 3 fits in all permittee class types. *Question from NMDOT* : Please clarify NMDOT status and class types.	EPA agrees, NMDOT Dist. 3 falls into both Class A and Class B permittee class types. If NMDOT Dist. 3 chooses individual program elements, NMDOT Dist. 3 should use Class A nomination. If NMDOT Dist. 3 chooses cooperate with one or more permittees, NMDOT Dist 3, should use the deadlines and timelines for cooperative programs. The language in Appendix A has been revised to include NMDOT Dist. 3 as a permittees within the Class B type permittees. A note has been added in Appendix A as follows: *NMDOT Dist. 3 falls into the Class A type permittee, if an individual program is developed or/and implemented. The timelines for cooperative programs should be used, if NMDOT Dist. 3 cooperates with other permittees.*

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187	AMAFCA	III.A	Whether an MS4 chooses an Individual or Cooperative monitoring program, the MS4 should be required to make their data available to other MS4s under this permit. This would help MS4s to better trend natural pollutant sources, like wildfires. The MS4 should make data available within 3 months of the request from another MS4.	Data submitted to EPA will be available to the public, but only after reports are filed. Joint activities carried out to collect, evaluate, and publication of data can be included in the joint agreements. Data from the permittees can be obtained from the EPA Enforcement and Compliance web site at https://echo.epa.gov/.
188	AMAFCA	IV.T	A statement should be included that provides that a Permittee's voluntary additional monitoring shall not obligate any additional monitoring activities in any subsequent years.	Additional monitoring would be above and beyond the minimum requirements of the permit and does not create a future monitoring obligation beyond what is required by the permit.
189	SSCAFCA	III.A.1.b	If a sample cannot be analyzed for e-coli because of timing (holding time exceedance), will it "count" as a valid sample for permit requirements or would the entire sampling event need to be thrown out? With this in mind, it is entirely possible that a qualifying event may not occur in any given year within the WSBMS4 boundary area.	The holding time, storage and preservation of samples for bacteria are needed to maintain integrity of the sample. Permittees (or a coalition of permittees) may develop the capacity for in-house testing or make arrangements with local labs if that would assist in meeting holding times.
190	SSCAFCA	III.A.1.b	One of the constituents listed for sampling is gross alpha. Due to the geology of the Sandia Mountains, there is a naturally occurring source of gross alpha constantly depositing this constituent into the sediments underlying the City of Albuquerque. Uranium is naturally occurring in granite to a level of 10-20 parts per million. Thorium also appears in granite naturally to a level of +/- 6 ppm. Both of these elements are alpha emitting. It seems logical that regardless of actions taken by the MS4s in the area, gross alpha will continue to be an issue. We recommend removing this constituent from the sampling list.	The comprehensive monitoring and assessment program should be designed to confirm that stormwater discharges are not a source of gross alpha in the receiving waters.
191	Bernalillo County	III.A	There also exists some confusion regarding the sampling methodology. For example, Sec.III.A.1.c, in the paragraph that begins," Wet weather monitoring shall be performed…," list antecedent dry period and rainfall requirements. However, the following section which begins, "Monitoring methodology at each MS4 monitoring location shall consist…" states that these requirements are not necessary. *Can you please clarify the differences in sampling methodology between Sec.III.A.1.c and Sec.III.A.1.d?* In addition, there is also some confusion in the permit regarding the difference, if any, between a grab sample and an aliquot. For example, Sec.III.A.1.c suggests that the term "grab sample" refers to the individual components, or aliquots, of a composite sample. However, the language in Sec.III.A.5.i-ii suggests that grab samples are not the same as aliquots. *What specifically are the definitions of composite sample, grab sample, and aliquot as they are being used in the permit?*	Wet weather monitoring shall be performed only when the predicted (or actual) rainfall magnitude of a storm event is greater than 0.25 inches and an antecedent dry period of at least forty-eight (48) hours after a rain event greater than 0.1 inch in magnitude is satisfied. Monitoring methodology will consist of collecting a minimum of four (4) grab samples spaced at a minimum interval of fifteen (15) minutes each (or a flow weighted automatic composite, see Part III.A.5.a.(i)). Individual grab samples shall be preserved and delivered to the laboratory where samples will be combined into a single composite sample from each monitoring location. Part IIIA.5.a: Storm Event Discharge Monitoring: If storm event discharges are collected to meet the objectives of the Comprehensive Monitoring and Assessment Program required in Part III.A (e.g., assess compliance with this permit; assess the effectiveness of the permittee's stormwater management program; assess the impacts to receiving waters resulting from stormwater discharges), the following requirements apply:

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191	Bernalillo County	cont.		Part VII: Grab sample means a sample which is taken from a wastestream on a one-time basis without consideration of the flow rate of the wastestream and without consideration of time. Composite Sample means a sample composed of two or more discrete samples. The aggregate sample will reflect the average water quality covering the compositing or sample period. Regarding the requirements in Part III.A.1d., see response to comment No 158.
192	Bernalillo County	III.A.1.d	As previously mentioned, the wet season in Albuquerque is mostly driven by monsoonal thunderstorms, and being convective in nature, these thunderstorms are also very spotty. It is not uncommon to see closely-spaced rain gages record vastly different amounts of rainfall. And for this reason, it could be difficult to determine if a sample will meet minimum rainfall requirements simply because rainfall may not be evenly distributed across the sampling watershed and as a result, a given storm may produce discharge without actually being recorded at a rain gage. Section Sec.III.A.1.d basically states that any discernible flow would constitute a valid sample, regardless of any antecedent dry period or rainfall requirement and this approach to sampling is probably most appropriate for an area like Albuquerque. Consequently, rainfall magnitude requirements should be dropped from the permit and instead NPDES permittees in the Albuquerque area should be allowed to sample any and all significant flows to meet permit requirements.	See responses to comments No 158 and 160.
192	Bernalillo County	III.A.1.d	As previously mentioned, the wet season in Albuquerque is mostly driven by monsoonal thunderstorms, and being convective in nature, these thunderstorms are also very spotty. It is not uncommon to see closely-spaced rain gages record vastly different amounts of rainfall. And for this reason, it could be difficult to determine if a sample will meet minimum rainfall requirements simply because rainfall may not be evenly distributed across the sampling watershed and as a result, a given storm may produce discharge without actually being recorded at a rain gage. Section Sec.III.A.1.d basically states that any discernible flow would constitute a valid sample, regardless of any antecedent dry period or rainfall requirement and this approach to sampling is probably most appropriate for an area like Albuquerque. Consequently, rainfall magnitude requirements should be dropped from the permit and instead NPDES permittees in the Albuquerque area should be allowed to sample any and all significant flows to meet permit requirements.	See responses to comments No 158 and 160.

#	Commenter	Section	Comment	Response
193	Bernalillo County	III.A.1	The analytical requirements listed include 15 tests: TSS, TDS, COD, BOD5, DO, oil and grease, E.coli, pH, total kjeldahl nitrogen, nitrate plus nitrite, dissolved phosphorus, total ammonia plus organic nitrogen, total phosphorus, PCBs and gross alpha. (Although total ammonia plus organic nitrogen is the same as TKN, so it is unclear what exactly is required.) To perform all 15 tests as routine discharge monitoring is excessive and expensive, approximately $3000 per sample. *Please identify the critical analytes per sample: in other words if a sample cannot be tested for a specific analyte in accordance with the methods specified at 40 CFR §136 due to holding time constraints for example, WHICH of the analytes define whether a sample counts toward the minimum samples required? Is E. coli the minimum mandatory analysis? If so, please stipulate this clearly to reduce unnecessary expenditures that will not contribute to meeting the requirements.*	Part III.A.1 lists the specific parameters to sample for during wet weather discharges. Part.III.A.2 lists the specific parameters to sample for during dry weather discharges. See also specific parameters under Part I.A.4 Industrial and High Risk Runoff Monitoring. The requirements of the permit in Part III.A were specifically designed to protect the water quality of the receiving waters and to provide a reasonable assurance that permitted activity will be conducted in a manner which will not violate applicable Water Quality Management Plans and Water Quality Standards. See response to comments No 155, 170, and 189.
193	Bernalillo County	cont.	We recommend that the test list be reduced to those parameters of concern PER stream or discharge point, not required across the entire watershed for each sample event. DO, conductivity, and temperature are not included in the test list, but are referenced in field screening along with pH. Please clarify if and when these are required. (Part III, A, 1. F)	
194	Bernalillo County		*Please clarify specifically* . Is EPA Method 1668 (PCBs) to be used in discharge water? And the Arochlor test (EPA Method 8082) or USGS test method (8093) to be used only for sediment sampling as part of a screening program.	EPA Method 1668 should be utilized when PCB water column monitoring (e.g., discharge water) is conducted to provide a detection level sufficient to provide meaningful information relative to the PCB water quality standard. For purposes of sediment sampling as part of a screening program to identify area(s) where PCB control/clean-up efforts may need to be focused, either the Arochlor test (EPA Method 8082) or USGS test method (8093) may be utilized, but must use EPA Method 1668 (latest revision) for confirmation and determination of specific PCB levels at that location. EPA has clarified the language in Part III.A.5.b as to use EPA Method 1668 (latest revision) for confirmation and determination of specific PCB levels.

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195	Pueblo of Sandia	III	Wet Weather Monitoring: (ii) The Pueblo requests the EPA clarify and give more detail on the sampling of PCBs and gross alpha for this option. Can an individual use a screening type of analysis for these parameters? Also can an individual use or submit data collected secondarily from another EPA grant whose primary purpose was not NPDES permit compliance monitoring? The Pueblo feels that due to the conditions in the arid southwest and the infrequency of wet weather that a statement concerning climate change or weather conditions be added to adjust the minimum of 7 events per location during the permit term.	Per Part III.A.5.b., analysis and collection of samples shall be done in accordance with the methods specified at 40 CFR §136. Where an approved 40 CFR §136 method does not exist, any available method may be used unless a particular method or criteria for method selection (such as sensitivity) has been specified in the permit. Part IIIA.5.b also references the EPA method used for PCBs. Regarding the methodology for gross alpha sampling, EPA has revised the language in PartIII.A.5.b to indicate the EPA method utilized when gross alpha water column monitoring is conducted. The permittees should be able to acquired data from federal (e.g., using already data collected from another EPA grant), state, or local studies NMED, local river authorities, partnerships, and/or other local efforts as appropriate to meet the TMDL and Endangered Species requirements (see specific language in Part I.C.2.b.(i).(f).B and Part I.C.3.b.(i)).
195	Pueblo of Sandia	cont.		Data collected by others may be used to satisfy part, or all, of the permit monitoring requirements in Part III.A provided the data collection by that party meets the requirements established in Part III.A.1 throughout Part III.A.5.
196	City of Albuquerque	III.A.5.b	We appreciate the EPA allowing the use of Method 8082 for soils screening.	Noted in the administrative record.
197	Amigos Bravos	I.C.1.d	*Phase I Dissolved Oxygen Program.* This program is described as a "continuation" of efforts under the current (2012) permit. Despite the existence of this prior program and the resources available to both the COA and AMAFCA, the proposed MS4 watershed-based permit gives the two entities a full year to "revise" the May 2012 Strategy. Why do these permittees get such a long period of time to revise an existing strategy when the general requirement in the permit is for a permittee to have 60 days to submit a report on existing and planned controls for any discharge that causes or contributes to an exceedance? The COA/AMAFCA Phase 1 DO Program should be revised within 60 days.	Use of an iterative approach to improve the effectiveness of SWMPs is integral to the MS4 permitting program. DO requirements in previous permits largely focuses on modifications to the North Diversion Channel embayment and DO monitoring. For this term, the permittees will be building on information learned as a result of those efforts and requirements generated as a result of consultation with the U.S. Fish and Wildlife Service. The proposed permit includes provisions to revise the City and AMAFCA Strategy to further assess and implement source controls to address dissolved oxygen in the area as data submitted in 2013 indicates low level of dissolved oxygen at the North Diversion Channel and downstream locations. The timeframe specified in the permit reflect the time needed to coordinate with the US Fish Service and the public according to 50 CFR 402 and 40 CFR 122.49(c)) and 40 CFR 122.34(b)(2) (See Part I.D.5.h Involvement/Participation Program.

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198	Amigos Bravos	I.C.1.f	*"Temperature Requirements"* EPA is inviting comment on its Temperature program because dealing with temperature in the arid and hot southwest is difficult to do. Standard BMPs, such as planting more trees in the Bosque (forest) along the river, don't apply when we have the Bosque here already. EPA also seems to be asking whether it should go beyond just the COA and AMAFCA contributions to this problem. Thinking a little outside the box and definitely outside the MS4 permit: The Bosque is in trouble. With the implementation of flood control measures upstream (the Cochiti dam), the river has been aggrading and is now well below the banks, putting existing cottonwood stands in jeopardy. Furthermore, there are many restoration experts who believe that it is in the best interests of species diversity to allow (and encourage) the Bosque to revert in places back to the grassland and mixed vegetation landscape that prevailed prior to flood control.	EPA requested specific comments from the public as the temperature data submitted to EPA by the City of Albuquerque (see May 2012 City of Albuquerque Temperature Strategy) shows one exceedance of the NM water quality standard of 32.2 ˚C at the South Diversion Channel. The strategy shows data from 1982 to 2012 for all five outfalls. EPA is continuing with the existing temperature strategy in the permit. It should be noted that Part III.A.1.a, Part III.A.1.b, and Part III.A.2.b have been modified to include temperature as one of the parameters to sample for.
198	Amigos Bravos	cont.	This would mean large open areas rather than a continuous Bosque. In other words, some of the existing forest vegetation along the river would disappear. However, Temperature is mostly a flow issue. It is hard to do anything about that, although the current 3-year drought has revived discussions on how to manage upstream reservoirs (both flood control and storage) and their releases in ways that would provide a better hydrograph for the river – something more like historic flows and which would – in conjunction with significant restoration efforts, provide the means to reestablish a functional linkage between the river and the cottonwood/willow Bosque as well as support efforts to reintroduce the original grassland/mixed vegetation ecosystems. More flow would help with the temperature issue. Making the river narrower and deeper would also increase flow speed and depth, both of which would work to lower temperature. Of course, disturbing the river and the area between the levees means treading on Endangered Species Act (ESA) territory.	
198	Amigos Bravos	cont.	Increasing flow by narrowing and deepening the river would also lead to less evaporative losses … but increased flow would also lead to less recharge. It's complicated. All of these efforts to increase flow involve activities, entities, and issues well beyond the Middle Rio Grande itself and the potential permittees. Perhaps there should be a study (yes, another study on the Middle Rio Grande!) to investigate the impacts of making the river narrower and deeper.	

#	Commenter	Section	Comment	Response
199	NM Home Builders Assn.	I.C.1	d. Phase I Dissolved Oxygen Program and f. Temperature. Issue: These two issues appear to be of concern due to the topography of one specific outfall in Albuquerque: the North Diversion Channel Embayment where stormwater flows through a concrete channel and is then allowed to disperse into shallow sandbars to wait for the next storm flow to push it into the Rio Grande. While resting in the shallows the water is stagnate, and its oxygen content dissipates. The water presumably also heats to a higher temperature than what is desirable in the river. During the "monsoon" season the stagnate water is flushed into the river by water that has come off of asphalt and concrete that has been super-heated by high-altitude sunlight. There are only three Best Management Practices (BMPs) that would remedy temperature impairments, and only one of those BMPs would affect the stagnation of the water: 1.) Trees that might provide shade to the water would lessen the intense sunlight, but they would need to be able to survive	The State of New Mexico has listed segments of the Rio Grande flowing through Albuquerque as impaired for Dissolved Oxygen. While attention has focused lately on the North Diversion Channel, other discharges to the river could be contributing to the impairment. Under Part I.C.3, the permit requires the permittees to identify (or continue identifying if previously covered under permit NMS000101) structural controls, natural or man-made topographical and geographical formations, MS4 operations, or oxygen demanding pollutants contributing to reduced dissolved oxygen in the receiving waters of the Rio Grande. More specifically the permit requires AMAFCA and the City of Albuquerque to continue addressing oxygen levels in the North Diversion Channel (Note: this was a requirement in the 2012 Phase I permit). Consistent with Part I.D.5.h Public Involvement and Participation of the permit (40 CFR 122.34(b)(2)), EPA encourages the NM Home Builders Association and other organizations to work with the permittees as they develop their programs.
199	NM Home Builders Assn.	cont.	without water for the nine months of the year when no rain falls, and be able to withstand severe flooding for the anticipated three-month "monsoon" season. News reports this week express concern over the death of the cottonwood trees adjacent to the Rio Grande that have died from lack of water in the current extreme drought; 2.) Vegetated buffers adjacent to the Embayment to disperse and infiltrate the stagnate water, but they would not only need to survive the same harsh conditions as trees, but they would potentially require irrigation in the dry months; 3.) Changing the depth-to-width-ratio of the Embayment to make it deeper so stormwater does not have an opportunity to allow the oxygen to dissipate or the temperature to rise prior to reaching the Rio Grande. This dredging work would be fraught with other environmental issues such as habitat destruction and further sedimentation of the Rio Grande channel.	
199	NM Home Builders Assn.	cont.	Additionally, this issue appears to be an anomaly found in only one location in the watershed, yet it is included as if it were to apply to every permittee signing on to the MRG MS4 Watershed Permit. Requested Action: Instead of mandating the MRG MS4 Watershed permittees comply with an unattainable goal, the EPA should fund a study to develop some BMPs that would work in arable climates where stormwater comes in great surges for a short period of time, and provide an exemption for this section of the Rio Grande until a workable BMP can be discovered.	

#	Commenter	Section	Comment	Response
200	City of Albuquerque	I.C.1.d	Phase I Dissolved Oxygen Program. The COA will continue to share in the cost of DO and temperature monitoring in the embayment and river with AMAFCA. However, the NDC Embayment is an AMAFCA-maintained facility within an easement on Sandia Pueblo Land. As such, the COA has no jurisdictional authority over the facility.	EPA (in consultation with FWS) has included ESA program elements to ensure actions required by this permit are not likely to jeopardize the continued existence of any currently listed as endangered or threatened species or adversely affect its critical habitat (see 50 CFR 402 and 40 CFR 122.49(c)).
200	City of Albuquerque	cont.	However, the NDC Embayment is an AMAFCA-maintained facility within an easement on Sandia Pueblo Land. As such, the COA has no jurisdictional authority over, or ownership interest in, the facility. Any remedial actions undertaken in the facility (i.e., structural BMPs) will be at the direction of AMAFCA and Sandia Pueblo. However, the COA will continue to act in a cooperative, collaborative and supportive role with both agencies to address the DO issue. (iv) The FWS and EPA should consult, not approve (GS).	
201	City of Albuquerque	I.C.1.f	"Temperature Requirements" (1) Historical temperature data clearly indicate that urban storm water is always far below the water quality standard (32° C) and therefore cannot cause exceedances in temperature in Rio Grande. Other nonanthropogenic factors are likely causing the impairment in the Middle Rio Grande reach. Temperature requirements in this new Watershed-Based Permit should be eliminated. (2) Storm water temperature data recorded at 5 outfall locations and submitted to EPA in June and September 2012 and in April 2013 demonstrate that storm water does not contribute to exceedance s of water quality standards in the Rio Grande. Therefore, all compliance items that have been promulgated under "Temperature Requirements" in the Albuquerque Metropolitan Area MS4 Permit No. NMS000101 and in this Draft Watershed Based Permit should be dropped. (3) Historical temperature data clearly indicate that urban storm water is always far below the maximum water quality standard (32°C) and therefore does not cause exceedances in temperature i	EPA will continue with the existing temperature strategy in the proposed permit to confirm the results of the 2012 strategy. As a condition of NMED 401 Certification, Part III.A.1.a, Part III.A.1.b, and Part III.A.2.b have been modified to include temperature as one of the parameters to sample for.
201	City of Albuquerque	cont.	temperature in Rio Grande. Other non-anthropogenic factors are likely causing the impairment in the Middle Rio Grande reach. Temperature requirements in this new Watershed-Based Permit should be eliminated.	
202	AMAFCA	I.C.1.d.iv	FWS does not approve said strategies; they only provide consultation. Please correct.	EPA has corrected Part I.C.1.d.(iv) as follows: Submit a revised strategy to FWS for consultation and EPA for approval within…..
203	AMAFCA	I.C.1.f	Requesting removal of temperature requirement from this permit. There are no sources of elevated temperature, except the sun and climate. Also, the Rio Grande typically does not have elevated temperatures.	See response to comment No 201.

#	Commenter	Section	Comment	Response
204	Amigos Bravos	I.A.5.e	*Discharges Compromising Water Quality* . This refers to "[d]ischarges that EPA, prior to authorization under this permit, determines will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard". Elsewhere in the draft permit, specific requirements are made of the City of Albuquerque (COA) and the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) regarding PCBs. What will EPA do about the known impacts of all four Bernalillo County stormwater outfalls, all of which the County itself identified as contributing PCBs to the Middle Rio Grande (reports of which Amigos Bravos sent to EPA Region 6 and which we are happy to provide again if needed)?	The ubiquitous nature of stormwater runoff does not allow for the cessation of municipal stormwater discharges regardless of EPA's action on a permit. Instead, the program uses the National Pollutant Discharge Elimination System (NPDES) permitting mechanism to require the implementation of controls designed to prevent harmful pollutants from being washed by stormwater runoff into local water bodies. The Bernalillo County stormwater program is also required to reduce the discharge of pollutants to the "maximum extent practicable" and to satisfy the water quality goals of the Clean Water Act. Specifically, implementation of the SWMP and monitoring requirements of the permit will reduce pollutants in the County discharges, help guide adaptive management changes by the permittees, and provide information necessary to require more stringent permit requirements through the permit modification process if necessary. PCB studies continue in the Rio Grande, it is expected the results of these studies could drive changes to the SWMPs. EPA reviewed Part I.C.1.e to require Bernalillo County to develop a strategy to address PCBs in the County's outfalls and drainage areas discharging directly to the Rio Grande.
205	Amigos Bravos	I.C.1.e	*PCBs in San Jose Drain and North Diversion Channel.* This section specifies that the COA and AMAFCA continue "updating/revising and implementing a strategy to identify and eliminate controllable sources" of PCBs from the San Jose Drain (which runs through the South Valley Superfund site and should have extensive controls in place already) and the North Diversion Channel (NDC). The NDC drains the largest portion of the COA, east of I-25 and north of Central. The Bernalillo County PCB study concluded that it is not possible to identify specific "controllable" sources in the watershed because PCBs are so ubiquitous. Rather, it is necessary to implement site-specific BMPs at all discharge locations. As noted earlier, the EPA knows about the Bernalillo County PCB study identifying the County as a source of PCBs from all 4 of its outfalls and yet does not include the County in this requirement; why not?	EPA reviewed Part I.C.1.e to require Bernalillo County to develop a strategy to address PCBs in the County's outfalls and drainage areas discharging directly to the Rio Grande.

#	Commenter	Section	Comment	Response
206	Amigos Bravos	App. H	The appendix contains a footnote regarding PCB monitoring methodology: "EPA Method 1668 should be utilized when PCB water column monitoring is conducted to determine compliance with permit requirements. Either the Arochlor test (EPA Method 8082) or USGS test method (8093) may be utilized for purposes of sediment sampling as part of a screening program". We are aware that this was a topic of long discussion at the last stakeholder meeting and to a lesser extent at the last public meeting. EPA was asked whether, and seemed to agree that, it is possible for a permittee to use the less expensive – but less sensitive – aroclor method to establish if there is a problem ("screening"), but the permittee must use the much more sensitive congener method to meet permit requirements. We appreciate that the EPA wants to find ways to make monitoring less burdensome to resource-stressed permittees. However, PCBs are a listed impairment in the Middle Rio Grande and the impairment appears to be increasing.	As indicated in Part III.A.5.b, EPA Method 1668 shall be utilized when PCB water column monitoring is conducted to determine compliance with permit requirements. For purposes of sediment sampling during dry weather as part of a screening program to identify area(s) where PCB control/clean-up efforts may need to be focused, either the Arochlor test (EPA Method 8082) or USGS test method (8093) may be utilized, but must use EPA Method 1668 (latest revision) for confirmation and determination of specific PCB levels. For clarity, the flowing underlined text has been added to Part III.A.5.b: *For purposes of sediment sampling in dry weather as part of a screening program to identify area(s) where PCB control/clean-up efforts may need to be focused, either the Arochlor test (EPA Method 8082) or USGS test method (8093) may be utilized, but must use EPA Method 1668 (latest revision) for confirmation and determination of specific PCB levels at that location*.
206	Amigos Bravos	cont.	We had this same argument with Los Alamos National Laboratory (and EPA) regarding LANL's wish to continue using the aroclor method. We argued that doing so missed known contamination entering the Rio Grande from canyons running off Pajarito Plateau. We were right. This has also been an issue of contention for existing permits on the Middle Rio Grande, as documented in the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) 2011-12 Storm Water Management Program (SWMP). The SWMP allows AMAFCA to use either method, but contains the following footnote: "5By letter dated April 20, 2010, NMED notified EPA that pursuant to Section 401 of the Clean Water Act, the use of EPA Method 1668: Chlorinated Biphenyl Congeners in Water, Soil, Sediment and Tissue by HRGC/HRMS for PCB monitoring under this permit will be a condition of certification of the permit. Permittee PCB monitoring detection levels shall be consistent with those used in the NMED/DOE Oversight Bureau PCB study".	
206	Amigos Bravos	cont.	We believe that the EPA must insist on the use of the congener method first and only allow the aroclor method for "screening" after prior and repeated monitoring has indicated that there is no or very limited PCB contamination from an outfall. Furthermore, to the extent permittees will be screening for PCB sources upstream, that monitoring should also be done using the congener method because we know that the aroclor method will miss sources.	

#	Commenter	Section	Comment	Response
207	Department of Defense	App. H	Appendix H specifically identifies PCB as a pollutant, but does not list a MCL for compliance. As such, permittees can be subjected to arbitrary MCL enforcement without the formal establishment of a recognized MCL. As previously discussed in item 3 above, this listing subjects the permittee to unlimited financial exposure, as well as potentially being required to conduct watershed pollutant studies. Additionally, the permit has not provided a process by which permittees can overcome the claim of a PCB discharge, when the discharge occurred from separate and distinct permittees and/or the alleged discharge is in actuality a residual contamination found in the watershed soils that surfaces with each watershed event.	The Minimum Quantification Levels (MQL) of 0.2 ug/L should be used for reporting PCBs for compliance reporting. Appendix H has been revised to include the MQL of 0.2 ug/L for PCBs.
208	City of Albuquerque	I.C.1.e	PCBs in San Jose Drain and North Diversion Channel. The majority, if not all, of the PCBs in the San Jose Drain are thought to be from a single point source (the abandoned and razed GE plant), a former Super Fund site. The COA and AMAFCA have demonstrated via reports submitted in 2011, 2012, and 2013 that PCB contamination found in the San Jose drain does not reach the Rio Grande. PCB sources in the NDC are thought to be ubiquitous in the watershed, and therefore will be exceedingly difficult if not impossible to mitigate. The COA and AMAFCA will continue to screen sub-basins within the NDC for potential isolated PCB hot spots through our cooperative monitoring program. (iv) PCB sources in the NDC are thought to be ubiquitous in the watershed, and therefore there aren't any "controllable sources." However, the COA and AMAFCA will continue to screen sub-basins within the NDC for potential isolated PCB hot spots through our cooperative monitoring program.	Noted in the administrative record.
208	City of Albuquerque	cont.	The COA and AMAFCA have demonstrated via reports submitted in 2011, 2012, and 2013 that PCB contamination found in the San Jose drain does not reach the Rio Grande. Soil screening has pinpointed the General Electric plant as a potential source. However, PCBs from this source are sequestered in soils along the unlined channel and does not reach waters of the U.S.	
209	AMAFCA	I.C.1.e	EPA can't continue to require elements from an expired/terminated permit if those elements are not specifically identified in this permit.	Specific requirements to address PCBs have included in the proposed permit (See Part I.C.1.e).
210	AMAFCA	I.C.1.e.i	Controllable sources should be added to the definitions and should be defined as "sources, private or public, which fall under the jurisdiction of the MS4".	EPA has added the definition of "Controllable Sources" in Part VII.

#	Commenter	Section	Comment	Response
211	AMAFCA	I.C.1.e.(iv)	What is this in reference to, i.e., what extends beyond the 5 year permit term? Please delete.	According to the Administrative Procedures Act (5 USC §551 et seq. (1946)), if the permit is not reissued or replaced prior to the expiration date, it will be administratively continued. Any activities undertaken beyond the 5 year permit term (e.g, monitoring) should be continued to eliminate controllable sources of PCBs in the drainages areas.
212	Amigos Bravos	I.A.5.f	*Discharges Inconsistent with a TMDL*. There is troubling language in this section regarding permittee requirements "[w]here an EPA-approved or established TMDL has not specified a wasteload allocation (WLA) applicable to municipal storm water discharges, but has not specifically excluded these discharges". First, where there is a documented impairment and a Total Maximum Daily Load (TMDL), why would a discharge not be "specifically excluded" in the absence of a mechanism (the WLA) to limit them? Second, we understand that the EPA is proposing an alternative method to limit pollutants of concern – and specifically bacteria, nutrients, and dissolved oxygen (DO) in the subsequent sub-sections – in referring permittees to "the requirements in Part I.C.2.b.(ii) of this general permit". However, the referenced material simply calls for the inclusion of Best Management Practices (BMPs) and measurable goals. In other words, the alternative in the absence of a WLA is to allow contamination that will "contribute" to a violation, in direct conflict with Clean Water Act (CWA) requirements (40 CFR 122.4(i)).	The proposed permit conditions requiring controls to address discharges directly to water quality impaired water bodies without an approved in Part I.C.2.b.(ii) are intended to reduce the pollutants in discharges from municipal storm water discharges. It should be noted that in August 1996 EPA issued the Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits policy which addressed the use of Best Management Practices (BMPs) in storm water permits to provide for attainment of water quality standards. The memorandum explains the rationale being implemented for the draft permit.
212	Amigos Bravos	cont.	What is the point of a TMDL then if additional loading is allowed above and beyond the loads outlined in the TMDL? To rectify this problem, the EPA could amend the TMDL to include a WLA for the source(s) by reducing the WLAs for other point sources or completely redo the TMDL.	
213	Amigos Bravos	I.C.2.b.ii	*Discharges Directly to Water Quality Impaired Water Bodies without an Approved TMDL* This section deals specifically with bacteria, nutrients, and DO, but these either already have TMDLs or will well within the life of the permit. The existing or pending TMDLs for bacteria, nutrients, and DO are as follows: E.coli for the mainstem reaches (2009); nutrient/Eutrophication for the Tijeras Arroyo (2009); and DO on the mainstem (2016). Shouldn't these either be included in the "with an approved TMDL" sections or – for DO – treated as if there were a TMDL, since the compliance schedule for the proposed permit will push implementation up against the 2016 date for the MRG DO TMDL?	The only TMDL in the Middle Rio Grande watershed (area defined in Appendix A of the permit) is the TMDL for bacteria which was approved by the New Mexico Water Quality Control Commission on April 13, 2010, and by EPA on June 30, 2010. Where an EPA-established or approved TMDL with specified wasteload allocation(s) applicable to municipal storm water discharges is issued after permit issuance, the permittee(s) should modify their SWMP to meet the requirements in Part I.C.2.b.(i). For impaired segments, permittees should follow requirements in Part I.C.2.b.(ii).

#	Commenter	Section	Comment	Response
214	Amigos Bravos	I.C.2.b.i.f	Monitoring or Assessment of Progress Under this section, permittees are allowed to "use either of the following methods either individually or in conjunction": A. Evaluating Program Implementation Measures; B. Assessing Improvements in Water Quality. Implementing BMPs and other controls is not the same as actually achieving improvement in water quality. Permittees should be required to do both A & B. This will provide earlier warning that BMPs are not working (cf I.C.2.b(i)(g), which allows three years to observe progress toward goals) and it will help EPA, NMED, and the permittee by providing data on which BMPs are more effective in reaching water quality goals.	EPA agrees. The words "either of" have been deleted in the last paragraph of Part I.C.2.b.(i).(f) and the word "or" has been replaced to "and" in the last paragraph of Part I.C.2.(i).(f).A
215	NM Home Builders Assn.	I.C.2.b.i	(b) and (d) Issue: The stated purpose of this MS4 Watershed Permit is to be flexible so each Permittee may modify items to best reflect each political subdivision or pueblo. The Measurable Goals in (b) and Annual Report in (d) contain some prescriptive requirements that border on micro-managing. They read like an instructor's list of items they would like to see in a student's term paper. Stating each measurable goal "shall include a graphic representation of pollutant trends, along with computations of annual percent reductions achieved from the baseline loads and comparisons with the target loads" is an example of extreme micro-management. One would hope an MS4 would not be fined for failing to comply with every single one of these prescriptive report requirements. Requested Action: Return to the concept of General Permit by removing many of the "shall" and "must" language in the written documentation.	Comment noted. The permit requirements mentioned are needed to assess if the stormwater programs developed and implemented are effective. They also provide a uniform framework for the permittees to evaluate and present the data findings
216	City of Albuquerque	I.A.5.f	Discharges Inconsistent with a TMDL. An exceedance of the TMDL should be a permit violation not a lack of coverage (GS).	Federal regulations at 40 CFR §122.4(d) provide that no permit may be issued if the "conditions cannot ensure compliance with the applicable water quality requirements." While CWA §402(p)(3)(B) does not specifically mandate compliance with CWA §301 water quality requirements, CWA §402(p)(3)(B)(iii) does provide the authority to include conditions the Administrator or State/Tribe determines appropriate for control of pollutants. Given the overall goal of water quality protection in the CWA and the express purpose of Phase II of the NPDES storm water program to regulate storm water discharges to protect water quality, discharges inconsistent with a TMDL are not eligible for coverage under this general permit.

#	Commenter	Section	Comment	Response
217	City of Albuquerque	I.C.2.b.i	Discharges to Water Quality Impaired Water Bodies with an Approved TMDL. The COA voices it's objection to the use of E-coli as an indicator of pathogens. E-coli bacteria has been found at concentrations exceeding primary contact standards in pristine areas upstream of the urban watershed (e.g. in streams at the Sandia Crest). This ubiquitous class of bacteria is an indicator of mammalian activity rather than a pollutant associated with urban runoff.	See response to Comment No 155.
218	City of Albuquerque	I.C.2.b.i.d	Annual Report. Note that the State of NM has experienced drought conditions the past 3 years. The Middle Rio Grande, in particular, has been declared a region of Extreme Drought, having received less than an inch of rainfall during the past 8 months (October 2012-June 2013). Comparisons with target loads in these conditions is not comparable to non-drought conditions and a reflection of climate induced conditions rather than a measure of BMP effectiveness.	Noted in the administrative record. Evaluation of data (e.g., non-drought conditions vrs. drought conditions) should be included in the Annual Report.
219	City of Albuquerque	I.C.2.b.i.f.B	Assessing Improvements in Water Quality. Note comment made on the previous page regarding drought conditions. Event Mean Concentrations, also typically used as an indicator of water quality, may also be skewed following a first flush event after a lengthy period of time (in this case, longer than 8 months) with no rainfall events.	Noted in the administrative record. See response to Comment No 218.
220	City of Albuquerque	I.C.2.b.i.f	Observing no Progress Towards the Measurable Goal. An exception to assessing progress in 3 years should be made if drought conditions are experienced. During drought conditions, it is difficult to ascertain BMP effectiveness.	Noted in the administrative record.
221	City of Albuquerque	I.C.2.b.ii.b	Impairment for Bacteria. Storm events in the region tend to be localized, of short duration and high intensity. In addition, these "monsoonal" events typically occur during the late afternoon through evening hours. Because laboratories in the area are not open in the evenings or on weekends, samples must be collected between the hours of 3 am and 4 pm on Mondays through Thursdays in order to meet 6 hour hold time requirements for bacterial analysis. Thus, there are relatively few storm events that can be sampled and yield valid bacterial results.	Noted in the administrative record.

#	Commenter	Section	Comment	Response
222	City of Albuquerque	I.C.2.b.ii.b	Impairment for Nutrients. Does not apply to the Middle Rio Grande as it is not listed as an impairment.	We note that Las Huertas and Tijeras arroyos (receiving waters), tributaries of the MRG, are listed for nutrients in some, but not all, segments. See 2012-2014 State of New Mexico Clean Water Act §303(d) List.
223	AMAFCA	I.C.2.b.i.c.C	A provision should be included which specifies that no permittee is liable for any exceedances based on a WLA that has been individually assigned to any other permittee.	The requirements in Part IV.A Duty to Comply are applicable to the provisions in Part I.C.2.b.(i).(c).C. The permittee(s) must comply with all conditions of this permit insofar as those conditions are applicable to each permittee. If a WLA has been individually assigned to a permittee, as specified in Part I.C.2.b.(i).(c).C, the permittee is only responsible for progress in meeting its WLA measurable goal.
224	AMAFCA	I.C.2.b.i.e	Sections A-D do not apply to AMAFCA, because AMAFCA doesn't have any said facilities identified in A-D.	Noted in the administrative record.
225	Amigos Bravos	I.B.1.d	*End of Administrative Continued Coverage under Previous Permit* . When coverage under NMS000101 or NMR040000 ends, what happens to existing Administrative Order (AO) requirements for permittees in the region? Do these, if there are any, carry over when the new permit goes into effect?	Under the Administrative Order (AO) issued to NMS000101, once conditions of the AO are met and all enforcement negotiations are complete, the order will be closed. If the permit has expired, and conditions of the AO have not been met, it is likely the order will be re-issued until all conditions are met. Under the AO issued to municipalities under NMR040000, once a permit is issued and becomes effective they will have the opportunity to apply for coverage under it. Once that happens and they have met the requirements of their orders, their orders will be closed.
226	City of Albuquerque	I.B.1.d	End of Administrative Continued Coverage under Previous Permit. The COA assumes that this statement ["...coverage under those permits ends..."] implies that all old permit requirements are superceded by new permit requirements and deadlines unless otherwise specified. Is this the case?	Yes, the existing Phase I MS4 permit (NMS000101) will have early termination when the proposed watershed based MS4 permit becomes effective. Region 6 believes that for the last five-year term of the MS4 permits (NMS000101, NMR040000, and NMR04000I) in the area, most existing MS4s opted for measurable goals which consist of a given level of effort in implementing a particular BMP. During the program implementation of the proposed permit, existing MS4s will update/revise as necessary, their existing measurable goals to comply with the requirements of the proposed permit.

#	Commenter	Section	Comment	Response
227	Amigos Bravos	I.D.5.d.vii	*Program Flexibility Elements* (d. Industrial and High Risk Runoff (Applicable only to Class A permittees). This flexibility element is meant to simplify and make less burdensome the monitoring requirement for facilities within the jurisdiction of a Class A permittee by allowing such facilities with multiple outfalls to show that their outfalls are "substantially identical" with "substantially identical effluents". This seems reasonable. However, if the outfalls are contributing effluent containing contaminants of concern or other regulated substances, then BMPs need to be put in place. If the BMPs are different – for process reasons, for example, or the nature of the location receiving the outfall – then the outfalls are no longer identical and the nature of their effluents may well have changed as well. EPA needs to be clear – and conservative – in accepting claims of "substantially identical".	Noted in the administrative record. Identical outfall evaluation will be reviewed on site specific bases.
228	AMAFCA	I.D.5.d	This only applies to City of Albuquerque. Please correct.	See response to comment No 143.
229	AMAFCA	I.D.5.d.i	It is unclear from this whether a permittee may certify that they do not have jurisdiction over any such facilities, or whether any such facilities exist which discharge into their facilities. In addition, because AMAFCA is strictly a flood control authority, the legal authority and jurisdiction granted to it by the State is limited. As a result, AMAFCA is unable to develop, implement, and enforce any ordinances or regulatory mechanisms required by this section.	See response to comment No 143.
230	AMAFCA	I.D.5.d.ii.a	It is unclear from this whether a permittee may certify that they do not have jurisdiction over any such facilities, or whether any such facilities exist which discharge into their facilities. In addition, AMAFCA does not own or operate any industrial or high risk runoff locations and is without jurisdiction over private entities. As such, AMAFCA is without legal authority to implement the requirements of this section.	See response to comment No 143.
231	AMAFCA	III.A.4	Industrial and High Risk Runoff Monitoring. [Class A] This only applies to City of Albuquerque. Please correct.	See response to comment No 143.
232	AMAFCA	III.A.4	Industrial and High Risk Runoff Monitoring. It is unclear from this whether a permittee may certify that they do not have jurisdiction over any such facilities, or whether any such facilities exist which discharge into their facilities. In addition, AMAFCA does not own or operate any industrial or high risk runoff locations and is without jurisdiction over private entities. However, to the extent applicable to its activities, AMAFCA will conduct monitoring in its facilities in compliance with the requirements of this section.	See response to comment No 143.

#	Commenter	Section	Comment	Response
233	Amigos Bravos	I.D.5.e.ix	*Program Flexibility Elements* (b. Illicit Discharges and Improper Disposal). These elements are meant to ease the monitoring burden on permittees. However, E315the flexibility seems likely to result in weakening the detection of illicit discharges. First, permittees would be allowed to create "assessment areas" (ix.a) that apparently would aggregate multiple upstream sources at a single downstream monitoring site. We know from experience at Los Alamos National Laboratory that this does not lead to clarity in detecting and remedying problems. If a discharge is detected downstream, it can prove difficult to identify the source, especially if the response time is extended. The flexibility elements also allow (ix.b) high-priority areas to be downgraded after a single "screening" event in the absence of more than five "citizen complaints" in a 12-month period. This seems to be setting the bar very low. We all know that the North Diversion Channel is a major source of DO impairment, for example, but this was not detected by the very limited sampling done by the NMED; it required continuous monitoring	The objective of the illicit discharge detection and elimination minimum control measure is to have regulated small MS4 operators gain a thorough awareness of their systems. This awareness allows them to determine the types and sources of illicit discharges entering their system; and establish the legal, technical, and educational means needed to eliminate these discharges. Permittees could meet these objectives in a variety of ways depending on their individual needs and abilities, but some general guidance to meet the requirements in Part I.D.5.e.(i) through I.D.5.e.(viii) was provided in Part I.D.5.e.(ix). Evaluation of the Illicit Discharge Detection and Elimination Program Element will be carried out on site specific bases. EPA encourages Los Amigos Bravos and other organizations to participate in the development and implementation of these program elements. See Part I.D.5.h Public Involvement and Participation Program.
233	Amigos Bravos	cont.	over a long period to pick up the pulses affecting the MRG and trace them back to the NDC. Similarly, identifying the NDC as the source of PCB contamination required a specific study by the NMED DOE Oversight Bureau targeting that outfall. It seems more appropriate for high priority areas to require more concerted screening (quarterly perhaps) and far fewer citizen complaints (2 per year, say) before they could be downgraded. Similarly to element ix.a, ix.d allows for cooperative programs that will create large monitoring assessment areas that capture multiple sources, in this case multiple sources across jurisdictional lines. This is an invitation for conflict when illicit discharges are detected and it is not clear which jurisdiction contains the source, absent further monitoring. Such additional monitoring will inevitably be resisted on the unfounded claim that the illicit discharge does not come from "my" jurisdiction. Absent a clear statement from EPA on how failure to comply under a cooperative program will be dealt	

#	Commenter	Section	Comment	Response
233	Amigos Bravos	cont.	with (discussed above), this will not lead to an effective or efficient use of scarce resources to manage stormwater. Finally, while we are fans of citizen science and community-based monitoring, the flexibility element ix.e shifts detection of illicit discharges in non-high priority areas (and we have already commented on the apparent ease of shifting high priority areas down) completely on the shoulders of citizens to identify and report illicit discharges (aside from the requirement to screen the entire jurisdiction once every five years). EPA needs to require permittees to do adequate monitoring, especially in the early years of the permit, in order to capture as many sources of illicit discharges and dumping as possible, only scaling back requirements once a complete and clear overview of the entire jurisdiction has been established. Reliance on citizen monitoring should only become the sole source of monitoring (for low-impact areas) after "low-impact" has been thoroughly established by prior "adequate" monitoring and only after an intensive and extensive public education and outreach program has	
233	Amigos Bravos	cont.	been implemented and there is strong evidence – based on the number and accuracy of citizen reports – that citizens are sufficiently knowledgeable and motivated to carry out this task.	
234	City of Albuquerque	I.C.2.b.i.e.C	Illicit Discharges and Dumping. The COA continues to search for sanitary sewer cross connects and other illicit discharges into the storm sewer system. When detected, the COA notifies the Water Utility Authority (WUA) and the homeowner of the illegal connection and works with all entities to correct the plumbing deficiency in a timely manner.	Noted in the administrative record.
235	City of Albuquerque	I.D.5.e.iv	The Environmental Health Department (EHD) of the COA inspects grease traps associated with fats, oils, and greases. EHD staff also track records for proper disposal of these substances by certified waste haulers. The COA has expanded the Household Hazardous Waste (HHW) Program, operated by EHD, to include an additional drop off day. Funds to increase the expansion were provided by Storm Drainage.	Noted in the administrative record.

#	Commenter	Section	Comment	Response
236	Amigos Bravos	I.D.5.b.xii	*Program Flexibility Elements* (b. Post-Construction Stormwater Management in New Development and Redevelopment). This section allows permittees to choose "appropriate BMPs" by participating in "locally-based watershed planning efforts, which attempt to involve a diverse group of stakeholders including interested citizens" [emphasis added]. This is a "Program Flexibility Element" and as such ought to be constructed in such a way that it doesn't allow the permittee to skate past meaningful stakeholder processes and real citizen participation in favor of a "stakeholder" process (National Association of Industrial and Office Properties, Home Builders Association, Association of General Contractors, etc) that favors the interests of sectors that are a significant source of stormwater runoff and contamination. In other words, the "locally-based" planning process must involve "a diverse group of stakeholders including interested citizens".	Participation of a diverse group of stakeholders and interested citizens can be included in the permittee's Public Involvement and Participation Program. See Part I.D.5.h Public Involvement and Participation Program.
237	Amigos Bravos	I.D.5.h.i	*Public Involvement and Participation* – "Public Participation Requirement" This section refers back to Part I.A.3.a(i)(a), which deals with the Public Notice requirement for inclusion under this proposed permit. Unfortunately, there is no subsection (i)(a) under I.A.3.a, which states simply: "Public Participation: Prior [sic] submitting the Notice of Intent (NOI), the operator of the MS4 must follow the local notice and comment procedures at Part I.D.5.h.(i)". Nevertheless, we strongly support the EPA's language in I.D.5.h(i) that a permittee, "must consider all public comments received during the public notice period and modify the NOI, or include a schedule to modify the SWMP, as necessary, or as required by the Director modify the NOI or/and SWMP in response to such comments. The Permittees must include in the NOI any unresolved public comments and the MS4's response to these comments. Responses provided by the MS4 will be considered as part of EPA's decision-making process".	Through the public notice process referenced in Part I.D.5.h.(i) and Part III.B, the public will have the opportunity to comment on the development and implementation of local storm water management programs, including comment on proposed NOIs. The public participation process is through the life of the permit as EPA requires the permittee to submit an Annual Report which includes a summary of any issues raised by the public on the draft Annual Report, along with permittee's responses to the public comments. Interested members of the public are encouraged to contact their local officials for information on how they can participate in the development and implementation of those local storm water management programs, including the development and implementation of the Public Participation Plan required in Part I.D.5.h.(ii).

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237	Amigos Bravos	cont.	This language makes the public participation aspects of the proposed permit much stronger, since permittees will be required to respond to all comments by either incorporating them into their permit or explaining why this was not done. However, this requirement that public comment be dealt with explicitly by the permittee is apparently limited to public comment prior to submitting the NOI for eligibility under the proposed MS4 permit. We believe that this requirement should carry through at every stage of the permittee's permit, wherever and whenever public comment is part of the process. This seems to be the EPA's intent, given language at Part III.B ANNUAL REPORT, that places the same requirement on the permittee to take and explicitly consider public comment. The EPA should include a dedicated "Public Participation Requirement" section that clarifies this requirement as applying to all points of public participation through the life of the permit.	
238	Pueblo of Sandia	III.B	Annual Report. The Pueblo requests that EPA re-write and clarify the public notice requirements for the draft annual report and how the permittee is to address any public comments and concerns. This public notification and comments on the annual draft report will take longer than thirty (30) days. The Pueblo also suggests that the EPA notify through their web page, announcement, or list of interested parties the final annual report once it is approved by EPA so that the public, interested stakeholders or other permittees can view it.	EPA agrees. The time frame specified in Part III.B was changed from thirty (30) days to forty five (45) days to allow more time to review and address the comments received from the public during the public notice. If an electronic copy of an Annual Report is received by EPA, EPA will post the Annual Reports at http://www.epa.gov/region6/water/npdes/sw/ms4/index.htm. You may also request an electronic copy from EPA by contacting Ms. Dorothy Brown at 214-665-8141 or brown.dorothy@epa.gov or via mail at the Address below, attention Dorothy Brown. U.S. EPA Region 6 Water Quality Protection Division (6WQ-NP) 1445 Ross Ave., Suite 1200 Dallas, TX 75202
239	City of Albuquerque	I.A.3.a	Public Participation. EPA should allow sufficient time for the addition of this process to the deadline for NOI submittal.	Based on the experience gained on the public participation on proposed NOIs during the expired general small MS4 permits (NMR040000 and NMR04000I), EPA believes the timelines specified in Table 1 of the permit to submit NOIs are appropriate to address the public participation process referenced in Parts I.A.3.a and I.D.5.h.(i).
240	AMAFCA		EPA must allow sufficient time for public review and comment incorporation. Is the intent that we don't submit the NOI until we've addressed public comments or just that we submit the NOI and all public comments without revising NOI. If the intent is to address public comments prior to submitting the NOI to the EPA, then 6 months is not sufficient.	See response to comment No 239.

#	Commenter	Section	Comment	Response
241	NMDOT	I.A.1	"Permit Area", : Are NMDOT facilities discharging storm water inside the Middle Rio Grande ("MRG") watershed boundary, but still outside the urbanized areas boundary, included in the Permit? *Answer*: All permittees other than NMDOT have clear, distinct, physical boundaries defining their areas of responsibility. The NMDOT roadways extend beyond the defined urban areas to the watershed boundary. *Question from NMDOT*: Is NMDOT responsible for complying with the Permit requirements in the areas between the urban boundaries and the watershed boundary? *Question from NMDOT:* Would EPA post a GIS file (shapefile) of the MRG watershed boundary on their web site for this permit similar to the census urbanized zones for Phase 1 Permit? *Question from NMDOT*: NMDOT owns a local commuter rail within the urbanized area. NMDOT believes only rail maintenance facilities would ever be subject to Permit requirements. Please advise if EPA feels differently.	NMDOT is responsible for complying with the permit requirements in the areas within the corporate boundary of the City of Albuquerque and within the Albuquerque urbanized area as determined by the 2000 and 2010 Decennial Census. Maps of Census 2010 urbanized areas are available at: http://cfpub.epa.gov/npdes/stormwater/urbanmaps.cfm. As applicable, all requirements of the permit apply to those areas. Additional guidance on specific requirements applicable to the local commuter rail will be provided during the NOI approval process.
242	AMAFCA	I.A.1.a	Many eligible MS4s listed in #2 are not located fully or partially within the corporate boundaries of the City of Albuquerque.	Noted in the administrative record.
243	NMDOT	III.B	"Annual Report", states that the Annual Report shall "… cover the previous year from January 1st to December 31st…"and Part III.B.3.b states that the Performance Assessment shall include "a summary of the data, including monitoring data that is accumulated throughout the monitoring year (October 1 to September 30)". *Question from NMDOT*: As these two "years" do not coincide, what is the recommended procedure for presenting the data in the Report? This also refers to III.D.1, which discusses the October to September reporting period. In Part III. B. 5. b., "Annual Report Responsibilities for Cooperative Programs", *Question from NMDOT*: Why is the date March 1st and not April 1st?	EPA has revised the deadlines in Part III.B, Part III.B.3.b, Part III.B.5.b and Part III.D.1 to reflect consistency in the deadlines to submit the Annual Report and the Monitoring Reporting period. Permittees with cooperative program elements should provide information related to content of the Annual Report they are individually responsible for four months before the Annual Reports deadline. Four months were chosen to accommodate public participation on the proposed Annual Report (e.g., revision of the Annual Report due to comments received during the public notice). See also response to comment No 244.

#	Commenter	Section	Comment	Response
244	City of Albuquerque	III.B	Annual Report. The City of Albuquerque operates on a Fiscal Year (FY) cycle of July 1 to June 30. Tracking of and budgeting for City operations (e.g. street sweeping, debris removal) occurs on this cycle. Reporting on the basis of the City's FY rather than the CY would ease reporting requirements. The COA suggests a due date for the Annual Report of December 1 that covers the previous FY from July 1 to June 30. The concern here is if public comments are received late and their incorporation in the Annual Report results in a submission after the April 1st deadline. If public comment is received within the 30-day period, the deadline should be extended to allow the permittee to address the comment.	The language in Part III of the permit has been modified as follows: *The permittees shall submit an annual report to be submitted by no later than December 1st. The report shall cover the previous year from July 1st to June 30rd and include …….* EPA has also revised the deadline in Part III.B.5.b for the permittees with cooperative programs to provide information to other partners no later than July 31st of each year.
245	AMAFCA	III.B	Annual Report. Three months is not enough time to write the Annual Report, post for 30-day public review, incorporate comments and submit to EPA. That is essentially requiring the Annual Report to be drafted in 1 month – too short of time period. An Individual MS4 will need a total of 4 months, and a cooperative of MS4s will need 6 months.	See Response to comments No 244 and 238.
246	AMAFCA	III.B	Annual Report. Additional time should be allowed to revise the SWMP.	According to Part III.B., the permit requires the permittees to submit a complete copy of the SWMP with their Annual Report during the first year and the fourth year of permit term. This time is appropriated to finalize the SWMP revisions.
247	AMAFCA	III.B.3.b	I thought the Annual Report was for the calendar year. Keep the reporting periods consistent for ease of reporting.	Part III.B.3.b has been modified to include in the Annual Report a summary of the data, including monitoring data, that is accumulated throughout the monitoring year (July 1st to June 30rd).
248	AMAFCA	III.B.5	Annual Report Responsibilities for Cooperative Programs. Too complicated – simply allow a cooperative of MS4s to provide one report.	For compliance purposes, individual submittal of annual reports is required. To be consistent with the response to comment No 244, the dateline to provide information for the system-wide annual report (see Part III.B.5) has been modified to no later than July 31st of each year.
249	AMAFCA	III.B.5.b	Cooperative Annual Report will require more time and should be due July 1.	See response to comment No 244 and 248.
250	AMAFCA	III.B.7	Signature on Certification of Annual Reports. Annual Report should be due April 1. Be consistent with #5.b above.	See response to comment No 244. Part III.B.7 has been modified to indicate that an annual report shall be submitted no later than December 1st of each year.
251	AMAFCA	III.D.1	I thought the Annual Report was for the calendar year. Keep the reporting periods consistent for ease of reporting.	Part III.D.1 has been modified to report the monitoring results obtained during the reporting period running from July 1st to June 30rd on discharge monitoring report (DMR) forms along with the Annual Report.

#	Commenter	Section	Comment	Response
252	NM Home Builders Assn.	I.A.4	Authorized Non-Stormwater Discharges Issue: The list of non-stormwater discharges that "need not be prohibited" includes the language "*lawn, landscape, and other irrigation waters provided all pesticides, herbicides and fertilizers have been applied in accordance with approved manufacturing labeling . . .* ". There is no way an MS4 permittee would be able to determine if an individual homeowner, homeowner's association, building manager, or landscape contractor had applied all pesticides, herbicides, or fertilizers according to manufacturers' labeling. NMHBA's concern is when homeowners begin moving into a development and start managing their own property, the developer may still be responsible for the actions of these new homeowners under the terms of the developer's SWPPP. There is no practical manner for a developer or homeowner's association to determine if every resident of the development had complied with this requirement, but they would be liable for fines from the MS4 and Region 6 EPA if this requirement were	The discharge control conditions established by this permit are based on Section 402(p)(3)(B) of the Act which mandates that a permit for discharges from MS4s must effectively prohibit the discharge of non-stormwater to the MS4; and require controls to reduce pollutants in discharges from the MS4 to the maximum extent practicable (MEP) including best management practices (BMPs), control techniques, and system, design and engineering methods, and such other provisions as the Administrator deems appropriate for the control of pollutants. The permittees may use education and outreach materials to reach the public as to how to become aware of individual actions that can be avoid to protect or improve the quality of nearby waters.
252	NM Home Builders Assn.	cont.	6 EPA if this requirement were placed into law. If these actions cannot be documented or determined by the MRG MS4 Watershed permittee, then this requirement places them in a position where they cannot hope to comply either. Requested Action: Delete the language starting with "provided all pesticides, herbicides and fertilizers . . " through to the semicolon.	
253	Bureau of Recl., Albuquerque Area Office	I.A.4	We understand that certain "non-stormwater discharges need not be prohibited unless determined by the permittees, EPA or NM Environment Department (NMED) to be significant contributors of pollutants to the municipal separate storm sewer system (MS4)." We appreciate including the clarification of "…other irrigation waters provided all pesticides, herbicides and fertilizers have been applied in accordance with approved manufacturing labeling and any applicable permits for discharges associated with pesticide, herbicide and fertilizer application…" in this list of authorized non-stormwater discharges.	According to Part I.A.4 lawn, landscape, and other irrigation waters provided all pesticides, herbicides and fertilizers have been applied in accordance with approved manufacturing labeling and any applicable permits for discharges are in the list of authorized stormwater discharges.

#	Commenter	Section	Comment	Response
254	NM Home Builders Assn.	I.D.1	Issue: The language in this section would appear to cancel any construction permits issued that had not yet been started under the prior Albuquerque MS4 permit. With the recent economic downturn there may be NPDES construction permits that were issued previously that had not yet had their construction begin. To effectively cancel those permits and require new permits to be issued under this Watershed MS4 Permit could make those previously-permitted projects uneconomical. Those Permittees would have to return to the subdivision process and have their plats redrawn, site plans revised to incorporate the LID requirements and post-construction discharge requirements, etc. The cost of going through the process again would be extremely costly, and could kill earlier planned developments. Requested Action: If this interpretation of the language "This permit does not extend any compliance deadlines set forth in previous permits…" is incorrect, then this language must be changed to avoid misunderstanding and clarify the intent of this section.	The statement: This permit does not extend any compliance deadlines set forth in the previous permits is referring to the individual permit No NMS000101 and General permits No: NM NMR040000 and NMR04000I issued to address stormwater discharges from the regulated MS4s in the Albuquerque Urbanized Area.
255	NM Home Builders Assn.	I.D.5.b.ii.f	Also in the same section with the maintenance of post-construction BMPs, is the suggestion of using "dedicated funds or escrow accounts for development projects" to maintain these features. NMHBA has seen these types of suggestions in the Construction General Permit. Somehow they always end up becoming a mandate in later revisions of permits. It is not appropriate for the MRG MS4 Watershed Permit to include suggestions on how a permittee is to find the money to cover the unfunded mandate of the federal government. The developer of a residential project would like to deed the post-construction BMPs to the public subdivision to ensure proper maintenance, but the municipalities don't want to take responsibility for them. That leaves the developer with one choice: leave the ownership and maintenance of the BMPs to the Homeowners' Association (HOA). The funding for the maintenance of the BMPs would naturally come from the annual budget of the HOA.	please note that this requirement is continued from the 2012 MS4 permit. The requirements in Part I.D.5.b.ii.f are needed to ensure proper long-term operation, maintenance, and repair of stormwater management practices that are put into place as part of construction projects/activities.

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255	NM Home Builders Assn.	cont.	The suggestion that the developer give money ("dedicated funds or escrow account") to the HOA upon completion of the project is not up to the MS4 to decide. It is not up to the MS4, the state, or the federal government to suggest, nor decide how private construction projects include in their contracts or agreements with other private entities (HOAs) who is going to pay for these unfunded mandates. If the MS4 won't take the ownership freely offered and the responsibility for maintenance, then they have no involvement in the issue until the responsible party fails to comply with their maintenance duties. Requested Action: Delete references to "dedicated funds or escrow account".	
256	Bureau of Recl., Albuquerque Area Office	I.D.1	We understand that the Phase I individual permit requirements to: 1. Identify major outfalls and pollutant loadings; 2. Detect and eliminate non-storm water discharges to the system; 3. Reduce pollutants in runoff from industrial, commercial and residential areas; and 4. Control storm water discharges from new development and redevelopment areas will be addressed in the general permit requirement to develop a proposed SWMP that meets the standard of "reducing pollutants to the Maximum Extent Practicable (MEP)." While this is clearly explained on page 10 of the associated Fact Sheet and Supplemental Information for the Proposed Issuance of an NPDES Stormwater General Permit for MS4s in the MRG Watershed, EPA may want to add clarifying language to this section.	The intent of Part I.D.1 is to explain the overall goal of developing and implementing a SWMP to address pollutant in municipal stormwater discharges.
257	AMAFCA	I.D.6.c	In setting a time schedule for the modifications, a reasonable period of time should be granted.	Noted in the administrative record.

#	Commenter	Section	Comment	Response
258	NM Home Builders Assn.	I.C.3.b	(h) Critical Habitat - Note: is this supposed to be a subset of (v.)? There is no section (g). Issue: The language "Verify that the installation of stormwater BMPs will not occur in or adversely affect . . . critical habitat . . ." is vague, confusing, and contradictory. This section requires the Permittee to verify the installation of the BMPs will not occur in critical habitat. That is contradicted by the second half of this requirement with the language "by reviewing the activities and locations of stormwater BMP installation within the location of critical habitat . . .". Clearly BMPs are permissible within the critical habitat if the Permittee is to review the BMP activities and location. A ban on stormwater BMPs in critical habitat would be contradictory to Section 4 of the Endangered Species Act (ESA) Statute that states that the establishment of critical habitat does not prohibit further development of an area. The ESA does, however, require that federal agencies make special efforts to conserve habitat within designated areas. Most often, this requirement means that	Please note that EPA conducted on ESA consultation with USFWS in the issuance of this permit. Conditions in the permit to protect Endangered Species and critical habitat are consistent with the August 21, 2014 Biological Opinion. The requirements in Part I.C.3.b were designed to ensure actions required by this permit are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR 402 and 40 CFR 122.49(c)), see August 21, 2014 Biological Opinion. EPA notes Part I.C.3.b.(h) was numbered incorrectly, Part I.C.3.b.(h) in the proposed permit has been corrected to Part I.C.3.b.(vi).
258	NM Home Builders Assn.	cont.	federal agencies responsible for issuing permits needed for development must consult with other federal agencies prior to granting the permit to ensure that the development activities covered do not adversely modify critical habitat. When a federal nexus exists, under the ESA, Permittees are required to consult with the Action Agency and may enter into "Section 7 consultation." Section 7 consultation will analyze whether the "effects of the action" on listed species, plus any additional, cumulative effects of State and private actions which are reasonably certain to occur in the action area, are likely to jeopardize the continued existence of that species or adversely modify critical habitat. There does not appear to be any thought given to mitigating critical habitat threat by creating new areas for critical habitat protection nearby. The concept of "no net loss" arrangements, which is popular across the rest of the country is absent from this program. The draft language in the MRG MS4 Watershed Permit appears to go beyond any existing requirements regarding	
258	NM Home Builders Assn.	cont.	regarding protecting endangered species, and could place large tracts of land in the "unbuildable" category. Requested Action: We strongly suggest that the agency remove this section and rephrase this requirement as follows: "In instances where proposed development is projected to occur within designated critical habitat for listed endangered or threatened species, and where a federal nexus exists, the Permittee must ensure compliance with all applicable ESA statutory requirements."	

#	Commenter	Section	Comment	Response
259	Bureau of Recl., Albuquerque Area Office	I.C.3	We concur with the requirement that all permittees shall include a dissolved oxygen and sediment pollutant load reduction strategy in their Stormwater Management Programs (SWMPs) to ensure actions required by the MS4 permit are not likely to jeopardized the continued existence of any currently listed endangered or threatened species or adversely affect its critical habitat. As you know, Reclamation manages and is the fiscal agency for the Middle Rio Grande Endangered Species Collaborative Program (MRGESCP) which includes 16 federal, state, local, pueblo and tribal entities working towards recovery of the endangered Rio Grande silvery minnow and Southwestern willow flycatcher while protecting existing and future water uses.	Noted in the administrative record.
260	WESTCAS	I.C.3.b	regarding Endangered Species Act (ESA)Requirements. These requirements are focused on reducing the sediment loading to the Rio Grande, ostensibly to protect the silvery minnow. The silvery minnow is listed as endangered due to loss of habitat associated with reduction in water flows in the Rio Grande. WESTGAS believes that ESA requirements in permits should only be related to the documented cause(s) of species endangerment.	In general, Stormwater discharges from urbanized areas are a concern because of the higher concentration of pollutants typically found in these discharges. Large amounts of runoff can easily pick up debris, pollutants including sediment and wash them into nearby storm drains and downstream to the Rio Grande. Sediment conveyed during stormwater runoff can cloud the water and make it difficult or impossible for aquatic plants to grow by reducing light penetration. A BO issued by FWS evaluates those effects and documents the effects of the MRG silvery minnow upon the actions taken under this permit. The ESA requirements in Part I.C.3.b were designed under the recommendations of FWS which are documented in the 2014 Biological Opinion.
261	City of Albuquerque	I.C.3.a	ESA Requirements, Dissolved Oxygen Strategy in the Receiving Waters of the Rio Grande. (i) Why does the preceding DO section in this permit apply only to the COA and AMAFCA, while here it applies to all permittees. (ii) The COA will continue to share in the cost of DO and temperature monitoring in the embayment and river with AMAFCA. However, the NDC Embayment is an AMAFCA-maintained facility within an easement on Sandia Pueblo Land. As such, the COA has no jurisdictional authority over, nor ownership interest in the facility. Any remedial actions undertaken in the facility (i.e., structural BMPs) will be at the direction and approval of AMAFCA and Sandia Pueblo. However, the COA will continue to act in a cooperative, collaborative and supportive role with both agencies to address the DO issue. The FWS and EPA should consult, not approve (GS).	Part I.C.1. d (Phase I Dissolved Oxygen Program) was included in the proposed permit to continue with the DO program/strategy already developed by the City of Albuquerque and AMAFCA during the 2012 NMS000101 individual permit. Part I.C.3.a (Dissolved Oxygen Strategy in the Receiving Waters of the Rio Grande) requires all permittees to identify structural controls, natural or man-made topographical and geographical formations, MS4 operations, or oxygen demanding pollutants contributing to reduced dissolved oxygen in the receiving waters of the Rio Grande. The program required in Part I.C.3a. was added to further assess sources of DO and may complement the existing DO strategy developed by the City of Albuquerque and AMAFCA.

#	Commenter	Section	Comment	Response
262	Tierra West, LLC	I.B.1.A	*Designations 2* Comment: The National rule making process covering the TMDL has not been completed and continues to be delayed. This permit is being proposed before that rule making has been completed. We feel that the rule making should be completed prior to the EPA moving forward on this permit. Please provide a date when the national rulemaking process will be complete. We recommend that the permit be placed on hold until the national rule making is completed and implemented.	EPA is not aware of a national rulemaking addressing TMDLs. Tierra West, LLC may refer to the EPA national rulemaking to establish a program to reduce stormwater discharges from newly developed and redeveloped sites and make other regulatory improvements to strengthen its stormwater program. EPA is updating its stormwater strategy to focus now on pursuing a suite of immediate actions to help support communities in addressing their stormwater challenges and deferring action on rulemaking to reduce stormwater discharges from newly developed and redeveloped sites or other regulatory changes to its stormwater program. EPA will provide incentives, technical assistance, and tools to communities to encourage them to implement strong stormwater programs; leverage existing requirements to strengthen municipal stormwater permits; and continue to promote green infrastructure as an integral part of stormwater management. EPA believes this approach will achieve significant, measurable, and timely results in reducing stormwater pollution and provide significant climate resiliency benefits to communities.
262	Tierra West, LLC	cont.	*cont*	The discharge control conditions established by this permit are based on Section 402(p)(3)(B) of the Act which mandates that a permit for discharges from MS4s must effectively prohibit the discharge of non-stormwater to the MS4; and require controls to reduce pollutants in discharges from the MS4 to the maximum extent practicable (MEP) including best management practices (BMPs), control techniques, and system, design and engineering methods, and such other provisions as the Administrator deems appropriate for the control of pollutants and on the requirements at 40 CFR 122.34 which requires the permittee to develop, implement, and enforce a storm water management program to reduce the discharge of pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate requirements of the Clean Water Act.

#	Commenter	Section	Comment	Response
262	Tierra West, LLC	cont	*cont.*	The proposed permit conditions were designed to specifically address pollutants of concern in the Rio Grande (e.g., dissolved oxygen, bacteria), to protect endangered species (e., Rio Grande Silvery Minnow), and to restore and maintain the chemical, physical and biological integrity of the local's waters. More specifically, the CWA under §402(p)(3)(B)(iii) does provide the authority to include conditions the Administrator or State/Tribe determines appropriate for control of pollutants. Given the overall goal of water quality protection in the CWA and the express purpose of Phase II of the NPDES storm water program to regulate storm water discharges to protect water quality, water quality based controls are deemed appropriate for this permit. The controls will also have benefits for flood control and reduction on impacts on natural channels due to changes in hydrology.
263	Bernalillo County	I.B.1.A	Designations 2, The Rulemaking Process is incomplete. The first and simplest concern of Bernalillo County with regard to the proposed MS4 permit targeting the Middle Rio Grande (MRG) is that it precedes the action of rulemaking. Changes to stormwater regulations have been planned for years, but are still delayed; in fact none have been publicly proposed. The formal process of Federal rulemaking would involve a broader review by many more agencies and consultants with more resources and greater experience. This permit suggests a radical shift in approach to municipal stormwater regulation, and does not reflect the current distinctions of Phase I and Phase II regulations. This is a very small community, in a rather unique setting. It is difficult to assess the long term consequences of the permit in itself, and more troubling to consider that this permit may represent de-facto rulemaking outside the legal process.	See responses to comments No 36 and 262. Please note that EXPO NM is a potential permittee.

#	Commenter	Section	Comment	Response
263	Bernalillo County	cont.	Simply renaming Phase I and Phase II as Classes A and B, etc does not reflect the genuine differences inherent in the current legal designations. Indeed, a wide range of villages, municipalities, flood control agencies and county governments are covered whole cloth by this permit with little or no recognition of population size, density or actual stormwater contribution to the Rio Grande flow. The logic of a "watershed" permit is contradicted by the absence of all Federal lands on the western slope of the Sandias which are significant contributors of both pollutants and flow. Inexplicably, one state agency (NM DOT) is included, but another state facility with known violations (EXPO NM) is not included. While it may be useful to move beyond Phase I and II in that they reflect the starting stages of NPDES stormwater regulation, there should be some consideration of both population size and community resources in assigning mandatory, unfunded programs.	
263	Bernalillo County	cont.	This permit appears to apply Phase I implementation to all parties, no matter how small in population, and with no consideration of how little flow they may contribute. In fact, much of this General Permit is essentially the same as the Phase I permit issued in 2012 to the City of Albuquerque and its co-permittees. Many of the parties to this permit have discharges only exceptionally, ie during exceptional flood events; the smallest MS4's are in basins along the Rio Grande, fundamentally at or below water level with raised irrigation dikes separating their urban areas from the river. We recommend that Phase I & Phase II designations be restored until stormwater rulemaking is complete, with concurrent staging or down-sizing of requirements for the Phase II permittees. At the very least the sector or class based allocation of Best Management Practices (BMP's) should be used to reduce the list of mandatory Stormwater Management Plan (SWMP) elements.	
264	City of Albuquerque		The new rule making is the foundation for this permit, yet it is not anticipated to be enacted before December 2014. How will this permit be issued in advance of the rule making?	See responses to comments No 36 and 262.

#	Commenter	Section	Comment	Response
265	Bernalillo County	I.D.5.a	Construction Site Stormwater Runoff Control. Also Part I. D. 5. b. Post-Construction Stormwater Management in New Development etc. **Also Part III. A**. Monitoring and Assessment, The economic burden imposed by this permit is disproportionate to any realistic benefit The Monitoring program alone represents a substantial increase in simple, direct costs. The required analytical costs alone will increase from less than $100 per sample (for E. coli) to more than $3000 per sample for the list of 15 analytes—a 30-fold increase, which does not include increased sampling frequency or new sampling locations. The new mandatory elements in construction and post-construction measures alone may triple the workload of County plan review and inspection. Many of these elements are unnecessarily repetitive and overly defined. Simply calling out more than 145 mandatory elements in the SWMP creates tedious and largely irrelevant tracking efforts. The reporting requirement, with annual update and annual assessments of the SWMP required, virtually	The majority of program elements included in Part I.D.5.a (Construction Site Stormwater Runoff Control) and Part I.D.5 b (Post-Construction Stormwater management in New Development and Redevelopment) were previously required in the expired permits (NMS000101 and NMR040000). EPA did not remove those existing program elements from permits NMS000101 and NMR040000 as the permittees should continue implementing existing programs, updating as necessary, to comply with the requirements of the proposed permit. The proposed permit extends the dateline to develop and implement new program elements. Regarding reduction of monitoring requirements, the Phase II storm water regulations at 40 CFR 122.34(g) require that small MS4s evaluate program compliance, the appropriateness of the BMPs in their SWMPs and progress towards meeting their measurable goals. Phase I MS4s were (40 CFR 122.26(d)((2)(iii)(C) and (D)) require to monitor the MS4 to provide data
265	Bernalillo County	cont.	doubles the administrative workload. It is also unrealistic to expect accurate evaluation of new stormwater measures on an annual basis in a location currently averaging about 4 inches of rain per year. To evaluate any measure at this frequency is a waste of time and money. We recommend that new Construction and Post-Construction SWMP elements be reduced in number, and at the least staged in over the permit term to allow time for training and expansion of duties with existing personnel. We strongly suggest that the analytical requirements be reduced, and that the annual assessment requirements be reduced to years 3 and 5 of the permit term, or to year 5 alone.	necessary to assess the effectiveness and adequacy of SWMP control measures; estimate annual cumulative pollutant loadings from the MS4; estimate event mean concentrations and seasonal pollutants in discharges from major outfalls or sub-watersheds identify and prioritize portions of the MS4 requiring additional controls; and, identify water quality improvements or degradation. To avoid duplication and added expense, the permit specifically allows coordination between monitoring programs to use monitoring data collected for one purpose to be used to satisfy part or all of another's data collection requirement. EPA has designed a monitoring frame work to accommodate cooperative programs among the permittees so that meaningful results can be obtained based on limited monitoring dollars. EPA is open to creative monitoring plan proposals which could reduce the total number of monitoring locations not only for a single permittee, but across a group of cooperatively permittees.
266	Bernalillo County	III.A	[Same comment as made under I.D.5.a]	See response to comment 265.
267	Martin J. Haynes		Causes and economic burden for the area	See response to comment 265.

#	Commenter	Section	Comment	Response
268	Department of Defense		*[Note: the memorandum referred to within this comment can be found in the comment leter submitted by DoD]*. **EISA § 438**. The DoD is full implementing the provisions of the Energy Independence and Security Act of 2007, Section 438 (EISA § 438), consistent with the EPA Technical Guidance, using Low Impact Development Techniques in accordance with DoD policy. With regard to this draft permit, the DoD is concerned over the inclusion in section 5.b of the draft MS4 Permit (Post-construction Stormwater Management in New Development and Redevelopment) of stormwater management controls which appear to be based on EISA § 438. The draft permit includes requirements from EISA § 438 in a Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Permit. The DoD notes that EISA and the CWA are two separate statutes having related but distinct underlying purposes and enforcement mechanisms.	EPA does not dispute that Section 438 of EISA is a separate statutory mandate and that it was not intended to be enforced through NPDES permits required under CWA authority. EPA acknowledges that the proposed permit Fact Sheet may have caused confusion by including an explanation of DoD's requirement to comply with EISA Section 438 as general background for controlling post-construction stormwater discharges. EPA did not intend to suggest that the Agency's independent authority under the CWA to establish requirements in NPDES permits on post-construction stormwater discharges is derived from Section 438, however the Agency understands how the discussion of EISA Section 438 in connection with the permit's post-construction requirements may have unintentionally suggested just that. In retrospect, it was unnecessary to include any discussion at all of EISA Section 438 in the fact sheet to explain why EPA is including post-construction requirements in this MS4 permit. Today's fact sheet does not include any discussion of EISA Section 438.
268	Department of Defense	cont...	The CWA is designed to eliminate the discharge of pollutants into navigable waters of the United States; EISA § 438 is designed to maintain or restore to the maximum extent technically feasible the pre-development hydrology of the property with regard to the temperature, rate, volume, and duration of flow. That is, EISA is designed to retain stormwater on-site to allow infiltration into groundwater rather than entry into navigable waters of the United States. We also note Congress did not amend the CWA when it passed EISA § 438. Rather, EISA § 438 was written to be self-executing by federal agencies, in the management of stormwater from federal development and redevelopment projects. Furthermore, we do not believe the CWA authorizes the inclusion of EISA § 438 standards in a general MS4 Permit applicable to a DoD installation.	DoD is incorrect, however, in asserting that including post-construction requirements in this permit amounts to implementing EISA Section 438 or EPA's technical guidance (i.e., "Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act") through an NPDES permit. Contrary to DoD's claim, EISA Section 438 and the recommendations in the Agency's EISA Technical Guidance do not establish the basis for the permit's post-construction stormwater management requirements. Rather, the authority to establish such post-construction discharge requirements in MS4 permits is based entirely on Section 402(p)(3)(B)(iii) and 402(p)(6) of the CWA, and their implementing regulations.

#	Commenter	Section	Comment	Response
268	Department of Defense	cont...	The CWA contains broad enforcement authorities to ensure compliance by the entire regulated community, including federal facilities, in applicable circumstances, but Congress did not extend that authority to the substantive EISA § 438 requirements. The DoD is also concerned with what appears to be the incorporation of portions of the EPA's EISA § 438 Technical Guidance as legally binding requirements in a NPDES permit. As required by E.O. 13514, the EPA issued Technical Guidance on Implementing the Stormwater Runoff Requirements for Projects under EISA § 438, in December 2009. In issuing the Technical Guidance, the EPA explained that the document was intended solely as guidance and did not impose any legally binding requirements on federal agencies, or impose legal obligations upon any member of the public.	CWA Section 402(p)(3)(B)(iii) directs EPA to include in MS4 permits "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and such other provisions as the Administrator … determines appropriate for the control of such pollutants." See Section II.A.1 of the Fact Sheet. EPA has intentionally declined to define "maximum extent practicable" (MEP) to allow for maximum flexibility in MS4 permitting. 64 Fed. Reg. 68722, 68754 (Dec. 8, 1999). Instead, as explained in the preamble to the Phase II stormwater regulations: *MS4s need flexibility to optimize reductions in stormwater pollutants on a location-by-location basis. EPA envisions that this evaluative process will consider such factors as conditions of receiving water, specific local concerns, and other aspects included in comprehensive watershed plan. Other factors may include MS4 size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance. Id.*
268	Department of Defense	cont...	It is not necessary to place these performance standards in the draft permit since the DoD has already instructed its installations to implement EISA § 438, consistent with the EPA's Technical Guidance, through its policy memorandum issued 19 January 2010 (Attached). In incorporating portions of EISA § 438 into the draft permit, the EPA has eliminated the statutory provision that federal facilities are to maintain predevelopment hydrology "to the maximum extent technically feasible." Rather, the draft permit makes the management of stormwater based on predevelopment hydrology an absolute requirement. The DoD objects to the EPA's elimination of the statutory requirement concerning technical feasibility. As stated above, DoD is committed to managing stormwater from its facilities' development and redevelopment projects through green technology and low impact development design principles and practices and has implemented policy to do so.	The CWA "requires permit writers to "tak[e] into account the full range of consideration before it [determines] that the BMPs required by the permit collectively represent the maximum practicable effort to reduce pollution." See In Re: Gov't of the D.C. Mun. Separate Storm Sewer Sys., 10 E.A.D. 323 at *22 (EAB Feb. 20, 2002). EPA further explained that: For [MS4s], EPA … may determine that other permit provisions … are appropriate to protect water quality, to achieve reasonable further progress toward the attainment of water quality standards pending implementation of a total maximum daily load … [A SWMP] designed to reduce the discharge of pollutants from the [MS4] 'to the [MEP]' is also designed to protect water quality.
268	Department of Defense	cont...	The DoD is fully implementing the provisions of EISA § 438, consistent with the EPA Technical Guidance, using Low Impact Development Techniques in accordance with DoD policy.	64 Fed. Reg. at 68787. "Section 402(p)(3)(B)(iii) specifically preserves the authority for EPA … to include provisions determined appropriate to reduce pollutants in order to protect water quality." Id. At 68788. EPA notes that many MS4 permits around the country include requirements to address specific water quality problems, most notably to reduce pollutants associated with discharges from new development and redevelopment and discharges to impaired waters. See Municipal Separate Storm Sewer System Permits – Post-Construction Performance Standards & Water Quality-Based Requirements: A Compendium of Permitting Approaches (EPA, June 2014).

#	Commenter	Section	Comment	Response
268	Department of Defense	cont….		In terms of the specific authority to regulate stormwater discharges from new development and redevelopment, both the Phase I and Phase II regulations require the MS4 to put in place controls for such discharges, while acknowledging that the specific details of these programs will necessarily need to be tailored to local, state, or regional considerations. The regulations require permittees to address stormwater discharges from new development and redevelopment in their SWMPs, but do not specify which practices or design standards must be used. For example, the Phase I regulations require the permittee to provide a "comprehensive master plan to develop, implement, and enforce controls to reduce the discharge of pollutants from municipal storm sewers, which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed." (40 CFR 122.26(d)(2)(iv)(A)(2)).
268	Department of Defense	cont….		Similarly, the Phase II regulations require small MS4s to "develop, implement, and enforce a program to address" stormwater discharges from new development and redevelopment projects of one acre or greater to "ensure that controls are in place that would prevent or minimize water quality impacts." 40 CFR 122.34(b)(5). The Phase II regulations recommend (but do not require) that MS4s attempt to maintain pre-development runoff conditions by installing and implementing stormwater control measures.
268	Department of Defense	cont….		These statutory and regulatory authorities, while not dictating to permitting authorities the precise details of each permit's post-construction stormwater management requirements, provide discretion to determine on a permit-by-permit basis (1) what control requirements are adequate to reduce pollutants to the maximum extent practicable and (2) what other controls are appropriate to control such pollutants. It is these authorities, not any other statute or regulations, which instruct EPA on what post-construction controls requirements are necessary or appropriate.

#	Commenter	Section	Comment	Response
268	Department of Defense	cont….		In requiring a specific set of requirements in this permit governing the management of post-construction discharges from new and redevelopment, the EPA has determined that these permit provisions are what is required to reduce pollutants in discharges from the MS4 that originate from newly developed and redeveloped sites to the maximum extent practicable. These provisions are consistent with the minimum requirements in the Phase I and II regulations to develop and implement a post-construction program to address stormwater discharges to the MS4 from new development and redevelopment, and the suggested programmatic goal in the Phase II regulations of adopting site controls that minimize water quality impacts and attempt to maintain pre-development runoff conditions. Related to the water quality impacts from post-construction discharges, see Fact Sheet Section II.F.1 summary of the National Research Council report "Urban Stormwater Management in the United States", and the Section V.B discussion of the link between increased runoff from urbanization and water body impairments.
268	Department of Defense	cont….		There are important watershed-specific reasons for EPA to adopt these post-construction requirements. Stormwater discharges from urban areas has contributed to the impairments in the Middle Rio Grande for E. coli, temperature, dissolved oxygen, PCBs, and nutrients. See Section II.F.2 of today's Fact Sheet. Impacts from stormwater discharges are also a concern for the protection of the endangered Silvery Minnow, which is sensitive to high levels of sediment and heavy metals, as well as to fluctuations in temperature and dissolved oxygen levels. See Section III of the U.S. Fish & Wildlife Service's Biological Opinion. By requiring stormwater discharges from new development and redevelopment to mimic the hydrology of the previously undeveloped site, EPA expects to address these water quality concerns. For example, use of controls such as bioretention or other infiltration and filtration practices, types of practices expected to be used to meet the permit's post-construction requirements have exhibited high removal efficiencies for total suspended solids (TSS), nitrogen, phosphorus, copper, and zinc.

#	Commenter	Section	Comment	Response
268	Department of Defense	cont….		See "National Pollutant Removal Performance Database", Center for Watershed Protection (September 2007). For the Middle Rio Grande watershed, in particular, EPA estimates that by implementing the post-construction requirements in today's permit, the discharge of pollutants of concern, such as total suspended solids (TSS), nitrogen, phosphorus, and E. coli, from new development and redevelopment will be reduced by an average 70 percent. See "Estimating Pollutant Load Reduction from a Stormwater Retention Standard in the Middle Rio Grande Watershed, New Mexico", Tetra Tech (September 2014). This estimated reduction will help MS4s achieve the WLA assigned in the Middle Rio Grande E. coli TMDL, which is targeted at 66 percent. See Stormwater Management for TMDLs in an Arid Climate: A Case Study Application of SUSTAIN in Albuquerque, New Mexico (EPA 2013).
268	Department of Defense	cont….		Lastly, DoD suggests in its comments that EPA has incorporated portions of EISA 438 into the permit, and that, as a result, it has eliminated the "maximum extent technically feasible" flexibility written into that statute. As EPA has explained above, the post-construction requirements in this permit do not emanate from or implement EISA 438, rather they carry out CWA Section 402(p)(3)(B)(iii) and its implementing regulations. The bottom line responsibility of the permittee is to comply with the conditions established in this permit. How permittees comply with separate and independent statutory or regulatory requirements is not relevant to this permit or EPA's CWA authorities. In part to address DoD's concerns, however, EPA has clarified in the final permit that if a permittee is already in compliance with one or more of the permit requirements because it is already subject to and complying with a related local, state, or federal requirement that is at least as stringent as this permit's requirement, the permittee may reference the relevant requirement as part of the SWMP and document why this permit's requirement has been satisfied. See Part I.D.1.
268	Department of Defense	cont….		The permit also clarifies that where the MS4 permit has additional conditions that apply, above and beyond what is required by the related local, state, or federal requirement, the permittee is still responsible for complying with the additional conditions of EPA's permit.

#	Commenter	Section	Comment	Response
269	Department of Defense	I.A.3	This provision, as drafted, does not provide any protection for sensitive or classified information provided by the Department of Defense and/or other federal agencies as required by the Permit. As drafted, the Permit approval process requires distribution of the NOI and public notice and distribution of the associated Storm Water Management Plan (SWMP) without consideration of disclosure of information considered vital to the National Security and/or classified information. In those instances where the requested information is vital to the National Security and/or is classified information, the Permit should allow that information to be without public disclosure and distribution. The draft permit should be amended to include a provision identifying and limiting such information on an as-needed basis with only the regulator, not the public.	For [MS4s], EPA … may determine that other permit provisions … are appropriate to protect water quality, to achieve reasonable further progress toward the attainment of water quality standards pending implementation of a total maximum daily load … [A SWMP] designed to reduce the discharge of pollutants from the [MS4] 'to the [MEP]' is also designed to protect water quality.
270	WESTCAS	I.D.2	item 2 and Permit Tables 2, 3, 5, and 6 include a permit requirement to develop ordinances or other control mechanisms by permittees. However, it violated the Constitution for the Federal government to force a legislative body (i.e. state legislature, city council) to develop new laws or ordinances. WESTCAS suggests that the mechanism for enforcing permit conditions within the MS4 should be left to discretion of the permittee. Further, it is an unfunded mandate to require a location municipality to enforce the requirements under the Federal industrial multi-sector general NPDES permit and the construction NPDES permit.	Part I.D.2 requires the permittees to have the legal authority to control discharges to the MS4s and to fully implement the SWMPs. As the Permittees implement their SWMP, it may ascertain that local rules do not provide the permittees with sufficient or appropriate authority. Local rules are also subject to change over time. Since the implementation of the SWMP is the cornerstone of the permit, and adequate authority is critical to this implementation, the permit language requires the permittees to demonstrate their authority to implement their SWMP and control discharges to their storm sewer system.
270	WESTCAS	cont...		Industrial Stormwater Program: Phase I MS4 permittees are required to develop and implement an inspection and oversight program to monitor and control pollutants in stormwater discharges to the MS4 from industrial facilities. The permit was written according to 40 CFR 122.26(d)(2)(i)(B, C, E, and F) and 40 CFR 122.26(d)(2)(iv) and the requirements to regulate the stormwater discharges from commercial facilities found at 40 CFR 122.26(d)(2)(iv)(A). The permit requirements include adequate legal authority to require compliance and inspect sites, inspection of priority industrial and commercial facilities, establishing control measure requirements for facilities that may pose a threat to water quality, and enforcing stormwater requirements.

#	Commenter	Section	Comment	Response
270	WESTCAS	cont...		Construction Stormwater Program: Federal Regulations (Phase I MS4 Regulations 40 CFR 122.26(d)(2)(iv)(D) and Phase II MS4 Regulations 40 CFR 122.34(b)(4)) require an operator of a regulated MS4 to develop, implement, and enforce a program to reduce pollutants in stormwater runoff to their MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Even though all construction sites that disturb more than one acre are covered by the CGP, the construction site runoff control minimum measure for the MS4 program is needed to induce more localized site regulation and enforcement efforts, and to enable operators of regulated MS4s to more effectively control construction site discharges into their MS4s.
271	AMAFCA	I.D.2	Downstream MS4 does not have legal authority to control discharges from an upstream MS4. Because AMAFCA is strictly a flood control authority, the legal authority and jurisdiction granted to it by the State is limited. However, AMAFCA will utilize available means to control discharges outside of its jurisdiction and legal authority, including working with those entities which do have jurisdiction and entering into joint powers agreements as necessary.	Permittees not authorized by the legislature to enact ordinances/regulations, issue permits, and/or enforce statutes or other legal mechanisms may develop internal procedures to control discharges from its own activities and enter into contracts/agreements with entities it contracts to perform activities/projects to control discharges. Additionally, permittees may coordinate via memorandum of understanding, cooperative agreements, or similar mechanisms (e.g. Joint Powers Agreement) with one another and/or other agencies that have the legal authority to prohibit these types of discharges.
272	Pueblo of Isleta		The Pueblo of Isleta will be requesting a waiver on the basis of enumerated population (<1,000 persons) within the urbanized area. Still, the Pueblo will be engaging in stormwater pollution prevention activities and expects to work cooperatively as appropriate with upstream permittees to assist with meeting select obligations under the MS4 watershed-based permit for the urbanized area.	Noted in the administrative record.
273	Pueblo of Sandia	I	Page 4 of Part I-Potentially Eligible MS4's. The Pueblo acknowledges that the EPA considers the Pueblo of Sandia a small regulated Phase II MS4 and should be regulated under the Stormwater Phase II requirements and has included the Pueblo a potentially eligible MS4 (Class D). This, in the Pueblo's opinion is still debatable. How the Pueblo is to be regulated, as you are aware, is still being worked out. Therefore, the Pueblo will be submitting a waiver request under the Phase II Permit Program/Requirements. If the Pueblo is successful in obtaining a waiver then the Pueblo will need to be taken off this list.	Pueblo of Sandia was designed automatically under the Phase II Rule (64 FR 68722) which covers on a nationwide basis all small MS4s located in “urbanized areas” (UA) as defined by the Bureau of the Census (unless waived by the NPDES permitting authority), and on a case-by-case basis those small MS4s located outside of UAs that the NPDES permitting authority designates. Provisions and criteria for waivers were included for MS4s with a population under 1,000 (40 CFR 122.32(d)) and under 10,000 (40 CFR 122.32 (e)). These waivers must be reconsidered every five years.

#	Commenter	Section	Comment	Response
274	Pueblo of Sandia	App. A	Middle Rio Grande Watershed Permittees List. As stated above in Comment I [Page 4 of Part I-Potentially Eligible MS4's.], the Pueblo acknowledges that the EPA considers the Pueblo a small regulated Phase II MS4 and should be regulated under the Stormwater Phase II requirements and has included the Pueblo of Sandia a potentially eligible MS4 (Class D). This, in the Pueblo's opinion is still debatable. How the Pueblo is to be regulated, as you are aware, is still being worked out. Therefore, the Pueblo will be submitting a waiver request under the Phase II Permit Program/Requirements. If the Pueblo is successful in obtaining a waiver then the Pueblo will need to be taken off this list. The Pueblo therefore requests that its name be taken off Class D. until the Pueblo's requirement to be a permittee has resolved. The other option, which would satisfy the Pueblo, would be to put in 0 the words "potential permittee". As written, anyone reading the permit would get the idea that the Pueblo is a permittee which has yet to be determined by EPA or the Pueblo.	See response to comment No 273.
275	Pueblo of Sandia	I	Page 10 of Part I- I. Compliance with Water Quality Standards: The Pueblo requests that EPA notify the Pueblo of a water quality standards exceedance and if the permittee is required to write a report. The EPA shall notify the Pueblo of the report. The Pueblo will then notify the EPA if the Pueblo needs the permittee's report. As the paragraph is written, all reports will be sent to the Pueblo which will create a burden for the Pueblo.	EPA agrees, in the event that EPA determines that a discharge from the MS4 causes or contribute to an exceedance of applicable surface water quality, EPA will copy the notification letter to the Pueblos or/and the NMED. The Permit was amended to indicate that the report required in Part I.C.1.c will be submitted to the Pueblo of Sandia upon request
276	Pueblo of Sandia	V	Page I of Part V- Part V. Permit Modification. 2. "Changes in applicable water quality standards, statutes or regulations;" As EPA knows, the Pueblo has implemented EPA approved water quality standards for all surface waters within, and around, the exterior boundaries of our Pueblo since I 993. These standards set forth numeric and narrative criteria which are protective of both the existing and designated uses of waters of the United States located on the Pueblo. The Pueblo therefore requests that EPA change this statement to reflect that the Pueblo's Water Quality Standards be recognized and addressed in any modification or reopening of this permit.	According to Part V.A.2 , the permit may be reopened and modified, in accordance with 40 CFR §122.62, §122.63, and §124.5, during the life of the permit to address changes in “applicable” water quality standards, statutes or regulations. Applicable water quality standards are referred as the State of New Mexico, the Pueblo of Sandia, and the Pueblo of Isleta water quality standards.
277	AMAFCA	I.A.5.e	Please identify where these determinations are documented so the MS4s under this permit know how to find a listing of these discharges.	Eligibility and limitations of permit coverage (e.g. discharges that may compromise water quality standards) will be evaluated during the approval of NOI submittals taking into account the controls in the permittee's SWMP.

#	Commenter	Section	Comment	Response
278	AMAFCA	I.C.1.b	["Discharges from various portions of the MS4 also flow downstream into waters with Pueblo of Isleta and Pueblo of Sandia Water Quality Standards"] Comment: It is unclear from this statement whether discharges must also meet these Pueblo's water quality standards.	Discharges must not cause or contribute to receiving waters failing to meet the Pueblo of Sandia a downstream state of tribe's water quality standards as they flow into that jurisdiction.
279	AMAFCA	I.C.1.b	["Discharges from various portions of the MS4 also flow downstream into waters with Pueblo of Isleta and Pueblo of Sandia Water Quality Standards"] Comment: This statement should reference the NMED TMDL, not the Pueblo Water Quality Standards.	The special conditions in Part I.C.1.b were included to comply with applicable water quality standards. Provisions in Part I.C.2 were included to specifically address TMDLs.
280	Pueblo of Sandia	I	Page 18 of Part I-Sediment Pollutant Load Reduction Strategy (Applicable to all permittees). The Pueblo requests EPA to reference in the Code of Federal Register (CFR) or MS4 regulations where this strategy is a requirement. The Pueblo requests that EPA explain this requirement in more detail and how this strategy will be used to improve the Rio Grande. The Pueblo feels that this strategy is excessive, costly, and burdensome especially to Class C and D MS4 operators. This strategy will be very costly to MS4 operators.	The Endangered Species Act (ESA) of 1973 requires Federal Agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (also known collectively as the "Services"), that any actions authorized, funded, or carried out by the Agency (e.g., EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR 402 and 40 CFR 122.49(c)). The requirements in Part I.C.3 were included in the permit to ensure actions required by this permit are not likely to jeopardize the continued existence of any currently listed as endangered or threatened species or adversely affect its critical habitat. Part I.C.3 of the proposed permit has included strategies to address dissolved oxygen and pollutant loads associated with sediment (e.g.,
280	Pueblo of Sandia	cont.		metals, etc. adsorbed to or traveling with sediment, as opposed to clean sediment) into the receiving waters of the Rio Grande. The permittee may coordinate the ESA sediment reduction strategy with the strategies carried out during the Construction Site Stormwater Runoff Control and Post-Construction Stormwater Management in New Development and Redevelopment programs. This ESA program element may be coordinated with the monitoring required in Part III.A.

#	Commenter	Section	Comment	Response
281	City of Albuquerque	I.C.3.b	Sediment Pollutant Load Reduction Strategy. The COA currently reduces sediment loads to the Maximum Extent Practical (MEP) in its detention basins and water quality features. Due to the intense, short duration storm events and steep grades on portions of the conveyance system further reductions are difficult. In addition, Office of the State Engineer (OSE) regulations will not allow storm water to be detained for a period of longer than 96 hours. (i) All arroyos (ephemeral streams) in Albuquerque and throughout the arid southwest exhibit characteristics of erosion, scour and sedimentation. (iii) Controls are typically installed in conjunction with other projects as the need arises. Although adequate funding has been allocated for NPDES related projects through FY2021, site specific projects are planned on shorter (2-4 year) cycles. (v) During this period of extreme drought, more sediment has accumulated in our storm water quality detention features via the wind than by storm water. Again, it is difficult to assess effectiveness of any BMP during a drought.	In addition to more traditional sediment removal techniques such as trapping sediment in detention basins, EPA encourages permittees to consider how the construction and development/redevelopment programs could be used to reduce pollutants being transported offsite and reduce contaminated sediment entering the MS4. Implementing BMPs and discussing their expected benefits can be included in evaluation of the sediment control requirement.
281	City of Albuquerque	cont.	Five years may not be an adequate length of time to determine BMP effectiveness.	
282	Amigos Bravos		"Electronic NOI/NOT Requirement" EPA is soliciting comments on an "alternative requirement to require or encourage" electronic submittal of Notice of Intent (NOI) and Notice of Termination (NOT) documents. We believe that EPA should require electronic submittal. Electronic submittal of document copies will make it easier for any interested party to receive and redistribute permit documents, which will facilitate the public participation the EPA is so interested in fostering in other sections of the permit.	EPA has revised Part I.A.6.a.(i), Part I.A.6.b.(f), Part I.B.3, and Part III.D.2 to require the permittees to submit the NOIs, NOTs, DMRs, annual reports, and other reports required in this permit in electronic form.
283	Pueblo of Sandia	III	Page 8 of Part III-2. The Pueblo requests that EPA re-write the electronic submittal sentence to include a stronger statement on electronic reporting requirements. This should be a requirement of the DMR submittal. Training on electronic submission should also be referenced.	EPA has revised Part I.A.6, Part I.B. and Part III.D.2 to require the permittees to submit DMRs, annual reports, and other reports required in this permit to be submitted in electronic format. In addition, the permit requires the permittees to post those documents in a website.
284	City of Albuquerque		The City of Albuquerque supports the submittal of electronic NOI/NOT. The COA supports the electronic reporting requirements as long as the ICIS format is fully functional and does not present technical difficulties which impair the permittee's ability to meet deadlines for submissions.	See response to comments No 282 and 283.

#	Commenter	Section	Comment	Response
285	AMAFCA		If considering electronic submittals of NOI, please allow flexibility for the MS4 to add information as needed. In other words, don't make the electronic system so rigid that additional information can't be added at the discretion of the MS4.	EPA has revised Part I.A.6 and Part I.B.3 to require the permittees to submit NOIs and NOTs in electronic format. See also response to comment No 282.
286	AMAFCA	III.D.2	Keep this simple – MS4s need to have flexibility of format and software used for Annual Report. Can we simply provide a standard electronic file format, such as PDF or MS Word?	Noted in the administrative record. See response to comment No 283.
287	City of Albuquerque	I.A.3.b.ii	The permittees are required to comply with SHPO and THPO regulations, but should not be required to enter into an agreement with these agencies, as they already have the regulatory authority to enforce SHPO/THPO laws. The COA has in the past coordinated with the SHPO Officer to obtain written letters of approval for the Albuquerque Archeological Ordinance as well as the MS4 SWMP. A similar letter of approval for the SWMP associated with this permit should fulfill this requirement, therefore a formal agreement is not necessary.	Noted in the administrative record.
288	AMAFCA	I.A.3.b	Request that Part I.A.3.b be deleted from this permit, because NHPA already has statutory jurisdiction. This does not pertain to water quality.	The National Historic Preservation Act of 1966, 16 U.S.C. 470, et seq,, section 106 requires, when issuing a permit, adoption of measures when feasible to mitigate potential adverse effects of the permitted activity on properties listed or eligible for listing in the National Register of Historic Places. Consistent with 40 CFR 122.43(a) and 122.49(b), Part I.A.3.b. was included to support this obligation regarding protection of historic properties.
289	AMAFCA	I.A.3.b.ii	SHPO/THPO already have statutory jurisdiction; therefore, it is not appropriate to include this requirement in this permit.	See response to comment No 288.
290	AMAFCA	IV.U	Archeological and Historic Sites. This has nothing to do with water quality and should not be part of the permit. Archeological and historic sites are already under the jurisdiction of SHPO.	See response to comment No 288.
291	AMAFCA	I.B	Please add the time period that USEPA is allowed for review. For example, "US EPA is granted 30 days to review the NOI. If US EPA does not respond to NOI within 30 days of submittal, then the MS4 should proceed to submit the SWMP. If the US EPA does not respond to the SWMP within 30 days of submittal, then the MS4 should proceed to execute the SWMP." Otherwise, how is the MS4 to know how to proceed implementing the program?	Once an NOI is submitted, EPA will review for completeness. There can be come back and forth with the MS4 operator on the NOI during this phase regarding technical approvability. After deemed complete EPA will notify the permittee of NOI approval.

#	Commenter	Section	Comment	Response
292	AMAFCA	I.B.2	NOI should allow opportunity for MS4 to identify portions of the permit that don't apply to the MS4 based on jurisdictional limitations.	Permittees are encouraged to document which required elements of the SWMP are not applicable in the SWMP attachment to the NOI.
293	AMAFCA	I.B.2.g	Since the intent of the permit is to regulate impaired waters of the U.S., this requirement should be specific to "impaired" waters. Otherwise, AMAFCA and all other MS4s will need to identify all AMAFCA channels as waters of the U.S. based on USACE determinations.	The permit regulates discharges to all waters of the United States, not just those that are impaired.
294	SSCAFCA	I.D.5.a.ii.e	This is a very vague statement. We are not clear on what type of information "submitted by the public" the EPA is intending entities to receive and consider. Information about the program? Information on potential violations of the construction site runoff SWPPP? Please advise and clarify the types of information received by the public you are wanting the entities to address.	EPA will not pre-judge what input Citizens will have. Input on suspected non-compliance or suggestions on program elements and implementation are certainly within the scope of information the MS4 is expected to address.
295	SSCAFCA	I.D.5.g.ii.f	The last sentence of this part requires that information be available for "non-English speaking residents". The presumption by the regulated entities is that means documentation must be made available in Spanish as well. Is that a valid assumption?	All residents should have the ability to understand and participate in the SMWP programs to improve water quality in the Middle Rio Grande. Providing appropriate resource to non-English speaking residents allows them to participate and understand their obligations.
296	SSCAFCA	I.D.5.e.iv	Where there is joint jurisdiction (i.e. A municipality lies within a County), if the County offers a program (household hazardous waste in particular) to which municipal residents are entitled by being county residents, does this require a formal cooperative program or agreement between the municipality and the County for the municipality to use this program in their SWMP in order to an MS4 to take "credit" for this program in their annual report?	Under 40 CFR 122.35, permittees may rely on another entity to satisfy their permit obligations. Section 122.35(a)(3) requires that the other entity agree to do so. EPA suggests exploring whether there already is some sort of "agreement" such as a notice to county residents that the program is available to all county residents be sued to document how the MS4 is taking advantage of this program and advertising it to citizens.
297	Amigos Bravos	I.D.3.c	Each permittee shall provide adequate finance, staff, equipment, and support capabilities to fully implement its SWMP and all requirements of this permit. We already know that the COA is not providing adequate support to their current NPDES program, although the COA has begun to use bonding capacity to increase resources to the program. However, it appears that the type of bonds being used – capital improvement bonds – have restrictions in their use that should make their use for stormwater management inappropriate. How does EPA assess "adequate" and will the EPA finally be prepared to enforce this critical component on the COA (or any other entity) if it is clear that resources are not adequate.	"Adequate" funding is typically determined in an enforcement context resulting from failure to comply with permit requirements. It is virtually impossible to prescribe a one-size-fits-all definition of "adequate," since the SWMPS will vary and one permittee may be much more efficient in accomplishing permit compliance than another.

#	Commenter	Section	Comment	Response
297	Amigos Bravos	cont.	EPA should incorporate a definition of "adequate" into this section of the permit. Specifically, base levels of funding and staffing based on total impervious surface area covered under the permit should be required.	
298	Amigos Bravos	I.D.5.g.v	This element states that "[w]here necessary" to comply with Minimum Control Measures in I.D.5.g(i), the permittee "may" (emphasis added) modify or revise an education and outreach program to promote and facilitate the use of Green Infrastructure and Low-Impact Development (GI/LID). We applaud the EPA for attempting to move permittees towards greater use of GI/LID. However, we believe the flexibility element does not go far enough. First, the use of GI/LID should not be in a "flexibility" element, but part of mandated permit requirements. Second it should not be "where necessary", but "" that permittees develop (not "may" develop) GI/LID education and outreach programs. In other words, these should be a frontline element in the permittee's stormwater management program.	The language in Part I.D.5.g.(v) was modified to change the word "may" to "should" as follows: *To comply with the Minimum Control Measures established in Part I.D.5.g.(i) and Part I.D.5.g.(ii), the permittee should develop a program or modify/revise an existing education and outreach program to the extent possible to:*
298	Amigos Bravos	cont.	This would put these flexibility elements in line with the language in, for example, I.D.5.v: "The site plan review required in Part I.D.5.a.(ii)(d) must include an evaluation of opportunities for use of GI/LID/Sustainable practices and when the opportunity exists, encourage project proponents to incorporate such practices" (emphasis added).	
299	NMDOT	I.D.6.b	"Program Modification", The New Mexico Environment Department ("NMED") is referred to numerous times in the Permit. Question from NMDOT: Please clarify what role and enforcement authority NMED has related to this Permit. For example, this item requires SWMP modifications to be sent to NMED, but does not require approval by NMED. Please include Part 1. 5. E. i. from Phase 1 permit No. NMS000101"If an illicit discharge fails to comply with procedures or policies established by the permittee, the permittee may rely on EPA and the state environment agency for assistance in enforcement of this provision of the Permit."	EPA is the enforcement authority for the permit, but coordinates with the State and Tribal Authorities in accomplishing this task. For example, States and Tribes have a vested interest in the effectiveness of the permit in protecting their water quality and often conduct inspections on EPA's behalf.

#	Commenter	Section	Comment	Response
300	NM Home Builders Assn.		The EPA stated the Middle Rio Grande valley was chosen as one of three pilot Watershed-Based Permit projects nationwide because of existing water quality impairment in the Rio Grande and the opportunity to create a "permit" appropriate to the unique arid and semi-arid parts of the country. That goal has not been accomplished. There are many instances in the proposed document where the requirements and suggestions seem to envision a cooler, wetter climate with frequent rain. These solutions won't work well in an area where we have very low desert humidity and the annual monsoon type rainfall is only a few inches. Suggestions such as "green roofs" and "rain gardens" come to mind.	EPA disagrees that green infrastructure practices such as green roofs and rain gardens are inherently incompatible with arid/semi arid climates, so long as they are properly designed taking into account local conditions. Note that the terms bioretention and rain garden are sometimes used interchangeably. The commenter appears to have the mistaken impression that EPA would somehow require or recommend that green infrastructure practices used in high rainfall climates be used in the Middle Rio Grande without adaptation to local conditions. This is not the case. The permit does not require the use of any particular practice or design, leaving open the flexibility to choose the practices or mix of practices, and their design, that make the most sense for meeting permit objectives. For example, if the goal was rooftop water harvesting, a green roof, which retains much of the water that falls on it, would not be the best choice. If the goal was to reduce offsite runoff, provide insulation for energy savings, reduce heat island effect, and potentially improve air quality, then a "green" roof with appropriate plantings could be an option.
300	NM Home Builders Assn.	cont.	cont.	"Green Infrastructure in Arid and Semi-Arid Climates - Adapting innovative stormwater management techniques to the water-limited West" (EPA-833-B-10-002 | MAY 2010) provides information on use of green infrastructure practices in arid/semi-arid climates and is available online at: http://www.epa.gov/npdes/pubs/arid_climates_casestudy.pdf. The New Mexico Office of the State Engineer's web site at http://www.ose.state.nm.us/publications_brochures.html includes resources for water harvesting and landscaping that includes routing runoff to vegetated areas.
301	NM Home Builders Assn.		It appears the drafters of the current Permit draft are unaware that the state of New Mexico is under Region 6 primacy. Some proposed provisions conflict with requirements in the Construction General Permit (CGP) issued as NMR120000. Without NM primacy, provisions in the MRG MS4 Watershed Permit cannot over-rule approvals and features of a SWPPP issued by Region 6.	EPA Region 6 is the permitting authority that issues both the Construction General Permit (CGP) and MS4 permits in New Mexico. The two permits are different, provide authorization to MS4 operators vs. construction site operators, and are subject to different standards under the Act. The CGP controls and authorizes discharges by the site operators during the construction phase. The MS4 permit controls and authorizes discharges from the MS4 and required local programs to reduce the discharge of pollutants both during and post construction (see 40 CFR 122.34(B)(4)&(5)). The commenter did not provide specific examples in support of their comment; however, note that Part 7.4.1.5 of the 2012 CGP requires construction site operators authorized by the CGP to modify their Storm Water Pollution Prevention Plan (SWPPP) "to reflect any revisions to applicable federal, state, tribal, or local requirements that affect the stormwater control measures implemented at the site..."

#	Commenter	Section	Comment	Response
302	NM Home Builders Assn.		As we understand the concept of the Watershed Permit, it was to develop a regional general permit that could include not only the Phase I (large municipal) permittees, but also the Phase II (smaller) permittees, and even the villages, towns and pueblos. The proposed MRG MS4 Watershed Permit makes the faulty assumption that the Phase II cities, towns, villages and pueblos are heavily urbanized and have the resources to accomplish sophisticated drainage management. Also, the commentary that accompanies the draft MRG MS4 Watershed Permit states that this "model" will be taken statewide after MRG area adoption. The currently targeted MRG Phase II participants are mostly vast areas of lightly-developed or undeveloped land with hundreds of miles of dirt roads, with largely dirt-lined storm channels and topographical features, many in their native state. Even in the MRG area surrounding Albuquerque many of the residential and business areas would be considered "primitive" compared to the massively capitalized urban areas	The commenter failed to provide specific information on which particular permit requirements would be infeasible or cost prohibitive in rural area nor data supporting this assertion. In any event, the MRG permit, while based on a watershed concept, primarily covers only the portion of MS4s within the Census Designated Urbanized Area. Rural areas within the watershed are not automatically regulated under the MS4 program and would not be required to have permit coverage unless separately designated. EPA does, however, encourage MS4s to recognize the benefits of adopting local controls to ensure the long[term impacts of development are addressed during the development phase rather than creating a potential degradation of water quality and need for more expensive retrofit projects to correct problems that could have been prevented. Note that as population growth continues, it is likely that areas now outside the Urbanized Area will be included in the regulated MS4 area as a result of future Census results, making the MS4 operator having to address pollutants originating from those areas. See Part I.A.1 Permit Area.
302	NM Home Builders Assn.	cont.	areas which can manage storm water and drainage in the manner envisioned by the proposed Permit. The goals of the proposed MRG MS4 Watershed Permit will never be attainable in less populated and rural areas without unimaginable expenditures and redevelopment. If the goal of this effort, as stated, is to encourage the more rural areas to voluntarily sign onto the Watershed Permit and to then take this model statewide, this approach won't work. The MRG MS4 Watershed Permit apparently suffers from an identity crisis as it does not appear to generally consider conditions in the arid rural communities in the watershed, and instead reads as if it were developed exclusively to micro-manage the urbanized Albuquerque environment. These outlying areas actually encompass more of the acreage included in the MRG watershed than does the City of Albuquerque, and more accurately reflect the watershed concerns that will be found in other areas of the state.	

#	Commenter	Section	Comment	Response
303	Department of Defense	I.A.5	This provision includes the regulation of pollutants of concern. Since pollutants of concern normally do not have an identified total maximum daily load (TMDL) and/or minimum quantification levels (MCL), inserting this provision into the draft permit will place Permittees at risk of permit violation. Part I §C(2)(b)(ii) subjects the Permittee to unlimited financial exposure in that the Permittee is required to perform a de facto watershed contaminant report for the regulator for any contaminant of concern without limitation.	The permit is statutorily obligated to include controls to reduce pollutants to the Maximum Extent Practicable and to protect water quality. Prior to a TMDL, the permit requires added attention for controlling pollutants of concern linked to know water quality impairments. The permit does not establish a numeric limit for those pollutants of concern, but rather requires best management practices and monitoring. The permit does not require the permittees to do a TMDL or watershed contaminate report. Activities taken to reduce the discharge of the pollutant of concern will help the permittee meet Wasteload Allocations that would be established when a TMDL is developed.
304	Martin J. Haynes		Confusing as to the effective date and the permit issuance	The effective date of the permit is the date of publication in the Federal Register.
305	Martin J. Haynes		No clear list of BMPs	EPA has intentionally not specified a mandatory list of specific BMPs, enabling MS4 operators flexibility to use the BMPs they find to be best suited at meeting their Measurable Goals and the permit requirements.
306	Martin J. Haynes		Causes problems with water compact requirements for the State of New Mexico.	See responses to comments No 41 and 45.
307	Martin J. Haynes		By implementing this Permit, EPA is taking private citizens' rights away. Citizens have no representation in relation to the Permit due to multi-jurisdictional entities that most likely will be fighting amongst each other. At a minimum the permit should be delayed, but better yet, the Permit should not be levied upon the citizens of the Middle Rio Grande area.	The commenter did not specify exactly what rights they believed were being taken away, preventing a more specific response. However, EPA has not taken private citizens rights away. Part I.D.5.h of the permit specifically requires the MS4 operator to provide opportunities for public participation and involvement. The commenter has already exercised their right to be involved in the permit decision by providing comments on the proposed permit. The commenter's elected local officials have a role in formulating the Storm Water Management Program that will be used in their jurisdiction.

#	Commenter	Section	Comment	Response
308	WESTCAS	I.D.5	item 5 requires Low Impact Development (LID) for new development and redevelopment, to the point of requiring payment in lieu of implementing LID. WESTCAS is concerned that EPA has focused entirely on minimizing storm water runoff as the single tool for improving receiving water quality. Storm water runoff is a resource that provides water to our rivers and maintains flow for both humans and the environment. The goal of storm water permits should be on protecting receiving water quality and should not mandate and limit the tools that can used to meet the goal. This permit should explicitly recognize that LID practices in arid areas are but one way to achieve compliance with water quality standards.	The goal of the permit is to protect water quality from stormwater discharges. The permit does provide for a number of BMPs to be implemented to address stormwater runoff, including post-construction stormwater standards. The permit also provides flexibilities on what BMPs to implement. See response to comment No 55.
309	WESTCAS	I.D.5	item 5 requires Low Impact Development (LID) practices that include infiltration of storm water. WESTCAS is concerned that infiltration infrastructure will meet the definition of injection and trigger the Underground Injection Control (UIC) provisions. This would require obtaining another permit to meet the permit requirements. WESTCAS urges EPA to remove elements that would require infiltration of storm water until there is an exemption for storm water infiltration in the UIC regulations.	Comment noted. EPA has issued a memo on UIC practices and Green Infrastructure. It clarifies on what stormwater infiltration practices have the potential to be regulated as Class V wells by the Underground Injection Control Program. The memo can be found at http://water.epa.gov/infrastructure/greeninfrastructure/upload/memo_gi_classvwells.pdf
310	WESTCAS	I.D.5	item 5 should recognize that requirements to implement green infrastructure, such as permeable pavement, may not be appropriate for runoff reduction in the arid west. The short duration high intensity storms that are characteristic of the arid west overwhelms the absorptive capacity pavement. Further, the lack of rain between storms result in dry conditions that are amenable to dust storms, which have the impact of plugging permeable pavements. Other concerns regarding arid LID include increased infrastructure maintenance and necessary use of potable water to maintain LID features between rain events, which is contrary to water conservation.	See response to comments No 55 and 57.

#	Commenter	Section	Comment	Response
311	Pueblo of Sandia	I	Page 9 of Part I- 3. Where to Submit. The Pueblo requests the following MS4 operators: Class A -AMAFCA (Albuquerque Metropolitan Arroyo Flood Control Authority), Class B- Sandoval County, Village of Corrales, City of Rio Rancho, Town of Bernalillo, SSCAFCA (Southern Sandoval County Arroyo Flood Control Authority) and Class C -ESCAFCA (Eastern Sandoval County Arroyo Flood Control Authority) also submit the signed NOI to the Pueblo of Sandia at the following address: Pueblo of Sandia Environment Department, Attn: Scott Bulgrin, Water Quality Manager, 481 Sandia Loop Bernalillo, New Mexico 87004.	Part I.B.3 and Part III.D.4 have been modified to require those MS4s with discharges upstream of or to waters under the jurisdictional of the Pueblo of Sandia (AMAFCA, Sandoval County, Village of Corrales, City of Rio Rancho, Town of Bernalillo, SSCAFCA, and ESCAFCA) to submit a copy of the NOI to the Pueblo of Sandia. The address in Part III.D.4 has been also modified as follow: *Pueblo of Sandia Environment Department* *Attn: Scott Bulgrin, Water Quality Manager* *481 Sandia Loop* *Bernalillo, NM 87004* *(Note: Only those MS4s with discharges upstream of or to waters under the jurisdictional of the Pueblo of Sandia: AMAFCA, Sandoval County, Village of Corrales, City of Rio Rancho, Town of Bernalillo, SSCAFCA, and ESCAFCA)*
312	Pueblo of Sandia	I	Page 35 of Part I- Note: "Discharges or flows from fire fighting activities..." The Pueblo requests that this note be amended to include other natural disasters or man-made events which may occur and be out of the permittee' s control due to their nature.	EPA declines to add additional categories of allowable non-storm water. CWA 402(p)(3)(B)(ii) requires the permit to include an effective prohibition on non-storm water discharges into the MS4. Parts I.D.5.e and I.D.5.e.(i).(b) of the permit implement this prohibition by prohibiting illicit discharges and requiring the IDDE program. Emergency fire fighting waters are excluded from the definition of "illicit discharge" (see 40 CFR 122.26(b)(2)). Other non-storm water discharges caused by natural or man-made disasters would likely fall under the "spill" provisions of the permit at Part I.D.5.e.(v). The MS4 operator's responsibility is to respond appropriately to the spill to minimize the discharge of pollutants (see Part I.D.5.e.(v)(a) and (b).
313	Pueblo of Sandia	III	Page 8 of Part III- 4. The Pueblo requests only the following MS4 operators: Class A -AMAFCA (Albuquerque Metropolitan Arroyo Flood Control Authority), Class B-Sandoval County, Village of Corrales, City of Rio Rancho, Town of Bernalillo, SSCAFCA (Southern Sandoval County Arroyo Flood Control Authority) and Class C- ESCAFCA (Eastern Sandoval County Arroyo Flood Control Authority) submit the documents in 4 to the Pueblo of Sandia at the following address: Pueblo of Sandia, Attn: Scott Bulgrin, Water Quality Manager, 48I Sandia Loop, Bernalillo, New Mexico 87004.	See response to comment No 311

#	Commenter	Section	Comment	Response
314	Pueblo of Sandia	IV	Page 5 of Part IV- 2. (iii). The Pueblo requests that the following correction be made to the address listed in the permit: Pueblo of Sandia Environment Department, Attn: Frank Chaves, Environment Director, 48I Sandia Loop, Bernalillo, New Mexico 87004.	The address for the Pueblo of Sandia has been revised in Part IV.U.2.a.(iii) and Appendix C of the permit - Historic Properties Eligibility Procedures as follows: *Pueblo of Sandia Environment Department* *Attn: Frank Chaves, Environment Director* *481 Sandia Loop* *Bernalillo, NM 87004*
315	Pueblo of Sandia	App. C	Historic Properties Eligibility Procedures. The Pueblo requests in III. Tribal Historic Preservation Officers that the following contact be added for historic and cultural properties issues: Pueblo of Sandia Environment Department, Attn: Frank Chaves, Environment Director, 481 Sandia Loop, Bernalillo, New Mexico 87004. The Pueblo also asks why the Mescalero Apache Tribe is included in this section.	See response to comment No 314. The Tribal Historic Preservation Office for Mescalero Apache Tribe was included in previous permit. EPA carried this information over the new permit.
316	City of Albuquerque		The COA wishes to thank the EPA for allowing us to comment on this permit and promoting the ideas of watershed-based permitting and GI/LID practices to improve the quality of water in the Middle Rio Grande.	Noted in the administrative record.
317	City of Albuquerque		The CWA regulates the discharge of pollutants in storm water. It does not regulate the volume of storm water that is discharged. Any portion of this permit that purports to regulate volume or quantity of storm water is inconsistent with the CWA.	Permit conditions are included to control the discharge of pollutants and not solely water quantity. CWA 402(p)(3)(B)(iii) provides broad authority for the control of pollutants in storm water discharges from the MS4: "shall require controls…including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator ... determines appropriate for the control of such pollutants."
318	City of Albuquerque		Entities in the WBP area who are not true copermittees to the permit should not be able to promote, restrict or veto any decisions, actions or plans undertaking by the collective will and consensus of the co-permittees.	Permittees are obligated to comply with the permit. While the permit does require opportunities for public participation, that does not alter the obligation to comply with the permit.
319	AMAFCA	Cover letter	*["This permit and the authorization to discharge shall expire at midnight."]* It's my understanding that the EPA expects MS4s to continue managing the SWMP even after the permit expires. For example, the small MS4 permit has already expired, but the MS4 responsibilities have not been dismissed. Please reword this in order to clarify the true intent of permit expiration.	According to the Administrative Procedures Act (5 USC §551 et seq. (1946)), if the permit is not reissued or replaced prior to the expiration date, it will be administratively continued. See also Part IV.V of the permit.

#	Commenter	Section	Comment	Response
320	AMAFCA	Cover letter	State the duration of the permit.	NPDES permits are issued for a term not to exceed five years, however, the Administrative Procedures Act (5 USC §551 et seq. (1946)) would automatically extend the permit ("administratively continue") and keep it in force and effect after the expiration dates should it not be reissued or replaced prior to the expiration date. The final permit will include the permit expiration date.
321	AMAFCA	Table of contents	Due to the large size of the permit, please add page numbers to the table of contents.	The Table of Content has been revised to include the page numbers.
322	AMAFCA	I.A.5.a.ii	Please explain how are these exemptions identified and documented so the MS4s under this permit know how to find a listing of these exemptions.	The CWA determines which discharges are subject to the NPDES permitting program and also provides several exemptions. The most common "exempt" discharges are non-point sources such as agricultural storm water (see definition at point source at CWA 502(14)), agricultural return flows (CWA 402(l)(1), and uncontaminated storm water runoff from oil and gas and mining activities (see CWA 402(l)(2).
323	AMAFCA	I.C.1.d	Nearly all AMAFCA channels are waters of the U.S. per the USACE.	AMAFCAs permit responsibility is limited to portions of their system that are not waters of the United States, with the exception of conditions included to implement reasonable and prudent measures for protection of endangered species resulting from the U.S. Fish and Wildlife Service's Biological Opinion concluding consultation on the permitting action required under section 7 of the Endangered Species Act. Inclusion of such conditions is authorized under 40 CFR 122.49 and is necessary to enable the permittees to take advantage of the incidental take statement included in the Biological Opinion that provides authorization for incidental takes of endangered species resulting from the authorized discharges.
324	AMAFCA	I.D.5.c.i	Note: Flood Control Authorities may only apply the Pollution Prevention/Good Housekeeping for Municipal/Co-permittee Operations to the permittees' own facilities as applicable.	Part I.D.5.c.(i) of the permit only applies to the permittees own operations.
325	AMAFCA	I.D.5.c.ii.d	AMAFCA does not engage in these types of activities, and this section is therefore inapplicable.	If a particular portion of the permit requirement for the SWMP does not apply, permittees should note this and explain why it does not apply in that section of their SWMP.
326	AMAFCA	I.D.5.c.ii.f	AMAFCA does not use or discard any of these types of items, and this section is therefore inapplicable. However, to the extent this section is applicable to AMAFCA's operations in removing pollutants from the MS4 system, AMAFCA will take steps necessary to address the proper disposal of such items.	Noted in the administrative record.