
SUPPORTING STATEMENT
Stormwater Management Including Discharges from Developed Sites Questionnaires
For Revised Questionnaires

U.S. Environmental Protection Agency
Office of Water
Office of Science and Technology

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PART A OF THE SUPPORTING STATEMENT

1. Identification of the Information Collection

a. Title of the Information Collection

United States Environmental Protection Agency
Information Collection Request for Stormwater Management Including Discharges from Developed
Sites (New)
EPA ICR No. 2366.02
OMB Control No. 2040-0282

b. Short Characterization/Abstract

The United States Environmental Protection Agency (EPA), through this Information Collection Request (ICR) package, requests that Office of Management and Budget (OMB) review and approve this ICR in support of EPA's Stormwater Management rulemaking. Through this collection, EPA will obtain data essential to inform EPA's stormwater management rulemaking under Clean Water Act (CWA) Section 402(p).

Long term stormwater discharges from developed sites, such as subdivisions, roadways, and commercial buildings or shopping centers, can significantly alter the hydrology of a site and can have a negative impact on receiving waterbodies. Generally, as sites are developed, there is an increase in impervious areas where water cannot infiltrate into the ground, leading to increases in stormwater runoff volume. This additional stormwater volume, as well as the introduction of pollutants such as fertilizers, sediments and deposition of vehicle emissions contributes to increased stormwater impacts.

EPA's current national stormwater program regulates stormwater discharges from certain municipal separate storm sewer systems (MS4s), stormwater discharges associated with industrial activity, and stormwater discharges during active construction at sites of one acre or larger as required by section 402(p) of the CWA. See 40 CFR 122.26(a). Under EPA's regulations, these stormwater discharges are required to be covered by National Pollutant Discharge Elimination System (NPDES) permits that must include certain requirements including, where applicable, stormwater management plans including long term stormwater discharge controls. Section 402(p) also authorizes EPA to designate additional stormwater discharges to be regulated other than those already regulated and to establish a comprehensive program to regulate them. See 402(p)(2)(E) and (6).

In July 2006, EPA commissioned the National Research Council (NRC) to review its program for controlling stormwater discharges under the CWA. The NRC released its report, entitled *Urban Stormwater Management in the United States*, National Academy of Sciences Press, in October 2008. The NRC report states that stormwater discharges from the built environment remains one of the greatest challenges of modern water pollution controls, "as this source of contamination is a principal contributor to water quality impairment of waterbodies nationwide." The NRC found that the current regulatory approach by EPA is not adequately controlling all sources of stormwater discharge that are contributing to waterbody impairment. NRC recommended that EPA address stormwater discharges from impervious land cover and promote practices that harvest, infiltrate and evapotranspire

stormwater to prevent it from being discharged, which is critical to reducing the volume and pollutant loading to our Nation's waters.

Based on the results of the NRC report, EPA published a December 28, 2009 Federal Register Notice announcing a proposed rulemaking to strengthen its stormwater program under the Clean Water Act (CWA) and to further reduce the impact of long term stormwater discharges from developed sites to our Nation's waters (See FR 74 FR 68617-68622). As described in that notice, EPA is considering the following as part of its rulemaking:

- a. Establishing national standards for stormwater discharges from new and redeveloped sites.
- b. Expanding the scope of the existing MS4 regulations. This includes a consideration of covering more areas within existing MS4 jurisdiction as well as regulating additional areas for regulation not currently subject to MS4 jurisdiction.
- c. Revising existing MS4 regulation to establish a single rule for all regulated MS4s and to strengthen existing requirements..
- d. Revising existing MS4 requirements to include retrofit requirements for existing development within an MS4, and
- e. Including specific provisions for the Chesapeake Bay watershed.

In order to inform this rulemaking, this ICR consists of two questionnaire instruments designed to collect information from owners and developers of residential, commercial, industrial, and non-commercial sites. The data collected through these questionnaires will provide EPA with information to characterize current building, transportation, and real estate improvement projects (i.e., new and redevelopment); long term stormwater controls and best management practices (BMPs) being installed at newly developed and redeveloped projects; and technical, financial, and environmental data needed to quantify the incremental pollutant removals, compliance costs, impacts, and benefits for various regulatory options that EPA might consider in this rulemaking.

EPA plans to distribute the Owner/Developer Questionnaires to a statistical sample of owners and developers. See Part B of this supporting statement. Owners/Developers will devote time and resources to respond to this ICR. EPA estimates that the total respondent burden associated with this ICR will be 86,811 hours or \$4,210,346 dollars (including labor and O&M costs), a drop of 16,772 hours and \$644,093 from EPA's initial estimates. The questionnaires and collection design represent EPA's effort to gather sufficient data to perform the analysis to accurately assess its rulemaking consideration yet at the same time administer an ICR that limits the burden placed on respondents.

2. Need for and Use of the Collection

a. Need/Authority for the Collection

As explained in 74 FR 68617-68622, under Authority of Section 402(p) of the CWA, EPA's Office of Water has begun an effort to strengthen and expand its stormwater program with a focus on reducing water quality impacts from long term stormwater discharges from developed sites. EPA plans to use these questionnaires to solicit information from owners and developers of newly developed and redeveloped projects. Because EPA lacks readily available information to inform this proposed rulemaking, this ICR is necessary to fulfill requirements established by the CWA to inform Agency

decision making about the appropriate course of regulatory action to reduce water quality impacts from long term stormwater discharges.

EPA will use the questionnaire data (along with information obtained from other sources) to develop a profile of current building, transportation, and real estate improvement projects (i.e., new and redevelopment); long term stormwater controls and best management practices (BMPs) being installed at newly developed and redeveloped projects; and technical, financial, and environmental data needed to quantify the incremental pollutant removals, compliance costs, impacts, and benefits for various regulatory options that EPA might consider in this rulemaking.

The information will be collected through questionnaires, distributed under the authority of section 308 of the Clean Water Act.

b. Practical Utility/Users of the Data

i. General Use of the Data

EPA plans to use this ICR to solicit information from the owners and developers of residential, commercial, industrial, and non-commercial sites that may be affected by this rulemaking. EPA will use the information collected through this ICR to gain knowledge of new development and redevelopment projects, long term stormwater management practices and installations at newly and redeveloped sites; and financial information for developers and owners of these projects. The information collected will provide data that complement, and go beyond, data that are available from public sources.

The Owner/Developer Questionnaires request information on the following primarily as they relate to long term stormwater management of discharges from newly and redeveloped building and real estate improvement projects¹:

- General identification information;
- Type/location/size/identification of projects;
- Land cover areas both pre- and post-development including percent imperviousness;
- Long term stormwater best management practices and controls (with a focus on LID practices), including design criteria, specifications, and cost information;
- Stormwater permit and management requirements;
- Information on design credits or incentives (or impediments) associated with implementing retention practices;
- Firm level financial information;
- Establishment level financial information; and
- Project level financial information.

EPA would use the technical data collected in the Owner/Developer Questionnaires to establish a baseline of current usage and availability of long term stormwater discharge practices and controls at new and redevelopment projects. In addition, EPA would use the project level data to develop a national distribution of projects based on critical characteristics (e.g. size, value, percent imperviousness, previous land use). Together, this information supplemented with other data (e.g. capital cost), will be

¹ EPA is not collecting data on erosion control activities or stormwater management activities during the active construction phase.

used to assess the incremental costs and benefits associated with various regulatory options for reducing long term stormwater discharges. Finally, EPA would use the financial information collected on the firm, establishment, and project level to characterize the economic status of owners and developers that could be subject to new stormwater management requirements and estimate the impact of compliance costs on the property developers and owners.

ii. Detailed Technical Analyses Supported by the Data from the Questionnaires

To support potential changes to the stormwater regulations, EPA would collect technical, programmatic, and financial information pertaining to current stormwater regulation and conveyance and treatment practices from owners and developers of property, MS4s, and NPDES Permitting Authorities. Ultimately, EPA would use the information to inform whether to expand its national stormwater program and how to best reduce long term stormwater discharges from new and redevelopment and the built environment.

EPA engineers, statisticians, economists, biologists, and contractors would perform detailed analyses of the data collected through the questionnaires. The EPA team would also supplement the collected information with additional data sources, such as National Oceanic and Atmospheric Administration (NOAA) precipitation data. Specific analyses using the technical data are described below.

Consideration of National Standards for Long Term Stormwater Discharges from New and Redeveloped Sites

(a) Profile of Current Construction Projects and Creation of Impervious Surfaces

EPA would use the data collected through the questionnaires to develop a national profile of new building and real estate improvement projects. This profile would differentiate the various types of residential and commercial construction, by, at minimum, size and geographic location. In addition, EPA would develop a national profile of net increase in impervious surfaces resulting from these activities.

(b) Profile of Long Term Stormwater Management Practices

EPA would use the data collected through the questionnaires to develop a national profile of long term stormwater management and control technologies and practices currently being incorporated in new building and real estate improvement projects, incentives and barriers to incorporating such practices, as well as a profile of the conveyance of stormwater discharges from these sites.

(c) Profile of Current Stormwater Program Requirements for Long Term Stormwater Discharges

EPA would use the data collected through the questionnaires to develop a national profile of existing local and state long term stormwater requirements for new and redevelopment projects and the built environment.

(d) Technical Feasibility and Effectiveness Analysis of Post Construction Stormwater Control

Feasibility and effectiveness of various long term stormwater controls and practices will likely vary depending, at minimum, on geography and weather patterns. EPA would use data collected through this ICR on feasibility and effectiveness of long term stormwater controls and practices, where available, together with other readily available data to assess the effectiveness of various control options at reducing overall stormwater volumes, stormwater velocities, and specific pollutants in the effluent and to identify any feasibility limitations of such technologies and/or practices.

(e) Pollutant Loadings and Removals

EPA will estimate current pollutant loadings from long term stormwater discharges and any reductions after incorporation of regulatory control options. EPA would use technical data collected from the questionnaires to supplement readily available data on pollutant loadings from long term stormwater discharges. Together, with information on existing projects, rainfall, and long term control and practice effectiveness, EPA will estimate the incremental pollutant reductions associated with various regulatory options. EPA will then use these incremental reductions in its benefits analyses and also to compare the relation between costs and associated reductions of regulatory options.

(f) Assessment of Technology Costs

EPA will estimate the costs of various stormwater management approaches, including pollution prevention and controls, associated with regulatory options. The costs of the control options or practices would include the following items: capital costs for engineering design (including overhead), equipment and installation, and annual operating and maintenance (O&M) costs for the option.

EPA would use data collected through the questionnaires, supplemented by cost information from other sources such as control system manufacturers, to estimate the direct costs of stormwater management, pollution prevention, and control options selected for any regulatory requirements. These data include information to allow for estimation of stormwater flow rates, data related to stormwater collection and treatment/control technologies, retention practices, and pollution prevention/management practices.

EPA would estimate the difference in incremental costs for incorporating option compliant long term stormwater discharge controls or practices during new development and redevelopment projects and any associated costs for operating and maintaining such controls and practices over current expenditures. EPA would use the information on current projects and long term stormwater pollutant estimates to determine whether new and redevelopment projects need to improve their stormwater collection and control technology (e.g., by installing new units or entire systems) and whether those responsible for maintaining such technologies would need to modify their operating practices to comply with the discharge requirements for a particular regulatory option. EPA also plans to evaluate and, account for, where appropriate, cost savings associated with option compliant long term stormwater discharge controls and practices. Incremental compliance costs would be used to determine the potential economic impacts of the options. In addition, these incremental compliance costs would be weighed against the incremental pollutant reductions and benefits resulting from each regulatory option.

(g) Environmental Assessment and Economic Benefits Analysis

EPA will perform an environmental assessment to characterize environmental impacts associated with long term stormwater discharges and the environmental improvements associated with their reduction. Improvements can include both surface water improvements as well as “ancillary benefits” associated with the use of certain urban stormwater control technologies and practices (e.g., improved groundwater recharge from infiltration practices or additional riparian habitat from vegetative buffers). The assessment aims to provide both a qualitative and, when sufficient data is available, quantitative characterization.

EPA would use information collected through this ICR, supplemented by other data, to perform this analysis. Following an assessment of the current environmental impacts, EPA would estimate the potential change in environmental impact associated with different control options for discharges from newly developed and redeveloped sites.

(i) Standards Consideration

EPA would use all of the above analyses to help inform its consideration of and development of options for national requirements to reduce long term stormwater discharges from new and redeveloped sites. For example, EPA would use the information to assess whether it should develop different standards for development and redevelopment or based on geographic location (e.g., Chesapeake Bay). The above analyses in conjunction with the economic analyses described below would help EPA determine what standards are appropriate to meet such a requirement and ultimately the decision criteria that may be used to make standard(s) selection.

iii. Detailed Economic Analyses Supported by the Questionnaire Data

EPA economists would use information collected in these questionnaires to estimate the potential economic impacts of the proposed rule on affected entities. In each of these analyses, the questionnaire data may be used as the primary input (e.g., project level financial information is used directly in an impact model), or may be used in conjunction with other readily available information. Many of the economic analyses require input from and/or build on the technical analyses described above.

To analyze the costs and impact of the proposed rule, EPA would use the questionnaire information to (1) characterize quantitatively the financial profile of the economic entities expected to be subject to the regulation, (2) characterize quantitatively the profile of new and redevelopment projects, and (3) undertake analyses of the economic impacts due to installation and maintenance costs based on that information.

(a) Developing the Analysis Baseline

EPA would develop the industry baseline for the establishments and firms engaged in developing projects and projects owners that are expected to be directly affected by this regulation. The development industry encompasses businesses operating in a range of construction industry segments. The questionnaires would determine those industry segments that are likely to perform activities within the scope of the regulation and that are the focus of this regulatory analysis. EPA would also determine the quantity and character of acreage and project development associated with those businesses and/or

owners. The development of an industry baseline, with respect to both establishment financial condition and the profile of projects performed, will support the analysis of the costs and impact of the proposed rule.

(b) Analysis of Impacted Entities associated with National Long Term Stormwater Discharge Standards for New and Redevelopment Projects

The four primary categories of affected entities are defined by their role in the life cycle of a development project, including the original land owner, the project developer/owner, the project's end user, and the government entity (in most cases an MS4) that has jurisdiction over the project's stormwater. OW will use these survey results, supplemented with other data sources to establish the baseline number and an economic/financial profile of potentially affected entities in non-government sectors impacted by the rule. A set of model firms that perform development projects will be based on the profile of developers/owners. All model project costs will initially be assigned to model firms. As most of these projects will be developed to be sold or leased in the real estate market, many of these costs will be passed through to other entities. Information on ownership and project purpose gathered through the survey will facilitate the estimation of the proportion of costs that are passed through to different business sectors and socio-economic communities.

(c) Error: Reference source not found

The survey will collect information on project construction cost and value for each phase of development. This will facilitate an assessment of project-level changes to profitability and also help in estimating an incremental compliance cost multiplier, which would be used to account for overhead, debt, and equity cost considerations that affect per-acre compliance cost, but that are not expected to be accounted for in the engineering-level estimate of per-acre cost. The project level analyses will support assessment of the cost and economic impact of proposed regulatory requirements on development industry. Industry-level effects will be assessed in terms not only of total cost to the industry, but also other key impact metrics, including cost-to-revenue ratios, potential instances of financial stress, and potential closures. This analysis would be performed for the entire set of in-scope entities, and separately for small entities in order to satisfy the Regulatory Flexibility Act (RFA, 5 U.S.C. et seq., Public Law 96-354), amended by the 1996 Small Business Regulatory Enforcement Fairness Act (SBREFA).

(d) Analysis of Single-Family Housing Affordability Impacts

The survey will collect information on value and number of dwelling units for residential projects. This information will be used to help assess potential effects on housing affordability. This analysis would be performed at a regional level (potentially states or metropolitan statistical areas), with economic effects assessed in terms of the expected change in price for various priced new single-family homes and cost for potential operation and maintenance requirements for permanent stormwater control structures. An assessment of the affect of these costs on the purchasing decision of prospective home buyers would also be performed.

(e) *Analysis of Social Cost and Economy-wide Effects*

The survey results provide the basis for estimating the extent and distribution of current development activity and for assessing the incremental costs from regulating this activity. In turn, this information supplemented with other data sources are used to estimate the social cost of the rule. The social costs analysis examines the affects of increased construction and O&M costs on the level of activity in the construction and real estate markets. The social cost analysis also takes into account the increased governmental costs resulting from the rule. The incremental costs to government and the private sector are also used for an additional analysis that estimates the economy-wide effects on output, employment and household income.

(f) *Regulatory Flexibility Act (RFA)*

As part of the statutory requirements under the RFA, EPA will assess the potential impacts of the rule on small entities. Small entities are estimated to comprise approximately 88 percent of the construction industry. The survey will provide insight on the operating models of small entities, their baseline economic/financial condition, and their participation on in-scope projects, and thus support a stronger understanding of potential rule impacts on small businesses.

(g) *Market Values Analysis*

The use of various stormwater controls and any associated maintenance requirements can have a direct affect on property values. The survey collects information on project value, controls used, and O&M requirements for property owners which will all help inform an analysis of how property values may change. Because some controls can improve or diminish the aesthetic quality of a property they can have an indirect affect on the property value of surrounding properties. Survey information will help identify neighborhoods that may have experienced property value changes due to the use of certain stormwater control practices within them.

(h) *Avoided Cost Analysis*

The national standards for new and redevelopment will lead to greater use of infiltration and retention practices, which can lead reductions in costs associated with numerous commercial activities and public works that are impacted by changes in urban hydrology, such as: Flood Damages, Storm Sewer System Maintenance, and Stream Restoration. Information collected in this survey, supplemented with other data sources will help in the assessment of the potential cost savings that may result from reducing the volume and velocity of stormwater entering storm sewers and adjacent waterways.

3. Non-Duplication, Consultations, and Other Collection Criteria

a. Non-Duplication

EPA's Office of Water made every reasonable attempt to ensure that this ICR does not request data and information currently available through less burdensome mechanisms. Specifically, OW explored Agency databases, directories, contacts, and sources to locate data and information significant to this regulatory development process. OW also explored other ongoing or completed regulatory developments (e.g., Effluent Limitations, Guidelines, and Standards (ELGs) for the Construction and

Development Industry) and/or information collection efforts. In addition, OW has conducted a thorough collection and review of other applicable databases and secondary sources.

For information on project type and project size, EPA has used CGP Notice of Intent (NOI) records in the past. However, while some information for potential in-scope projects can be obtained from the NOI database, the dataset has certain limitations including coverage, detail and currency. The NOI database includes data on only 24 states and cannot provide the information needed to conduct a national assessment. In addition, the information included in this source is not sufficiently detailed in terms of project technical characteristics and contains little or no economic/financial information to meet the needs of the technical, economic, and environmental impact analyses. Moreover, the dataset is not consistently current. EPA intends therefore to collect information on current projects and project size from the questionnaire respondents so that a more accurate national picture can be developed.

Previously used data sources for stormwater controls include state construction general permits (CGPs), websites, summary references, state regulations, and erosion and sediment control design and guidance manuals. These sources provide a summary of criteria and standards for active construction site stormwater erosion and sediment control that are implemented by states, but do not summarize long term stormwater controls that are implemented after completion of active new and redevelopment projects, which are the focus of this data collection activity. EPA intends to collect information on stormwater controls and to assess practices currently used for long term stormwater discharge control.

For information on land use, EPA has used the National Land Cover Database (NLCD), which provides a national source of data on land cover change. This database provides a 30-meter resolution land cover data layer over the conterminous United States (CONUS) from Landstat Thematic Mapper satellite imagery. NLCD data are publicly available for the years 1992 and 2001 and the land cover change map and all documentation pertaining to it are considered provisional until a formal accuracy assessment can be conducted. Classifications from the NLCD dataset include: open water, urban, barren, forest, grassland/shrub, agriculture, and wetlands Ice/Snow. EPA intends to collect pre- and post-development land cover data as part of this data collection as a means to assess potential changes in stormwater flow following land development. These data are not currently available from NLCD due to the level of detail required for post-development land cover categories (e.g., rooftops, parking lots, street/road, lawn, farm, forest, other vegetation).

For information on soil type, EPA has used the State Soil Geographic Database (STATSGO) which provides a national map of soil types across the U.S. STATSGO was designed primarily for regional, multi-county, river basin, State, and multi-state resource planning, management and monitoring and the data are not detailed enough to make interpretations at a county level. As part of the questionnaire, EPA will request information on the predominant soil type for each project identified and reported. EPA needs to collect this information at the project level since STATSGO will not provide location specific soil conditions to allow for the most accurate analysis.

For precipitation data, EPA will use publicly available data published by the National Oceanic and Atmospheric Administration (NOAA). These data are available from national weather stations throughout the U.S. and will provide sufficient estimates of annual rainfall by location (city, county, state).

For purposes of the current stormwater data collection and analysis, EPA will also require information on BMPs and retention practices applicable to the control of long term stormwater discharges from newly developed and redeveloped sites. To assess the performance of these practices, in part, EPA will use data from vendors and the National Stormwater BMP Database, developed by the American Society of Civil Engineers (ASCE).

The financial data requested in the owner/developer Questionnaire is not expected to be available through other sources. While some general business information is available from business registries such as Dunn & Bradstreet (D&B), these data are limited and do not provide sufficient understanding of the business operations of the industry to complete a comprehensive economic impact analysis. In addition, some of the financial information requested may be claimed as CBI and therefore not available outside of a survey.

b. Public Notice Required Prior to ICR Submission to OMB

(i) Publication of the Federal Register Notice

On October 30, 2009 (74 FR 56191-56193), EPA published a notice in the Federal Register, announcing the Agency's intent to submit a request for a new ICR and to collect comment on three draft questionnaires associated with this stormwater management regulation. EPA informed trade associations, state and local contacts, and environmental groups of the notice via phone and e-mail.

EPA published a second notice in the Federal Register announcing its intent to submit a request for a new ICR and to collect comments on the revised versions of the questionnaires on May 10, 2010 (75 FR 25852-25853). The notice included a description of the entities that would be affected by the proposed questionnaires, a brief explanation of the need for the questionnaires, and an estimate of the burden to be incurred by questionnaire respondents. In addition, the Agency requested further comments and suggestions regarding the questionnaires and a reduction in the associated burden, and asked the public to submit all final comments and suggestions within 30 days of Federal Notice publication. EPA notified key trade associations, state and local contacts, and environmental groups of this notice via phone and e-mail.

Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act, EPA specifically solicited comments and information to enable it to:

1. Evaluate whether this proposed information collection is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, clarity, and unity of the information to be collected.
4. Evaluate the questionnaires that will be implemented for this information collection request.
5. Minimize the burden of the collection of information on those that respond.

(ii) Public Response to the Federal Register Notice

EPA received public comments from a variety of interested parties following publication of the first Federal Register Notice (October, 2009). EPA received a total of 84 comments from environmental groups, associations, MS4s including State Departments of Transportation, long term stormwater practice and control vendors, universities, and individuals. Appendix A contains a complete list of all commenters.

EPA is appreciative of the efforts made by stakeholders to support and improve the focus and content of the draft questionnaires. EPA has benefited from this input and used the information gained to improve this ICR and overall approach to this stormwater management rulemaking. In each case, EPA carefully reviewed each of the questionnaires, as appropriate, and revised them accordingly. An overview of the overarching comments applicable to all of the questionnaires and the resultant changes is provided below. A more detailed summary of comments received on each of the questionnaires and EPA's response and action are presented in Appendix B.

Several commenters questioned EPA's authority to promulgate a regulation thereby negating the need for this information collection. The following discusses each of the comments and EPA's response:

EPA does have federal authority to regulate discharges “from” MS4s but not “into” them. [402(p)(2)(C) & (D)] The only federal authority over MS4 influent is the prohibition of non-stormwater discharges into MS4s. [402(p)(3)];

EPA agrees with commenter that CWA sections 402(p)(2)(C) and (D) give EPA the authority to regulate discharges from MS4s; indeed EPA was required to regulate medium and large MS4s under section 402(p)(4). EPA disagrees with commenter that EPA does not have the authority over stormwater discharges into MS4s or that the only authority over MS4 influent is the prohibition of non-stormwater discharges into MS4s. Under CWA sections 402(p)(2)(B), 402(p)(2)(E), and 402(p)(6) EPA can and does regulate stormwater discharges into MS4s. For example, stormwater associated with industrial activity that is discharged to an MS4 is independently regulated by EPA or the States. 40 CFR 122.26(b)(14). As early as the preamble to the Phase I stormwater rule EPA stated “storm water from an industrial facility which enters and is subsequently discharges through a municipal separate storm sewer system is a ‘discharge associated with industrial activity’ which must be covered by an individual or general permit pursuant to [EPA regulations].” 55 Fed. Reg. 47,990, 47996-97 (November 16, 1990). EPA has the authority to regulate stormwater that is discharged into MS4s. In any rulemaking process EPA will discuss further the scope of what point sources will be subject to any standard or other effluent limitation.

Congress did not grant EPA authority to determine how MS4 operators should control indirect stormwater discharges into their systems as long as the MS4s meet their applicable permitting requirements for their own discharges.

EPA disagrees with commenter to the extent that EPA is required to ensure that permits for discharges from MS4s require controls to reduce the discharge of pollutants to the maximum extent practicable and require such other provisions as the EPA Administrator

or State determines appropriate for the control of such pollutants. See CWA section 402(p)(3)(B)(iii). In any rulemaking process EPA will discuss further the scope of what point sources will be subject to any standard or other effluent limitation.

EPA lacks the authority to regulate post-construction sites unless they independently generate a regulated stormwater discharge by meeting the definition of an industrial activity or MS4.

EPA disagrees with commenter. EPA has the authority under CWA section 402(p) to regulate discharges of stormwater other than those that are defined as “industrial” or from a “municipal separate storm sewer system.” Specifically, EPA derives independent legal authority from CWA sections 402(p)(2)(E) and 402(p)(6) and EPA regulations at 40 CFR 122.26(a)(9)(i)(C)-(D) to regulate stormwater discharges from developed sites. For example, in the Phase II stormwater regulations under the authority of CWA section 402(p)(6) EPA designated and currently regulates stormwater “discharges associated with small construction activity,” which are neither industrial discharges nor discharges from MS4s. 40 CFR 122.26(b)(15). In any rulemaking process EPA will discuss further the scope of what point sources will be subject to any standard or other effluent limitation.

Post-construction stormwater discharges should be considered nonpoint source discharges or diffuse stormwater discharges that are not regulated under the CWA.

EPA disagrees with commenter. “Point source” is defined as “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, or vessel or other floating craft, from which pollutants are or may be discharges.” See CWA section 502(14). EPA has the discretion to further define what is a point source. See National Wildlife Federation v. Gorsuch, 693 F.2d 156, 175 (D.C. Cir. 1982). The vast majority of developed sites contain pipes, ditches, swales or other types of discrete conveyances; through which pollutants are or may be discharged. Under CWA section 308 EPA has the authority to collect information from point sources. In any rulemaking process EPA will discuss further the scope of what point sources will be subject to any standard or other effluent limitation.

EPA can only regulate using standard industrial classification codes which don’t exist for subdivisions, etc.

EPA disagrees with commenter. There is nothing in the CWA that requires EPA to regulate stormwater discharges based on the standard industrial classification (SIC) codes. In the Phase I stormwater rule EPA used SIC codes to categorize discharges associated with industrial activity; however the Agency was not required to do so then and is not required to do so in any future rulemaking. Any stormwater rulemaking will discuss further how EPA intends to classify discharges from developed sites (or any other stormwater point sources addressed in the proposal) for regulation under the CWA.

EPA has not clearly articulated its statutory authority to develop stormwater management regulations nor demonstrated that an information collection effort and rulemaking are necessary. EPA has not designated post-construction stormwater discharges as requiring a permit. EPA has not provided a clear definition of what the information will be used for.

EPA disagrees with commenter. EPA has authority under CWA section 402(p)(6) to designate stormwater discharges in order to protect water quality and develop a comprehensive program to regulate those designated stormwater discharges. Designation of stormwater discharges from developed sites is being considered as part of any rulemaking. Additionally, EPA has the authority under CWA section 402(p)(3)(B) to require discharges from MS4s to require 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 EPA determines are appropriate for the control of stormwater discharges. The information collected in this Information Collection Request will be used to assist EPA in developing a regulation to address discharges from developed sites, including, but not limited to, performance or design standards for those designated discharges from developed sites as part of a comprehensive program under section 402(p)(6); benefits of any performance or design standard; costs of any performance or design standard; the prevalence, utilization and effectiveness of stormwater controls that retain, detain or infiltrate stormwater (i.e., low impact development or green infrastructure); and characterize the current scope, components, and implementation of existing state or regional NPDES stormwater programs. EPA would like a sound record basis for any regulation it proposes and promulgates. This information request is reasonably related to helping create a record for that decision-making.

Many commenters provided alternative sources to obtain data and/or explained that they did not have the information to respond to certain questions. Others commented that the format in which EPA requested the information is extremely burdensome because they do not track information in that way. EPA carefully reviewed each of the questions in each of the survey instruments to remove or revise its questions, where appropriate, accordingly.

Some suggested EPA's possible universe of questionnaire recipients is flawed. In some cases, commenters provided information on additional categories of possible recipients (other possible sources of the requested information) while others explained why certain categories were inappropriate recipients (because they do not have the requested information). EPA reviewed and revised its universe of possible questionnaire recipients and concludes that the entities included in the survey design will provide the best information to aid EPA in this rulemaking effort. See Part B of this ICR for additional information on the proposed universe of questionnaire recipients.

Various commenters requested additional definitions or suggested revised definitions. EPA agrees that additional and/or revised definitions would improve understanding of the terms used in specific questions and would likely improve the quality of the data obtained. EPA has revised the questionnaire definitions accordingly.

Several commented on the burden and the 60 day response deadline. During consultations with developers/owners, EPA gathered valuable insight on the overall questionnaire burden and the burden of specific questions. EPA has revised the questionnaires with an eye on burden reduction. For example, EPA has reduced the amount of questions in the owner/developer survey considerably and developed both a long and short version. A 60 day response period allows ample time for even the most burdensome questionnaire respondents. See Section 7 for additional discussion on burden.

Various commenters provided suggestions for revisions of specific questions or additional questions or stormwater issues for which EPA should request data. Where appropriate, EPA revised the questions accordingly.

Many provided comments on the rulemaking itself. While EPA appreciates these comments, they are outside the scope of this ICR.

c. Consultations

Following the first Federal Register Notice, EPA hosted a number of teleconferences and meetings with representatives from the National Association of Home Builder's (NAHB), The Association of General Contractors (AGC), Association of State and Interstate Water Pollution Control Administrators (ASWIPCA), National Association of Clean Water Agencies (NACWA), Natural Resources Defense Council (NRDC), and various states. In addition, between January and March, EPA conducted listening sessions in Chicago, San Francisco, Denver, Dallas, DC, and Boston which enabled it to obtain feedback directly from a variety of interested stakeholders. EPA also held a virtual listening session with approximately 1,900 participants. The main purpose of the listening sessions was to obtain input on the rulemaking considerations described in Section 1a. However, these listening sessions were invaluable to this effort as well because they provided EPA with a more complete picture of existing stormwater management and permitting throughout the U.S., including local geographic and legal considerations. EPA also received input on the questionnaires themselves as well as other data sources during these listening sessions.

The Agency continued to solicit comments and consult with interested stakeholders following publication of the second notice as it plans to do throughout development of this rule. During the comment period for the second notice, EPA met with NAHB,), American Association of State Highway and Transportation Officials (AASHTO), National Association of Clean Water Agencies (NACWA), Leading Builders of America, Wal-Mart, Building Owners and Managers Association, International Council of Shopping Centers, Commercial Real Estate Development Association (NAIOP), National Multi Housing Council, National Apartment Council, National Leased Housing Association, the Real Estate Roundtable, and various states.

d. Effect of Less Frequent Data Collection

These questionnaires are to be administered one time only. If this information collection is not conducted, the specific data sought in these questionnaires will not be available for EPA's use in decision making about the need for and scope of potential regulation to prevent or reduce long term stormwater discharge impacts from new and redevelopment. Reliance on public data alone would significantly impair EPA's ability to establish a baseline of existing state and local stormwater programs

and requirements, current new and redevelopment projects and associated long term stormwater controls; and incremental costs, pollutant reductions, impacts, and benefits of potential rulemaking.

e. General Guidelines

EPA will conduct data collection in accordance with the Paperwork Reduction Act guidelines in 5 CRA 1320.6 and EPA's Quality Assurance Guidance. Information to be disseminated would comply with EPA's Information Quality Guidelines which were developed for implementing OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of the Information Disseminated by Federal Agencies.

f. Confidentiality

The owner/developer questionnaires inform respondents of their right to claim information confidential in accordance with 40 CFR part 2, subpart B, Section 2.203. The owner/developer questionnaires provides instructions for claiming confidentiality and informs respondents of the terms and rules governing Confidential Business Information (CBI) under the Clean Water Act and 40 CFR 2.203(B). EPA does not expect stormwater management practices or project related conditions (such as project size, predominant soil type and land cover use) to be claimed as CBI. However, financial data requested through the questionnaire may be subject to a CBI claim. Each question which requests potentially confidential business information is accompanied by a CBI checkbox. Questionnaire respondents are directed to check the CBI checkboxes which accompany the responses they claim as confidential.

EPA and its contractors will follow existing procedures to protect data labeled as CBI. These procedures include the following:

- Ensure secure handling of completed questionnaires to preclude access by unauthorized personnel.
- Store completed questionnaires and databases in secured areas of offices, and restrict access to authorized EPA and contractor personnel only.
- Restrict any publication or dissemination of confidential study results or findings to aggregate statistics and coded listings.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the Clean Water Act. Exemption 4 of the Freedom of Information Act (FOIA) protects from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." See 5 U.S.C. 552(b)(4).

Information covered by a claim of confidentiality will be made available to EPA contractors supporting this rulemaking to enable them to perform the work required by their contracts with EPA. Each EPA contractor that collects, possesses, or stores CBI is responsible for the proper handling of that data. Each contractor will safeguard information as described in Section 2.211(d) of Subpart B and is

obligated to use or disclose information only as permitted by the contract under which the information is furnished.

g. Sensitive Questions

No sensitive questions pertaining to private or personal information, such as sexual behavior or religious beliefs, would be asked in the questionnaire.

4. The Respondents and the Information Requested

a. Respondent NAICS Codes

The target population for the Owner/Developer Questionnaires is all development establishments in the United States. For the selection of establishments by construction type, EPA is focusing on the following eight North American Industry Classification System (NAICS) codes:

- 236115: New Single-Family Housing Construction (except operative builders);
- 236116: New Multifamily Housing Construction (except operative builders);
- 236117: New Housing Operative Builders;
- 236210: Industrial Building Construction;
- 236220: Commercial and Institutional Building Construction;
- 237210: Land Subdivision;
- 237310: Highway, Street and Bridge Construction;
- 237990: Other Heavy and Civil Engineering Construction;
- 523920: Portfolio Management;
- 531110: Residential Real Estate Estimate Lessors; and
- 531120: Non Residential Real Estate Estimate Lessors.

EPA has identified over 738,000 possible developers/owners of new and redevelopment.

Also see Part B of this support statement.

b. Information Requested

i. Data Items, Including Record Keeping Requirements

EPA has developed two survey instruments for this data collection effort: a Long Owner/Developer Questionnaire and a Short Owner/Developer Questionnaire. The Owner/Developer Questionnaire responses will primarily provide information to evaluate the standards for long term stormwater discharges from newly developed and redeveloped sites.

EPA is planning to distribute the owner/developer questionnaires to a statistical sample of the four population categories. Part B of this document details EPA's plans for selecting questionnaire recipients.

EPA is evaluating various methods for distributing the questionnaires. EPA may distribute the questionnaires through the mail or may request recipients go to a web site to obtain a PDF fillable or Excel Spreadsheet version of the questionnaire. In the event that EPA elects to distribute the

questionnaires via the mail, questionnaires may be provided in a paper or electronic format (PDF fillable or Excel spreadsheet such as a CD or flash drive).

Descriptions of the data requested in each of these questionnaires are provided below:

OWNER/DEVELOPER QUESTIONNAIRES

The following section provides detailed information on and justification for each of the questions in the Owner/Developer Questionnaires. The potential population of questionnaire recipients is the same for both the long and short version. However, selected recipients will be requested to respond to the long or short version, but not both. The short version of the questionnaire is the same as the long version, but includes fewer questions. In particular, questions in the short questionnaire are aimed at covering basic, key operational and financial characteristics of potentially in-scope business and the projects they perform.

LONG OWNER/DEVELOPER QUESTIONNAIRE

GENERAL INFORMATION

Questions 1-11 cover basic, key operational and financial characteristics of potentially in-scope business and the projects they perform.

Questions 1 and 2 request contact information for the establishment to identify the responding establishment and enable follow-up on erroneous/incomplete answers.

Several questions in the questionnaire will ask the respondent to report financial information for each year in which the respondent was in business from 2005 – 2009. Recognizing that some respondents may find it less burdensome to report financial information on a fiscal year basis rather than on a calendar basis (i.e., if their fiscal year doesn't begin in January), Question 3 simply asks the respondent to indicate their choice for reporting this information. If the respondent selects the *fiscal year* option, then they must check a box to indicate which month begins their fiscal year. EPA will then use this information to assign establishment financial information to specific calendar years of business activity.

Questions 4, 5 and 6 are the primary screener questions in the survey instrument. These questions will be used to determine whether the respondent is required to complete the rest of the questionnaire. The respondent will continue with the questionnaire if they have engaged on one or more of the following activities during the period 2005 – 2009: Land Development (including land subdivision); Single-Family Residential Construction; New Multifamily Residential Construction; Commercial and Institutional Construction; Transportation (Highway, Road, or Bridge) Construction; or Industrial Construction. In addition, the business must have been an owner, developer, or builder of at least one project during either its land development phase or its building construction phase (either as the sole responsible party or as a participant in a joint venture or other multiple party structure) during 2005-2009. Finally, the business must have participated in at least one new development or redevelopment project either during the land development or building construction phase that resulted in the installation of 5,000 square feet or more of new impervious surfaces (roads, roofs, parking lots, etc.) during 2005-2009? If the respondent answered no to any of the above questions, they do not have to complete the remainder of the questionnaire. EPA concludes these scoping questions ensure it will get responses from the

appropriate target audience and also that respondents to the remainder of the survey are point source dischargers.

Question 7 requests that the respondent indicate the state(s)/territories in which the establishment operates. The state in which the establishment is a legal entity may be different than the state or states that in which it operates. This information will be used to characterize the distribution of development activity and existing stormwater regulations geographically. This information will also support the development of model projects and model firms, which will be differentiated by Census region.

Question 8 asks if the respondent is a publically traded company. EPA will use this information in the industry-level economic/financial analysis to further characterize the baseline financial performance and structure of model firms and to estimate certain financial information required in the analysis (for example, costs of capital).

Question 9 requests that the respondent indicate their type of business organization from a menu of choices. EPA will use this information to identify the tax status of the business for use in the economic/financial analysis and to understand the business operating structure(s) characteristic of the industry.

Question 10 requests the respondent to indicate their primary source of revenue from a menu of choices. Question 11 requests the respondent business to indicate if they develop properties primarily for sale or lease, or for your business to occupy? EPA will use this information to understand the business operating structure(s) characteristic of the industry.

Project Information Part 1

Questions 12-17 request summary project information.

Question 12-14 request information pertaining to projects in which the respondent had an ownership stake.

Question 12 asks for the respondent's total revenue. The respondent may flag this information as CBI. Revenue information will be used to define the size of the responding business in the economic/financial analysis and characterize model firms' operating economic structures and baseline financial performance and conditions. EPA will use revenue data along with financial statement data from RMA's eStatement Studies to map survey respondents to model firm financial statements. This question asks not only for total revenue, but also for the subset of revenue associated with activities that meet the in-scope criteria. In so doing, this question also functions as a mechanism for narrowing the focus of the questionnaire for questions 13 and 14. It is also important to isolate the respondent's in-scope revenue to gauge the fraction of the respondent's business that may be affected by the regulation.

Question 13 asks the respondent to report the number of new development and redevelopment projects the business completed in which they had an ownership stake during 2005 through 2009 (i.e., in-scope revenue from). This will be used to characterize the proportion of model business activity that occurs in these categories and support the assignment of model projects to model businesses.

Question 14 asks the respondent to report the number of project types (e.g., single-family, multi-family, commercial, industrial, and various mixed-use options) the business completed in which they had an ownership stake during 2005 through 2009 (i.e., in-scope revenue from). This question will be used in developing the industry profile and also in further identifying the respondent's business activities that could be affected by a long term stormwater discharge regulation and the extent of potential effect given their participation in these activities.

Questions 15 through 17 request summary project level information on projects in which the respondent had an ownership stake.

Question 15 asks the respondent to report the types of construction or land development activities their business participated in during calendar years 2005 – 2009.

Question 16 asks the respondent to report the number of projects that commenced construction (where land disturbance had begun) in which their business was participating in on the last day of 2009. It then requests information on the amount of likely land disturbance and creation of impervious areas, EPA will use this information to support the development of the baseline snapshot of in-scope development activities presently underway. The respondent may flag this as CBI. Question 16 also asks if any of these projects incorporate or will any of these projects likely incorporate low impact development (LID) practices. If so, the respondent is asked to approximate the number of projects that incorporate LID. This information will be used to support development of the baseline profile of new and redevelopment activities and the general trend in the frequency of LID implementation.

Question 17 asks the respondent to report the total number of projects that they completed participation in each year from 2005 – 2009, by project size and across key development categories. This information will serve multiple purposes in the economic impact analysis. EPA will develop distributions from this data to support the development of model in-scope projects (e.g., the size and frequency of projects in different categories), and it will be used similarly to characterize the kinds of projects typically performed by different categories and sizes of in-scope businesses.

Project Information Part 2

These questions request detailed technical and financial information about individual projects. The respondent is asked to complete one copy of these questions (Part 2) for five projects their business is currently working on that have commenced construction (disturbed land).

Questions 18-28 identify the project for which information will be provided including the project name and location, NPDES NOI/NOC permit information specific to the project, the respondent's role (e.g., owner for the entire project or just certain phases), and, if non-residential, who ownership was transferred to upon project completion. These questions will help EPA identify instances in which information may be received for the same project from multiple sources as well as appropriately identify the project and match it to the permit.

Questions 29 and 30 ask for the timing of the project. This information will be used in the economic impact analysis to assess the length of time that costs will be incurred.

Question 31 and 32 request project type and approximate size while question 33 asks if the project was new or redevelopment. EPA will use these questions to categorize each type of project reported.

Questions 34, 36, and 37 ask about the category types for the project (e.g., residential, commercial broken down into new and redevelopment), and pre- and post-development land cover areas (for both impervious and pervious site components). This information is critical in understanding and modeling projects for consideration of possible post construction stormwater controls.

Question 35 requests information on the number of residential dwellings units, if applicable. This question will be used to support the analysis of affordability affects on single-family housing units.

Question 38 requests information on whether or not the respondent installed or hired anyone to install post construction stormwater controls on the site. If yes, the respondent will be required to respond to detailed questions on these controls. If no, the respondent is not required to respond to the detailed post construction stormwater control questions.

Question 39 asks for information on the type of long term stormwater performance standards that applied to the project (e.g., water quality, flood control) and design criteria for the system of long term stormwater controls implemented for the project (e.g., 1-year, 2-year, 5-year or 10-year storm event, number of inches of rainfall). This information will be used to identify trends in long term stormwater management requirements and practices among sectors of the industry (e.g., residential vs. commercial).

Questions 40 – 44 request information specific to retention practices considered and/or implemented for long term stormwater discharge control. They request information on the challenges and policies that impacted their use for the project as well as information on alternative land use if stormwater controls had not been implemented at the project. The information in this set of questions will be used, along with the data collected in the MS4 questionnaire, to evaluate long term stormwater controls by characterizing the state of current regulations for development and redevelopment projects, the use of retention practices in the industry nationally, and the driving forces and impediments to the use of such practices. EPA anticipates it may contact certain respondents for additional follow-up for some of these questions. For example, where a respondent responds that they performed a cost comparison between traditional stormwater post construction controls (i.e. basins) and stormwater practices that retain runoff onsite (i.e. bioretention, rain gardens, etc) for this project, EPA may contact them to request the cost comparison.

Question 45 and 46 requests information on whether certain long term stormwater controls are included in the project's stormwater control system and their associated costs, as applicable. This information will help assess the current usage of various long term stormwater controls, evaluate potential technology options, and potential costs. EPA anticipates it may contact certain respondents to this questions for additional information. In addition, Question 46 requests information on the total cost and value of the project. This information will be used in the financial analyses.

Questions 46 and 47 request project-specific financial information.

Question 47 asks the respondent to indicate in which phase(s) of the project that they actively participated. This information will be used to support development of the model in-scope firms in terms of identifying the typical roles performed by different types of establishments in different types of projects. Information on percent ownership in the project will be used to further define the typical roles of model establishment in projects.

Question 47 asks the respondent to report the total revenue the business received from all completed phases of this project in which they were a participant. This information will be used in the economic impact analysis to develop the model projects and specifically determine the sequence of costs incurred during the projects.

Project Information Part 3

Question 48 asks the respondent to complete a table summarizing no more than five projects above a certain size that they participated in for a randomly assigned date, during the period 2005 – 2009. The table includes key project characteristics including the NOI or NOC permit number, zip code, development category, new vs. redevelopment, percent impervious surface area at the site, final project value, and an LID indicator. These project characteristics represent the key differentiating concepts for model in-scope projects. This information will therefore be integral for developing model projects to support the cost and economic impact analysis.

Ultimate Parent Company Information

Question 49 asks about whether the business is owned, controlled, or managed by a ultimate parent company. Although the questionnaire is targeted to the business level, if the business is owned by an ultimate parent company, it is also important to collect basic revenue information about the ultimate parent company in order link establishments to firms in the industry-level economic impact analysis and to understand the operating structure of owners and developers. If the respondent indicates that they are owned by an ultimate parent firm, they are prompted to answer three follow-up questions about the parent firm:

If YES to Question 49, then question 50 asks for contact information for the parent firm to identify the firm.

If YES to Question 49, then question 51 asks for the state in which the firm is organized as a legal entity. EPA will use this information to establish which state commerce regulations apply to the firm for use in the economic/financial analysis.

If YES to Question 49, the question 52 asks if the ultimate parent company has operations in foreign countries that are a source of international revenue?

If YES to Question 49, then question 53 asks if the ultimate parent company is a small business. If so, then the respondent is asked to provide the parent firm's total revenue for each year from 2005 through 2009 in question 54. The respondent may flag this information as CBI. Revenue information will be used to define the size of the firm in the economic/financial analysis, and determine if the firm qualifies as a small business.

SHORT OWNER/DEVELOPER QUESTIONNAIRE

Questions 1-11 cover basic, key operational and financial characteristics of potentially in-scope business and the projects they perform.

Questions 1 and 2 request contact information for the establishment to identify the responding establishment and enable follow-up on erroneous/incomplete answers.

Several questions in the questionnaire will ask the respondent to report financial information for each year in which the respondent was in business from 2005 – 2009. Recognizing that some respondents may find it less burdensome to report financial information on a fiscal year basis rather than on a calendar basis (i.e., if their fiscal year doesn't begin in January), Question 3 simply asks the respondent to indicate their choice for reporting this information. If the respondent selects the *fiscal year* option, then they must check a box to indicate which month begins their fiscal year. EPA will then use this information to assign establishment financial information to specific calendar years of business activity.

Questions 4, 5 and 6 are the primary screener questions in the survey instrument. These questions will be used to determine whether the respondent is required to complete the rest of the questionnaire. The respondent will continue with the questionnaire if they have engaged on one or more of the following activities during the period 2005 – 2009: Land Development (including land subdivision); Single-Family Residential Construction; New Multifamily Residential Construction; Commercial and Institutional Construction; Transportation (Highway, Road, or Bridge) Construction; or Industrial Construction. In addition, the business must have been an owner, developer, or builder of at least one project during either its land development phase or its building construction phase (either as the sole responsible party or as a participant in a joint venture or other multiple party structure) during 2005-2009. Finally, the business must have participated in at least one new development or redevelopment project either during the land development or building construction phase that resulted in the installation of 5,000 square feet or more of new impervious surfaces (roads, roofs, parking lots, etc.) during 2005-2009? If the respondent answered no to any of the above questions, they do not have to complete the remainder of the questionnaire. EPA concludes these scoping questions ensure it will get responses from the appropriate target audience and also that respondents to the remainder of the survey are point source dischargers.

Question 7 requests that the respondent indicate the state(s)/territories in which the establishment operates. The state in which the establishment is a legal entity may be different than the state or states that in which it operates. This information will be used to characterize the distribution of development activity and existing stormwater regulations geographically. This information will also support the development of model projects and model firms, which will be differentiated by Census region.

Question 8 asks about whether the business is owned, controlled, or managed by an ultimate parent company. Although the questionnaire is targeted to the business level, if the business is owned by an ultimate parent company, it is also important to collect basic revenue information about the ultimate parent company in order link establishments to firms in the industry-level economic impact analysis and to understand the operating structure of owners and developers. If the respondent indicates that they are owned by an ultimate parent firm, they are prompted to answer three follow-up questions about the parent firm:

If YES to Question 8, then question 9 asks for contact information for the parent firm to identify the firm.

If YES to Question 8, then question 10 asks for the state in which the firm is organized as a legal entity. EPA will use this information to establish which state commerce regulations apply to the firm for use in the economic/financial analysis.

If YES to Question 8, then question 11 asks if the ultimate parent company is a small business. If so, then the respondent is asked to provide the parent firm's total revenue for each year from 2005 through 2009 in question 12. The respondent may flag this information as CBI. Revenue information will be used to define the size of the firm in the economic/financial analysis, and determine if the firm qualifies as a small business.

Question 13 requests the respondent provide the business total revenue for each year from 2005-2009. The respondent may flag this information as CBI. This information will be used in the financial analysis.

Question 14 asks if the respondent is a publically traded company. EPA will use this information in the industry-level economic/financial analysis to further characterize the baseline financial performance and structure of model firms and to estimate certain financial information required in the analysis (for example, costs of capital).

Question 15 requests that the respondent indicate their type of business organization from a menu of choices. EPA will use this information to identify the tax status of the business for use in the economic/financial analysis and to understand the business operating structure(s) characteristic of the industry.

Question 16 requests the respondent to indicate their primary source of revenue from a menu of choices. Question 11 requests the respondent business to indicate if they develop properties primarily for sale or lease, or for your business to occupy? EPA will use this information to understand the business operating structure(s) characteristic of the industry.

Question 17 asks the respondent to complete a table summarizing no more than five projects above a certain size that they participated in for a randomly assigned date, during the period 2005 – 2009. The table includes key project characteristics including the NOI or NOC permit number, zip code, development category, new vs. redevelopment, percent impervious surface area at the site, final project value, and an LID indicator. These project characteristics represent the key differentiating concepts for model in-scope projects. This information will therefore be integral for developing model projects to support the cost and economic impact analysis.

ii. Respondent Activities

All questionnaire respondents must read the transmittal letter with attachments citing authority of section 308 or of the Clean Water Act², and confidentiality and handling instructions of any responses

² The Authority for the NPDES Authority Questionnaire is sections 304(i) and 402(c) of the CWA, 33 U.S.C. Sections 1314(i) and 1342(c).

asserting a CBI claim, as applicable. Respondents will also need to read the Introduction, General Instructions, Glossary of Terms, and Certification Statement sections in the beginning of the questionnaire. The Introduction section provides the purpose and use of the questionnaire, questionnaire outline, e-mail/help line information, and information on how to return the completed questionnaire. The General Instructions section will give the respondent guidance on completing the responses and including attachments, if needed. The Glossary of Terms provides respondents with all pertinent definitions and acronyms to understand and complete the questionnaire sections.

Each respondent will need to read and understand the questionnaire, plan response activities, gather information, compile and review information, and complete the questionnaire form. The respondent would also be required to maintain a copy and retain the completed questionnaire form for up to one year, in the event that EPA has to contact the respondent for clarification of any response.

(a) *Owner/Developer Questionnaires*

The first part of the questionnaires requires the respondent to determine whether they are within the scope of the information collection. If yes, then the remainder of the questionnaire requires the respondent to report establishment and/or firm-level financial data, and project-level technical and financial data, as appropriate. Establishment-level financial data should be available from the Establishment's balance sheet, income statement, and cash flow statement and for respondents with Firm-level ownership, from the Firm's balance sheet, income statement, and cash flow statement.

5. **The Information Collected: Agency/Contractor Activities, Collection Methodology, and Information**

a. **Agency/Contractor Activities**

The Agency and/or its support contractors will conduct the following activities to administer the questionnaires:

- Development of the questionnaires;
- Development of the sample frames;
- Development of a sample designs;
- Development of Federal Register Notices (FRNs);
- Consultation with respondent trade associations, industry representatives, environmental groups, and other stakeholders on the questionnaires;
- Review of questionnaire comments provided by the public commenters, EPA work group, and OMB;
- Development of the ICR;
- Performing the sample draws;
- Development of a mailing list database and mailing labels;
- Development of a tracking system for questionnaire mail out/e-mail sending, receipt, and return activities;
- Questionnaire distribution;
- Development and maintenance of a web-site and help line support option for respondents who require assistance in completing their questionnaire, which

may include responding to questions via e-mail or call backs and documentation of the contacts;

- Development of the databases for questionnaire responses;
- Receipt and review of questionnaire responses;
- Data entry and verification or file uploading for the questionnaire responses;
- Summarization and analysis of questionnaire responses for a profile of affected entities; and
- Performance of statistical summaries and technical and economic analyses.

EPA will ultimately use the questionnaire results to inform EPA's stormwater management rulemaking under Clean Water Act (CWA) Section 402(p).

b. Collection Methodology and Management

Each selected questionnaire recipient will receive a paper copy, an electronic PDF version, or a letter with a link to the questionnaire for completion on line. EPA will deliver questionnaires or web link information via Federal Express or similar delivery service to each recipient to ensure that a point of contact receives and signs for it. Each respondent will be allowed 60 calendar days from the time of receipt to return the completed questionnaire (or to complete their response via the web) for all portions of the questionnaires.

EPA will provide an e-mail address to so that respondents can request assistance in completing the questionnaires. Responses to questions will be documented and, as requested by a respondent, EPA or its representatives will provide assistance by phone.

Each questionnaire respondent will be assigned a unique identification number for ease of tracking. The identification number will be used to track the mailing date of the questionnaire or, questionnaire receipt date by the respondent, follow-up correspondence and telephone calls, and EPA's receipt of the completed questionnaires. The identification number will also be used as a respondent code for file upload in the questionnaire databases.

Upon receipt of completed questionnaires, EPA and its contractors will review the questionnaire responses for completeness and CBI claims. All questionnaires will also be reviewed for consistency and reasonableness and follow up calls will be conducted as needed to clarify inconsistencies found in the responses. Reviewed questionnaire files will then be uploaded into questionnaire databases. The databases developed using the questionnaire responses will be used by EPA to perform data analysis for the purpose of developing discharge standards.

c. Small Entity Flexibility

In accordance with requirements of the Regulatory Flexibility Act (RFA), EPA must assess whether actions would have "a significant impact on a substantial number of small entities" (SISNOSE). Small entities include small businesses, small organizations, and small governmental jurisdictions. The target population for the Owner/Developer Questionnaires is all owners or developers that completed one or more phases of certain projects during Fiscal Year 2005- 2009. EPA expects a significant portion of these populations to be small entities.

EPA has designed the questionnaires to minimize respondent burden while obtaining sufficient and accurate information. The questionnaires employ the use of checkboxes where feasible, or provide a set of potential responses for respondents to choose from. The questions are phrased with commonly used terminology. Questions requesting similar types of information are arranged together to facilitate review of pertinent records and completion of the questionnaire.

Because this regulation could potentially affect these small entities, EPA needs to collect information to adequately assess any impacts to them. As explained in more detail in Section 6a below, EPA has designed all of the questionnaires to include burden-reducing features. In addition, for the long Owner/Developer Questionnaire, EPA projects the burden will be less for small entities because they will likely have completed fewer projects during the requested time period as compared to large entities and would therefore be required to provide much less detailed technical and financial information on a project level.

d. Collection Schedule

The specific dates for distribution, response receipt, and data collection activities for the questionnaires have not yet been established but will include the following activities:

Activity	Estimate of Schedule
Questionnaire Distribution	July 2010
Receipt of questionnaire responses	60 days following receipt
Complete questionnaire follow-up	Three months after receipt

6. Estimating the Burden and Cost of the Collection

a. Estimating Respondent Costs

EPA has designed the questionnaires to minimize respondent burden while obtaining sufficient and accurate information. The questionnaires employ the use of checkboxes where feasible, or provide a set of potential responses from which respondents may choose. The questions are phrased with commonly used terminology. Questions requesting similar types of information are arranged together to facilitate review of pertinent records and completion of the questionnaire. EPA also incorporated skip patterns where possible so that respondents are directed to skip over questions for information that does not apply to their situation. Finally, for the owner/develop questionnaire, EPA designed financial questions to solicit information in the format that would be available on an establishment’s and firm’s balance sheet, income statement, and cash flow statements.

(a) Owner/Developer Questionnaires

EPA developed both a short and long version of the Owner/Developer Questionnaire. The short version is the same as the long version, but requests less detailed project level technical and financial information as well as less detailed establishment level financial information. Recipients will be required to complete the short or the long version, but not both. EPA estimates it would take an average of 16 hours and 61 hours respectively for each in-scope Owner/Developer Short Questionnaire recipient and each in-scope Owner/Developer Long Questionnaire recipient to complete and review its responses. This estimate assumes that all respondents of the long questionnaire will report data for five projects.

For purposes of this burden estimate, EPA assumes that 30 percent and 15 percent of the short and long questionnaire recipients, respectively, would be out-of-scope and not need to complete the entire questionnaire.

EPA would distribute the questionnaires to 2,835 owners/developers of new and redevelopment projects. Because the recipients are legally obligated to complete the questionnaire under the authority of Clean Water Act, EPA expects at least an 80 percent response rate. For purposes of the burden estimate, EPA has assumed 100% response rate to develop a conservative estimate. EPA estimates that the total burden for the recipients of the Owner/Developer Questionnaires would be 70,039 hours.

Table 2 presents the average hourly burden by labor category associated with all respondent activities necessary to complete the questionnaires and the total burden by labor category based on the categories of respondents.

Table 2. Estimated Respondent Burden to Complete the Questionnaires (Hours)

Respondent Activity	Hours by Job Category					Total Burden per Activity (Hours)
	Technical/ Environmental Engineer	Clerical Support	Project Manager	Financial Manager	Legal	
Owner/Developer Long Questionnaire (per respondent)						
Read Instructions & Review Questionnaire	0	0	1.25	1.25	1.25	3.75
Detailed technical and financial questions	18.25	1.75	11.3	17.25	8.75	57.25
Total for Owner/Developer Questionnaire	18.25	1.75	12.55	18.50	10.0	61
Owner/Developer Short Questionnaire (per respondent)						
Read Instructions & Review Questionnaire	0	0	1.25	1.25	1.25	3.75
Technical and financial questions	0	0.8	1.75	7.35	2.35	12.25
Total for Short Owner/Developer Questionnaire	0	0.8	3	8.6	3.6	16
Owner/Developer Questionnaires – Out of Scope (per respondent)						
Read Instructions & Review Questionnaire	0	0	2	0	0	2
Total for Out of Scope Owner/Developer Questionnaire	0	0	2	0	0	2

b. Estimating Respondent Costs

i. Estimating Labor Costs

The direct cost to each respondent to complete the questionnaire equals the time required to read and understand the questionnaire, gather the information, compile and review the information, and complete the questionnaire form. EPA anticipates that the Owner/Developer respondents will submit their questionnaires by mail, therefore material costs for each Owner/Developer respondent would include photocopying and postage. Labor costs would compose the majority of the financial burden imposed on the Owner/Developers.

The Agency estimated respondent labor costs using average hourly wages derived from Bureau of Labor Statistics (BLS) Occupational Employment Statistics (May 2008) to develop labor category rates in \$/hour to use with the hour burden estimates. For Owner/Developer labor rates, EPA used median hourly earnings representative of Engineering Services. Table 3 presents the average labor cost burden by job category and the total labor cost burden per questionnaire for the Owner/Developer in-scope, and Owner/Developer out-of-scope respondents. Table 4 presents the total respondent labor cost burden estimated for the entire questionnaire effort.

Table 3. Estimated Per Questionnaire Respondent Burden (Dollars)

	Costs by Job Category					
	Technical/ Environmental Engineer	Clerical Support	Construction Manager	Financial Manager	Legal	Total Burden (Dollars)
Owner/Developer Long Questionnaire Respondent	\$752.20	\$27.31	\$837.57	\$1,060.06	\$757.97	\$3,435.11
Owner/Developer Short Questionnaire Respondent	\$0.00	\$13.03	\$205.73	\$505.90	\$276.57	\$1,001.22
Owner/Developer Questionnaire Out of Scope Respondent	\$0.00	\$0.00	\$109.72	\$0.00	\$0.00	\$109.72

Table 4. Total Respondent Burden in Labor Costs

Questionnaire	Labor Category					Total/quest.	# of Quest	Total Hrs.	Total \$
	Tech/Envr. Eng	Clerical	Manager	Financial	Legal				
Industry Long – Hours	18.25	1.75	12.55	18.5	10	61.05	736	44,896.00	
Industry Long – Dollars	\$752.20	\$27.31	\$837.57	\$1,060.06	\$757.97	\$3,435.11			\$2,528,240.96
Industry Short – Hours	0	0.8	3	8.6	3.6	16.0	1,475	23,895.00	
Industry Short – Dollars	\$0.00	\$2.22	\$137.15	\$372.72	\$210.19	\$632.00			\$932,200.00
Industry - out of scope									
Hours	0.00	0.00	2	0.00	0.00	2	624	1,248.00	
Dollars	\$0.00	\$0.00	\$109.72	\$0.00	\$0.00	\$109.72			\$68,465.28
Total Revised Burden							2,835	70,039.00	\$3,528,906.24

ii. Estimating Capital and Operations and Maintenance (O&M) Costs

Because EPA would not require questionnaire respondents to purchase any goods, including equipment or machinery, to respond to the questionnaire, the Agency does not expect capital costs to result from the administration of this data collection request. Operation and maintenance costs for the Owner/Developer Questionnaire would only include photocopying and postage. EPA assumed a photocopying rate of \$0.10 per page for an estimated 60 pages for the long questionnaire and 25 pages for the short questionnaire for a total photocopy cost of \$10,129. EPA is also assuming that the respondents will return the completed questionnaire file via Federal Express or a comparable delivery carrier that requires a signature to acknowledge receipt. EPA estimates the Federal Express Saver rate at \$9.65 for a 1-lb package per respondent for a total mailing cost of \$27,358. The total O and M associated with these questionnaires is \$37,486.75.

c. Estimating Agency and Contractor Burden and Costs

Table 5 presents an estimate of the burden and labor costs EPA and its support contractors would incur to administer the questionnaires. The table identifies the collection administration tasks to be performed by Agency employees and contractors, with the associated hours required for each grouping of related tasks. EPA determined contractor labor costs by multiplying contractor burden figures by an average hourly labor rate of \$80/hour. EPA determined Agency labor costs by multiplying Agency burden figures by an average hourly labor rate of \$40.44/hour. Table 6 presents the estimated Agency total costs including labor and O&M. Total Agency costs (including contractor and O&M costs) are estimated at \$867,093.

d. Estimating the Respondent Universe and Total Burden Costs

EPA estimates a total burden of 70,039 hours and a total labor and O&M cost of \$3,566,393 for all respondents.

e. Bottom-Line Burden Hours and Cost Tables

With 2,835 Owner/Developer Questionnaires and questionnaire follow-up information requests to clarify questionnaire responses, EPA estimates that the total burden is 70,039 hours and \$3,566,393 for the respondent community and 11,243 hours and \$867,093 for the Agency.

f. Reasons for Change in Burden

Not applicable. This is a new collection.

Table 5. Estimated Agency and Contractor Burden and Labor Costs

Activity	Burden (Hours)			Labor Cost (\$)		
	Agency	Contractor	Total Hours	Agency (\$40.44/hr)	Contractor (\$80/hr)	Total Cost
<ul style="list-style-type: none"> Develop the questionnaire instruments; Provide the draft questionnaire instruments to Owner/Developer for review; Meet with trade association representatives; Publish notice of anticipated ICR in Federal Register; Respond to all comments received; Revise Questionnaire instruments based on reviewer's comments. 	215	1531	1746	\$8695	\$122,518	\$131,212
<ul style="list-style-type: none"> Design sampling approach; Develop a mailing list database; Develop a system to track mailing/e-mailing and receipt activities; Mail questionnaire files. 	200	1277	1477	\$8088	\$102,145	\$110,233
<ul style="list-style-type: none"> Develop and maintain e-mail helpline 	160	366	526	\$6,470	\$29,300	\$35,770
<ul style="list-style-type: none"> Maintain response tracking system; Implement appropriate procedures for handling CBI responses; Review responses and collect missing data; Engineering and economic followup to clarify responses to questionnaires. 	850	5538	6388	\$34,374	\$443,011	\$477,385
<ul style="list-style-type: none"> Develop questionnaire database Upload and verify data 	40	1065	1105	\$1618	\$85,238	\$86,856
Total*	1465	9778	11,243	\$59,245	\$782,212	\$841,456

* Activity amounts are estimates using rounded values, total amounts were calculated using un-rounded values.

Table 6. Estimated Agency Total Cost (Labor and O&M)

	Agency	Contractor	Total Agency and Contractor Cost
Labor Costs	\$59,245	\$782,212	\$841,456
O&M Costs	\$0.00	\$25,637	\$25,637
Total Labor and O&M Costs	\$59,245	\$807,849	\$867,093

(a) *Burden Statement*

EPA estimates it would take 61 hours and \$3,435 for each in-scope Long Owner/Developer Questionnaire respondent, 16 hours and \$1,001 for each in-scope Short Owner/Developer Questionnaire respondent, and 2 hours and \$110 for each out of scope Owner/Developer Questionnaire respondent to complete and review their responses to the questionnaires. This estimate is based on U.S. Department of Labor, Bureau of Labor Statistics' Occupational Labor data from May 2008 for the likely range of personnel involved in responding.

EPA estimates that the total respondent burden for the two questionnaires would be approximately 70,039 hours and \$3,566,393 dollars. EPA estimates that there would be no start up or capital cost associated with the questionnaires described above.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2009-0817, which is available for online viewing at www.regulations.gov, or in person viewing at the EPA Docket Center Public Reading Room in the EPA Docket Center (EPA/DC), EPA West, Room Number 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. An electronic version of the public docket is available through www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID Number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-OW-2009-0817 and OMB Control Number 2040-0282 in any correspondence.

**Appendix A: List of Public Commenters to First Federal
Register Notice of Proposed ICR**

List of Commenters with Submittals to Docket EPA-HQ-OW-2009-0817

First Federal Register Notice: ICR, Proposed Collection; Stormwater Management Including Discharges from Newly Developed and Redeveloped Sites, ICR #2366.01

EPA-HQ-OW-2009-0817-	Commenter
0009	Hal Sprague, Senior Policy Associate, Center for Neighborhood Technology
0010	Association of State Flood Plain Managers (ASFPM)
0011	Tom Ballestero, University of New Hampshire Stormwater Center
0012	Lee Epstein, Director, Lands Program, Chesapeake Bay Foundation
0013	C. M. Lake
0014	Dr. Edo McGowan, Medical Geo-hydrology
0015	Smart Growth Advocates; Paul Crabtree, PE, Crabtree Group, Inc.
0016	John Jacob, Texas Sea Grant, Texas A&M
0017	Miami Conservancy Agency; Theresa McGeady, Program Coordinator
0018	Craig DiGiammarino, Operations Environmental Coordinator, Stormwater Compliance Management Program, Technical Services, Operations Division, Vermont Agency of Transportation
0019	J. Heimbürger, PE, CHMM
0020	Minnesota Cities Stormwater Coalition, Randy Neprash, PE
0021	Brent Bruggeman, Stormwater Technician, City of Sidney, Ohio
0022	Water Environment Federation (WEF), Tim Williams, Managing Director, WEF Government Affairs
0023	City of Fresno, Scott W. Krauter, PE, Assistant Public Works Director, Street Maintenance Division
0024	City of Portland, OR, David Kliewer, Bureau of Environmental Services
0025	City of Austin, Watershed Protection Department, Patricia Foran, Field Operations Division
0026	Michael Keenum, City of Lubbock
0027	Dominic J. Hanket, Assistant Director for Regulatory Compliance, Department of Public Utilities, City of Columbus, OH
0028	City of Clovis Public Utilities, Lisa Koehn, Assistant Public Utilities Director
0030	Anonymous public comment
0031	Synithia R. Williams, Environmental Coordinator, County of Lexington Public Works Stormwater Division
0032	National Association of Flood and Stormwater Management Agencies (NAFSMA), Gale William Fraser, II, PE, President
0033	Wyoming Department of Environmental Quality, Barbara L. Sahl, Storm Water Program Coordinator, Water Quality Division
0034	Neal Shapiro, Watershed Management Program's Coordinator, Watershed Management Section, Office of Sustainability & the Environment, City of Santa Monica, California
0035	Charlie Miller, P.E., Principal, Roofscapes Inc.
0036	Jessica Wall, Water Program Assistant, Natural Resources Defense Council (NRDC) for Jon Devine, Senior Attorney, Water Program, et al. Natural Resources Defense Council (NRDC)
0037	Brooks M. Smith, Hunton and Williams on behalf of Utility Water Act Group (UWAG)

EPA-HQ-OW-2009-0817-	Commenter
0038	Margaret Doss, Water Quality Manager, Columbia County (Georgia) Water Utility
0039	Robert Swanson, Water Quality Specialist, DuPage County Stormwater Management
0040	Christine Cahill-Reams, Project Manager, Charles C. Bell, Inc.
0041	Anonymous
0042	Monica Licher et al., Virginia Polytechnic Institute and State University (Virginia Tech)
0043	Paul A. Hindman, P.E., Executive Director and Ken Mackenzie, P.E., Manager, Master Planning Program, Urban Drainage and Flood Control District (UDFCD)
0044	Ray Vaughan, Stormwater Manager, South Carolina Department of Transportation (SCDOT)
0045	Chris Crompton, Chair, California Stormwater Quality Association (CASQA)
0046	Susan Asmus, Senior Vice President, Environment and Labor, Safety & Health Policy, National Association of Home Builders (NAHB)
0047	Bob Van Wyk, General Manager-Secretary, Fresno Metropolitan Flood Control District
0048	Leah F. Pilconis, Senior Environmental Advisor to The Associated General Contractors of America (AGC of America)
0049	Gayle Killam, River Network, et al.
0050	Peter King, Executive Director, American Public Works Association (APWA)
0051	City of Myrtle Beach, South Carolina (SC), Janet Wood
0053	Massachusetts Department of Transportation (MassDOT), Kevin Walsh, Director Environmental Services
0054	City of Charlotte (NC), Storm Water Services Division, Daryl Hammock, Water Quality and Environmental Permitting Manager
0055	Beveridge & Diamond, Richard Davis
0056	Smart Growth America, Geoff Anderson, President and CEO
0059	Town of Framingham, MA Department of Public Works, Katherine R. Weeks, Senior Stormwater and Environmental Engineer
0060	City of Bellevue, WA, Denny Vidmar, Bellevue Utilities Director
0061	Tallahassee, Florida NPDES Stormwater Section, Eric H. Livingston, Program Administrator
0062	Construction Industry Coalition on Water Quality, Mark Grey, Technical Director
0063	Colorado Stormwater Council (CSC), Jill E. Piatt Kemper, Chair CSC
0064	City of Downey, CA, Gerald E. Greene, Principal Civil Engineer/Water Resources Control Specialist
0065	Federal Stormwater Association (FSWA), Jeffrey S. Longsworth, FSWA Coordinator
0066	City of San Luis Obispo, CA, Barbara Lynch, Deputy Director of Public Works
0067	University of Missouri, Environmental Health and Safety, Bill Florea, on behalf of Boone county MS4, Steve Hunt, on behalf of City of Columbia MS4, Todd Houts, on behalf of University of Missouri MS4
0069	Croton (NY) Watershed Clean Water Coalition (CWCWC), James Bryan Bacon, Attorney and Counselor at Law

EPA-HQ-OW- 2009-0817-	Commenter
0070	Harris County Flood Control District, Snehal R. Patel, Chief Environmental and Regulatory Affairs Section, Harris County Attorney's Office
0071	Washington Metropolitan Area Transit Authority, Sarah Kline, Director Office of Policy and Government Relations
0072	Kentucky Stormwater Association, Randy Stambough, Kentucky Stormwater Association President
0073	Las Vegas Valley Stormwater Quality Management Committee (SQMC), Kevin Eubanks, Chairman SQMC, Assistant General Manager, Clark County Regional Flood Control District
0074	StormWater Association of Maryland, Wet Weather Partnership, Paul Calamita, General Counsel
0084	Greenville County Land Development Division

**Appendix B: Summary of Public Comments and EPA Response
to First Federal Register Notice of Proposed ICR**

General: Table B-1

Industry Questionnaire: Table B-2

Topic	Comment	Response
<p>Rule Legal Authority</p>	<p>EPA does have federal authority to regulate discharges “from” MS4s but not “into” them. [402(p)(2)(C) & (D)] The only federal authority over MS4 influent is the prohibition of non-stormwater discharges into MS4s. [402(p)(3)]</p> <p>Congress did not grant EPA authority to determine how MS4 operators should control indirect stormwater discharges into their systems as long as the MS4s meet their applicable permitting requirements for their own discharges.</p> <p>EPA lacks the authority to regulate post-construction sites unless they independently generate a regulated stormwater discharge by meeting the definition of an industrial activity or MS4.</p> <p>Post-construction stormwater discharges should be considered nonpoint source discharges or diffuse stormwater discharges that are not regulated under the CWA.</p> <p>EPA can only regulate using standard industrial classification codes which don’t exist for subdivisions, etc.</p> <p>EPA has not clearly articulated its statutory authority to develop</p>	<p>EPA agrees with commenter that CWA sections 402(p)(2)(C) and (D) give EPA the authority to regulate discharges from MS4s; indeed EPA was required to regulate medium and large MS4s under section 402(p)(4). EPA disagrees with commenter that EPA does not have the authority over stormwater discharges into MS4s or that the only authority over MS4 influent is the prohibition of non-stormwater discharges into MS4s. Under CWA sections 402(p)(2)(B), 402(p)(2)(E), and 402(p)(6) EPA can and does regulate stormwater discharges into MS4s. For example, stormwater associated with industrial activity that is discharged to an MS4 is independently regulated by EPA or the States. 40 CFR 122.26(b)(14). As early as the preamble to the Phase I stormwater rule EPA stated “storm water from an industrial facility which enters and is subsequently discharges through a municipal separate storm sewer system is a ‘discharge associated with industrial activity’ which must be covered by an individual or general permit pursuant to [EPA regulations].” 55 Fed. Reg. 47,990, 47996-97 (November 16, 1990). EPA has the authority to regulate stormwater that is discharged into MS4s. In any rulemaking process EPA will discuss further the scope of what point sources will be subject to any standard or other effluent limitation.</p> <p>EPA disagrees with commenter to the extent that EPA is required to ensure that permits for discharges from MS4s require controls to reduce the discharge of pollutants to the maximum extent practicable and require such other provisions as the EPA Administrator or State determines appropriate for the control of such pollutants. See CWA section 402(p)(3)(B)(iii). In any rulemaking process EPA will discuss further the scope of what point sources will be subject to any standard or other effluent limitation.</p> <p>EPA disagrees with commenter. EPA has the authority under CWA section 402(p) to regulate discharges of stormwater other than those that are defined as “industrial” or from a “municipal separate storm sewer system.” Specifically, EPA derives independent legal authority from CWA sections 402(p)(2)(E) and 402(p)(6) and EPA regulations at 40 CFR 122.26(a)(9)(i)(C)-(D) to regulate stormwater discharges from developed sites. For example, in the Phase II stormwater regulations under the authority of CWA section 402(p)(6) EPA designated and currently regulates stormwater “discharges associated with small construction activity,” which are neither industrial discharges nor discharges from MS4s. 40 CFR 122.26(b)(15). In any rulemaking process EPA will discuss further the scope of what point sources will be subject to any standard or other effluent limitation.</p> <p>EPA disagrees with commenter. “Point source” is defined as “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, or vessel or other floating craft, from which pollutants are or may be discharges.” CWA section 502(14). EPA has the discretion to further define what a point source is. <i>National Wildlife Federation v. Gorsuch</i>, 693 F.2d 156, 175 (D.C. Cir. 1982). The vast majority of developed sites contain pipes, ditches, swales or other types of discrete conveyances; through which pollutants are or may be discharged. Under CWA section 308 EPA has the authority to collect information from point sources. In any rulemaking process EPA will discuss further the scope of what point sources will be</p>

Topic	Comment	Response
	<p>stormwater management regulations nor demonstrated that an information collection effort and rulemaking are necessary. EPA has not designated post-construction stormwater discharges as requiring a permit. EPA has not provided a clear definition of what the information will be used for.</p> <p>EPA’s intention to change the Phase I and Phase II stormwater program based on the ICR constitutes a breach of the program evaluation agreement reached through the Stormwater Phase II FACA as well as the current NPDES regulations resulting from that agreement. Until the provisions of Section 122.32 are satisfied, changes to Phase I and II regulations may be precluded or prohibited.</p>	<p>subject to any standard or other effluent limitation.</p> <p>EPA disagrees with commenter. There is nothing in the CWA that requires EPA to regulate stormwater discharges based on the standard industrial classification (SIC) codes. In the Phase I stormwater rule EPA used SIC codes to categorize discharges associated with industrial activity; however the Agency was not required to do so then and is not required to do so in any future rulemaking. Any stormwater rulemaking will discuss further how EPA intends to classify discharges from developed sites (or any other stormwater point sources addressed in the proposal) for regulation under the CWA.</p> <p>EPA disagrees with commenter. EPA has authority under CWA section 402(p)(6) to designate stormwater discharges in order to protect water quality and develop a comprehensive program to regulate those designated stormwater discharges. Designation of stormwater discharges from developed sites is being considered as part of any rulemaking. Additionally, EPA has the authority under CWA section 402(p)(3)(B) to require discharges from MS4s to require 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 EPA determines are appropriate for the control of stormwater discharges. The information collected in this Information Collection Request will be used to assist EPA in developing a regulation to address discharges from developed sites, including, but not limited to, performance or design standards for those designated discharges from developed sites as part of a comprehensive program under section 402(p)(6); benefits of any performance or design standard; costs of any performance or design standard; the prevalence, utilization and effectiveness of stormwater controls that retain, detain or infiltrate stormwater (i.e., low impact development or green infrastructure); and characterize the current scope, components, and implementation of existing state or regional NPDES stormwater programs. EPA would like a sound record basis for any regulation it proposes and promulgates. This information request is reasonably related to helping create a record for that decision-making.</p> <p>EPA disagrees with this comment. As stated in the Preamble to the Phase II Rule, EPA was asked by the Phase II FACA to demonstrate its commitment to revisit the small MS4 requirements in the Phase II Rule and to make changes where necessary after evaluating the stormwater program and researching the effectiveness of municipal BMPs. 64 Fed. Reg. 68722, 68771 (Dec. 8, 1999). EPA did so by committing to revisit the rule after completion of the first two permit terms, i.e., after December 10, 2012. See 40 CFR 122.37. This was an affirmative commitment to revisit the Phase II MS4 program after evaluating its effectiveness, as of a date certain, not a promise not to make changes before a certain date. Nothing in the preamble or section 122.37 requires EPA to refrain from an ICR process to collect information about implementation or effectiveness of the stormwater program or from changing the regulations prior to that time. Although in 1999 EPA expressed its intention to wait until completion of two permit cycles except under certain circumstances, this was only a stated intention, an expectation, and not a commitment. As EPA explained in the Phase II preamble, some commenters requested that EPA reevaluate the program much sooner; some commenters supported waiting two permit</p>

Topic	Comment	Response
		<p>cycles, but EPA anticipated that two full permit cycles would be necessary to obtain enough data to significantly evaluate the rule. However, in the ten years since the rule was promulgated and in light of the significant information provided in <i>Urban Stormwater Management in the United States</i> (National Academy of Sciences Press, October 2008), including the strong information indicating EPA should improve how it controls discharges of stormwater, EPA has obtained enough data to begin the reevaluation process at this time.</p>
Unfunded Mandate	<p>EPA is imposing an unfunded mandate with little measurable benefit which is particularly difficult during these times of reduced state budgets. Municipalities will not be able to hire additional personnel to prepare this information, so existing staff will have to work on the project in addition to their regular duties.</p>	<p>EPA disagrees with commenter. This Information Collection Request is not a federal intergovernmental mandate under the Unfunded Mandates Reform Act. However, EPA appreciates that municipalities may have difficulties given a lack of resources in answering all of the questions and obtaining all of the requested information. EPA would like municipalities to contact EPA and welcomes the opportunity to work with municipalities if they need assistance in answering all of the questions in the Questionnaire.</p>
308 Authority	<p>CWA Section 308 does not provide EPA with the authority to collect information from state permitting authorities.</p>	<p>EPA has the authority under CWA sections 304(i) and 402(c) obtain information from State NPDES permitting authorities. Specifically, 40 CFR 123.41(a) states that “[a]ny information obtained or used in the administration of a State program shall be available to EPA upon request without restriction.”</p>
CBI	<p>All financial information should be submitted separately and automatically be given confidential protection and not be subject to the confidentiality classification changing or having to prove confidentiality if requested by a third party.</p> <p>All responses and information provided to EPA should be made confidential and unavailable to third parties for potential litigation.</p> <p>Big Box stores are different from other</p>	<p>EPA recognizes that some of the data requested in these questionnaires is confidential business information and should be treated as such because, if released, could be detrimental to some business operations. At the same time, EPA wants to ensure transparent decision making and public access to data informing EPA’s rulemaking decisions. As a result, EPA developed its CBI procedures to protect pertinent information while ensuring public access to the extent possible.</p> <p>EPA understands the importance of financial information. However, EPA does not agree that all financial information is CBI. Therefore, EPA is not considering all financial information to be confidential, but is providing CBI check boxes so that a respondent can claim financial responses to be CBI. In an effort to reduce burden, EPA is not requiring respondents to provide justification for the CBI claim at this time. Should EPA receive a request for information claimed CBI, the respondent will need to justify the CBI claim in accordance with procedures outlined in 40 CFR Part 2.</p>

Topic	Comment	Response
	<p>construction entities. Seemingly innocuous data from Big Box stores can inadvertently be used to suggest the direction or planned growth of the stores which can be damaging on a broad scale.</p> <p>There is concern about the inadvertent disclosure of CBI data by the Agency based on past incidents where federal agencies inadvertently released confidential information (e.g., TSA).</p>	
<p>Response Deadline</p>	<p>The design and cost detail requested as to project specific stormwater control structures most likely cannot be assembled within the time required.</p> <p>Because some of the data may have to be obtained by the developer respondents from third parties and stormwater management entities, the effort of developers to gather this information could negatively impact the ability of MS4 respondents to meet their response deadlines.</p> <p>Unless the construction company is the owner/builder they may need to obtain data from the designer or engineer to complete Part C which will affect the timeline.</p> <p>Sixty days is inadequate for MS4s to</p>	<p>EPA has revised the questions in each of the questionnaires, where possible, to reduce requests for information that will likely require lengthy time periods to assemble. For example, EPA is no longer requesting detailed cost and design information for each stormwater system component in the owner/developer survey.</p> <p>EPA is not requesting information from MS4s that will require them to collect information from third parties.</p> <p>EPA is not requesting companies that perform construction to provide technical or financial responses to any of the questionnaires.</p> <p>EPA is not asking respondents to collect new info or to provide information for questions for which data is not available.</p> <p>EPA does not require or anticipate that County Councils will need to approve the responses.</p> <p>EPA concludes that 60 days allows adequate response time. Burden estimates for each questionnaire respondent ranges from 10 hours to approximately 70 hours. Sixty days to respond allows ample time even for the most burdensome questionnaire.</p>

Topic	Comment	Response
	<p>review the materials and provide a response.</p> <p>Many small MS4s in TX have not fully implemented their initial Storm Water Management Programs and may not have complete information for the requested timeframe.</p> <p>120 days is more appropriate</p> <p>More time is necessary if the responses have to be approved by County Council.</p>	
Mandatory Response	Questionnaires should be voluntary rather than mandatory	Based on previous experience, the response rate to mandatory questionnaires far surpasses that of voluntary surveys. In addition, mandatory response eliminates the bias of responses that may result with voluntary response.
Certification Statement	<p>EPA should add a disclaimer that the information collected will not be used in an enforcement action.</p> <p>It will be difficult for someone to sign the certification statement when they are unsure of the data they are providing, even though it is the only data they have.</p> <p>The certification statement does not identify the level of the certifying individual. Is it the same person who must sign the annual reports?</p>	<p>This certification statement is not unique to this ICR. Because EPA needs to obtain accurate information upon which to base any rulemaking, EPA routinely includes the certification in Office of Water ICRs. However, EPA does not expect nor does the certification statement require, that facilities respond to each question with certainty. In fact, the directions state that respondents should provide estimates if actual values are not available. EPA is only asking respondents to provide the best information based on their knowledge or belief.</p> <p>Identifying non-compliance of existing regulation is not the purpose of this data collection. However, this does not preclude the enforcement office from requesting information collected through this ICR.</p> <p>The certifying official must be a duly authorized representative. This may be the same person that signs the annual reports, but does not have to be.</p>
Rulemaking approach	Neither the notice nor the supporting statement describes the scope of the proposed regulations.	EPA published a Federal Register Notice on December 28, 2009 (FR 74 FR 68617-68622) that describes the scope of the proposed regulation.

Topic	Comment	Response
	<p>EPA should explore strategic education outreach programs, evaluate the current successes of the NPDES stormwater program and provide the necessary resources for MS4s to effectively evaluate and implement programs before mandating new regulations.</p> <p>The idea of developing national design or performance standards to control stormwater volume and flow (one size fits all approach) is contrary to the NRC recommendation of watershed based stormwater planning and implementation.</p> <p>EPA is focusing too much on costs. EPA needs to include analyses on the ecosystem and community benefits of reduced stormwater-caused degradation, as well as the economic benefits to developers who adopt LID strategies in lieu of traditional hard infrastructure conveyances.</p> <p>The current economic struggles for most of the industry over the last couple of years will not adequately express the ability of the industry to adhere to or comply with regulatory standards. The right to access private property for LID inspections may be problematic and require a warrant.</p>	<p>Many of these comments are outside the scope of this information collection request. These comments are in blue.</p> <p>EPA has revised and/or included questions to address some of these comments. For example, the developer/owner survey requests info comparison of LID and traditional techniques. As another example, EPA has added questions to the MS4 survey to gather information on existing authority to access private property for LID inspection and/or maintenance. EPA has also added questions pertaining to watershed permitting and ordinances, laws, or the possibility of groundwater or drinking water contamination that may inhibit retention practices. In addition, this ICR is not EPA’s only source of information. EPA also has case studies for developers than have employed non-traditional techniques.</p> <p>EPA recognizes that the past couple of years may not adequately express the ability of the industry to comply with regulations. As a result, EPA is collecting information over the past 5 years.</p> <p>EPA is aware of other sources of information such as actual MS4 permits. However, MS4 permits are not readily available to EPA.</p> <p>EPA disagrees with the comment. The November 2012 date will be sufficient time for the public to participate in the rulemaking process. In a November 17, 2009 letter from Peter S. Silva, Assistant Administrator for the Office of Water, to the Natural Resources Defense Council and Waterkeeper Alliance, EPA committed to propose and finalize a rule that includes requirements for stormwater discharges from developed sites no later than November 2012. EPA has ample time to fully engage the public and State and local governments and collect sufficient information to support any rulemaking. The Information Collection Request is part of that process, and EPA notes that since the November 2009 letter was sent, EPA has held 7 listening sessions in 6 different locations around the country, including a webcast, where 1900 people attended. The attendees made both oral presentation and submitted over 200 written comments regarding any EPA revisions to the stormwater regulatory program. EPA will continue to meet regularly, and solicit the opinions of, industry, environmental organizations, State, Tribal and local governments and the public in general.</p>

Topic	Comment	Response
	<p>EPA has set an arbitrary deadline of November 2012, which will not allow the public ample time to become fully engaged in the process. The Agency has not provided rationale for this deadline.</p> <p>EPA should abandon the survey effort and instead use its resources on MS4 permit renewals throughout the U.S.</p> <p>EPA does not have the experience, technical knowledge, nor expertise to lead this effort. As was recognized by EPA’s original NPDES stormwater permitting staff, such expertise rests with the 10 to 12 states that have established comprehensive stormwater treatment regulations and by local governments which have done likewise.</p> <p>Watershed permitting has the potential to be the most efficient and effective approach to achieving water quality standards, however, watersheds cross jurisdictional lines including state lines. Empowering the MS4s as the first tier would require some states to modify powers granted those MS4s. The model with the least hurdles would be permitting at the Federal level with permit fees paid into a central system to administer the program.</p>	

Topic	Comment	Response
	<p>EPA has not explained how it will consider the costs associated with the recently finalized ELG in the overall costs associated with a post-construction stormwater rulemaking.</p> <p>It appears this ICR is gathering information to allow EPA to promulgate rules that potentially eliminate a community's ability to assess its own environment; evaluate the impacts that development has on the quality of its surface waters; and the opportunity to develop meaningful and effective mitigation strategies that meet a community's unique needs.</p> <p>Areas of high density will not have places to retain water and the program may not be practical.</p> <p>There will be problems associated with enforcing private residents/citizens to maintain installed LID technologies/practices.</p> <p>EPA should not be directly involved in developing engineering requirements, test methods, codes, etc. This should remain the providence of local municipalities and industry standard setting organizations. Distributed measures, in aggregate, can modify urban hydrology.</p>	

Topic	Comment	Response
	<p>At present most providers of LID systems, including green roofs, are insulated from the consequences of poor performance or degradation of performance over time. By placing an emphasis on quantifying performance and on system longevity, the federal government would promote competition to provide higher quality and reliability.</p> <p>When using site-specific calculations to determine predevelopment hydrology, and/or use of regional standards to reflect local circumstances, the phosphorus export loads from various watershed land-uses should be as site-specific as possible.</p> <p>EPA should not reduce or prevent stormwater from being discharged when the development is located in, or upstream to, a basin dependent upon the runoff for the yield for a drinking water source.</p> <p>EPA should only (1) set a national standard to reduce runoff from impermeable areas to the 90th percentile, which will vary by region; (2) require the first priority be rainwater harvesting for non-potable use; (3) include LID or equivalent terminology/practices/strategies in the</p>	

Topic	Comment	Response
	<p>design of all projects; (4) require during the selling of property, a retrofit upon sale strategy, that minimal runoff mitigation measures be added, such as infiltration pits to collect a standard of runoff, like the 80th percentile; (5) require no runoff from any irrigation practice.</p> <p>To be effective, EPA must identify and account for all sources that contribute to “urban runoff” and their relative percentages, and then devise a program that addresses the largest and most problematic sources first.</p> <p>Can EPA develop a “tool-box” approach such as what was used with some of the Minimum Control Measures in the Phase II program to allow local governments to choose from a set of options to implement both existing and new regulations?</p> <p>The adoption of a strict numeric standard that is easily achievable on a greenfield site might be cost-prohibitive or simply impossible to attain for a site-constrained redevelopment projects. A final rule that disadvantages redevelopment could result in a net-negative impact on water quality by shifting growth to greenfields that would otherwise have occurred through</p>	

Topic	Comment	Response
	<p>redevelopment or infill.</p> <p>Requiring additional retrofit work with no income stream to provide the funding for it will cripple cities, some of which have already declared bankruptcy.</p> <p>There is the potential or infrastructure costs to exceed expected revenues from the population that will be supporting the infrastructure forever. Long term maintenance costs continually rise and could easily eclipse the cost of the initial facilities.</p> <p>There would be a significant inspection and maintenance burden on municipalities associated with on-site LID implementation.</p> <p>Other municipal costs not directly related to stormwater capital and operations cost could increase as a result of EPA mandated land use standards associated with Smart Growth and LID including transportation infrastructure, public transportation, and utility costs.</p> <p>The costs associated with placing, operating, maintaining, eventually totally replacing, keeping track of, and the inspecting of possibly millions of</p>	

Topic	Comment	Response
	<p>individual parcel-based retention practices is substantially different than the construction, operation, maintenance, eventually totally replacing, keeping track of, and inspecting of more consolidated community-wide facilities.</p> <p>Experience shows that the order of magnitude is greatly increased when you consider requiring smaller, parcel-based, private/public facilities versus larger community-wide based facilities.</p> <p>The costs associated with timely maintenance are much lower than those associated with the current erratic approach to maintenance. A payoff for nurturing a service industry for LID maintenance will be a quickly enlarging pool of expertise. This will spur more efficient and reliable design and will drive down the costs of construction as well as maintenance.</p>	
Land Use	The separation of federal regulations from state/local community control of land use decisions may be lost if this rulemaking goes forward.	EPA disagrees with the comment. EPA in no way intends for any rulemaking on stormwater discharges to interfere with state and local control over land use decisions. EPA welcomes further comment during any rulemaking process.
Burden	The ICR is too costly and burdensome to the industry. The data can not be complied within EPA's burden	During consultations with developers/owners, MS4s, and states, EPA gathered valuable insight on the overall questionnaire burden and the burden of specific questions. EPA has revised the questionnaires with an eye on burden reduction. For example, EPA has reduced the amount of questions in the owner/developer survey considerably. In addition, EPA

Topic	Comment	Response
	<p>estimate.</p> <p>EPA should seek industry input before submitting the questionnaire to OMB.</p> <p>The O&M costs and municipal costs are not even known to the respondents.</p> <p>The financial data is especially difficult to collect from small builders and may cost them \$1500 to pay for the services needed to fill out the financial portion of the survey.</p> <p>The ICR process, as proposed, is inadequate to evaluate the economic impact on states, local governments, and businesses.</p> <p>Big Box retailers often have far less information about costs and practices than do their general contractors, making it unusually difficult and costly for a Big Box respondent to address questions on those subjects. They would have to hire consultants that charge around \$100/hour which is twice the hourly rate assumed by EPA.</p> <p>The burden must be reduced for homebuilders since 95% are small businesses. Very few homebuilders typically have accounting or engineering staff on the payroll and they</p>	<p>developed a transportation-related questionnaire that it tailored to such activities in an effort to make it easier for DOTs to provide responses.</p> <p>However, based on feedback received from possible respondents, even with these revisions, EPA has increased the burden estimate per questionnaire.</p> <p>EPA expects the burden to small business developers/owners of residential properties will be less than others. EPA has incorporated a size cut-off that should eliminate developers/owners of single properties from the requirement to provide financial and technical information.</p> <p>EPA’s burden estimate includes all aspects of responding including the time required to read, comprehend, and compile the information.</p> <p>EPA is no longer requiring general contractors to provide financial or technical information requested in the developer/owner questionnaire.</p> <p>EPA anticipates it will use other readily available sources of information in addition to this questionnaire in evaluating this proposed rulemaking.</p> <p>EPA has revised its budget related questions to make it easier and less burdensome to respond.</p>

Topic	Comment	Response
	<p>usually do not retain technical data on past projects. Some companies may fail if they are required to spend a week completing the questionnaire.</p> <p>It would be extremely burdensome to transit agencies to complete the questionnaire.</p> <p>EPA’s burden estimate does not account for the time required to read, comprehend, and compile the information.</p> <p>It may take general contractors 3 weeks to just complete Section C (for all 10 projects) because they would have to go back to each project’s civil engineering firm/design engineer to get nearly all of the technical information.</p> <p>Providing budget related information will be one of the most difficult tasks in completing the surveys. Municipalities have many departments involved in programs to ensure compliance with our stormwater permits – it would be an arduous task to try to separate out and assess a dollar amount associated with such wide ranging activities such as street sweeping, park maintenance activities, etc.</p>	
Survey Recipients	EPA must expand the scope of its gathering to derive critical information	Based on the detailed comments and on additional consultations with contractor and construction organizations, EPA agrees that entities performing only as contractors or constructors should not be targeted to respond to the owner/developer survey.

Topic	Comment	Response
	<p>from stormwater researchers, consultants, and technology providers and federal, state, and regional agencies on the forefront of the next generation of stormwater control.</p> <p>The responsibilities for the O&M of post-construction stormwater controls, maybe the responsibility of the Big Box retailers, a separate developer, or some aggregation of the entities in the shopping center. In many cases the Big Box firms function as both the “owner” and the “developer” of its projects. Big Box retailers do not have access to the site-specific technical data required in Section C.</p> <p>Transit agencies should not be included in this data collection effort even though they have an ongoing need for construction and/or rehabilitation of public transit passenger, maintenance and storage facilities.</p> <p>Contact national societies of the Professional Engineers, Land Surveys, and Landscape Architects to get lists of firms that actually implement the practices and can answer a detailed questionnaire more easily. Also the International Erosion Control Association, Center for Watershed Protection, American Society of Civil</p>	<p>EPA has revised the questionnaire and its survey design so that it only pertains to owners or developers.</p> <p>This ICR is not the only means by which EPA will collect information to support this rulemaking. EPA agrees that other sources of information are invaluable and has or will reach out to them. However, EPA has concluded these other sources are not appropriate questionnaire recipients because the vast majority of the requested info is not applicable to them.</p> <p>Based on comments and other outreach, EPA has revised the questions to collect information it believes is available to the vast majority of respondents. If the information is not available, respondents have the option of responding that the information is not available.</p> <p>EPA disagrees that transit agencies should not be included in this data collection effort. EPA anticipates that transit agencies will be subject to this rulemaking and needs to collect information to analyze the feasibility and impacts of the rulemaking to transit agencies. EPA has developed a separate questionnaire for transportation agencies in an effort to tailor its information collection to their activities.</p> <p>See Part B of this ICR supporting statement for EPA’s survey design and strategy for selecting questionnaire recipients.</p>

Topic	Comment	Response
	<p>Engineers.</p> <p>Unless the construction company is the owner/builder, it is not likely they will know the design basis of the stormwater control features on projects they have constructed.</p> <p>EPA should redesign the survey to align to the different types of builders and developers which could include a question asking what categories apply – builds on single lots developed by another company; builds on owner’s land’ builds multifamily homes; land development only; develop and build in a project the company develops; develop and sell lots to other companies. The EPA can tailor the questions to the different type of builders/developers.</p> <p>EPA should develop separate questions for owner/developers and general/lead contractors.</p> <p>Financial information from a general contractor serves no purpose because they will never be paying for the permanent BMPs. EPA should eliminate Section B for general contractors.</p> <p>Random sampling of developers or municipalities will not result in a fair</p>	

Topic	Comment	Response
	<p>representation of municipalities and industry.</p> <p>Industry surveys should be solicited from knowledgeable developers with experience in incorporating post-construction stormwater controls.</p> <p>Different size developers will have different unit costs and varying degrees of understanding LID issues.</p> <p>Expand list to include others that have control over infrastructure that significantly impacts stormwater such as federal facilities, railroads, airports, and owner and operators of commercial or industrial sites of a specified size.</p> <p>Require that primary contractors obtain, where appropriate, answers to questions from their stormwater contractors.</p> <p>The strategy for selecting questionnaire recipients should be grounded in statistics and should include a statistically broad and representative cross section of the nation with regard to climatologic, topographic, geologic, economic, legal, social, political, and environmental factors. The sampling strategy should be clearly documented and made available for public comment before the questionnaires are</p>	

Topic	Comment	Response
	<p>distributed.</p> <p>Many support EPA’s decision to exclude the electric utility industry from the stormwater ICR.</p>	
<p>Survey Approach/Format</p>	<p>The questionnaire was unclear or vague, and questions had multiple meanings and multiple potential responses. The multiple choice format is not conducive to clear and meaningful responses.</p> <p>EPA should provide clear guidance as to what should be included in the costs, otherwise data will be highly variable.</p> <p>Why is the period of interest limited to 5 years? A false assessment of cost/benefit may result if the database is skewed toward recently installed projects.</p> <p>The Agency should focus on the more problematic impacts stemming from preexisting development versus newly constructed sites that are using some stormwater control measures.</p> <p>EPA should remove the firm level financial information from the survey as EPA has not justified the need for this information.</p> <p>EPA should eliminate the requirement</p>	<p>In response to these comments, EPA has revised its definitions and instructions, where appropriate.</p> <p>EPA has designed its questionnaires to reduce burden to recipients and to EPA in processing responses. Multiple choice format addresses both of these concerns.</p> <p>EPA typically struggles with reducing burden and collecting enough data to inform its regulations. In this case, EPA chose to collect 5 years of data in this ICR because it concludes data from the past 5 years will be sufficient to allow full consideration of this rulemaking.</p> <p>EPA is also considering retrofit of existing development as part of this rulemaking and has included questions to gather information on the extent and type of retrofit currently being incorporated.</p> <p>EPA needs firm level information to assess the possible economic impact of this rulemaking to firms.</p> <p>EPA is not requiring owner/developer surveys to develop engineering or financial information that does not exist.</p> <p>Whether EPA provides an e-mail address or a telephone number for a questionnaire help-line, it does not typically have someone to respond immediately 24 hours per day. E-mailing the question gives EPA the chance to research its response, if necessary, and reduces “telephone tag” – both of which ultimately reduce the delay in getting clarification.</p> <p>EPA is no longer including the BMP worksheets in any of the questionnaires.</p> <p>Because developers that are out of business would not be subject to this proposed regulation, it does not need to collect information from them.</p> <p>EPA has developed a separate questionnaire for transportation projects.</p> <p>EPA has not developed a separate questionnaire from BMP manufacturers/vendors, but is reaching out to them for cost and</p>

Topic	Comment	Response
	<p>to develop engineering and financial estimates for all recipients of the industry questionnaire.</p> <p>EPA should provide a phone number for to clarify questions in addition to the email address which will result in lost time.</p> <p>The BMP worksheets should address the fact that multiple BMPs may be used to satisfy one design objective and one BMP may be used to satisfy multiple design requirements.</p> <p>EPA should emphasize complete life cycle costs of all stormwater BMPs.</p> <p>It is not clear how the financial data that EPA collects will account for the many builders who have gone out of business during the period of time that the survey covers.</p> <p>The proposed surveys do not address the stormwater impacts from transportation projects in general, or highways in particular. These impacts should be the focus of a separate questionnaire.</p> <p>A separate questionnaire should be developed for manufacturers/vendors of BMP systems.</p>	<p>performance data for controls/systems for which it lacks information.</p> <p>EPA appreciates the concern about the summer months and has minimized burden as much as possible.</p> <p>EPA is considering the comment to conduct webinars with two weeks of questionnaire distribution in order to facilitate response and clarify questions early in the process. EPA will provide its analysis of the collected data in the public record associated with this proposed rulemaking.</p> <p>EPA has not moved the definitions to the back of the questionnaires as suggested because EPA wants respondents to read the definitions before they read the questions.</p> <p>EPA has developed a survey design for all the questionnaires. This includes a long and short version of the owner/operator survey. See Appendix A.</p> <p>EPA is evaluating the use of on-line surveys for this data collection effort.</p> <p>EPA has revised specific questions in all of the questionnaires to address comments. For example, EPA is requesting information on all types of long term stormwater discharge controls and is not limiting its collection to retention practices only.</p> <p>EPA disagrees that asking how much a municipality spends as a percent of total budget provides little useful information. As explained in a previous section, EPA will be able to compare the estimated incremental costs of any rulemaking considerations in an effort to gauge increased financial burden and possible impact.</p>

Topic	Comment	Response
	<p>Questionnaires requesting this type of information should not be mailed out during the summer months as monitoring, permitting, and other regulatory staff members are busiest during these months when construction and related activities are at their peak.</p> <p>EPA should conduct webinars on the questionnaires within 7 to 14 days of distribution and conduct stakeholder meetings after questionnaires are submitted and initial analyses are conducted.</p> <p>Move the definitions to the back of each survey or into a separate document to un-encumber the survey.</p> <p>EPA should develop a more detailed, precise survey of a selected group of municipalities to obtain more useful information.</p> <p>EPA should develop a short questionnaire that goes to a larger sample of respondents and a detailed questionnaire to a much smaller subset. Specifically, the detailed should go to design firms who actually do development work.</p> <p>Shorter surveys should be available for</p>	

Topic	Comment	Response
	<p>completion online.</p> <p>Retention is only one available approach; EPA should modify the survey to provide a full assessment of approaches.</p> <p>Asking how much a municipality spends as a percent of total budget provides little useful information.</p>	
<p>Survey Alternatives</p>	<p>EPA staff or a contractor should extract the requested information from the respondents through a series of research, interviews, and follow up questions. Using 1 entity to collect data improves the quality and usefulness of the data.</p> <p>Instead of conducting a survey EPA should be conducting a research effort and comprehensive evaluation of the new development and redevelopment programs that have been established.</p> <p>EPA should consider a separate effort to assess the effectiveness of source controls and which constituents would benefit the most from source control programs and/or new research.</p> <p>EPA should convene a national stormwater summit or strategic initiative involving scientists, engineers, regulators, MS4 permittees, and</p>	<p>This ICR is one source of data for this rulemaking. For the requested information, EPA concludes these alternative sources would not provide a national baseline to use as a basis of comparison for regulatory options. However, EPA is collecting information from multiple sources including most of those provided in comment. For information not collected through this ICR, EPA is conducting research supplemented with interviews, meetings, site visits and other outreach activities.</p> <p>The MS4 and State questionnaires are designed to provide a national perspective on existing new and redevelopment requirements.</p>

Topic	Comment	Response
	<p>stormwater practitioners to evaluate the status of the stormwater sciences and formulate an achievable strategy for the future.</p> <p>EPA should prepare designs and cost estimates for various scenarios for different design criteria, contributing land uses and project sizes in various climatic and physiographic regions of the country. Use MEANS catalog or other industry-standard cost-estimating tools.</p> <p>Utilize case studies of several pioneer cities from each region.</p> <p>After EPA articulates the goals of the regulation, identifies the target entities for information collection, EPA should sit down with those entities to discuss how best to obtain the necessary information prior to asking OMB for ICR approval.</p> <p>EPA should work with the State and regional stormwater agencies to gather the data, the cost of the data collection could be spread across member municipalities or funded by EPA.</p>	
<p>Definitions - General</p>	<p>The definitions are not detailed enough to ensure nationwide understanding and applicability.</p>	<p>EPA has revised its definitions to incorporate these comments.</p> <p>EPA has reviewed the definitions in the 4 questionnaires for consistency, as appropriate.</p>

Topic	Comment	Response
	<p>To generalize cost information it will be necessary to standardize the data definitions, activities, and metrics, and provide some central reporting mechanism. The definitions should be consistent for the 3 questionnaires.</p> <p>The ICR definitions should be consistent with the NRC definitions.</p>	<p>EPA disagrees that its definitions need to be consistent with NRC. EPA's definitions enable it to collect information in a manner which conforms to its analyses.</p>

Table B-2: Industry Questionnaire³ Comment Summary and Response			
Topic/ Question Number	Comment	Deleted/ Added Question	Response
States w/ projects & completed project criteria A-3 & A-4	Questions should include start/stop dates and clarify whether the dates [FY 2005 through FY 2009] are federal or state fiscal years.		EPA has clarified that it is asking for information for calendar years 2005 – 2009. However, for the financial questions only, EPA is allowing the respondent to provide information for either calendar or fiscal years and to indicate the first month of the fiscal year, if being used.
Completed project criteria A-4	Question should better define “not a pipeline or other utility related activity where the original land cover was replaced at the end of the project.” All underground and above ground pipelines would eventually have the land cover restored.		Question was revised to clarify this point.
Firm financial B5 – B-14	These questions represent an unnecessary intrusion into the private business records of the targeted respondents.		EPA revised the questions to limit the financial data being collected. Financial data are required for EPA to appropriately assess the economic impacts of any proposed rulemakings on the affected industries.
Firm balance sheet B-7 & B-9	The focus should be on the total value of the relevant work completed.		Questions were revised to only collect data on total revenues generated.
FTEs B-13	The number of FTEs is not relevant for Big Box retailers. A better question would be “how many development or construction contract managers are employed by the firm and what general functions these personnel perform.”	Deleted question	EPA has deleted the question asking for the number of FTEs.
Owner/general contractor for projects C-3	Does EPA mean the owner and general contractor or the owner or general contractor?		The survey was revised to clarify that EPA is only seeking information from projects where the respondents were either the owner or developer of all or a portion of the project. General contractors may be asked by the owner/developer to provide information when available, however, they are not expected to have and provide all of the information for a given project.
NPDES NOI	The NOI is not a permit. EPA should		Question was revised to clarify these points and to include NOCs.

³ Now called Owner/Developer Questionnaire

Table B-2: Industry Questionnaire Comment Summary and Response			
Topic/ Question Number	Comment	Deleted/ Added Question	Response
permit holder C-5	include or preclude NOCs. What is the relevance of the question “were they NOI holders?”		
NOI permit no. C-6	EPA can get this information from the states.		EPA believes the most efficient way to collect the NOI permit numbers is from the permittees themselves.
Project duration C-8	Phase duration – general contractors are not usually privy to land acquisition, land [site] development and design phasing information.	Deleted question	EPA has deleted the question asking for the duration of each phase of the project.
Project type, size, land cover, & impervious/ pervious components C-9 – C-11	Most of this information is more readily accessible to the design engineer for a project and not always placed on the construction plans, which are the only documents available to the general contractor. C-9 & C-11 results might be easier to assess and tabulate if (a) and (b) are combined into one table. Questions should focus on both the number of homes and number of lots constructed as well as the number of acres so that equal comparisons can be made.		EPA has clarified that only owners and/or developers of projects are expected to complete the surveys. These questions were revised to include the number of dwellings constructed.
Percolation rate C-13	EPA should consider asking for the average [percolation] rate of the most common pervious areas at the site. Project-specific data is usually not available on soil type or percolation rate.	Deleted question	EPA has deleted the question asking for the percolation rate at the project site. The question about project-specific soil types was clarified to allow respondents to skip the question if soil information is not known.
Performance standards/ design criteria C-16	Clarify what is being requested. Infiltration rates should be distinguished as either measured (under technical specifications) or used for		Question was revised to clarify these points.

Table B-2: Industry Questionnaire Comment Summary and Response

Topic/ Question Number	Comment	Deleted/ Added Question	Response
	design (design basis).		
Cost comparison C-17	EPA should allow for respondents to include actual dollar amounts; clarification should be made on meaning of retention practices.		Question was revised to clarify the meaning of retention practices. EPA does not believe that the actual dollar amounts of the cost comparisons will significantly improve its analyses. Respondents, however, are allowed to provide supplemental information if they choose to do so.
Implementation of retention practices C-19	Simplify the question by asking for the city or county where the site was located and whether it was designed above minimum standards and if so, how.		Project-specific location information is collected in a previous question in the survey. EPA does not believe that information on whether implemented practices were designed above minimum standards is necessary for its analyses.
Retention practices implementation challenges C-20	Allow respondents to provide additional information on the nature of the barrier encountered. Clarify whether financing requirements refers to conditions imposed by lenders or cost considerations.		Respondents are allowed to provide additional information that they believe is helpful. EPA did not clarify whether “financial requirements” were specific to conditions imposed by lenders or cost considerations as that distinction is not necessary for EPA’s analyses.
Alternative land use C-21	General contractors do not have this information.		EPA has clarified that only owners and/or developers of projects are expected to complete the surveys. Respondents can select “unknown” if they do not know how the land would have been used if on-site stormwater controls were not implemented.
Design criteria C-22	General contractors do not have this information. EPA should aggregate information from the entire site or project. “Containment” and what is meant by the system design capacity should be clarified. Project-specific data is usually not available the watershed area.		Question was revised and non-watershed specific information was merged with the question asking for project-specific or numeric stormwater performance standards and/or design criteria requirements. Watershed specific information was deleted.
Stormwater control components installed C-23	The percent of the site area managed should be specified for each control.		EPA does not believe that information on the percent of the site area affected by the post construction stormwater controls is necessary for its analyses.

Table B-2: Industry Questionnaire Comment Summary and Response

Topic/ Question Number	Comment	Deleted/ Added Question	Response
<p>Stormwater system component worksheets C-25</p>	<p>The question is difficult to answer because developments have a bid price that will not be broken down the way EPA asked the question. Maintenance costs are also not broken down by BMP. Some cost elements are for the overall site development versus facility-specific costs. Maintenance costs should be estimated on some time interval – annual, monthly & on level of maintenance – routine, periodic, rehabilitative, replacement. It is unlikely that costs will be known for each separate element of an individual practice. Planned developments and site plans are bid out to engineers and contractors and these individual costs would not be quantified. Flow rate capacity is generally expressed in cubic feet per second, not gallons. Design basins are not applicable to curbs and gutters Clarification should be made as to whether the catch basin worksheet applies to one catch basin or all catch basins in a project Unclear on the permeable paver worksheet what design basin refers to – retention/detention? Green Roof BMP worksheet – the same</p>	<p>Deleted question</p>	<p>EPA has deleted the question and information contained in the stormwater system component worksheets.</p>

Table B-2: Industry Questionnaire Comment Summary and Response

Topic/ Question Number	Comment	Deleted/ Added Question	Response
	<p>level of engineering/design detail should apply for bioretention systems and green roofs. The physical characteristics of engineered soil, under drains and drainage layers greatly affect performance. Depth of media and depth of soil are redundant terms. Media is the accepted term in the industry.</p> <p>It is also worth noting that costs for installation of stormwater controls may be difficult to separate from total project costs, because separate accounts are not usually established for stormwater controls.</p> <p>Provide concrete description of data desired – on Curb and Gutter worksheet, what elements are to be included in “storm sewer cost”? What elements in “materials” cost? What length is requested here – length of pipe installed, length of curb and gutter installed?</p> <p>Where BMPs are installed for water quality reasons only, the BMP worksheets should ask was the contribution to controlling runoff volume or runoff volumetric discharge rate evaluated.</p> <p>Questions on the warranty period and inspection cost should be included on all BMP worksheets.</p>		
Project financial information	General contractors do not generally have this information.		EPA has clarified that only owners and/or developers of projects are expected to complete the surveys.

Table B-2: Industry Questionnaire Comment Summary and Response			
Topic/ Question Number	Comment	Deleted/ Added Question	Response
C-30 & C-31			