

August 15, 2013

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RE: Comments on NH Small MS4 Draft General Permit

The Massachusetts Coalition for Water Resources Stewardship (MCWRS) appreciates the opportunity to comment on the Draft Small MS4 permit for New Hampshire. We understand that the US Environmental Protection Agency (EPA) intends to issue a draft permit for Massachusetts communities, which is very similar to New Hampshire's; therefore, our comments are relevant. We want to provide EPA with these comments not only to improve the permit for New Hampshire communities, but to also ensure the requirements are reasonable and sustainable for Massachusetts communities when the draft permit is issued in our state.

MCWRS is a nonprofit organization committed to promoting watershed-based policies and regulations that effectively manage and conserve water resources. MCWRS is unique in its focus on protecting municipalities' interests in an ever changing regulatory environment. We promote using scientifically based, fiscally responsible approaches to realize environmental and community goals. Members include municipalities; public agencies that transport and treat drinking water, wastewater and stormwater; quasi-government agencies; and private organizations whose members are committed to the principles of stewardship and sustainability in protecting the environment and public health.

General Comments:

- While the goal of the Clean Water Act is laudable and MCWRS fully supports the goal, MCWRS considers the requirements in the Small MS4 permit burdensome and some will not achieve the goal of clean water.
- The schedules set forth in the draft permit are not reasonable or feasible when considered in the context of municipal realities. For instance, the 5 year timeframe for completing the required Best Management Practices (BMPs) is unreasonable.
- The permit, as drafted, would create a significant administrative burden for municipalities that would detract from their ability to provide direct benefits to water

quality through such concrete activities as increased street sweeping, increased catch basin cleaning and removal of illicit discharges. This permit's burden needs to be considered along with CSO, CMOM and other regulatory requirements.

- Many of the deadlines provided in the draft permit do not allow sufficient time to allocate funding within set municipal budget cycles to complete the tasks required. Creating a separate fund for stormwater adds significantly more time. Without a stormwater utility, many municipalities simply do not have enough money. No item in the permit should be required to be completed during the first permit year.
- The draft permit would require compliance with Total Maximum Daily Load (TMDL) immediately, or no later than the date set forth in the TMDL. This approach is not consistent with the CWA provisions relating to the MS4 general permit and would likely result in immediate non-compliance upon issuance of the permit.
- The draft permit holds the MS4 permittee liable for illegal acts/discharges from a third party, such as individuals, industries, neighboring municipalities, and state or federal agencies. The permit should be modified or clarified not to hold the permittee liable for the third party stormwater contributions.
- New and additional stormwater flow to impaired waters regardless of concentration would be prohibited under this draft permit. This requirement presumes that the added discharge causes or increases the impairment without any sampling or confirmation of the possible impairment.
- How will EPA to credit municipalities for stormwater BMPs that have already been installed?

Section-Specific Comments:

Section 2.1 Water Quality Based Effluent Limitations and 2.1.1 Requirement to Meet Water Quality Standards: Section 2.1 (page 13) states that “Pursuant to Clean Water Act Section 402(p)(3)(B)(iii), this permit includes provisions to ensure that discharges from the permittee’s small MS4 do not cause or contribute to exceedances of water quality standards...”. The cited section of the Clean Water Act makes no mention of water quality standards. Instead, it establishes Maximum Extent Practicable (MEP) as the standard to which pollutants must be removed from municipal MS4s. The language in section 402(p)(3)(B)(iii) of the Act is clear that MEP governs pollution control requirements for municipal stormwater discharges. Section 402(p)(3)(B)(iii) of the Act states that controls to reduce the discharge of pollutants to the MEP include management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator determines appropriate for the control of pollutants. The “such other provisions” clause is within the broader context of the MEP standard, not separate from it as EPA tries to imply. The proper wording throughout the permit that would be consistent with the Act would be for the permittee to meet water quality standards to the maximum extent practicable. For Congress to bother to include such language in the Act is clear and unassailable evidence that lawmakers understood that there are limitations in the ability of

municipalities to meet water quality standards in stormwater discharges. These limitations are spelled out in the statutory standard of MEP applied only to municipal stormwater discharges. NPDES stormwater permits for municipalities will continue to be contentious as long as EPA refuses to recognize that the MEP standard applies as the only mandate for pollutant removal from MS4s. Water quality standards and TMDL waste load allocations may be goals but are not the required standards that must be achieved in municipal stormwater.

Section 2.2.2 Discharge to an Impaired Water without an Approved TMDL: This section is particularly onerous and potentially very expensive. It is also open-ended as far as what EPA and NH DES can require. This type of uncertainty is unacceptable for communities that have to be able to plan and budget resources. It should be the responsibility of EPA and the state regulatory agency to evaluate and identify sources of impairments. This language should be removed from the permit.

Section 2.2.4 and Appendix H Discharges to Chloride-Impaired Waters: The state should implement a statewide training, certification, and salt usage reporting program for commercial salt applicators. This requirement should not rest on municipalities independently. The requirements of the permittees in this section are excessively burdensome and an inappropriate delegation of responsibility. It is not appropriate for EPA to use the General Permit to mandate that a municipality acquire information about the source of the chloride impairment.

The remainder of the Chloride Impaired Water program described in this draft permit includes requirements for non-municipal entities to conform to specific application rates, to calibrate application equipment, to cover their piles, and a requirement to educate those entities on best management practices for deicing materials. This is a significant enforcement burden. The TMDL, not the General Permit, should specify the corrective actions necessary and this section should be removed.

Section 2.3.2 Public Education and Outreach: While EPA provides more time to conduct the public education program in this draft of the permit, it is important to keep in mind that current studies show that the majority of the public does not understand how stormwater can become polluted and how it can contribute to water quality issues. Most of the public still believes that catchbasins in their roads transport stormwater to a treatment facility prior to discharge. In addition, most people do not understand the concept of a watershed, or the concepts related to the water cycle (rainfall, runoff, infiltration, and evapotranspiration). A significant amount of awareness-raising must be done across the United States prior to an individual community education/outreach campaign in order to truly stimulate behavior changes in the general public. Many municipalities see a large influx of visitors during the tourist season and thus education must extend well beyond the immediate locality to be truly effective.

The MCWRS supports the requirements to provide public education materials related to the four sectors identified in the General Permit, however it is beyond any individual municipality's means to conduct a truly meaningful effective campaign. A national education program, such as that promoted by Keep America Beautiful in the 1970's, could provide a consistent and transferable message that regulated MS4s could use in developing further promotional materials.

At a minimum, EPA should provide a template or umbrella program for education of stormwater issues that each municipality could modify to be specific to the municipality's waters. Engaging a public relations firm to identify messages that can be effective is a lengthy and expensive process that should not be imposed upon smaller communities or single cities. It will likely take any party at least 6 months to identify a target audience and message, and develop an evaluation protocol. EPA is in a better position to create and evaluate the effectiveness of any public education messages. Any stormwater education initiatives need to be properly funded and appropriately broad in reach.

2.3.4 Illicit Discharge Detection and Elimination Program:

2.3.4.4 a through e: This Sanitary Sewer Overflow reporting requirement is redundant and should be removed from the Small MS4 permit. Most municipalities are already required to report on overflows and removal and measures to address them as part of their NPDES permits for wastewater treatment plants.

2.3.4.6 System mapping: The required mapping elements include indication of all use impairments as identified in the state's most current 303(d) list. This information is complex and cannot all be displayed on a map in a manner that is legible without significant effort. We respectfully request clarification on the intent of this requirement, so it may be properly and reasonably addressed by municipalities.

2.3.6.8 Directly Connected Impervious Area: The requirement to complete an inventory and prioritization of MS4-owned property and infrastructure that may have the potential to be retrofitted is a burdensome and inappropriate requirement for most municipalities, many that own significant acreage. To comply would be costly and expend funds that would be better spent on already identified stormwater treatment infrastructure needs and operational activities. Retrofits should be applied as corrective measures for areas that are already impaired from polluted stormwater runoff, or as opportunistic when a property is already planned for redevelopment. This requirement should be removed from the General Permit.

Appendix E Notice of Intent:

The suggested form provided by EPA in Appendix E requires that information related to the 2003 SWMP be provided. Many municipalities already submit annual reports providing the requested information, and the requirement is administratively duplicative and wasteful of scarce municipal resources. In addition, the NOI requires that dates and responsible parties and description of BMPs associated with the SWMP be submitted with the NOI. The NOI is due within 90 days of the effective date of the permit. Municipal SWMPs may not be due to be completed beyond the 90 days, so the NOI could effectively shorten the SWMP deadlines. We request that the requirements to provide 2003 information and new SWMP information as part of the NOI be removed.

The MCWRS appreciates the opportunity to comment on New Hampshire's Draft Small MS4 General Permit. We urge EPA to consider modifications to the permit that will make it more sustainable and reasonable for municipalities.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip D. Guerin". The signature is fluid and cursive, with the first name "Philip" and last name "Guerin" clearly legible.

Philip D. Guerin, President

Cc: MCWRS Board of Directors and Members
Great Bay Municipal Coalition