TOWN OF FRANKLIN

DEPARTMENT OF PUBLIC WORKS

Franklin Municipal Building
257 Fisher Street
Franklin, MA 02038-3026

March 24, 2010

EPA – Region 1
Attn: Thelma Murphy
Office of Ecosystem Protection
5 Post Office Square, Suite 100
Mail Code: OEP06-4
Boston, MA 02109-3912

Subject: Town of Franklin's Comments on the Draft Massachusetts North Coastal Small MS4 General Permit

Dear Ms. Murphy:

The Town of Franklin is in receipt of the Draft Massachusetts North Coastal Small MS4 General Permit for stormwater management. This letter provides our comments for consideration when developing the final permit. We recognize the importance of stormwater management to the environmental health of Massachusetts waterways and the maintenance of designated uses. With the Clean Water Act long focusing on point sources alone, we applaud the efforts of the Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MassDEP) over the last decade to incorporate non-point source pollutant reduction into the CWA regulatory program.

The regulatory agencies and the regulated communities share a common mission – to ensure the health and quality of our cities and towns and their natural resources. In order to accomplish these goals, environmental programs must be balanced with other needs and responsibilities of each community and implemented in a fashion that is both feasible and financially responsible. In this context, we offer the following comments on the Draft Permit:

Data Needs for Compliance by MS4 Communities

The Draft Permit requires an enormous quantity of data to be gathered and mapped in a very short time frame in order to meet all of the permit requirements. The following is a list of data requirements included in the permit.

- The locations of all stormwater infrastructure including outfalls, pipes, catch basins, interconnections to other small MS4s, catchments delineations, treatment structures and other BMPs;

TOWN OF FRANKLIN

DEPARTMENT OF PUBLIC WORKS

Franklin Municipal Building
257 Fisher Street
Franklin, MA 02038-3026

March 24, 2010

EPA – Region 1
Attn: Thelma Murphy
Office of Ecosystem Protection
5 Post Office Square, Suite 100
Mail Code: OEP06-4
Boston, MA 02109-3912

Subject: Town of Franklin's Comments on the Draft Massachusetts North Coastal Small MS4 General Permit

Dear Ms. Murphy:

The Town of Franklin is in receipt of the Draft Massachusetts North Coastal Small MS4 General Permit for stormwater management. This letter provides our comments for consideration when developing the final permit. We recognize the importance of stormwater management to the environmental health of Massachusetts waterways and the maintenance of designated uses. With the Clean Water Act long focusing on point sources alone, we applaud the efforts of the Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MassDEP) over the last decade to incorporate non-point source pollutant reduction into the CWA regulatory program.

The regulatory agencies and the regulated communities share a common mission – to ensure the health and quality of our cities and towns and their natural resources. In order to accomplish these goals, environmental programs must be balanced with other needs and responsibilities of each community and implemented in a fashion that is both feasible and financially responsible. In this context, we offer the following comments on the Draft Permit:

Data Needs for Compliance by MS4 Communities

The Draft Permit requires an enormous quantity of data to be gathered and mapped in a very short time frame in order to meet all of the permit requirements. The following is a list of data requirements included in the permit.

- The locations of all stormwater infrastructure including outfalls, pipes, catch basins, interconnections to other small MS4s, catchments delineations, treatment structures and other BMPs;

- Data regarding the water quality of receiving waters, including water quality classifications and standards, identified impairments, total maximum daily loads (TMDLs), and waste load allocations (WLAs);

- Detailed receiving water quality information to identify areas with a high illicit discharge potential, such as fecal coliform, ammonia-nitrogen, total phosphorus, and surfactant data, and "any other available sources of dry weather water quality data including state agencies or watershed associations;"

- Parcel-by-parcel land use information, including specific uses (car dealers, car washes, gas stations, garden centers, industrial manufacturing areas, colleges, and residential areas), building ages, septic system ages, results of Title 5 inspections, locations of swimming pools, ages of industries, land uses, soil types, impervious cover, public and private parking lots, public and private yard waste storage or composting facilities, parks, recreational fields, golf courses, fertilized sports fields, street alignments with extensive deciduous tree canopies, areas subject to erosion, and land suitable for structural controls;

- Sanitary sewer system information, including sewer ages, the location, date, volume, and mitigation of sanitary sewer overflows, the locations of combined sewer overflows, sanitary sewer infrastructure locations, materials, and flow directions, rim and invert elevations, monitoring data, cleaning and repair activities, sewersheds, areas with inadequate levels of service, investigation (CCTV) and rehabilitation work planned and completed, flow isolation and dye testing areas, and locations of lift stations, siphons, known or suspected underdrains, and major crossings with drainage utilities;

- Planned capital projects on roadways or other infrastructure that could impact stormwater; and

- Locations of drinking water supplies, fishing areas and other sensitive environment resources.

Timeline for Completion of Permit Milestones

Among the many requirements in the Draft Permit, a multitude of milestones are included at various times during the five year permit duration. With over 30 deliverables over the five year

permit cycle, many occurring within the first 6 months to 2 years, municipalities will be overburdened with the requirements as presented in the draft permit. Many of the individual requirements, on their own, would be achievable. However, requiring so many varied tasks of each community during a five-year permit cycle is unrealistic and is setting communities up for failure to comply. For this permit cycle, the program should be pared down to a list of achievable goals.

Financial Burden to Regulated Communities

Since Franklin has identified 501 outfalls, the sampling and laboratory testing alone for 25% of the outfalls is estimated to cost $40,000 to $100,000 annually, depending on the parameters being tested. This is just one small component of the Draft Permit. Combined with the labor and consulting fees required to develop and distribute public education materials, to conduct site investigations, to develop the mapping described above, to inventory and inspect municipal facilities, to inspect and enforce construction activities, to review site plans for proposed new development or redevelopment projects, and to develop and implement reports, policies and ordinances, the financial burden of the Draft Permit is excessive.

In Section 1.10 c, the permittee is "encouraged to maintain an adequate funding source for the implementation of this program. Adequate funding means that a consistent source of revenue exists for the program." With only 120 days from the permit's effective date to develop the Stormwater Management Plan and commit to particular measures for implementation, there is not adequate time for funding to be secured. Furthermore, a "consistent source of revenue" implies a funding mechanism such as a stormwater utility assessing user fees. This type of program could require years to develop and implement, normally requiring multiple levels of review and approval from the town counsel and may also include approval from the state legislature.

Charles River Watershed Phosphorus Reduction Requirements

Based on the Draft Permit, Franklin is required to meet unrealistic phosphorus reduction goals (52% reduction in total Phosphorous), since it is within the Lower Charles River Basin. Specifically, the permit states that Charles River watershed communities "shall develop a Phosphorus Control Plan (PCP) that describes measures necessary to reduce the amount of phosphorus in discharges from its MS4 to the Charles River and its tributaries to achieve consistency with the WLA for the phosphorous loadings published in the *Final TMDL for Nutrients in the Lower Charles River Basin*" and "must reduce phosphorus loading to support

achievement of the WLA included in the approved TMDLs for nutrients." This will be very difficult, if not impossible, to achieve.

Presently, best management practices (BMPs) for stormwater phosphorus reduction are not well-developed. Furthermore, consistent guidance is needed in the permit regarding how to calculate the reduction potential associated with particular BMPs. Example BMPs are listed (bioretention, infiltration, disconnection of impervious areas, public education, etc.), but without presenting a consistent approach to calculating their reduction potentials, each community is likely to assess their achieved removal differently. In order to have an equitable program across cities and towns within the watershed, the permit documents must be more specific in this regard. A list of phosphorus-reducing BMPs should be provided as an appendix, with detailed instructions as to how to relate BMP implementation to a removal percentage for the flow that is affected by the BMP. This should apply to both structural and non-structural controls. This will also minimize the frequency of phosphorus sampling required to assess compliance with the permit.

In addition to the need for more detailed methods of calculating reduction potential, the permit should address alternatives for highly urbanized areas where the installation of structural BMPs on public property may not be feasible. In these areas, communities can work with private property owners as properties are redeveloped to require BMPs on their sites. In the meantime, however, there may not be feasible approaches to meeting TMDL WLAs for phosphorus.

Furthermore, communities are required to develop a priority ranking of areas and infrastructure where phosphorus pollution is likely. This does not take into account naturally occurring phosphorus which no-doubt will be present in some areas and may be difficult to mitigate.

For all communities within the Charles River watershed, a phased approach with less stringent, achievable goals over a longer period of time is more appropriate until such time when research and development on phosphorus reduction in stormwater presents a range of feasible, cost-effective options for meeting water quality goals.

Phosphorus Trading and Offsets

"Trading mechanisms and offsets" are mentioned in the Draft Permit with regards to phosphorus reduction. We are hopeful that this is a step in the direction of more holistic water resources planning, where phosphorus trading could be between not only stormwater outlets discharging to one length of receiving water, but also between MS4 communities and wastewater treatment

facilities. Many communities are presently spending millions of dollars to upgrade their wastewater treatment facilities to meet stringent new phosphorus goals. Some of these facilities can meet levels below those required to meet TMDLs from their facilities alone. These communities should be able to extend that investment to offset some of the costs of stormwater treatment, if the same total load can be achieved. Additionally, the Town of Franklin is working with the Charles River Pollution District in upgrading the facilities to greatly enhance phosphorus reduction. It is estimated that the Town of Franklin will spend in excess of $7,000.000.00 to reduce phosphorus discharges at the plant.

Assistance from the Regulatory Agencies

Section 2.2.1(d)(viii) states that, "The permittee shall identify incentives or regulatory assistance or guidance that the permittee seeks from EPA or MassDEP to implement effectively the PCP." Beyond just the PCP, there are several areas in which the regulatory agencies could provide information that would greatly reduce the financial burden and time constraints imposed by the Draft Permit. These include the following, each of which is described in more detail below: 1) public education materials, 2) ordinances and policies, 3) BMP removal efficiencies and related data, and 4) coordination with other review agencies.

Public Education Materials - For the required public education materials, having each of the 84 communities create their own language and graphics for brochures, websites, signs, etc. is an inefficient use of resources. Enough of the information on non-structural controls implemental by the public is generic and can be provided in a series of templates to communities. A few versions of this information could be developed depending on the size and demographics of each community or depending on the watershed. Similarly, for business and industrial user education, much of the information is generic and applies to all facilities. Specific recommendations regarding pet waste management, the use of alternative fertilizers, appropriate fertilizer application, and yard waste recycling, to name a few, are common to most locations. Templates could include areas where communities can input specific information, greatly reducing duplicate efforts and costs.

Ordinances and Policies - Similar to public education materials, the regulatory agencies should provide suggested language for ordinances and policies. The Draft Permit requires the development of a number of specific policies and procedures, including those relating to illicit discharges, construction oversight, new development reviews, and management of municipal facilities. Again, much of this information is generic and could be provided to communities as a range of templates, where a community could select the provisions applicable to their needs from

a list of potential wording. If five templates could be made for each ordinance, rather than 84, this, again, would greatly reduce duplicate efforts and costs. Furthermore, many communities are likely to have counsel review new bylaw language prior to its adoption. If the regulatory agencies provide only that language that has been reviewed from a legal perspective and is deemed appropriate and enforceable, this would further reduce the costs to communities.

BMP Removal Efficiencies and Related Information - As described above specific to phosphorus removal, the regulatory agencies should provide means of calculating removal efficiencies based on particular BMPs to arrive at a fair and equitable accounting across all communities. This is especially true for non-structural controls, such as public education and outreach, detection and elimination of illicit discharges, source control, and good housekeeping. Results from these activities are hard to measure otherwise.

Coordination with Other Review Agencies - Reviews for the presence of and impacts to endangered species, specific habitats, historical resources, and archeologically significant areas are cumbersome for each community to coordinate individually, both for the communities and for the review agencies. The permitting authorities should coordinate the reviews by these agencies with the comment periods and with particular future milestones, and all comments should be funneled through the permitting agencies to the applicants via formal comments. The draft permit describes activities as minor as constructing a ditch or installing a new catch basin as requiring the community to contact the review agencies due to the disturbance of land, especially in relation to archeological resources. A more streamlined process is required for obtaining input from these agencies on minor activities such as this.

Other Comments

The following is a list of other miscellaneous comments that apply to topics other than those discussed above:

- The monitoring of 25% of outfalls each year in both wet and dry weather conditions is cumbersome, costly, and unreasonable. This should be lowered to a more achievable level, such as 10% per year, starting with known problem areas.

- For receiving waters both with and without approved TMDLs (Sections 2.2.2 and 2.3.1), requiring the installation of BMPs in municipal systems to meet all impaired water quality standards is an enormous and expensive undertaking.

- The permit states that the regulations only apply to the "urbanized" areas of each community – those with at least 500 people per square mile – and that "irrigation water" is excluded as a non-stormwater discharge. This may result in an exclusion of agricultural areas, which tend to be major contributors to stormwater pollution, especially with regards to nutrients. The regulatory agencies would be remiss to require such stringent requirements to meet WLAs from urbanized areas but not include agricultural inputs.

- If a discharge causing an exceedance of a water quality standard is discovered, the community is instructed to fix it within 60 days or document in the SWMP an estimated timeframe to correct the problem. This implies that the SWMP is an evolving document with constant updates to the regulators. If this is the case, it should be clarified in the Draft Permit.

- In Section 2.3.3 – Antidegradation, item (b) requires that for "discharges to tier 2 waters as defined by 314 CMR 4.04 the permittee shall demonstrate to the satisfaction of MassDEP that the discharge will cause no significant lowering of water quality by documenting one or more of the following: …(iii) The discharge does not cause a significant lowering of water quality because the effluent will be of a quality equal to or better than the existing water quality of the receiving water…" This should be clarified, as it implies that water quality standards do not need to be met in water bodies where they are not presently being met. This rationale could be used by all permittees discharging to tier 2 waters to maintain the status quo.

- The permit mentions that areas with sanitary sewers over 50 years old should be considered as having a high illicit discharge potential. Note that in some communities, the majority of sewers are over 50 years old. Therefore, a further division of priority areas would be required. I would also suggest, that sewer pipe age is just one factor that should be considered; soils types in the area, water tables and type of pipe would be much more relevant.

- Section 2.4.4.2 accurately recognizes that 6 months is not enough time to pursue and resolve a legal dispute with a discharger unwilling to comply; this could take years, and no time limit should be placed on this where it is beyond the control of the community particularly if the Court system is involved.

- The provision of impervious area and directly connected impervious area for each community in Section 2.4.6.9 is a good example of the type of information that should be provided to assist in compliance. As much as possible, the regulatory agencies should provide guidance documents and templates to meet the individual requirements of the permit.

- The requirements for construction site stormwater runoff control represent an improvement over the present General Construction Permit. Enforcement by E.P.A. is often lacking with the present program, and having communities more involved with construction within their limits should help to mitigate the impacts of construction-related erosion and sedimentation. There could be a substantial reduction in pollutants from this alone, and the requirements appear to be reasonable and achievable.

- Similarly, post-construction stormwater management from new development and redevelopment are also "low-hanging fruit." The application of the existing DEP stormwater management standards to upland areas outside of the MA Wetlands Protection Act jurisdiction is appropriate. These are standards that have been implemented in and around wetland resource areas for a number of years and are tested, implementable, and enforceable.

- The requirements for good housekeeping and pollution prevention from municipal facilities all appear to be reasonable and achievable, with the exception of the following provision: 1) Investigating municipal buildings to identify all floor drains may be a challenging task, especially in a 6-month time frame, if large facilities such as school buildings and public meeting spaces are included; Franklin has over 30 buildings that would need to be inspected. Furthermore, the inspection and cleaning of stormwater structures should be modified to be at the same frequency, allowing both to be performed at once.

- We agree with the requirements for stormwater inputs into drinking water supply areas (Section 4.1) and the encouragement of groundwater recharge where feasible (Section 4.2).

- Section 5.1.5 states that EPA or MassDEP may require the permittee to add, modify, repair, replace or change BMPs to other measures" at any time. This is open-ended and onerous. More specific allowances should be made for how long a community will be given to make changes if they are requested or required by the regulatory agencies.

- Where some of the permit requirements extend for a period of ten years, it seems that record keeping should be required for longer than a five year period.

In conclusion, while the Town of Franklin agrees with the regulation of stormwater inputs to maintain high water quality, the Draft Permit as presented includes several requirements which are not achievable and does not take into account time and budget constraints that affect cities and towns. The permit should be scaled back, especially in the areas of mapping, outfall monitoring and sampling, and phosphorus loading requirements, to include achievable, cost-effective goals during the course of the five-year permitting period. If we are presented with a permit we can meet, Franklin would be more likely to successfully invest the funds and labor for implementation of the permit.

Thank you for your consideration of these comments. Should you have any questions, please contact 508-520-4910

Very truly yours,

Robert Cantoreggi
DPW Director

c: Curt Spaulding, Regional Administrator EPA
Jeffrey Nutting, Town Administrator
William Yadisernia, Town Engineer