

## **Nancy H. Hammett**

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March 31, 2010

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

Subject: Comments on EPA's Draft General Permit for Small MS4s in the North Coastal Watersheds of Massachusetts.

Dear Ms. Murphy:

I am a former member of the Watertown Conservation Commission, former Executive Director of the Mystic River Watershed Association, and an environmental policy consultant. I welcome EPA's proposal for a new General Permit for Small MS4s for the North Coastal Watersheds of Massachusetts and I urge EPA to issue the new permit promptly.

Recent rains in Massachusetts have provided a vivid illustration of the problems caused by inadequate management of stormwater in Massachusetts. Flooding is the most obvious consequence, but the significant amounts of pollution carried into our waterways by overland runoff, surcharging stormdrains and sewers, sanitary sewer overflows, and combined sewer overflows are less obvious but very damaging results. It is may not be feasible to prevent all stormwater pollution from affecting our waterways during the most extreme weather events. But it is obvious that more work is needed to prevent pollution during routine events, and to prepare for future increases in storm frequency and severity that are likely to result from global climate change.

The proposed permit is a reasonable next step following the initial 5-year MS4 stormwater permit. Everyone recognized during the first permit period that this regulation presented a challenge for regulators and the regulated communities alike. With good reason, EPA Region 1 took a non-punitive enforcement stance, as communities struggled to deal with these new requirements. After 5+ years, however, all municipalities covered by the permit have had ample opportunity to map their storm drains and sewer systems, investigate continuing sources of sewage contamination, develop and implement the required ordinances, improve municipal practices, and begin to educate the public about ways of reducing stormwater pollution. It is now time to ensure that all municipalities are making an effective effort to address stormwater pollution, with more explicit requirements where needed and with more aggressive EPA enforcement of these requirements.

I'm sure that EPA will receive many comments from parties who argue that municipalities cannot afford to do more at this point to address stormwater pollution. Based on my experience as a consultant reviewing proposed state and Federal regulations, I can attest that it is always

## Nancy H. Hammett

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argued that the proposed regulation is too costly, or that now is not the right time to increase environmental requirements. As a Massachusetts taxpayer, I certainly recognize the fiscal burdens municipalities are currently facing. However, I do not believe that concerns about the costs associated with the proposed MS4 requirements are a valid basis for reducing requirements or delay in issuing the permit. There are several reasons for my conclusion:

- The post-construction ordinance/bylaw requirements are necessary to prevent future development that makes stormwater problems worse, in ways that are difficult to reverse. Prevention is always easier, less costly and more effective than dealing with negative environmental impacts after they have occurred. Ordinances or bylaws that restrict construction and post-construction stormwater pollution and maintain recharge are not expensive for municipalities to develop. There are many useful model ordinances and bylaws available.
- Complying with these requirements is also not very costly for developers. Extensive research and technology development in recent years has improved ways to control stormwater pollution using low-impact development methods. These methods often cost less than less-effective engineered stormwater management solutions, as well as being more attractive. They require continued maintenance to be effective, but so do the older engineered solutions. Given the current state of stormwater management methods, there is no reason to put off requiring better practices from developers. Allowing continuation of poor development practices shifts the burden to future generations, and will make cleaning up our waterways more difficult and expensive.
- In addition to model ordinances and bylaws, many other resources are now available to support municipalities' compliance with the permit requirements, including training programs, educational materials, information on BMP performance, and the like. Watershed associations and other local environmental groups may be able to help municipalities with their monitoring, with education and outreach, and with other permit requirements.
- It is not fair to allow some municipalities who have been slow so far to address their stormwater management obligations to continue to "hide in the weeds", while their neighboring communities are making good faith efforts to address their stormwater problems. We have a common responsibility as watershed neighbors to protect and restore our shared watershed resources. Cities and towns that have dragged their heels during the initial 5-year permit period should not now be rewarded for their failure to take action. Some communities could seek to reduce their residents' tax burdens or avoid the task of seeking outside funding to pay for finding and fixing stormwater pollution problems. Allowing this to continue by limiting permit requirements simply rewards a "race to the bottom" strategy on the part of these cities and towns. It is time for all communities subject to the permit to make a fair and reasonable contribution to solving a shared problem.

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U.S. EPA has faced a number of difficult challenges in developing an effective and efficient permit program. It is difficult, for example, to establish one-size-fits-all program and monitoring requirements that are cost-effective in every community. The challenge is to design monitoring and other requirements that encourage and reward actually solving the problems and discourage activity for activity's sake. Under the previous permit, a municipality could conduct engage in lots of IDDE activity, for example, while problems at certain outfalls continue uncorrected. More explicit permit requirements are now needed to ensure meaningful improvements in stormwater management.

In general, I believe the proposed permit finds an appropriate balance, avoiding overly-restrictive requirements while still requiring that municipalities demonstrate progress. The proposed permit describes more explicitly the steps municipalities must take to meet the permit requirements. At the same time, the options for modifying BMPs in Section 5.1 provide useful flexibility to adjust programs where they can be made more effective. I urge EPA to make use of this flexibility to adjust requirements where justified on a case-by-case basis, rather than reducing any of the proposed requirements for frequency of street sweeping, outfall monitoring, and other provisions of the permit. The "safety valve" provided by Section 5.1 is sufficient to ensure that municipalities are not unduly burdened by the permit requirements. Should frequent requests for the same modifications to the permit requirements indicate the need for more general adjustments in the permit, EPA can always conduct a new targeted rule-making to adjust the specific permit requirement.

There may be a number of ways to reduce unnecessary requirements for municipalities that are making good progress, while at the same time keeping pressure on municipalities that are not making reasonable progress in improving stormwater management. For example, EPA might waive specific monitoring requirements for municipalities that can convincingly demonstrate that they have identified the source of problems at outfalls with high pollutant loadings, and have developed a specific plan to address those problems. Monitoring schedules could be adjusted to fit the schedule for the corrective actions – allowing more funds to be devoted to fixing the problems. At the same time, EPA should have the authority to require more extensive and effective monitoring, in cases where problems persist and the municipality fails to identify and fix the problems within a reasonable period of time.

Clearly, EPA will have to use such discretion carefully, to ensure that it does not open the door to numerous, unjustified requests for exceptions to the permit requirements. It is important that any requests by municipalities to adjust BMPs, including the supporting information required by Section 5.1.3, be made available to the public as an addendum to the Stormwater Management Plan. The relevant watershed association and the local Conservation Commission should be notified of any requests for changes in BMPs and be provided an opportunity to comment.

EPA should set a high standard for allowing exceptions, and should look for cases where a local watershed association, Conservation Commission, or environmental advocacy group concurs that the municipality is taking appropriate steps to find and fix problems. Making quarterly and annual reports available on-line will help EPA in its oversight responsibilities, by allowing other interested parties to bring problems to the agency's attention. Requiring that municipalities place

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copies of their Stormwater Management Plans in local libraries will also allow other parties to participate more effectively in efforts to control stormwater pollution.

EPA's ability to oversee and enforce the MS4 permit requirements depends on developing more useful reporting requirements. Many of the quarterly IDDE and annual reports submitted by municipalities during the first permit period were lengthy, difficult to read, and not very useful. They focused on activities rather than results, and often included long lists of activities unrelated to actually reducing stormwater pollution. The proposed reporting requirements (Section 5.3) continue to emphasize activity reporting. I recommend that EPA make it clearer that the annual reports should include an evaluation of the reasons for continuing problems at outfalls and describe how the problem will be addressed. EPA should reject annual reports that do not clearly identify problems and describe effective strategies for dealing with them. Annual reports should also require descriptions of the reasons for any missed deadlines or slippage in schedules, identify the parties responsible for implementing the requirements, and provide a plan for getting the program back on track. Too often during the initial permit period, annual reports listed the same uncompleted tasks and missed deadlines year after year, with no explanation or plan for improving compliance with the permit requirements.

In addition to these comments, I concur with recommendations made by the Massachusetts Rivers Alliance, the Charles River Watershed Association and the Conservation Law Foundation.

Thank you for considering my comments on this very important proposed regulation.

Sincerely,  
Nancy Hammett