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Ms. Thelma Murphy
US ENVIRONMENTAL PROTECTION AGENCY
New England Region
MA Office of Ecosystem Protection
5 Post Office Square, Suite 100
Boston, MA 02109-3912

REF: Comments on the Draft MS4 Permit

Dear Ms. Murphy:

The Town of Norfolk understands the need to protect our water resources, and as Director of Public Works, I am involved in both aspects (drainage and potable water) of this important issue. Norfolk and our neighboring communities had been working toward the reduction and elimination of pollutants in municipal stormwater discharge well before the initiation of the NPDES Phase II Permit Program in 2003.

I have reviewed the draft permit with our consultants and would like to submit the following comments for the Town of Norfolk and communities throughout the Commonwealth for your consideration.

Regulatory/Administrative/Cost

- The draft permit does not provide sufficient time for towns with a direct town meeting form of government to comply with permit requirements. In towns like Norfolk, adoption of bylaws, appropriation of funds, levying of taxes, and other significant decisions require a vote of the citizens of the town at Town Meeting. Regular town meetings are scheduled only once a year (in May in Norfolk's case). Additional "special town meetings" are cumbersome to call and are a burden on town resources.
    - The most crucial problem posed by permit timelines is obtaining the funding necessary to implement the required measures. Norfolk's fiscal year runs from July 1 – June 30; appropriations for expenditures are made at the May Town Meeting preceding the start of the fiscal year. Development of the budget by the Board of Selectmen begins months before Town Meeting. Thus, the significant expenditures required in the first year of the permit term are infeasible. The Town needs advance notice of at least one

year of the specific expenditures it will need to plan for. Further, given recent drastic cuts in state aid and other budget constraints, the Town may not have sufficient funds available to allocate to permit implementation. Pursuing another avenue of funding, such as a stormwater enterprise fund, would require even more time for study by the relevant boards and committees and approval at Town Meeting.

- The draft permit also contains unrealistic timelines for adoption or amendment of bylaws. For example, the permit requires amendment of the town's post-construction stormwater management bylaw to specifically mandate compliance with the Massachusetts Stormwater Standards; this must be done within two years of the effective date of the permit. This is not enough time for the appropriate volunteer town boards to draft and evaluate a bylaw amendment, refine it with the assistance of town counsel, educate citizens on the proposal, and obtain approval of the amendment at Town Meeting. In addition, compliance with the broad requirements of Sections 2.1, 2.2, and 2.3 of the draft permit may require passage or amendment of bylaws, but towns are given no lead time to do this, except for the specific Phosphorus Control Plan requirements.

- There are numerous intra-permit term milestone and deadline dates for certain activities, many of which are unrealistic. EPA should clarify whether or not each missed milestone constitutes a potential non-compliance and therefore enforcement action. For instance, the permit requirements will impose a disproportionately complex and costly obligation on communities which have not yet undertaken more extensive system mapping (ie more than the outfall mapping required under the first permit). The IDDE elements of the program rely upon comprehensive mapping of both the drainage and sanitary sewer systems, and the Phosphorus Control Plan component requires additional mapping as well. This element alone could require hundreds of thousands of dollars and considerable time, potentially well beyond the timeframes dictated in the permit (mapping to be completed within first two years of permit).
- Estimated annual costs for implementation of the program have ranged into the hundreds of thousands of dollars. Costs are highly dependent on number of outfalls, extent of infrastructure, and status of infrastructure mapping (for both storm and sanitary sewers), as well as other GIS-based analytical tools, among other issues. The resources available within disparate communities to achieve the requisite milestones are highly variable. It is unrealistic to expect smaller communities such as Norfolk to be able to meet the stringent requirements and highly labor intensive data collection and administrative requirements of the draft permit as it is now proposed. Development of the SWMP by individual communities should allow for consideration of these constraints. The overall number of requirements should be scaled back to a more reasonable level, and requirements should be calibrated to the population and urbanization of the community. TMDL-based requirements should also be calibrated to the area of the municipality within the affected watershed. (Although the actual pollutant reduction goals are calibrated in the draft permit, other associated requirements, such as data collection and reporting, are not.)

- Many of the data collection tasks relate to region or state-wide efforts, such as water quality classifications, identified impairments and endangered species habitats. This data should be made available to all regulated communities as downloadable GIS data rather than impose a highly redundant effort on individual communities.

- Until such time as the investigations and data collection activities have been concluded, it is impossible to estimate costs associated with required corrective actions. Costs to develop and implement the program may be dwarfed by the costs of achieving the required results. Requiring information associated with costs and adequate funding mechanisms in the early period of the permit term is unrealistic.

Technical

- Section 2.2.1.d.vi. states that "The permittee shall establish for the calendar year 2010, an estimate of the total annual phosphorus load (2010 Total Phosphorus Load) discharging from its entire municipality…"

  From phosphorus TMDL studies that have been approved and adopted by the EPA, it is apparent that the science of estimating phosphorus loading involves far more than just applying a loading rate to a land use. The loading rates themselves are open to dispute, and the methods of estimating loadings can become very complex when attempting to account for site specific conditions, historical factors, and a vast array of existing BMP's all with varying reduction rates, themselves depending on frequency of maintenance and upkeep of the BMP. EPA should clarify if municipalities are going to be left to invent their own methods to undertake such a potentially complex calculation - one that could have long-term impact on their progress and compliance status. Alternatively, EPA should clarify if it plans to issue a standard methodology for estimating the "2010 Total Phosphorus Load" so that there is broad consistency.

- There is no mention of computer modeling for pollutant transport in the draft permit. Some communities have invested substantial resources in developing hydraulic models for all or portions of their stormwater systems. Depending on the computer models used, some can easily be adapted to also model pollutant transport. The EPA should offer compliance credit for those communities who already have or could easily add this capability onto their existing hydraulic models. This would be a useful tool that could help communities understand and mitigate the pollutant loading effect of development. The EPA should be willing to offer incentive in the form of compliance relief. For example, a Town that has a pollutant transport model in place and calibrated could have significantly reduced ongoing outfall monitoring requirements.

- Regarding Section 3 Outfall Monitoring Program: Please clarify whether EPA is going to develop standards or minimum qualifications or certification for water testing consultants, laboratories, and sampling personnel to ensure broad consistency. Will municipalities have the option of sampling and testing with their own staff and laboratories?

- Regarding section 2.2.1 Discharge to Impaired Waters with an Approved TMDL: The field of BMP products and technologies that are TARP or Mass STEP

approved is relatively small. More importantly, those that are available and approved are geared towards individual site designs with relatively small total flows and volumes. It is unclear how large high flow, high volume discharges from outfalls can be treated for nutrient/pollutant removal except with large chemical treatment facilities. Alternatively, the concept of retrofitting smaller treatment measures at the runoff sources over large drainage areas seems even less feasible and would create daunting operation & maintenance challenges. Implementation of the regulations seems premature when considering the treatment options that are currently available. Does the EPA have a realistic vision or concept of what a complying municipality's TMDL treatment facilities would look like? Are there pilot communities where full compliance has been achieved? Having access to such an example would be very useful to help municipal managers understand, in practical terms, the expectations of the new regulation.

- Outfall Monitoring – The permit should allow some flexibility for those municipalities with a significant number of outfalls. The ability of a municipality to collect samples manually is difficult from a coordination stand point, both for personnel and for timing of the storm event. The alternative to this is the purchase of automated sampling equipment. For municipalities with a significant number of outfalls this equates to a substantial number of sampling devices if the mandatory schedules are to be met. Automated sampling is also problematic because of the exposure to potential equipment vandalism or theft, in addition to the issue of providing power to the equipment. A limit to the number of outfalls sampled annually should be defined, or negotiated with the municipality individually.

- Development of a PCP program for implementation to be initiated within a four year time frame for those municipalities with a significant number of large flow outfalls within the Charles River is unrealistic. This requirement has the potential to produce a series of construction projects to re-direct stormwater flow back to wastewater treatment facilities for treatment. Many municipalities have invested enormous resources, often under Administrative Consent Order, to separate stormwater and sanitary sewer flows. This regulation may force other communities to re-combine the flows because of economics associated with the treatment necessary to meet TMDL loadings. The longer term result of the re-combining of storm flow may produce more frequent SSO's, a clear contradiction of program objectives.

- Alternatively, if re-combining flows is unrealistic or not permitable under regulatory constraints, for large flow outfalls the end of pipe treatment for phosphorous will likely require chemical treatment, thereby requiring additional financial and personnel resources to perform O&M.

- Several requirements for Charles River Watershed communities, such as Norfolk, represent more onerous obligations than implied in the permit. For instance, the permit requires a community to optimize its frequency of routine cleaning of catch basins with a goal that no basin shall be greater than 50 percent full. To do so, the community must track the amount of material removed from each basin and increase the frequency of cleaning if evidence suggests that material is accumulating more quickly than in other basins (language taken directly from EPA Fact Sheet). This represents significant additional labor and resources beyond that typically dedicated to catch basin clean-out.

It may require changes in procurement contract language if this task is out-sourced and will certainly be a more costly effort. A better understanding of these implied costs is required in order that communities can budget the effort appropriately.

- The monitoring of 25% of outfalls each year in both wet and dry weather conditions is costly and unreasonable. Wet weather monitoring is of little value as it relates to identified IDDE objectives of this program and such monitoring should be kept to a minimum, and with representative rather than comprehensive sampling at outfalls.

Please do not hesitate to call or email with questions or concerns.

Sincerely yours,

Remo R. Vito, Jr.
Director of Public Works

RRV/ajb

cc: Board of Selectmen
Town Administrator
Planning Board
Board of Health
Conservation Commission
Advisory Board
Superintendent of Public Works