June 4, 2010

VIA EMAIL AND REGULAR U.S. MAIL

Mr. Garrison D. Miller
United States Environmental Protection Agency
Office of NPDES Permits and Enforcement (3WP41)
1650 Arch Street
Philadelphia, PA 19103-2029
Email: miller.garrison@epa.gov

Dear Mr. Miller:

The National Association of Flood and Stormwater Management Agencies (NAFSMA) appreciates this opportunity to provide comments on the draft municipal separate storm sewer system (MS4) permit issued to the District of Columbia (District) by Region 3 of U.S. EPA on April 21, 2010. NAFSMA is a 30 year old national organization based in our nation's capital that represents close to 100 local and state flood and stormwater management agencies. Its members serve a total of more than 76 million citizens by providing stormwater management or flood control services. Many of its members are currently Phase I or II jurisdictions falling under the Clean Water Act's NPDES Permit Program. The association on behalf of its members has a strong interest in the structure and administration of the nation's stormwater management programs.

NAFSMA has been closely following the evolution of the District's MS4 permit since its first iteration was issued by Region 3 on April 19, 2000. The history of comments, appeals and negotiations over that permit and its subsequent amendments and renewals is summarized at pages 1-3 of the Fact Sheet for the current draft permit. NAFSMA has been directly involved in each step of that process. On August 11, 2000, NAFSMA joined with a number of other municipal associations in submitting a written notice to EPA's Environmental Appeals Board (EAB) of its intent to file an amicus brief in the first appeal of the permit that had been filed shortly after it was issued. That appeal ultimately resulted in a remand of the original permit back to Region 3 by the EAB on February 2, 2002. When a second round permit was issued to the District by Region 3 on August 19, 2004, and a new set of appeals was filed with the EAB, NAFSMA filed a formal Petition for Leave to Intervene, dated November 9, 2004. Finally, when Region 3 issued proposed amendments to that permit on July 21, 2005, NAFSMA and other associations submitted written comments on the draft permit directly to Region 3, dated August 12, 2005. The legal arguments regarding EPA's obligation to implement the statutory standard of reducing pollutants to the "maximum extent practicable" (MEP) set forth in NAFMSA's August 19, 2004 Petition for Leave to Intervene and in NAFSMA's written comments of August 12, 2005 are applicable to the current draft permit, and are incorporated herein by reference.

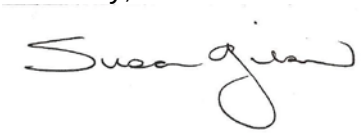
-continued-

In submitting this comment letter, NAFSMA supports the comments being submitted on this date by the National Association of Clean Water Agencies (NACWA). NAFSMA shares in NACWA's concerns about the unprecedented regulatory and financial burdens that the draft permit would place upon the District and its ratepayers without any clear knowledge of how much environmental benefit will be achieved in return. NAFSMA also shares in NACWA's concern about the technical feasibility and cost of achieving specific, mandatory levels of onsite stormwater retention in a highly urbanized environment such as the District.

NAFSMA wishes to add the specific comment that, to the extent that the permit is written in such a way as to require strict compliance with District water quality standards, with TMDL wasteload allocations, and with any specific numeric stormwater runoff capture rates for new development and/or redevelopment, each of those requirements must be modified to state that those requirements shall be met "to the maximum extent practicable." This is the only standard that U.S. EPA can lawfully apply to municipal stormwater discharges, in accordance with Section 402(p) of the Clean Water Act. NAFSMA is concerned that in a 60-page draft permit, the applicable MEP statutory standard is not mentioned even once. At a minimum, appropriate references to that standard must be added to the final permit, as an explicit qualification to, and limitation upon, the requirements set forth in Sections 1.4 ("Discharge Limitations"), 4 ("Stormwater Management Programs"), 8.1 (WQS and TMDL WLA Implementation Plans and Compliance Monitoring"), and 8.2 ("Compliance Monitoring with Water Quality Based Effluent Limitations").

Thank you for the opportunity to provide comments on this important stormwater permit, which by virtue of the fact that it is being issued directly by U.S. EPA rather than a delegated state agency, will have significant implications for the Agency's implementation of its national stormwater regulatory program. Should you have any questions about the foregoing comments, or wish to obtain copies of NAFSMA's previous submissions to the Agency cited above, please contact me at 202-289-8625.

Sincerely,



Susan Gilson
Executive Director