

## **Draft Permit for Review**

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)  
GENERAL PERMIT FOR STORM WATER DISCHARGES  
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

Authorization to discharge under the National Pollutant Discharge Elimination System

In accordance with the provisions of the Clean Water Act, as amended, (33 U.S.C. §1251 et. seq. the Act), except as provided in Part I.F of this permit, operators of small municipal separate storm sewer systems, located in the area specified in Part I.A (except Part 1.A.1) are authorized to discharge in accordance with the conditions and requirements set forth herein.

Only operators of storm water discharges from small municipal separate storm sewer systems in the general permit area who submit a Notice of Intent and a storm water management program in accordance with Part I.E. of this permit are authorized under this general permit.

This permit becomes effective on

This permit and authorization to discharge expire at midnight

Signed this    day of    200-

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Linda M. Murphy, Director  
Office of Ecosystem Protection  
United States Environmental Protection Agency  
One Congress Street - Suite 1100  
Boston, Massachusetts 02114

## Draft Permit for Review

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GENERAL PERMIT FOR STORM WATER DISCHARGES  
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

Authorization to discharge under the National Pollutant Discharge Elimination System

In accordance with the provisions of the Clean Water Act, as amended, (33 U.S.C. §1251 et. seq. the Act), except as provided in Part I.F of this permit, operators of small municipal separate storm sewer systems, located in the area specified in Part I.A.1, Commonwealth of Massachusetts, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Only operators of storm water discharges from small municipal separate storm sewer systems in the general permit area who submit a Notice of Intent and a storm water management program in accordance with Part I.E. of this permit are authorized under this general permit.

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One Winter Street  
Boston, MA 02108

## Draft Permit for Review

### Part I

- A. Area of Coverage: Small municipal separate storm sewer systems (MS4s) located within
1. Commonwealth of Massachusetts;
  2. State of New Hampshire;
  3. Indian Country lands within the States of Connecticut, Massachusetts, and Rhode Island; and
  4. Federal Facilities within the State of Vermont.
- B. Eligibility criteria:
1. This permit authorizes the discharge of storm water from small MS4s defined at 40 CFR 122.26(b)(16). This includes small MS4s designated under 40 CFR 122.32(a)(1) and 40 CFR 122.32(a)(2). The permittee is authorized to discharge under this permit if:
    - (a). The permittee is the operator of a small MS4 within the permit area described in Part I.A.;
    - (b). The permittee is not a large or medium MS4 defined in 40 CFR §122.26(b)(4) or (7);
    - (c). The municipality is located fully or partially in an urbanized area as determined by the latest Decennial Census by the Bureau of Census; and
    - (d). The permittee submits a Notice of Intent in accordance with Part I.E. of this permit.

Small municipal separate storm sewer system means all separate storm sewers that are:

- (a) owned or operated by the United States, a State, city town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity and Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.
  - (b) not defined as large or medium municipal separate storm sewer systems pursuant to 40 CFR §122.26(b)(4) and (b)(7) or designated under 40 CFR §122.26(a)(1)(v).
  - (c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospitals or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.
2. The following storm water discharges are not authorized by this permit:
- (a) Discharges that are mixed with sources of non-storm water unless such non-storm water discharges are:
    - i. In compliance with a separate NPDES permit, or
    - ii. Determined not to be a substantial contributor of pollutants to waters of the U.S.
  - (b) Storm water discharges associated with industrial activity as defined in 40 CFR §122.26(b)(14)(i)-(ix) and (xi).

## Draft Permit for Review

- (c) Storm water discharges associated with construction activity as defined in 40 CFR§122.26(b)(14)(x) or 40 CFR §122.26(b)(15).
- (d) Storm water discharges currently covered under another permit, including discharges covered under other regionally issued general permits.
- (e) Discharges or discharge related activities that are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the Endangered Species Act (ESA) or result in the adverse modification or destruction of habitat that is designated as critical under the ESA.

i. Coverage under this permit is available only if the storm water discharges, allowable non-storm water discharges, and discharge related activities are not likely to jeopardize the continued existence of any species that are listed as endangered or threatened (“listed”) under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA (“critical habitat”). Submission of a signed NOI will be deemed to constitute certification of eligibility.

ii. “Discharge related activities” include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

iii. In order to demonstrate eligibility, the permittee must use the most recent Endangered and Threatened Species County-Species List available from EPA. Eligibility must be determined prior to submission of the NOI. The most current list is available at: <http://www.epa.gov/npdes/>. The permittee must meet one or more of the criteria described below for the entire term of the permit. The information used to determine eligibility must be maintained as part of the Storm Water Management Program.

- Criteria A: No endangered or threatened species or critical habitat are in proximity to the MS4 or the point where authorized discharges reach the receiving waters; or

- Criteria B: In the course of a separate federal action involving the MS4, formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service under Section 7 of the ESA has been concluded and that consultation:

-Addressed the effects of the MS4 storm water discharges, allowable non-storm water discharges, and discharge related activities on listed species and critical habitat; and

- The consultation resulted in either a no jeopardy opinion or a written concurrence by FWS and/or NMFS on a finding that the storm water discharges, allowable non-storm water discharges, and discharge related activities are not likely to adversely affect listed species or critical habitat; or

- Criteria C: The activities are authorized under Section 10 of the ESA and that authorization addresses the effects of the storm water discharges, allowable

## Draft Permit for Review

non-storm water discharges, and discharge related activities on listed species and critical habitat; or

- Criteria D: Using best judgement and knowledge, the effects of the storm water discharges, allowable non-storm water discharges, and discharge related activities on listed species and critical habitat have been evaluated. Based on those evaluations, a determination is made by the permittee that there is no reason to believe that the storm water discharges, allowable non-storm water discharges, and discharge related activities will jeopardize the continued existence of any species or result in the adverse modification or destruction of critical habitat.

- Criteria E: The storm water discharges, allowable non-storm water discharges, and discharge related activities were already addressed in another operator's certification of eligibility which includes the MS4 activities. If certification is under this criteria, the permittee agrees to comply with any measures or controls upon which the other operator's certification was based.

iv. The permitting authority may require any permittee or applicant to provide documentation of the determination of eligibility for this permit where the EPA or the FWS and/or NMFS determines that there is a potential impact on listed species or critical habitat.

v. A discharge is not authorized if the discharge or discharge related activities cause a prohibited "take" of endangered or threatened species (as defined under Section 3 of the ESA and 50 CFR 17.3), unless such actions are authorized under sections 7 or 10 of the ESA.

vi. Discharges are not authorized where the discharge or discharge related activity are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA.

(f) Discharges whose direct or indirect impacts would jeopardize any Essential Fish Habitat.

(g) Discharges, or implementation of a storm water management program, which adversely effects properties listed or eligible to be listed on the National Register of Historic Places. Discharges may be eligible for coverage under this permit if the permittee is in compliance with requirements of the National Historic Preservation Act and has coordinated any necessary activities to avoid or minimize impacts. These requirements must be coordinated with the State Historic Preservation Officer. Information used to determine eligibility must be maintained as part of the Storm Water Management Program.

(h) Discharges to territorial seas, the contiguous zone, and the oceans unless such discharges are in compliance with the ocean discharge criteria of 40 CFR 125 subpart M.

## Draft Permit for Review

(i) Discharges prohibited under 40 CFR 122.4. This includes discharges not in compliance with the state's antidegradation policy.

(j) Discharges mixed with non-storm water except those discharges which are in compliance with another NPDES permit or are an allowable non-storm water discharge as discussed in Part I.F.

(k) Discharges that would cause or contribute to instream exceedance of water quality standards. The storm water management program must include a description of the BMPs that will be used to ensure that this will not occur. EPA, MA DEP, or NH DES may require corrective action or an application for an individual permit or alternative general permit if an MS4 is determined to cause an instream exceedance of water quality standards.

(l) Discharges of any pollutant into any water for which a Total Maximum Daily Load (TMDL) has been established or approved by the EPA unless the discharge is consistent with the TMDL. This eligibility condition applies at the time of submission of the NOI. If conditions change after submission of the NOI, coverage may continue provided the applicable requirements of Part 1.C. are met. In order to remain eligible for this permit, any limitations, conditions and requirements applicable to discharges authorized by this permit, must be incorporated into the storm water management program. This may include monitoring and reporting. Discharges not eligible for this permit, must apply for an individual or alternative NPDES general permit.

### C. Discharges to Water Quality Impaired Waters

1. The permittee must determine whether storm water discharges from any part of the MS4 contribute, either directly or indirectly, to a 303(d) listed water body.

2. The storm water management program must include a section describing how the program will control the discharge of the pollutants of concern and ensure that the discharges will not cause or contribute to instream exceedance of the water quality standards. This discussion must specifically identify control measures and BMPs that will collectively control the discharge of the pollutant(s) of concern. Pollutant(s) of concern refer to the pollutant identified as causing the impairment.

### D. Total Maximum Daily Load Allocations

If a TMDL has been approved for any water body into which the MS4 discharges, the permittee must:

1. Determine whether the approved TMDL is for a pollutant likely to be found in storm water discharges from the MS4.

2. Determine whether the TMDL includes a pollutant waste load allocation (WLA), BMP recommendations or other performance requirements for storm water discharges. This storm water WLA may be expressed in the TMDL as a gross allotment for the impaired water body. Or, provided no specific WLA for the MS4 exists, determine if a Performance Agreement or Memorandum of Understanding has been established between the MS4, EPA, and MA DEP or

## Draft Permit for Review

NH DES which modifies the BMPs or performance standards of the TMDL. Such Memorandums are posted on the TMDL websites. The Massachusetts site is:

<http://www.state.ma.us/dep/brp/wm/wmpubs.htm> The New Hampshire site is:  
<http://www.des.state.nh.us/wmb/tmdl>

3. If the MS4 is required to implement storm water waste load allocation provisions of the TMDL, the permittee must assess whether the WLA is being met through implementation of existing storm water control measures or if additional control measures are necessary. The permittee's assessment of whether the WLA is being met is expected to focus on the adequacy of the permittee's storm water controls (implementation and maintenance), not on the response of the receiving water.

4. Highlight in the storm water management program and annual reports all control measures currently being implemented or planned to be implemented to control pollutants of concern identified in approved TMDLs. Also include a schedule of implementation for all planned controls. Document the assessment which demonstrates that the WLA will be met including any calculations, maintenance log books, or other appropriate controls.

### E. Obtaining Coverage

1. Municipalities seeking coverage under this permit, must submit a Notice of Intent which contains the following information:

- (a). Name of person responsible for overall coordination of the storm water management program, mailing address and phone number
- (b). Name of municipality and state. Estimate the size of the municipality in square miles. For municipalities seeking coverage under Part V. of this permit, only identify the name of the agency, the city or town, and the state in which it is located.
- (c). Identify the legal status of the operator of the MS4 as either, Federal, State, Tribal, county, or other Public Entity. If the municipality is a city or town, indicate if there are other MS4s within its boundaries such as state highways, universities, prisons.
- (d). Identify the names of all known waters that receive a discharge from the MS4. If known, indicate the number of outfalls to each water.
- (e). Based on the requirements of Part I.B.2.e. describe how the eligibility criteria for listed species and critical habitat have been met.
- (f). Demonstration that the criteria in Part I.B.2.g for protection of historic properties have been met.
- (g). Identify best management practices for each minimum control measure described in Part II B; Part III B; Part IV. B or Part V.B., depending upon the type of municipality.
- (h). Identify measurable goals for each best management practice including implementation time frames and contact person..
- (i). The NOI must be signed by an appropriate official (see Part VI. G. of this permit).  
The NOI must contain the following certification:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my*

## Draft Permit for Review

*knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Print the name of the appropriate official, followed by signature, and date.

Municipalities in Massachusetts must use the form designated by the Massachusetts Department of Environmental Protection (MA DEP). The form is available at **(to be determined)**. EPA will also accept information submitted on this form. All signatures must be originals.

2. The Notice of Intent must be submitted by March 10, 2003, if designated under 40 CFR 122.32(a)(1)- those MS4s located fully or partially in an urbanized area; or within 180 days of notice, if designated under 40 CFR 122.32(a)(2), unless granted a longer period of time by EPA,;

3. All permittees must submit the Notice of Intent to EPA-Region I at the following address:

United States Environmental Protection Agency  
Municipal Assistance Unit (CMU)  
One Congress Street – Suite 1100  
Boston, Massachusetts 02114-2023

MS4s located in Massachusetts, subject to Part II, Part IV, or Part V, except Indian lands, must also submit a copy of the NOI to the MA DEP at the following address:

Massachusetts Department of Environmental Protection  
Division of Watershed Management  
627 Main Street  
Worcester, Massachusetts 01608

The appropriate fee must accompany the submission to MA DEP.

MS4s located in New Hampshire subject to Part III, Part IV or Part V, must also submit a copy of the NOI to the New Hampshire Department of Environmental Services (NH DES) at the following address:

New Hampshire Department Environmental Services  
Water Division  
Wastewater Engineering Bureau  
P.O. Box 95  
Concord, New Hampshire 03302-0095

New Hampshire may also adopt this permit as a state permit pursuant to RSA 485-A:13,I.(a).

4. Effective date of coverage. The authorization to discharge begins on the date of signature of the Notice of Intent unless information to the contrary is received from EPA or MA DEP/NHDES. The permittee will receive an initial written receipt detailing the completeness of submission. The permittee may be contacted by either EPA or MA DEP/NHDES at a later date

## Draft Permit for Review

requesting additional or updated information concerning the storm water management program. The initial response will not provide detailed comments on the submission.

5. A municipality is not prohibited from submitting a Notice of Intent after the dates provided in paragraph E.2. However, if a late NOI is submitted, authorization is only for discharges that occur after permit coverage is granted. The permitting authority reserves the right to take appropriate enforcement actions for any unpermitted discharges.

### F. Allowable Non-Storm Water Discharges

The following non-storm water discharges are authorized provided it has been determined by the permittee that they are not significant contributors of pollutants to the MS4.

1. water line flushing
2. landscape irrigation,
3. diverted stream flows
4. rising ground waters,
5. uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)),
6. uncontaminated pumped ground water,
7. discharge from potable water sources,
8. foundation drains,
9. air conditioning condensation,
10. irrigation water, springs,
11. water from crawl space pumps,
12. footing drains,
13. lawn watering,
14. individual resident car washing,
15. flows from riparian habitats and wetlands,
16. dechlorinated swimming pool discharges,
17. street wash water, and
18. Residential building wash waters, without detergents

Discharges or flows from fire fighting activities occur during emergency situations. The permittee is not expected to evaluate fire fighting discharges with regard to pollutant contributions. Therefore these discharges are excluded from the list of allowable non-storm water discharges.