

## Summary of Focus Group Feedback on Residual Designation Authority Permit Implementation in the Charles, Mystic and Neponset River Watersheds

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The United States Environmental Protection Agency, Region 1*

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## 1 Background

The Region I Office of the United States Environmental Protection Agency (“EPA”) has received petitions asking it to utilize its Residual Designation Authority (“RDA”) under the Clean Water Act<sup>1</sup> to designate certain commercial, industrial and institutional (“CII”) sources of polluted stormwater. More information on EPA’s RDA Authority and related information can be found on [EPA’s website](#). Because this is the first instance of EPA utilizing its RDA authority to regulate stormwater from these CII sources on a watershed basis in New England, Region I decided to conduct stakeholder outreach to: 1) share information with the public about the RDA process and the pollution reduction goals of the proposed permit and 2) to receive individual feedback on the RDA permitting process, including questions and/or proposed solutions to the challenges raised by this permitting approach.

The draft RDA permit currently under development seeks to reduce pollution, such as phosphorus, from stormwater runoff in the Charles, Mystic, and Neponset River Watersheds. This permit will apply to certain CII property owners with 1 acre or more of “impervious cover”<sup>2</sup> and will require those private property owners to implement practices on their properties to control the release of stormwater coming from their properties through the implementation of stormwater control management (“SCM”) practices. These practices may include “non-structural controls” such as street sweeping and catch-basin cleaning to “structural controls” such as infiltration (i.e., rain gardens, gravel wetlands, porous pavement), storage (i.e., dry and wet ponds, enhanced biofiltration), and disconnection practices.

## 2 Organization and Scope of this Summary

This **Summary of Focus Group Feedback on Residual Designation Authority Permit Implementation in the Charles, Mystic and Neponset River Watersheds** includes the following sections:

Section 3 – discusses the background of stakeholder input for the RDA permitting process for the Charles, Mystic and Neponset River Watersheds to date;

Section 4 – highlights the comments that generated the most significant discussion from each focus group; and

Section 5 – highlights the overarching themes discussed across the focus groups.

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<sup>1</sup> The Clean Water Act (CWA) and related regulations define the specific industrial, construction and municipal stormwater sources that must be authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. The CWA also recognizes that other sources may need to be regulated on a case-by-case or category-by-category basis based on additional information or localized conditions. The authority to regulate other sources based on the localized adverse impact of stormwater on water quality through NPDES permits is commonly referred to as the “Residual Designation Authority,” or simply, “RDA.”

<sup>2</sup> “Impervious cover” refers to hard surfaces such as roofs and parking lots and is specifically defined as “any surface that prevents or significantly impedes the infiltration of water into the underlying soil that can include, but is not limited to: roads, driveways, parking areas and other areas created using nonporous material including buildings, rooftops, structures, artificial turf and compacted gravel or soil” which allows rainwater (or “stormwater”) to carry pollutants into local rivers, lakes, and streams.

Throughout its stakeholder outreach efforts, EPA has not sought agreement or consensus from any of the participants. This document does not include recommendations raised by stakeholder groups but rather attempts to capture the diverse range of independent views and suggested solutions to some of the more significant challenges posed by the draft RDA permit. While some of these ideas are captured thematically, they represent the thoughts conveyed by individual focus group participants. This summary attempts to highlight the more significant views and opinions that were expressed but does not attempt to identify every comment that was conveyed.

Any member of the public can contact EPA with their questions, or feedback, by sending an email to [R1RDA@epa.gov](mailto:R1RDA@epa.gov). EPA will also provide notice (in the Federal Register and on [EPA's website](#)) when the draft RDA permit and the preliminary RDA determination are available for the public to provide formal comments on the record. EPA will provide a written response to all significant comments that it receives on the draft permit and the preliminary RDA determination through that public comment process.

Finally, throughout these stakeholder processes, all information presented or shared by EPA is considered pre-decisional and is subject to updates and other changes upon release of the draft permit.

### 3 Stakeholder Engagement

EPA retained the Consensus Building Institute (“CBI”) to conduct stakeholder engagement for the RDA permitting process. This work started in 2020 as the agency considered whether, and how, to move forward with the development of an RDA determination and draft RDA permit. Those initial stakeholder conversations, which focused on just the Charles River Watershed at that time, are summarized in a report that was issued in February 2021 and can be found on EPA’s website [here](#).

The next round of outreach began in late 2023 and included three phases. First, CBI conducted initial interviews with key stakeholders, some of whom had participated in the first round of stakeholder outreach, to better understand how an effective engagement strategy might be designed.

CBI then worked with key partners to co-convene virtual informational sessions on the RDA permit at which EPA presented information on the proposed goals as well as the legal and technical bases for the RDA permitting approach. These informational sessions occurred between January and May 2024, and were hosted by Charles River Watershed Association (“CRWA”), Neponset River Watershed Association (“NepRWA”), Mystic River Watershed Association (“MyRWA”), jointly by the Commercial Real Estate Development Association (“NAIOP”) and 495 Partnership, Metropolitan Area Planning Council (“MAPC”), and jointly by Healthcare Without Harm and Association of Independent Colleges & Universities in Massachusetts (“AICUM”). Those presentations can be found on EPA’s website [here](#).

Finally, CBI facilitated five virtual focus groups to identify challenges and brainstorm permitting implementation solutions for the draft RDA permit. Prior to the focus groups, participants were sent a list of potential discussion questions which can be found [here](#) (or at the Appendix at the end of this document). The five focus groups occurred in June 2024 and were held for specific stakeholders: (1) permittees and municipalities (supported by the 495 Partnership), (2) permittees, specifically colleges, universities, and hospitals, (3) municipalities, (4) permittees (supported by NAIOP), and (5) the Charles, Mystic and Neponset Watershed Associations. The discussions focused on a variety of topics including: permit phasing, redevelopment, off-site mitigation, maximizing pollutant reduction, the overlap between the MS4 and RDA permits, as well as various other topics raised by focus group participants.

Massachusetts Department of Environmental Protection (“MA DEP”) was also present to hear the feedback shared at each focus group.

With respect to communities with environmental justice concerns, EPA is developing a suite of tools to help inform communities about the basis and benefits of the RDA permitting matter including: a 2-page fact sheet which has been translated into 9 languages,<sup>3</sup> videos describing the permitting process and how members of the public can express their views and provide comments on that permitting process. In addition, EPA is interested in hearing from members of the public about questions or suggestions they may have, including those relating to communities with environmental justice concerns. Members of the public can receive quick answers to questions they may have by sending an email to EPA at: [R1.RDA@epa.gov](mailto:R1.RDA@epa.gov). During the outreach described above, various stakeholders have also made comments relative to how communities with environmental justice concerns might be impacted by the RDA permitting process.

## 4 Feedback by Focus Group

**The Watershed Associations (WA) Focus Groups** were conducted over two sessions and included staff from: CRWA, MyRWA, and NepRWA. Some of the more significant ideas raised by individuals in the two sessions included:

- Understanding existing state of SCMs and O&M efforts. There is some concern that existing SCMs” and their associated operation and maintenance (“O&M”) activities are not being tracked or enforced. The draft RDA permit could be used to ensure that when permittees enter the permitting system they receive pollution reduction credit for their existing SCMs by applying the Region I SCM performance curves (Appendix F Attachment 3 of the 2016 MS4 permit), and also certifying that appropriate O&M is occurring for these SCMs. Some participants suggested that allowing permittees to update their O&M plans to “get credit” for their existing SCMs would be a good outcome.
- EPA should develop or allow for the development of a “regionalized” or “universal” tracking system. A tracking system should be created that will track all of the pollution reduction achieved through structural or non-structural SCMs and associated O&M activities on CII sites. This tracking system should ideally be publicly available via a dashboard to ensure accountability, which can also be used by municipalities to identify where, and what type, of pollution reductions are happening within their municipal boundaries.
- Get everyone “under the tent” right away. All permittees should come into “the permitting system” right away so everyone is “on notice” but compliance deadlines might vary based on a variety of factors, e.g., amount of impervious cover, amount of pollution that a site generates. EPA needs to give smaller permittees time to understand requirements and should provide technical assistance to help these permittees better understand how to comply with permit requirements to plan for maximum effectiveness.

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<sup>3</sup> The informational fact sheet has been translated into Spanish, Haitian Creole, French, Italian, Russian, Vietnamese, Cantonese, Brazilian Portuguese, Arabic and is available on EPA’s website.

- Giving permittees and municipalities time to plan is important to maximize environmental outcomes. That means in the first five years, property owners should first identify their existing SCMs and retrofit them, if any are in place, have time to determine their pollutant load reduction responsibility, and have time to plan for the most meaningful results. The planning process should include a determination of whether on-site or off-site mitigation will lead to the most effective outcomes. The RDA permitting program is an opportunity to promote regional planning (and not “another town-by-town approach”).
- New development should lead to less, rather than more, pollutant load reductions. In the current MS4 permit, any new or redevelopment requires 60% or 50% reduction of phosphorus, respectively, which technically results in a net increase in pollutant load. New development on a CII site should not be allowed to add additional load resulting from the new impervious cover. The reason for this stringent approach is that this would also have positive impacts on flooding, which is a concern in many areas of the watersheds. For redevelopment, a site’s load should essentially be capped, and therefore not allow additional load from any newly added impervious cover. Some commenters even suggested that under redevelopment scenarios all impervious cover, existing and new, should be treated so no impervious cover load is allowed. Another viewpoint shared was that in many cases redevelopment does not result in a net increase of impervious cover. Therefore, if redevelopment takes place the entire site, not just the redeveloped portion, should achieve 100% disconnection. See Watertown, MA as an example of this type of approach that has resulted in measurable reductions in flooding.
- A “regionalized” approach may be the most effective way to maximize pollution reduction and address issues such as crediting and off-site mitigation. Such an approach might look like the Long Creek Management District in South Portland, Maine, and the draft permit should provide space for the creation of this type of external body. This regionalized approach could include a “fee in lieu of” approach which would allow such a regional group/organization to receive monies, rather than creating a “market” for pollution credits. At least one participant suggested that a multiplier penalty should exist, so that if a permittee cannot achieve its pollution reduction goals on its property and seeks off-site mitigation, it would be required to achieve a higher level of pollution reduction off-site. This would incentivize permittees to conduct at least some mitigation on-site even if they are not able to achieve full compliance on-site. If a regional entity is set up, these funds could be used to cover regional projects.
- The role of municipalities and the point at which they should get phosphorus reduction credits is a question with many variables. The comments on this topic ranged from the pollution credit should be transferred immediately to municipalities, to a system that would require CII site owners to certify they were complying with the permit and allowing towns to do inspections. Concerns about the potential for increased burdens on already-burdened municipalities were discussed. One thought was to transfer the credit when the SCMs are getting sized and designed to incentivize conversations among municipalities, property owners and others to promote regional planning for maximum impact. Another idea was that if CII sites go above and beyond their pollution reduction responsibility, they could offer the extra credits to other CII sites or municipalities as part of their pollution reduction requirements on the draft RDA or MS4 permit. “Regionalized tracking” is also important here to ensure accountability and allow municipalities to know what is being done and when.

- Comments on the role of stormwater utilities ranged from suggesting that utilities are only a way to raise money/revenue for municipal stormwater management and are not a way to incentivize action, to an alternative suggestion that would incorporate funding mechanisms into a regionalized approach to allow for more strategic planning and infrastructure management, e.g., SCM implementation (like the Long Creek Management District in Maine). One participant mentioned that stormwater utilities should not be viewed merely as a way to fund just pollution reductions in the municipality since municipalities face many additional MS4 permit obligations.

**The Municipal Focus Group** was attended by municipal engineers, municipal and regional planners, environmental/consulting staff. These individuals focused on the following topics:

- The pollutant load reduction responsibility should transfer immediately to CII properties upon the issuance of the RDA permit so that municipalities can determine what their remaining responsibility is to meet phosphorus reductions and to plan for future municipal land use. The goal should be to relieve the municipalities of that portion of the load so they can plan for their own remaining SCM responsibilities. Some thought that smaller properties should be given more time for technical assistance and to apply for grants (grant programs not identified) and to allow them to implement just non-structural controls such as street and parking lot sweeping. Some mentioned that smaller properties should be given “amnesty” if their existing SCMs were not fully compliant. “Smaller” properties were not defined by the commenters.
- EPA should be mindful about disproportionate adverse effects on minority small business owners and tenants.
- Some participants envisioned a scenario where there was a one- to two-year time-period for those with existing SCMs to gather information on those systems, retrofit them, if needed, and focus on updating O&M programs. Existing stormwater systems should be allowed to operate within a certain percentage of what is required under MA Wetlands Protection Act stormwater standards (i.e., they should not have to be in perfect compliance with existing MA Wetlands Protection Act stormwater standards and they should be offered “amnesty”). The amount of credit these existing SCMs would receive would be based on the sizing of the existing SCM and its corresponding pollutant removal performance based on Appendix F. EPA should provide education to help SCM owners calculate reductions and upgrade O&M work based on what is in the ground. Newly added SCMs should be required to meet current standards.
- Permit administration or SCM certification should fall solely or mostly on EPA as cities and towns are extremely capacity-limited and do not have the right of entry needed for inspection.
- A regionalized tracking system for municipal and private SCMs is needed so that municipalities can see where pollution reductions (phosphorus) are happening. Lexington and Newton have already created portals/inventories of what is happening on private parcels. Some communities are already getting O&M reports from these properties.
- Some communities in the Charles River Watershed are already requiring large property owners to submit information on stormwater controls to the municipalities (e.g., size and type of SCM, percent pollution removal). The information they are submitting to municipalities reflects what EPA requires from MS4s to track pollution reduction. The participants encouraged EPA to develop standardized reporting across permittees and permits.

- An off-site mitigation mechanism is a critical component of the permit. If it is included, the approach should not limit sites to off-site mitigation within their municipality only, but truly on a watershed wide basis. The regional watershed approach is also expected to result in overall cost savings for stormwater management to permittees.
- The overlap between the RDA permit and municipal stormwater utilities, and partial stormwater utility fee waivers for RDA permittees, needs to be addressed. Stormwater utilities should offer a 50% credit for SCMs, but not 100% because property owners still get the benefits of stormwater infrastructure maintenance (e.g., Boston) and the overall administrative costs of operating a municipal stormwater program.
- A phased permit approach by property size, where smaller property owners are granted a longer time to come into compliance or have lower compliance expectations, additional technical support, and grants to get into compliance, could be considered. Larger properties will do the most “proactive” work when they are undertaking redevelopment.
- There was some confusion about the idea of requiring 100% treatment for redevelopment and new development because a specific design storm or storm size would be needed to determine SCM efficacy. Some communities already require 100% of a newly developed catchment to be routed to an SCM. Instead of requiring 100% treatment, it was suggested to require the new impervious cover load not to exceed the pre-development load. Municipalities mentioned the MBTA Housing Law requirements and raised concerns with the added pollution load that would come from the rezoning and additional new large developments as required under this law. (Note, that 51 of the 177 MBTA communities are in the three watersheds designated for RDA).
- Offering menus of best management practices is important. The University of New Hampshire Clean Sweep program and including leaf litter collections programs was also mentioned.

**The NAIOP Focus Group** convened by NAIOP included property owners and consultants working on stormwater management and permitting. Individuals from this group focused on the following:

- The phasing of regulated entities was discussed with a focus on starting with entities with larger amount of impervious cover ( $\geq 5$  acres) and allowing smaller property owners to have more time (to address funding and education challenges). One participant recommended that EPA look into Boston’s Building Emissions Reduction and Disclosure Ordinance (“BERDO”) as an example of a phased rollout.
- The permit should be structured such that in the first term permittees should only become registered (i.e., submit a Notice of Intent (“NOI”)), begin mapping and implementation of non-structural controls like street sweeping and catch basin cleaning. Structural controls should then be required in the second permit term.
- Very large property owners (>50 acres, for example) may also need more time for mapping and addressing issues on the existing portions of site. One idea was to allow these permittees the entire first permit term to plan and then require implementation in the second permit term.



- Set up the permit so that smaller property owners do not need to hire consultants to minimize the burden of cost and complexity. Ideas for permit design included allowing self-reporting and self-certification or using a program like the Licensed Site Professional (LSP) program in Massachusetts.
- The RDA permit should align with definitions, accounting systems, and requirements of state laws, local bylaws, the MS4 and the Multi-Sector General Permit (MSGP) permit to the greatest extent possible. Specific concerns included a desire for consistency around new and redevelopment requirements. RDA should align with MA DEP stormwater regulations to reduce the reporting burden.
- If a municipality has a stormwater utility and a property owner is an RDA permittee, the question was raised whether that property owner could be removed from the utility as the utility also requires property owners to treat stormwater. Otherwise, it feels like property owners are being asked to pay for stormwater treatment twice. However, if the municipality is also using the utility to pay for drainage network maintenance or administration of the municipal stormwater program, then being an RDA permittee and paying into the utility at a reduced fee is reasonable.
- At a minimum, municipalities should at least be made aware of who is permitted under RDA within their jurisdiction.
- It may be more efficient to have RDA requirements written into the MS4 permit for properties that are connected to MS4s. While some municipalities will require additional staff to manage this program, it would be easier to navigate as a property owner. Then, the RDA permit would only need to cover sites that are discharging directly.
- Reasons for having the RDA permit stand alone include that the permit will have one set of requirements for all property owners in the three watersheds, not varying by municipality due to differing bylaws or ordinances.
- Reaching disconnection standards of 100% will be challenging, as this is not defined in state regulations, bylaws or ordinances. Instead EPA should require 100% treatment, which is simpler to understand and implement. Participants discussed metrics for 100% treatment. One participant suggested that all new impervious cover must align with local bylaws and state standards. The standards and accounting methods need to be normalized. The goals are the same between RDA and state regulations, which is to recharge groundwater and reduce pollution.
- EPA will need to conduct a large education campaign about the permit to let properties know they are regulated and how to get into compliance.
- An off-site mitigation and trading mechanism should be a critical component of the permit and may be difficult to figure out. At least one participant recommended including a conservation credit as well as treatment credits.

- MA DEP uses the following hierarchy for its off-site mitigation program and EPA could consider an identical one: project site, project locus, abutting property, same wetland resource area, same municipality, HUC12/subwatershed.
- To receive credit for structural stormwater controls permittees should submit information annually on the O&M they are conducting to the municipality's Conservation Commission.
- To receive credit for existing structural controls the permittees should submit original designs and plans to determine sizing of the SCM. If they do not have these, they should retain an engineer to estimate the sizing. Once that initial paperwork and certification is submitted, they could self-certify that maintenance is occurring. Many EPA permits are self-certified like the CGP. This new RDA program would be a departure from this and may require more reporting versus self-certification only. Alternatively, the self-certification program could also include some inspections or something like the Massachusetts LSP program.
- EPA should be mindful of the consequences of additional economic burdens for the struggling commercial real estate industry (e.g., businesses leaving the watershed, properties not redeveloping).
- Multi-family residential developments are also large contributors of pollutants because they have large parking lots. Some raised concerns that these properties are not included in the draft permit.
- EPA should consider flexible control measures and siting of SCMs within and across properties to allow for technological advancements and efficient implementation. Site owners should be allowed to monitor (to determine actual Phosphorus loading).
- EPA should be aware of unintended consequences like displacement of toxic urban soils, and entities who might make the economic decision to pay the fine, rather than engage in the necessary construction of SCMs.
- Some sites may be covered under the MSGP for industrial stormwater discharges, which has different requirements than RDA.

**The 495 Partnership (495) Focus Group** was convened by 495 and included municipal staff, property owners, and their consultants. Individuals from this group discussed the following:

- The permit should apply to the major pollutant contributors first. EPA should be careful of bringing smaller properties into the permitting regime, and offer them technical assistance. EPA should provide notice of the permit to individual parcel owners. 495 is willing to help with this, perhaps in partnership with MAPC and NAIOP.
- Technical assistance could include informational videos on how to comply and fill out NOIs as well as contact information for EPA staff who can answer permitting questions. Municipalities do not have the capacity to become the default source to answer questions on the RDA.

- Many property owners already have systems in the ground, are doing O&M, and want to ensure that existing SCMs are being credited if O&M is being conducted. It would not be fair to credit existing SCMs that have not been maintained.
- Property owners will need clear and unambiguous information on what is required for new construction or redevelopment. The line between “new” and “existing” development needs to be clear. EPA should also be clear about what happens when impervious cover is removed. EPA should be mindful to not create disincentives to develop.
- Municipalities should not be relied on for permit administration or SCM certification as they are extremely capacity-limited.
- The MBTA Communities Act will increase the amount of large residential development, and some participants raised the question of these properties will be addressed under the RDA. Participants specifically asked whether excluding these dense, residential developments from the RDA permitting process makes sense, is fair, and for clarity on how “mixed use” parcels will be addressed. Mixed use parcels are ones that may include housing and commercial development (e.g., Arsenal Yards in Watertown or Assembly Row in Somerville).

**The Colleges, Universities and Hospital Focus Group** was attended by university and college staff and their consultants who work on stormwater management and permitting.<sup>4</sup> Individuals from this group discussed the following:

- Timing of permit requirements is important. During the first permit term, permittees should have time to develop plans, create inventories and maps, and determine existing conditions. Time for capital planning is also important and can often occur 20 years in advance.
- The ownership issues for some colleges/universities may be quite complicated where the parcels have multiple uses (institutional, institutional non-profit, commercial, industrial, residential halls, 95-year ground leases, lessee agreements, tenancies) and different potential owners. Furthermore, some colleges/universities may straddle more than one municipal boundary and/or watershed. It would also be helpful to have a definition to understand what constitutes a contiguous parcel.
- Campuses should be treated as one property to allow for efficient and effective stormwater management. It will be important to allow larger campuses flexibility to look and plan on their sites holistically to get the best outcomes as opposed to requiring reductions on a parcel-by-parcel level.
- The RDA Permit should be aligned with MS4 permit obligations in terms of SCMs and O&M plan tracking, SCM and non-structural site approvals, etc. The RDA program should attempt to streamline required documentation and reporting to avoid redundancy. Many universities are already tracking their SCMs and O&M activities. Within some municipalities, compliance with

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<sup>4</sup> CBI attempted to reach out to various hospitals, healthcare facilities and organizations, but no health care representatives were in attendance. EPA did hold a useful information session with the hospital sector earlier in the year.

the MS4 program may already achieve many of the RDA goals. (See bylaws for requirements in Cambridge, for example).

- It would be good to avoid double regulation (i.e., permittees needing to report to both the municipality for MS4 and EPA for RDA).
- Clear definitions of redevelopment and new development are needed. One participant suggested that the definition match the building code, where a property that undergoes more than 50% redevelopment is considered new development and the entire building must meet all standards. One participant raised the question of what occurs if a site undergoes redevelopment, but the net impervious cover area remains the same (for example, if one area sees impervious cover removal and another area sees impervious cover additions).
- The issue of SCMs led to several comments including the questions of whether EPA will monitor water quality conditions over time to understand if the permit is achieving its goal, and if proprietary approaches not included in Appendix F will be allowed. Some wondered about potential crediting for trees.
- Off-site mitigation will likely be critical to achieving the necessary pollution reductions.
- Some small parcels are not planned for redevelopment, but some larger parcels may be. That is why it is important to offer flexibility on where SCMs are installed on the campus so pollution reduction can be achieved on the campus scale, not parcel scale. If EPA offers a campus scale approach, institutions may be able to come into compliance sooner.
- Will contiguous parcels that are less than one acre in size be included in this permit if they end up being greater than one acre in size, just by being next to each other?
- In relation to a stormwater utility, a university mentioned they can get credit towards their stormwater utility fee even if the university meets 100% of their pollution reduction requirements. The university needs to submit tracking information to the municipality to demonstrate that they are doing O&M so they can receive the utility credit.

## 5 Overarching Themes

The following describes feedback from the focus groups organized thematically. While each focus group spent time addressing these questions and concerns differently due to the unique perspectives of the individual participants who were present, the discussions highlighted a general set of questions (at least to kick off the conversations). Those questions and some of the more significant responses are recorded below. As previously stated, these comments are not intended to reflect any group consensus or shared advice, but rather provide a summary of the range of views and ideas expressed.

## 5.1.1 Phasing of Sites Based on Size

### 5.1.1.1 Questions

- EPA is considering phasing permit requirements based on the size of CII sites over several permit terms (5 years each term). In your view, what could the advantages and disadvantages of this phased approach be?
- What factors may be relevant in determining whether permittees can achieve 100% compliance within one permit term based on the phasing framework above, assuming pollution reduction requirements will match those set forth in TMDL, Alternative TMDL Reports, or other regulatory frameworks?
- How might the maximum amount of pollution reduction be obtained or incentivized in the shortest amount of time (i.e., enhanced street sweeping, other actions?)

### 5.1.1.2 Feedback

#### **First permit term**

Many commenters suggested that a phased approach to permitting requirements and permittees is important in the permit rollout. There is a tension between giving property owners – especially smaller ones – enough time to come into compliance and see pollutant reductions on the ground in the first permit term.

The following items were offered as considerations for the first permit phase, which could either be a portion of the first five-year permit term, or the entire five-year permit term.

**Sharing information:** All permittees should, at a minimum, be brought under the permit “umbrella” in the first permit year by sharing information with EPA. This could involve some combination of registering; sharing existing SCMs and O&M plans (if applicable); and monitoring stormwater to confirm that the permittees are, in fact, contributing to phosphorus pollution (if applicable).

**Education and technical assistance:** Education and outreach during the first phase of the permit – from who is regulated under the permit to what it takes to get into compliance – will be needed. These efforts will be especially important for smaller property owners who may be less familiar with EPA regulations and stormwater. Additional suggestions emphasized the importance of providing technical assistance to small properties in the form of an online tool that allows property owners to determine if their properties are subject to this permit, a list of resources of contractors who can plan for and install SCMs, informational videos, a step-by-step guide to getting into compliance, grants to come into compliance, and contact information for EPA staff to support the questions of RDA permittees.

**Planning:** The first permit term should include time for permittees to plan for SCM implementation, and identify and inventory existing SCMs. This is especially valuable for larger property owners with many, or large, properties with existing SCMs, as they will need to inventory and map their current SCMs and make decisions regarding off-site versus on-site mitigation. Some suggested that the RDA permit terms should operate like the MS4 permit Phosphorus Control Plan roll out for permittees in the Charles River Watershed, which gave municipalities the first five years of the 20-year plan to understand their assets and plan for the implementation of structural controls to meet the first interim pollution reduction goals. They also suggested looking at Boston’s BERDO [<https://www.boston.gov/departments/environment/berdo>] rollout and Lowell’s MS4 rollout for residential properties as models.

**Structural and non-structural controls:** Some suggested that the first permit phase could require non-structural SCMs for each permittee. Several focus group attendees suggested that implementing non-structural controls during the first permit term could result in pollutant reduction early on, although some cautioned that this may be challenging for small property owners less familiar with non-structural controls and might also overwhelm the market for services like street and parking lot sweeping. Some suggested that there is an opportunity for regional collaboration for non-structural controls, for example, all small property owners could buy into one contract for street sweeping. One participant suggested using a three-year permit term for smaller properties that may need to install just one SCM.

**Existing SCM maintenance:** For properties with existing SCMs, multiple focus group attendees suggested that the first permit term could be used to ensure that existing SCMs were being properly operated and maintained. SCM operation and maintenance is very important, and many do not believe it is being done consistently even though many properties may have SCMs in place due to other regulatory requirements at the state and local level.

**“Regional” or “universal” tracking of SCMs, O&M and pollution reductions:** Some indicated that a regional tracking system should be implemented immediately and require permittees to provide information about existing and future SCMs, O&M, and expected pollution reductions from the SCMs. EPA’s support was requested in the development of such a tracking system. They suggested a few models: (1) Neponset River Watershed Association and Metropolitan Area Planning Council’s past research on tracking private O&M plans; (2) transitioning the University of New Hampshire’s BMP Calculator tool from excel sheet to software (e.g., New Hampshire’s PTAP tool), and (3) Geosyntec model in Orange County.

**Regional approaches:** Some expressed the need for a regionalized approach that would require time to establish. The benefits of giving permittees time to plan, possibly on a regional scale if such an external mechanism was established, was expressed as an important way to ensure that SCMs were developed and implemented on a scale that would ensure the largest environmental impacts. Such an approach could also allow the coordination and planning of necessary funding mechanisms.

### Phasing order

Considerations for phasing order included by (1) size, (2) calculated pollutant load from the property, and (3) existing SCMs. Examples of how these points should be taken into consideration are below.

**Size:** Focus group participants emphasized that more support and time to come into compliance is needed for smaller properties that are less familiar with EPA regulation and stormwater management. Multiple focus groups identified that small property owners will need more time and education in the beginning.

**Calculated pollutant load:** Focus group participants felt that larger property owners that contributed a greater amount of pollution should come into compliance sooner than smaller properties that contribute relatively less pollution.

**Existing SCMs:** Properties with existing SCMs should be given credit if the SCMs are being maintained to ensure proper operation, and therefore be required to meet permit conditions sooner than properties that do not have existing SCMs.

## 5.1.2 Considerations for Re-development On-site or Addition of New Impervious Cover On-site

### 5.1.2.1 Questions

- EPA is considering requiring pollution requirements for existing impervious cover. However, in the case of new or redevelopment that results in the addition of impervious cover on the CII site, EPA is considering requiring 100% disconnection to eliminate any additional pollution load and to work towards meeting water quality.
- Can you envision a different scenario on how not to add to the existing problem /pollutant load?

### 5.1.2.2 Feedback

**Importance of addressing redevelopment in RDA permit.** Many participants emphasized that requirements for redevelopment are an important component of meeting long-term stormwater management goals.

**Clear definitions:** Participants in all focus groups raised the need for a clear definition of 100% treatment or disconnection. Many requested clear delineation of new development from redevelopment, with many suggesting EPA use the existing definitions found in other regulations.

Some participants suggested that treating 100% of the new impervious area would be desirable but cautioned that achieving 100% load reduction is not feasible. A threshold, rather than a set percentage of load reduction, is preferable. The removal percentage should be based on the MS4 permit, Appendix F.

Others emphasized the importance of aligning definitions, accounting systems, and requirements among state laws, local bylaws, the MS4 permit and RDA permit to the greatest extent possible. Some suggested aligning the 100% treatment goal with goals and language from local bylaws or state wetland regulations. For example, all new impervious cover for properties of all sizes must align with local bylaws and MA DEP regulations, or 0% new additional pollutant load from new development. In this scenario, the post-development load would match the pre-development load, which is similar to MA DEP's approach for peak rate attenuation under its Wetlands Regulations.

**Flexibility:** Some participants suggested that there should be flexibility in how to achieve the 100% treatment goal. Multiple focus groups suggested allowing for permit offsets if new impervious cover can offset disconnections elsewhere on a property if it still maintains an overall net zero new pollutant loading. Some discussed allowing for trading across properties (that might be in other municipalities or watersheds, for example) with the same owner and being eligible for off-site mitigation. These commenters also requested a very clear definition of what it means to redevelop. Others asked whether a net zero change in impervious cover would trigger these requirements. In other words, if a portion of a site is disconnected in one area through various actions, but another portion of the site adds impervious cover, but the total impervious cover area for the site does not change, would new impervious cover trigger the redevelopment standard for the entire site?

Some cautioned that achieving this goal may require building storage tanks on properties with highly contaminated soils and this poses its own environmental impacts, technical infeasibility for some sites, and high costs.

**Impervious cover metric:** Some suggested that the impervious cover metric could be gamed by permittees by not actually adding new impervious cover to their site to avoid adding new controls. Instead, they suggest that all redevelopment projects of a certain size should need to meet the 100% treatment goal. Others thought the addition of any new impervious cover is not the right metric and recommended identifying a goal toward which pollutant load would need to be treated.

**Stricter requirements:** Some suggested stricter regulations for redevelopment. Two options suggested included requiring on-site storage for the entire site if redevelopment occurs (e.g., Watertown ordinance), and on-site retention and infiltration of the first inch of rainfall on all impervious cover. This could be met on-site or off-site, but should not be avoided with application of the “maximum extent practicable” standard.

### 5.1.3 Off-site Mitigation

#### 5.1.3.1 Questions

- What can the permit do to allow, enable, or even encourage off-site mitigation?
- What might be key elements of an RDA off-site mitigation program?
- Who might administer such a program?
- Might a regionalized stormwater management program, such as the one operating in Long Creek Maine, be necessary to manage off-site mitigation and/or any pollutant trading program that might be established?

#### 5.1.3.2 Feedback

Across all focus groups, individual participants seemed to suggest that the permit should allow for, and encourage, regional collaboration on off-site mitigation. Some stated that it is especially important given the urbanization of the watersheds and the possibility of contaminated soils (which could make on-site SCM implementation impossible in some instances) and, in other cases, the lack of space to implement SCMs. Off-site mitigation also allows for greater efficiency, for example, where stormwater infiltration systems already exist and can be utilized for greater stormwater management.

**On-site prioritization:** Some participants suggested that on-site mitigation should be prioritized and incentivized over off-site mitigation. One option could be to add a multiplier offset (in wetlands banking, for instance, this can be a two for one offset) to off-site mitigation or where an additional fee would go to the regional entity (see below) or municipality. In this case, a permittee seeking to mitigate off-site would need to implement a larger than necessary stormwater system to allow the other RDA site to contribute to the system. Alternatively, if the permittee elects to pay an in-lieu fee, the fee should account for the development of a regional stormwater management system. Some encouraged aligning with the MS4 permit language on on-site mitigation and avoiding “maximum extent practicable” language. It was also mentioned that MA DEP has a useful hierarchy for selecting locations for off-site mitigation.

**Regional collaboration for off-site mitigation:** Three possible avenues for off-site collaboration were mentioned:

- Via a **regional entity** or watershed district to which permittees pay an *in-lieu* fee to a central entity. The fee would be used for permit compliance activities and the entity would implement stormwater management with a larger, regional lens, rather than a parcel-by-parcel approach



(the Long Creek Management District was mentioned by several participants, see that website [here](#)).

- Via a **trading market** where permittees track in a central location which other permittees have extra land available for SCMs and pay to meet their requirements on that land.
  - Potential resources and examples: IEC report for CRWA on pollutant trading system design, private market involvement in [wetland mitigation banks](#); [Pioneer Valley Planning Council](#) collaboration under the MS4 program for redevelopment projects.
- Via a **municipal stormwater utility** that would only allow for trading within one municipality.

Some also suggested allowing trading beyond CII properties, including MS4 properties. In some other groups the thought to open trading to state property and MS4 property was mentioned.

**Off-site mitigation boundary:** Regardless of the method of off-site mitigation, questions about the scale of trading were raised. One idea was to align with MA DEP regulations which follow the tiered approach of: (1) adjoining site, (2) within municipality, and (3) within watershed. One commentor suggested that the boundary limit should be within the municipal boundary so municipalities can get credit since off-site mitigation across municipal boundaries raises accounting issues. On the other hand, in some focus groups the suggested boundary was the watershed. One municipality raised a concern that watersheds abutting RDA ones may experience adverse effects if many property owners straddling both choose to add impervious cover to the non-regulated watershed.

**Regional tracking:** Some participants emphasized that a regional tracking system for SCMs, O&M plans, and available land mitigation would be necessary and useful regardless of whether off-site mitigation is allowed. This type of tracking system would be especially useful for municipalities and RDA permittees to enter and pull data from the system. Some also emphasized that this tracking system should be publicly available to provide real-time data to the public and ensure accountability for pollution reduction and ongoing operations and maintenance functions.

**Benefits of off-site mitigation:** Some participants highlighted the importance of ensuring equal benefits across the region when allowing for off-site mitigation and not unfairly shifting environmental burdens or lessening the positive impacts of SCM pollution reduction (i.e., avoiding all permittees in one sub-watershed from selecting off-site mitigation and resulting in no positive benefits in their sub-watershed). They suggested some ways to mitigate this misallocation: (1) a trading boundary at the HUC12/subwatershed level; and (2) development of a predetermined list or number of projects scattered throughout watersheds. On the other hand, one participant suggested that off-site mitigation could be used broadly to focus investments in environmental justice neighborhoods.

**Space limitations and flexibility in mitigation measures:** Some participants expressed concern about running out of property for off-site mitigation within the watersheds if CII properties, DOT, DCR, and municipalities are all looking for locations to meet their load reduction targets. One commentor suggested that conservation easements be allowed in place of treatment for off-site mitigation to prevent future impervious cover development. Others suggested giving credit for controls not in MS4 Appendix F (e.g., developing tree canopy, solar panels atop impervious cover). Some colleges/university participants wondered if EPA would give flexibility to institutional permittees that have land in multiple municipalities and allowing a “campus approach” to mitigation, rather than site-by-site compliance.

## 5.1.4 MS4 and RDA

### 5.1.4.1 Questions

- What factors should EPA consider when writing the permit so the pollutant load responsibility that would lie with CII sites would be transferred from municipalities to private property owners in a timeline that is consistent with municipal phosphorus control plans or impaired waters requirements as part of MS4?
- What responsibilities should MS4s have, if any, to certify pollution reduction occurring through private structural controls and operation and maintenance actions implemented by CII permittees?
- Should pollution reduction credits be transferred from MS4 permittees to RDA permittees? If, when and how should this happen?
- EPA is considering giving pollution reduction credit to CII permittees for existing structural or non-structural controls they have been implementing (and maintaining, if applicable), if these controls comply with the crediting criteria (based on MS4 Appendix F Attachment 2&3). What information should the permittee provide EPA to support these credits?

### 5.1.4.2 Feedback

**Timing of credit transfer:** Some discussed that the pollutant load reduction responsibility should transfer immediately from the municipality (who will receive a pollution reduction credit at that time of the finalization of the RDA general permit, while the responsibility for the necessary pollution reduction would be borne by the private party at that time) to others who suggested that this transfer should not happen until CII properties met all of the requirements of their RDA permits.

**Municipality capacity limitations:** Participants in all focus groups expressed concern about municipalities being responsible for SCM certification, should they be required to track SCM implementation and pollution reduction credits and ongoing O&M. In addition, many across the focus groups expressed concern about the administrative burden municipalities will face if tasked with ensuring compliance or being required to answer questions about RDA permit compliance, especially for large permittees who may have complicated implementation questions. Even without administering the permit, municipalities will be contacted for RDA permit compliance support. Many municipalities expressed interest in resources provided by EPA that would clearly lay out how permittees can get into compliance, through, for example, shared case studies on successful permit compliance, identified point of contacts at EPA, and other tools to assist municipalities in clear communication. One NAIOP focus group participant recommended integrating the RDA with the MS4 permit to enable the municipality to account and track private property SCMs. Barring that, they recommended that EPA offer grants and technical assistance to municipalities to help with data tracking.

**SCM certification:** Options suggested for SCM certification included: (1) self-certification, (2) certification by a professional engineer, similar to a MA Licensed Site Professional, and (3) an annual audit by EPA or municipality. Some cautioned against a system that requires small property owners to retain a consultant to certify a SCM due to cost considerations. Some suggested that a better alternative would be to allow self-reporting (similar to Stormwater Pollution Prevention requirements required by some permits, for example) or the submission of a management plan. O&M reports should be required as part of the reporting for each permitting cycle.

Participants in all focus groups expressed concern about relying exclusively on municipalities to certify SCMs due to their constrained resources. On the other hand, some suggested that municipalities would be incentivized to encourage implementation and certify SCMs if they received credit at the point of SCM construction. Some mentioned that they are already reporting their stormwater management practices to their municipalities, so municipalities can easily determine the amount of credit to claim under MS4. Others noted that municipalities do not have right of entry to private properties and thus it would be difficult for them to be responsible for certifying (or enforcing) RDA permit requirements.

**Regional tracking system:** Many of the participants across all focus groups emphasized the importance of a publicly available regional SCM tracking system. Many reasons were given for the need for such a system including: providing a central location for the tracking of SCMs in “in the ground” at the time of permit issuance and the corresponding O&M activities necessary to maintain those existing SCMs, to providing a way to track the pollution reduction credits available to municipalities, to providing public accountability for the work being undertaken through the RDA permit. Without this, there could be duplicity in tracking between municipalities requiring stormwater management to occur based on a local bylaw on private properties (below and above one acre), and EPA regulating private properties. Further, municipalities will want access to SCM information as they work on flood control measures. One municipality referenced a MA DEP-developed tool for regional combined sewer notification tracking as a model for a public data dashboard and ability to submit and request data. Finally, such a system might allow entities within watersheds to better identify strategic on- and off-site mitigation approaches that will lead to the greatest pollution outcomes and possibly, more reasonably apportion costs of the SCMs.

Many participants suggested aligning with other tracking requirements, such as those required under MS4 permits, when possible, if such a tracking system is developed. Some of the specific data points that were identified to include were drainage areas, SCM summaries, BATT calculations as example data points, reduction calculations and methodologies for calculating BATT, maintenance plans, and other types of information that municipalities need to report as part of their MS4 permits. One municipality mentioned that they do not currently track or take credit for O&M plans and non-structural controls.

**Existing SCMs:** Some suggested that EPA credit existing SCMs built after the year in which the TMDL was established for that watershed, if relevant. Others discussed that existing SCMs should get credit if they submit yearly maintenance reports, provide original designs or retain an engineer to certify that the control functions.

## 5.1.5 Maximizing Pollutant Reductions

### 5.1.5.1 Questions

- EPA has received feedback that the RDA permit could serve as a disincentive to the development of stormwater utilities and other local stormwater funding mechanisms. How might an RDA or other permit provide incentives for the creation of such funding mechanism?
- What other mechanisms exist to maximize pollutant reduction and generate reliable funding streams for stormwater control strategies in the three affected watersheds?
- How might permit requirements support these strategies?
- Other suggestions or ideas?

### 5.1.5.2 Feedback

**Stormwater utilities:** Some participants shared the concern that RDA permittees within a municipality with a stormwater utility will feel they are “double paying” for stormwater management if they have to pay a utility fee which addresses stormwater management from the site, which is what the SCMs are also doing. They cautioned that these permittees could push back against the development of stormwater utilities in their communities.

Some, on the other hand, stated that since stormwater utility fees contribute to municipal stormwater programs beyond just pollution reduction requirements (e.g., street sweeping, catchment cleaning, management and maintenance of shared municipal stormwater infrastructure, staffing) that all municipal entities, including CII properties, benefit from those services, so paying at least a partial fee (or receiving only partial “credit” against a stormwater utility fee), is reasonable. Consistent with the latter point, some participants suggested that stormwater utilities could offer a partial waiver for properties who certify compliance with their RDA permit. The partial waiver acknowledges that some of the stormwater fee goes to overarching municipal stormwater management. Two examples were shared of an existing 30% and 50% waiver on utility fees. Some thought 30% was too insignificant of a waiver to be meaningful. If the waiver is larger, large property owners may be more supportive of the RDA permit as they will pay a reduced utility fee. A challenge with fully exempting RDA permittees from utility fees is that they provide a significant revenue source for the municipalities who have them.

## 5.1.6 Other Suggestions and Ideas

### 5.1.6.1 Questions

- Are there other RDA permit suggestions that EPA should consider as it drafts the RDA permit?

### 5.1.6.2 Feedback

**Additional guidance to include in the permit:** Some suggested that the permit include very specific instructions for non-structural control measure implementation (e.g., equipment type), explicitly encourage permittees to coordinate with municipalities when planning SCMs, and explicitly encourage SCMs that maximize co-benefits and flooding reduction controls when possible.

**Flexibility in stormwater control measures:** Some mentioned the importance of flexibility of permitted stormwater control measure methodologies and technologies to allow for technological advancement. They suggested that methods not listed in Appendix F of the MS4 permit should be considered acceptable if they are monitored over time and can demonstrate compliance. One commentor mentioned adding the New Hampshire clean sweeping policy to the approved list of non-structural controls.

**Unintended consequences:** Some participants raised concerns about the cost of RDA permit compliance harming small property owners in the watersheds. There was particular concern expressed about disproportionate effects on minority small property owners. Further, municipalities were concerned with the costs of RDA compliance getting pushed onto tenants. Some participants expressed concern about the challenging commercial real estate market in Massachusetts, and that additional costs of compliance are a serious financial concern to certain CII property owners who will be subject to an RDA permit. Furthermore, these economic concerns could have downstream economic impacts; property

owners may stop investing in properties and additional regulatory burdens could suppress already stressed real estate markets in some communities.

**Residential and multi-use buildings:** Some participants noted the pollutant load from residential buildings is substantial. NAIOP participants suggested a trading or regional system that allows for off-site mitigation on residential properties. Multiple focus groups asked if multi-use buildings are included in the permit. Several participants asked EPA to clarify how they will handle mixed-use parcels. Some noted that some RDA permittees may no longer be included if they transition from commercial to residential properties. Some noted that this permit is in tension with the Commonwealth's goal to build more housing that will have the impact of creating more impervious cover (and thus, additional pollutant loads).

**Non-compliance:** Some participants shared that large property owners could choose to be non-compliant as they know EPA has limited enforcement capacity, and perhaps determine that Clean Water Act penalties are more affordable than becoming compliant. One participant suggested tying the permit to Environmental, Social, and Governance reporting for businesses to encourage compliance for non-economic reasons. Some participants raised the possibility of offering tax incentives for capital costs for stormwater management controls, modeled off the septic tax credit. Large property owners may monitor their stormwater runoff to determine if they are contributing to pollutant loading before complying and may take up issue with the permit approach given their findings.

**Permit impact:** Some participants asked if EPA will have monitoring plans to determine whether RDA permitting requirements are achieving the necessary pollution reductions. Some in the NAIOP and colleges/universities focus groups raised the question about monitoring stormwater runoff to determine phosphorus load contributions versus relying on the assumed load estimates that EPA uses in its stormwater permits.

## 6 Appendix

### Discussion Topics for RDA Permitting Focus Groups (version June 5, 2024)

**Note: The following was sent to participants before the focus groups and was also posted on the EPA website. The scope some of the questions discussed throughout all of the focus groups changed over time as a result of issues raised in earlier focus groups.**

#### **Background**

As part of its ongoing efforts to engage stakeholders prior to the issuance of its draft RDA permit later this year, US EPA, Region I has been providing informational sessions to a variety of stakeholders and inviting anyone who is interested to provide EPA with feedback on how the Residual Designation Permit might best be drafted to achieve its environmental objectives, but also to address issues that this permit raises for municipalities, future permittees and others.

Many questions have been raised through this stakeholder outreach process, as well as the permit drafting process. Some of these areas for further conversation, listed below, are among those on which EPA is seeking informed input from individuals who have ideas or suggestions about the best framework for this RDA permitting approach.\*

For more information on the RDA permitting process in Region I, see the RDA website. There you will find: the original RDA petitions, EPA's preliminary response to the petitions, background on the residual designation process, stakeholder outreach presentations, a Frequently Asked Questions document, parcel-level analyses for the Charles, the Mystic and the Neponset River watersheds and other useful information.

*\*Answering these questions is voluntary and optional; you may answer any of these questions that you wish; you may also answer none of these questions. Please note that in addition to the current efforts to receive feedback, there will also be an opportunity for all members of the public to provide formal comment to EPA on both the draft permit and the preliminary RDA determination. Notice of that opportunity to provide formal comments will be posted on EPA's website as well as the Federal Register later in 2024.*

#### **Focus Group Discussion Topics:**

##### **1. The phasing of structural and non-structural controls**

EPA is considering phasing the permit based on impervious cover acreage thresholds so that Commercial, Industrial and Institutional properties (those that will be subject to the RDA permit which we will refer to as "CII sites" or "CII properties") with 5 acres or more of impervious cover will be subject to permitting requirements that lead to pollution reductions sooner than smaller sites (those with fewer than 5 acres of impervious cover).

In the first permit term the largest sites could be required to implement permit requirements. EPA is considering requiring pollution removal via a suite of options like structural controls (e.g., rain gardens or infiltration trenches) and non-structural controls (e.g., parking lot sweeping) that have established pollution reduction estimates based on modeled data (refer to MS4 Appendix F, Attachments 2&3 to see an example).

It is likely, however, that all permittees would need to comply with notice of intent requirements and, possibly, other administrative or reporting requirements, before needing to implement pollution reduction requirements, such as implementation of structural or non-structural controls.

For context, EPA's NPDES permits are issued for up to 5 years after which permits can be renewed. During a single permit term, EPA sets a timeline over which permit requirements must be implemented to address discharges. EPA is not considering including monitoring at the end of pipe for direct dischargers as a compliance option.

- EPA is considering phasing permit requirements based on the size of CII sites over time. In your view, what could the advantages and disadvantages of this phased approach be?
- What factors may be relevant in determining whether permittees can achieve 100% compliance within one permit term based on a phased permitting approach, assuming pollution reduction requirements would match those set forth in TMDL, Alternative TMDL Reports, or other regulatory frameworks?
- How might the maximum amount of pollution reduction be obtained or incentivized in the shortest amount of time (i.e., enhanced street sweeping?)

## **2. Considerations for re-development on-site or addition of new impervious cover on-site?**

EPA is considering requiring pollution requirements for existing impervious cover. However, in the case of new or redevelopment that results in the addition of impervious cover on the CII site, EPA is considering requiring 100% disconnection to eliminate any additional pollution load and to work towards meeting water quality. Could you envision a different scenario on how not to add to the existing problem /pollutant load?

## **3. Off-site mitigation**

EPA has received feedback that some CII sites may not be able to install necessary SCMs due to restraints on the amount of land available for stormwater controls or poor soil quality. EPA is considering allowing off-site mitigation as part of this permitting that would be similar to the approach available under the MS4.

- What might an RDA off-site mitigation program look like?
- Who might administer such a program?
- Might a regionalized stormwater management program, such as the one operating in Long Creek Maine, be necessary to manage off-site mitigation and/or any pollutant trading program that might be established?

## **4. Intersection with MS4 and other regulatory requirements**

- What factors should EPA consider when writing the permit so the pollutant load responsibility that would lie with CII sites would be transferred from municipalities to private property owners in a timeline that is consistent with municipal phosphorus control plans or impaired waters requirements as part of MS4?
- What responsibilities should MS4s have, if any, to certify pollution reduction occurring through private structural controls and operation and maintenance actions implemented by CII permittees?
- Should pollution reduction credits be transferred from RDA permittees to MS4 permittees? When should this happen - after RDA permittees certify implementation of structural and non-structural controls and provide the relevant information to EPA or to the municipality? Would this happen after CII properties have met their obligations? Would municipalities want to review the CII properties pollution reduction controls prior to getting the credit?

- EPA is considering giving pollution reduction credit to CII permittees for existing structural or non-structural controls they have been implementing (and maintaining, if applicable), if these controls comply with the crediting criteria (based on MS4 Appendix F Attachment 2&3). What information should the permittee provide EPA to support these credits?

#### **5. Maximizing pollutant reductions in the Charles, Mystic and Neponset River Watersheds**

EPA has received feedback that the RDA permit could serve as a disincentive to the development of stormwater utilities and other local stormwater funding mechanisms. What other mechanisms exist to maximize pollutant reduction and generate reliable funding streams for stormwater control strategies in the three affected watersheds? How might permit requirements support these strategies?

EPA has received feedback that the RDA permit could serve as a disincentive to the development of stormwater utilities and other local stormwater funding mechanisms. How might an RDA or other permit provide incentives for the creation of such funding mechanism?

#### **6. Other thoughts**

Are there other RDA permit suggestions that EPA should consider as it drafts the RDA permit?