



## Massachusetts Association of Conservation Commissions

*protecting wetlands, open space and biological diversity through education and advocacy*

March 31, 2010

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

**SENT VIA EMAIL TO [Murphy.Thelma@EPA.gov](mailto:Murphy.Thelma@EPA.gov)**

**RE: Comments on draft NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4)**

Dear Ms. Murphy;

On behalf of the Massachusetts Association of Conservation Commissions, I offer these comments in response to the recent Notice of Availability from USEPA Region I regarding the above cited draft General Permit (GP). MACC represents the 2,400 Conservation Commissioners in the 351 cities and towns of the Commonwealth, who are charged with protecting the natural resources of their communities under the Conservation Commission Act (G.L. Ch.40 sec.8c) and with administering and enforcing the Massachusetts Wetland Protection Act (G.L. Ch.131 sec.40). MACC is the voice of municipal conservation commissions across Massachusetts and our mission is to promote strong, workable, science-based laws, regulations, and policies regarding wetlands, other water resources, open space, and biological resources.

MACC supports the proposed revisions to the permit, finding them appropriate for necessary protections to surface water resource areas for Massachusetts' north coastal basin. We do, however, remain concerned that USEPA's approach to the critical issue of controlling the surface water quality impacts of storm water discharges is too limited in focus or lacks the reach necessary to address the problem in a sufficiently comprehensive manner. Therefore although we commend recent efforts at renewing and tightening the requirements of the MS4 GP program, we will take this opportunity as well to comment on several additional steps which we believe are necessary to appropriately carry this pollution control program.

### **MACC Supports Important Provisions of the Draft General Permit**

We commend the Agency's efforts to continue the existing GP program while at the same time adding more specific procedures and practices for increasing storm water run-off protections and for documenting progress and success through monitoring. We support specific controls on storm-sewer discharge to rivers and wetlands along with other elements of the renewed/expanded permit conditions such as screening and sampling discharges from outfalls, folding in and endorsing the MADEP stormwater standards 3-7 and the more rigorous effort to control illegal discharges to stormwater systems. Requirements for municipalities to modify and update SWMPs are certainly warranted as are the heightened requirements to describe and document both the specific practices to be implemented, the resources to be applied, the individuals to be held accountable and the measures of assessment and documentation of success.

The expanded list of requirements for the identification and control of illicit discharges is particularly welcome as are the requirements to develop a report assessing existing local regulations and the associated feasibility of the use of green roofs, enhanced infiltration practices and water harvesting practices. Although we suggest several expansions of the requirements you have proposed (e.g., restoration of recharge hydrology (temperature, rate, volume, duration) of storms over 1.5 inches and operator certification that discharges from storm water systems will not contribute to water quality exceedances below the storm water system discharge point), we view the proposed changes as a necessary outgrowth of the conditions imposed by the former GP and by no means representing a significantly increased or unwarranted burden on the municipalities that will have to apply them.

### **Limitations in the Proposed GP program Need To Be Addressed**

We do question the liberal compliance periods that are proposed by the Agency for a number of critical elements of the revised GP program, and would ask the Agency to revisit them. Of particular concern are the four year period allowed for development of a Phosphorous Control Plan for dischargers into the Charles River, two years to develop maps of separate storm sewer systems and two years for the source-location and ranking of MS-4 owned property before beginning to control discharges to water supplies and other outstanding resource waters.

From a more general perspective we remain concerned that the new GPs cover only municipal, state and federal separate stormwater systems. The implication is that individual NPDES permits are therefore required for

- direct instream discharges to streams and lakes exceeding WQ standards
- new discharges to polluted non-TMDL waters
- new or INCREASED discharges to ORWs
- all discharges adverse to Endangered Species (state as well as federal?) and properties on the National Register of Historic places.

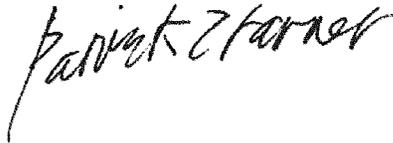
If this hypothesis is incorrect, the new GPs should take the opportunity clarify non-storm sewer requirements. Your GPs cover not only large cities but smaller communities and areas within towns, where stream storm sewers are not always available, and stormwater from streets and parking lots is directed to local ditches, streams and wetlands. While Conservation Commissions can deal with some of these direct discharges under the state and local Wetlands laws, existing drainage and increases to drainage into existing systems (storm sewers or not) are generally exempt from regulation. One of the best features of your GP is the promise to remove these obstacles to proper regulation; but if this promise of control of other sources of storm water discharge is not fulfilled, then needed clean up of developed areas will never occur.

### **Effective Monitoring Will Be Essential**

None of this will work without proper monitoring and, where necessary, effective enforcement. Since EPA clearly cannot take on all aspects of monitoring oversight, volunteer workers (properly trained) should be welcomed into the system (versus being told they are trespassing) and all stormwater SWMPS (management plans) must be placed on your website and not just tucked away in municipal files (start with the municipal facilities). Similarly the results of tests and innovative experiments should be made public. Right now it is almost impossible to find out what really works and/or where treatment system vendor promises comply with reality on the ground and in our region.

MACC thanks you for the opportunity to respond on this important issue and worthwhile permitting program. As an organization comprising significant legal and technical expertise in matters related to resource protection and water quality preservation, MACC would welcome the opportunity to discuss these issues further with you at your convenience. Please feel free to contact me, as President of MACC, should you have any additional questions and concerns.

Very truly yours,

A handwritten signature in black ink that reads "Patrick Garner". The signature is written in a cursive, slightly slanted style.

Patrick Garner  
President, MACC

