



March 29, 2010

United States Environmental Protection Agency
New England Region
MA Office of Ecosystem Protection
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Attn: Thelma Murphy (via email at murphy.thelma@epa.gov)

RE: Comments on Draft Stormwater Permit-NPDES Permit

Dear Regional Administrator Spaulding,

On behalf of the cities and towns of the Commonwealth, the Massachusetts Municipal Association (MMA) appreciates the opportunity to provide written testimony on North Coastal Small Municipal Separate Storm Sewer System (MS4) General Permits.

Cities and towns understand the need to protect water resources. Our members are committed environmentalists who take their role as stewards of this important natural resource very seriously. Communities throughout Massachusetts have been working toward the reduction and elimination of pollutants in municipal stormwater discharges well before the initiation of the NPDES Phase II permit program in 2003. Communities have long promoted the need to look holistically at how water resources are managed in the Commonwealth to provide for public health, safety and economic growth for our citizens.

In the past, the federal government partnered with communities to the benefit of our health and environment. Today, as evidenced by recent regulatory initiatives and unfunded requirements, that is not the case and localities are suffering. Last year, a group of Massachusetts local officials, including then-MMA President Bruce Tobey, traveled to Washington, D.C. to meet with top EPA officials and the Massachusetts Congressional delegation. The officials expressed concern about a number of unfunded federal mandates, assistance to cities and towns, and communications between the EPA and communities.

The local officials told the regional administrator for the EPA's New England office that strict stormwater standards are placing a financial burden on cities and towns at a time when local budgets are already stretched to the limit. The MS4 program is certainly one of the most burdensome unfunded mandates imposed by the federal government on localities. The EPA's estimate is that MS4 communities can expect to spend up to \$60 per capita each year to implement stormwater programs in their communities. The federal government must provide funding opportunities to assist local governments as they struggle to implement the requirements associated with this program.

The new draft of the North Coastal Small Municipal Separate Storm Sewer System (MS4) General Permit would require communities to institute more advanced stormwater testing, monitoring and management programs, yet is completely silent on the additional costs to communities.

The proposed permit is clearly written in a one-size-fits-all format and provides little or no flexibility. It does not reflect the diversity among the MS4 communities. Each of these communities has taken various steps to successfully comply with the original 5-year permit. The steps implemented during the original permit period differ from community to community and with varying intensities. The proposed MS4 permit takes none of this into account and leaves no flexibility in its level of compliance.

One of the provisions in the 2003 general permit was the ability for cities and town to tailor the BMP's to achieve the maximum benefit utilizing available financial resources and manpower. In this draft permit, there is considerably less flexibility. For instance, the requirements to sweep all streets and sidewalks twice a year would force communities to more than double their street sweeping budget. Urban communities may sweep many times a year while suburban communities with swales, no sidewalks and no box storm drain may not sweep at all. Few communities currently have the financial resources or equipment to sweep their sidewalks even once a year.

The requirement to maintain catch basins at no more than 50% full means that communities will end up significantly reducing the existing storage capacity in every catch basin. Limited staff will be required to document the amount in each catch basin when their time could be better spent cleaning catch basins, thus the paperwork and documentation requirements will likely decrease the catch basin cleaning frequency. Again, the new regulatory approach would result in a higher cost to perform this function.

The requirement to perform dry weather and wet weather sampling of all outfalls is especially burdensome. These communities have literally thousands of outfalls. Timing of the grab samples during wet weather will be difficult, costly and nearly impossible to schedule to obtain proper samples that are representative of the first flush of runoff.

The EPA must streamline the requirements by allowing communities to prioritize catchment samplings or substitute end of pipe sampling with strategic in-stream sampling, which is more effective and efficient. The cost to monitor and sample all outfalls is extraordinary and would place a severe financial burden on our cities and towns.

Another concern is the aggressive schedule that the EPA proposes for implementation of the program. Giving permittees only 90 days to file their Notice of Intent after their permit is finalized and dictating that within 120 days from the NOI the formal Stormwater Management Program must be complete is unrealistic. Communities would be forced to hire expensive environmental consultants for assistance to complete numerous elements of the program because of lack of staff and technical expertise from years of both state and federal cutbacks in grant funding and local aid. Hiring these consultants would require compliance with statutory procurement requirements and can be extremely time consuming. The initial 5-year permit requirements were accomplished in-house. This is no longer possible and communities will now be forced to cut other services or raise taxes to pay for these new requirements.

These are just a few examples of the significant problems with the proposed MS4 permits. Preliminary projections indicate that this permit will cost the impacted communities tens of millions of dollars per year to comply. The submittal of the NOI is a commitment to implement all the requirements of the general permit and there are no guarantees that there will be adequate funding in place now or over the 5-year permit life. As noted above, the requirements under the proposed permit are well beyond the normal operating budgets of our cities and towns. Because of Proposition 2½, many communities may be forced to vote on a tax override requiring voter approval. Many may have to fund requirements through a bond or create a stormwater utility. It may not be feasible to comply with these requirements, even if city and town governments are committed to implementing them, because taxpayers may simply refuse.

In short, we express our deep and serious concerns regarding these costly new permit requirements, and can testify that these requirements would certainly divert scarce resources away from core essential services necessary for the protection of public health and safety and the education of our schoolchildren. The costs of the operational, structural and staffing changes necessary to monitor and meet the requirements of the permit would have a severe financial impact on communities across the Commonwealth.

For these reasons, we ask you to defer action on the submission of NOI's until municipalities have had an opportunity to engage the regulatory agencies in an open dialogue regarding permit requirements. We urge the EPA to amend your approach to incorporate goals that are more realistically attainable and within the financial constraints of the current economic climate, or wait until adequate federal funding is available to ensure that these requirements do not translate into a harmful unfunded mandate on cities, towns and taxpayers.

If you have additional questions, please do not hesitate to contact my office or Tom Philbin at the MMA at any time. Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Beckwith". The signature is fluid and cursive, written in a professional style.

Geoffrey C. Beckwith
Executive Director