



March 31, 2010

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Boston, Massachusetts, 02109-3912

Via Email: [murphy.thelma@epa.gov](mailto:murphy.thelma@epa.gov)

Re: **Draft NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, North Coastal Massachusetts**

Dear Ms. Murphy:

On behalf of Mass Audubon, I submit the following comments on the draft National Pollutant Discharge Elimination System (NPDES) General Permit (GP) for discharges from small municipal separate storm water systems (MS4) in the North Coastal Massachusetts Area. It is our understanding that the Environmental Protection Agency (EPA) will also be issuing an updated MS4 GP for the remainder of Massachusetts later this year, and we request that these comments also be considered by EPA as you prepare that draft permit.

Polluted runoff from roads, parking lots, and other paved surfaces is the largest contributor to water quality impairment in Massachusetts. Storm water flowing rapidly off of impervious surfaces into wetlands and waterways also contributes to flooding and reduces natural water infiltration thereby reducing groundwater levels and flows to rivers and streams during dry periods. As climate change is predicted to lead to more frequent intense storm events interspersed with more frequent droughts, retaining rainwater on site, filtering it through soils and vegetation, and recharging it locally becomes even more important. Mass Audubon supports strong, science-based federal, state, and local storm water regulatory programs and incentives. These programs should increase the use of Low Impact Development (LID) techniques in new development as well as retrofitting of existing developed areas and paved surfaces to reduce storm water runoff and associated pollution. Although these efforts require expenditure of money and effort, they are important to protect water supplies, swimming areas and habitat for fish and other wildlife, and to prevent flood damage to property and infrastructure. Mass Audubon supports a GP that is structured in a manner that encourages municipalities to develop regulatory tools to fund storm water management and improvement, including requirements that private landowners do more to retain and treat storm water on their properties in order to reduce flows to municipal systems and associated burdens on local MS4s.

### **Support GP Proposed Enhancements**

Mass Audubon supports EPA's proposal to strengthen the GP in several respects compared to the 2003 version, including improved reporting and record keeping requirements; required elements of the local Storm water Management Program (SWMP); more specific requirements for discharges to areas with and without Total Maximum Daily Pollutant Loads (TMDLs); minimum control measures; enhanced public participation and education; more specific requirements for elimination of illicit discharges; requirements for both construction period and post-construction storm water management controls; good housekeeping and pollution prevention requirements; outfall monitoring; and periodic and ongoing program evaluation.

### **Support Further Program Strengthening**

While the proposed GP includes several improvements over the 2003 version, Mass Audubon recommends that the final permit include additional provisions addressing the following comments.

Many municipalities do not have an integrated storm water management system that is designed to manage all of the runoff that enters drains and pipes discharging to wetlands and waterways throughout the community. Various segments of storm drains were constructed at different periods of time, and many of these systems were built before standards were put in place. Many of these conveyances simply pipe or channel water from roads and other impervious surfaces to the nearest wetland or waterbody with little or no intervening treatment. The draft permit attempts to address this through requirements to document the existing systems and map impervious surfaces, then prioritize and implement improvements over time. It is important that the final permit and associated supporting documents make it clear that communities need to address all their conveyances of runoff from paved surfaces to local wetlands and waterways. Some types of discharges including new discharges to waters that already exceed water quality standards, or to Outstanding Resource Waters, or adversely impacting federally listed rare species do not qualify for inclusion in the GP and should be required to obtain an individual NPDES permit. We encourage EPA to work aggressively to identify and capture all such discharges effectively within its regulatory oversight.

### **Local Regulation of Storm Water on Private Lands**

It would be helpful if the GP was more explicit about the need for and rights of municipalities to regulate storm water management on private land, both in terms of new development and retrofitting of existing substandard storm water to the extent it contributes to the municipality's compliance or noncompliance with the GP. Priorities should include remediating discharges that affect water supplies, habitat for state or federally listed rare species, fisheries and shellfisheries, and swimming areas. The Massachusetts Department of Environmental Protection's storm water management standards and associated regulations including the state Wetlands Protection Act regulations do not adequately address discharges from existing substandard storm water systems. Furthermore, discharges from new development can escape state requirements if the flow is directed toward existing roadway inlets even if those discharge directly to a downstream wetland or waterway without any treatment. Unless the actual development is within 100 feet of wetlands, the state wetlands regulations do not require on-site treatment of the storm water. The GP requires the permittee to ensure that BMPs are applied to new discharges to their system in order to prevent water quality standard violations. Communities could accomplish this by developing local regulations over new development regardless of whether or not those developments are subject to the state standards and/or the Wetlands Protection Act. Because existing substandard discharges are so extensive, extensive retrofitting is needed in order for many waterways to meet water quality standards. Local rules and regulations requiring retrofitting of storm water management from existing privately owned impervious surfaces that discharge to local roads and associated storm water conveyances are also needed.

### **Reporting and Electronic Availability of Information:**

The reporting and public participation aspects of the GP should be strengthened to require that all municipal storm water management plans, maps, data, and reports be readily available online, preferably both through a searchable database on the EPA website and on the municipal website. Other entities regulated under this permit, such as MassHighway, should also be required to provide information in this manner.

### **Municipal Costs**

Many municipalities are struggling under severe financial constraints and are concerned about any new or modified regulations that increase their burdens for compliance without providing associated funding. We are sympathetic to these concerns, but also note that there are mechanisms available for communities to offset costs associated with requirements of the permit. For example, local regulations can require landowners who are contributing to the municipality's storm water discharges to retrofit and retain more of the water on site, or to make payments to the community for receipt and treatment of this runoff. Municipalities can establish storm

water utilities to charge fees for storm water discharges, and use the money to monitor and manage the discharges. LID systems are generally less expensive to build than traditional systems using pipes and detention basins, and LID has many other benefits as well and should be encouraged in all new development and retrofitting. Improved management of storm water also has direct and indirect benefits to municipalities, including protection of water supplies, prevention of storm damage, and enhanced property values.

Another way municipalities can reduce their costs while increasing program effectiveness is to partner with local watershed organizations or other nonprofits or volunteer groups. Many watershed groups have water quality monitoring programs that may be able to work with municipalities to help gather the required monitoring data at low cost while conforming with data quality standards. Watershed groups can also assist with education and outreach at a low cost with high quality programs. Such partnerships can have multiple benefits in helping the municipality achieve compliance, as the very involvement of volunteers in water quality monitoring also contributes to requirements for public participation, education, and outreach.

### **State Transportation Agencies**

Runoff from state transportation facilities, particularly state highways, has extensive and pervasive impacts on water quality, erosion, and flooding. State transportation agencies can be covered by this permit, but many of their discharge points discharge to such sensitive areas and contribute so significantly to water quality violations or other environmental problems that a more rigorous approach to prioritizing and remediating these outfalls is needed. EPA should require MassHighway to develop and implement a schedule for storm water management upgrades that will result in meaningful improvements within the next five years. Outfalls that are discharging polluted runoff into water supplies, state or federally listed rare species habitats, swimming areas, or important fisheries habitat or causing frequent flooding of property or infrastructure should be targeted for remediation. The schedule for these improvements should not be allowed to extend indefinitely, decades into the future.

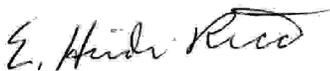
### **Timeline for Implementation**

Several of the timelines allowed for permittees to comply with this permit are generous. For example, communities subject to TMDLs in the Charles River basin have four years to complete a Phosphorus Control Plan and up to ten years to fully implement it. Compliance with the 2003 permit has been slow in many areas, but this should not be an excuse for further delays.

### **Conclusion**

Mass Audubon supports a strong, science-based, effective and fair approach to regulation of storm water. The proposed improvements to the MS4 GP for the North Coastal region of Massachusetts are positive and should be adopted, and we encourage EPA to further strengthen and clarify the permit in its final form.

Sincerely,



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Senior Policy Analyst

cc: Lucy Edmondson, DEP  
Glenn Haas, DEP  
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