



March 30, 2010

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

RE: Mystic River Watershed Association's comments on the  
Small Municipal Separate Storm Sewer System Discharge Permit  
In Massachusetts North Coastal Watersheds

Dear Ms. Murphy:

The Mystic River Watershed Association appreciates the opportunity to comment on the Draft NPDES General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) in the Massachusetts North Coastal Watersheds.

The Mystic River Watershed Association (MyRWA) is a non-profit dedicated to the preservation and enhancement of the Mystic River Watershed. The mission of MyRWA is to work to protect and restore the Mystic River, its tributaries and watershed lands for the benefit of present and future generations and to celebrate the value, importance and great beauty of these natural resources. As an important aspect of this mission MyRWA has been conducting scientifically rigorous testing of the water quality of the Mystic watershed for over 10 years, and actively using the data generated to work with the commonwealth, cities and towns to improve the quality of the water in the watershed. Because of this, MyRWA is greatly concerned about stormwater discharges into the Mystic River and its tributaries and the impact of those discharges on the water quality in the watershed.

Stormwater is one of the major sources of pollution in the surface waters of the commonwealth, and the nation. Unfortunately, stormwater causes a degradation of surface waters by bringing sewage, erosion and siltation to the rivers. In the Mystic River Watershed the degradation of water quality in the river and its tributaries caused by stormwater discharges was dramatically shown by the recent storm of March 13 – 15, 2010. As a direct result of that storm, and the resulting stormwater runoff, raw sewage was discharged directly in to the Mystic River and two of its tributaries. In addition, all known CSO's were discharging into the river and uncalculated amounts of street trash, pet waste, deicing chemicals, including salt and sand, and everything else that could float or be carried by runoff was discharged into the river by stormwater. But it does not take a storm of that magnitude to result in deleterious stormwater discharges into the Mystic River and its tributaries. As a result, strong stormwater regulations are critically important to the health of the Mystic River and its Watershed.

We would like to note that the proposed permit represents a great improvement over the 2003 Small MS4 General Permit. We applaud the EPA for this improvement in the general terms of this permit. MyRWA however does have the following specific comments on the permit.

## MyRWA Comments:

Section 1.7.3. The language of section **1.7.3** should require that documents are submitted in both paper and electronic form. We assume the paper form meets the requirements of record keeping of the EPA.

The electronic form is important to making these materials available to the public on a timely basis. Nearly every document that the permittee produces originates as an electronic document. It does not make sense for these electronic documents to be printed and sent to the EPA and then for the EPA to scan hundreds or thousands of pages of documents to place on their own website. Requiring MS4 owners to submit electronic documents will promote the rapid posting of these documents on the EPA website and encourage municipalities to make the electronic documents available on their own website. The EPA may insert language that asks the MS4 owner to certify that the electronic documents submitted are a complete set of the materials submitted in a hardcopy.

Section 1.8.1. Section **1.8.1** states in pertinent part: *“Any interested person may petition EPA in accordance with the provisions of 40 CFR §122.26(f) to require a small MS4 to apply for and/or obtain coverage under either an individual NPDES permit or an alternative NPDES general permit.”*

MyRWA **strongly supports** this language because it creates the crucial opportunity for concerned citizens, advocates and stakeholders to communicate information to the EPA on MS4 owners who are acting as poor stewards of the environment. In specific cases, citizens have information that could suggest the necessity of special requirements of a permit for MS4 owners who are indifferent to their responsibilities owing to the unique nature of the infrastructure, geography and responsibilities.

Section 1.9.1. Section 1.9.1 states in pertinent part *“The Stormwater Management Program (SWMP) shall include documentation supporting the permittee’s eligibility determination with regard to federal Endangered and Threatened Species and Critical Habitat Protection . . .”* This section then lists several requirements concerning federally listed endangered or threatened species. This paragraph should be expanded to comply with Massachusetts state law and to cover all species listed by the Commonwealth of Massachusetts as endangered, threatened or species of special concern as published in 321 CMR 10.90.

Section 1.10. MyRWA **strongly supports** the language of section **1.10** that provides 120 days for a city to generate a Storm Water Management Plan (SWMP) after the *“...receipt of authorization from EPA to discharge under the permit.”* Providing a hard timeline is requisite to move MS4s toward compliance with existing law.

We **request** that section **1.10c** include language that requires the MS4 owner to describe the sources of funds that will allow this work to continue. The MS4 owner should describe the funding limitations as well as identify opportunities that it will take advantage of to apply for grants, funds or awards. The MS4 owner should document that city funds are being set aside in yearly budgets for the work required in the IDDE program.

Section 1.10.1. Section **1.10.1** should require that the SWMP be made available on a webpage of the owner of the MS4. The less-than-stellar stewardship of these resources by MS4 owners has placed and continues to place a great deal of responsibility on citizens and advocacy groups to play a role as “watchdogs”. In many cases these advocacy groups are working on behalf of a river with flow from a dozen or more MS4 owners. Placing the burden on citizens to drive to each city office to request materials is not in step with the “digital world” in which we currently live. The argument that materials are available on the EPA website is not sufficient. Many citizens are not sophisticated enough to find the resources on the massive EPA digital library.

Citizen activists are more likely to pursue information available on the internet than spend resources driving to hunt down information. These materials need to be readily accessible to the public to ensure the “public participation” required in this permit. The requirement of making materials available on the MS4 website does not place an onerous burden as a) almost all MS4 owners have websites and b) many of these MS4 owners are already successfully posting the results of monitoring.

Section 1.10.2. We **strongly urge** that the map required in section **1.10.2** be a map produced with GIS software and be made available to the public. The provisions of this permit and the likely completion of TMDL's for many of these communities will require a continual improvement and progression of activities to improve water conditions. A provision to require GIS maps will make it mandatory for MS4 owners to upgrade record-keeping to a level appropriate for the 21<sup>st</sup> century and be cost effective over the long run. This map will serve as the foundation for all of the work required in this permit and for requirements in future permits. Allowing an MS4 owner to submit dated maps with hand-drawn modifications will discourage progressive behavior and the efficient application of resources.

Finally, watershed groups, the MA-DEP and the US-EPA have been collecting water quality data at outfall pipes that have revealed significant sources of pollution from owners of MS4 during the last ten years. A continual problem in this work is that many municipalities have poor documentation of outfall pipes, changes in pipe names over time or inaccuracies. The result is that it is difficult for stakeholders to communicate with each other and to municipalities about water quality issues. We feel strongly, that setting a high standard for map quality and pipe identifiers is crucial for the completion of work.

Section 2.1.1. We to **strongly object** to language included in section **2.1.1** of the Draft MA MS4 Permit. The language states:

*"In the absence of information suggesting otherwise, discharges will be presumed to meet the applicable water quality standards if the permittee fully satisfies the provisions of this permit."*

This language included in the Draft Permit places the burden of responsibility on advocacy and watchdog groups, watershed associations, state and federal regulators to prove that an MS4 owner is contributing to the impairment of a water body. MS4 owner has a responsibility for the waters that are emitted from the pipes under their stewardship. It is the responsibility of the pipe owner to make sure that they have designed a complete and full testing program to reveal all problems.

We strongly feel that this language runs counter to the spirit and language of the Clean Water Act and weakens this permit.

Section 2.1.1(a). Section 2.1.1(a) creates a presumption that is contrary to the intent of the Clean Water Act, and should be stricken. Specifically, Section 2.1.1(a) states "In the absence of information suggesting otherwise, discharges will be **presumed** to meet the applicable water quality standards if the permittee fully satisfies the provisions of this permit." (Emphasis added.) This presumption directly contradicts the statutory burden of the Clean Water Act imposed on dischargers to demonstrate that water quality standards will be met. This section may undermine the right and ability of citizens under Section 505 of the Clean Water Act, 33 U.S.C. § 1605, to enforce the provisions of the permit.

Section 2.1.1(c). We find reason to **strongly support** section **2.1.1.C** that provides the MS4 owner 60 days to fix items.

Section 2.2. Section 2.2 states "Impaired waters include those waters that MassDEP has identified pursuant to section 303(d) of the Clean Water Act as not meeting applicable state water quality standards." Given the five year duration of this permit the term "impaired waters" should include not only those waters identified as impaired and on the 303(d) list at the time of issuance of this permit, but should also include any waters that are added to the 303(d) list during the duration of this permit as well as those that are otherwise known to be violating water quality standards.

We **strongly support** the language of Section **2.2** that will begin to provide the support for regulation of pollutants in areas where TMDL's have been approved. As harmful algal blooms (HAB's, cyanobacteria etc.) are being documented with high frequency in the Charles River Watershed and watersheds across Massachusetts, there is strong need for regulation and incentives to reduce the inputs of phosphorus in freshwater systems.

However, MyRWA **strongly objects** to the following language included in section **2.2** of the Draft MA MS4 Permit:

*"Approved TMDLs" for discharges from the permittee's MS4 are TMDLs that have been approved by EPA as of the effective date of this permit."*

MyRWA also requests that the following language be added: If any part of a city or town discharges into waters with a TMDL, all storm waters from that city or town are required to meet the TMDL. If a city or town discharges into waters not under a TMDL they should not treat the storm water discharges into those other waters any differently until and unless those waters come under a TMDL.

There are a large number of stream sections in Massachusetts which require a TMDL for nutrients or bacteria. If a TMDL is approved for a watershed during the time that this permit is in effect, the requirements of the TMDL portion of this permit should be extended to these municipalities and incorporated into the instant permit. The requested language would require that MS4 owners submit a revised SWMP if a new TMDL is approved during the time frame of this permit. The time for meeting benchmarks such as mapping and prioritization should be equivalent to the time that is granted to MS4 owners with TMDL's prior to the implementation of this permit. Without this modification, assumptions about when the next MS4 permit will be approved could lead to a lack of accountability for more than 5 years.

Section 2.2. Section 2.2.1(a) states *“Approved TMDL’s for discharges from the permittee’s MS4 are TMDLs that have been approved by EPA as of the effective date of this permit.”* This language should be amended to allow for additional relevant TMDLs that may be finalized during the five-year term of the instant permit to ensure that those TMDLs are taken into consideration for purposes of determining, at a minimum, (1) whether specific discharges can continue as authorized under the permit, and (2) whether SWMPs, BMPs and other conditions must be modified for discharges into waters that are the subject of those TMDLs.

Section 2.4.7.1(d)(iii). Section 2.4.7.1(d)(iii) sets a minimum for street sweeping of twice per year, without any specific time frame for these sweepings. The permit should specifically require that one of these sweepings occur in the Spring to maximize the collection of winter deicing materials. We are also concerned that two sweepings per year are not sufficient to clean up materials that would otherwise be caught up in storm waters and discharged into receiving waters or the MS4 under this permit.

Section 2.4.7.2. Section 2.4.7.2(b)(iv) states *“(Salt Storage)Piles do not need to be enclosed or covered if stormwater runoff from the pile will not be discharged directly or indirectly to the MS4 or if discharges from the piles are authorized under another NPDES permit.”* As a good housekeeping measure, and because of significant problems associated with chlorides we would ask that all salt storage piles be required to be enclosed or covered to reduce any stormwater runoff.

Section 2.3.1. We **strongly support** the definition of a new discharge that specifically excludes sewer separation. This pragmatic view will encourage sewer separation work rather than holding up this work with the requirements on a new discharge.

Section 2.4.1(c). We **strongly support** the requirement that inter-municipal connections be mapped and labeled on city storm water maps. The experience of water quality advocates has shown that these details are often not included on maps. This new requirement will increase transparency and accelerate cooperation between MS4 owners. This requirement is consistent with the request that MS4 owners complete GIS maps of the pipes under their responsibility.

Section 2.4.2.1. We **strongly support** requirements of public education programs as described in section **2.4.2.1**. We would **request** that this requirement detail a requirement of having the education program and materials available at the MS4 owner’s website.

Section 2.4.3. We **strongly support** the requirements in section **2.4.3** on **Public Input and Participation**.

Section 2.4.3.1. However, the language in section **2.4.3.1** provides too low a standard for providing notice to the community and advocacy groups. The language reads:

*“All public involvement activities shall comply with state notice requirements (MGL Chapter 39 Section 23B). The SWMP and all annual reports shall be available to the public.”*

MGL c. 39, Section 23B states in the pertinent part:

*“ ... Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the notice of meetings of the committee with the clerk of each city or town within such district and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town and such secretary shall post such notice in his office or on the principal official bulletin board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting shall file the notice thereof with the clerk of each city and town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town. The notice shall be printed in easily readable type and shall contain the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting...”*

The EPA requires a standard of communication in this section that is out of date and prevents information being communicated to the public. Prior experience has shown that municipalities will schedule a follow up meeting during a previous meeting, post the information or agenda in a hallway at City Hall and generally not make an effort to make the information accessible. The EPA needs to make greater requirements of municipalities to post schedules and meetings on a “Stormwater” webpage and directly contact watershed organizations and other interested parties with the timing of meetings.

Section 2.4.3.2. The language of this section is so vague as to have little meaning. The permittee should be required to host an annual public hearing on stormwater, share information with the public and allow public comment.

Section 2.4.3.3 This section provides a form of public participation opportunities that does not encourage public knowledge of storm water issues and management. Hotlines, clean-up teams, and advisory committees will not be meaningful or accessible for most of the public. MS4 owners (e.g. municipalities) should be required to provide for both public input (e.g. review of SWMP) and public participation **separately**. The language in this section is inadequate as it suggests that activities such as supporting a “river clean-up” will meet the requirements of “Input” and “Participation” under the permit.

Section 2.4.4.1. We **strongly support** the language of section 2.4.4.1 that provides for accountability on sanitary sewer overflows (SSO’s). Across the state, there has been far too little accountability of MS4 owners to properly report and remediate SSO’s. Reports are filled out by MS4 owners, submitted on a paper form and rest in binders in MADEP offices. In nearly 30% of these paper reports, the permittee has not filled in key information such as volume of flow or action to remediate. We also feel that SSO’s are underreported by a wide margin.

Section 2.4.4.2. We **request** that the language in section 2.4.4.2 provide greater detail and clarification on enforcement options.

Section 2.4.4.6(b). We agree with the language of section 2.4.4.6(b) that states that to meet the requirements of mapping, a GIS map must be produced. A GIS map will serve as the foundation for an organized SWMP that will change over the next ten years.

Section 2.4.4.6(d)(i) & (ii). We request that the requirements in section **2.4.4.6 d (i) and (ii)** as applied to permittees under a TMDL be extended to all municipalities (those without an approved TMDL) covered by this permit. The efforts to map and plan work are a foundation for the stewardship needed of the water resources in Massachusetts.

Section 2.4.4.7. We **strongly support** the language in section **2.4.4.7** that requires that outfalls are field labeled with a unique identifier. We **request** that the location of the outfall be identified by GPS to within 10 feet or 5 decimal places of coordinates. We **suggest** that included in sensor observations, that “flow rate” be estimated categorically (e.g. Dry, Trickle, Significant Flow).

Section 2.4.4.7(a). We **suggest** that the language in section **2.4.4.7(a)** be altered to read that the permittee shall have completed an outfall inventory for 25% of outfalls by end of year 2, 50% by year 3, 75% by year 4 and 100% by year 5. This proposed language change would accommodate an inventory program that begins in year 1.

Section 2.4.4.7(c). We **request** that the requirements in section **2.4.4.7(c)** be amended to require only measurements of **bacteria, surfactants, ammonia, conductivity and temperature**. We feel strongly that the information contained in these parameters is the most useful toward identifying problems. Surfactants and ammonia can both be measured effectively with test strips or field kits. Conductivity and temperature can be measured easily with hand held device (YSI type device). The only parameter that will require laboratory analysis will be bacteria.

We suggest removal of pH, potassium and chlorine from the list. To measure pH properly requires significant calibration and it is the experience of some watershed groups that this data is not useful. It will be a rare outfall that has issues with pH substantial enough to warrant such a general requirement.

Chlorine is a problem almost exclusively limited to the release of waters from swimming pools and sources of drinking water. Test kits for chlorine tend not to be very sensitive and a human can detect with their nose for “clean” or “chlorinated” smells almost as effectively. For reasons of expediency, we suggest removing this parameter from the list.

Section 2.4.4.8. We **strongly support** the requirements of section **2.4.4.8** on Illicit Discharge Detection and Elimination Programs. The language provides adequate detail and clear guidance on benchmarks and methodology to complete this work.

Section 2.4.6.9. We **strongly support** the requirements of section **2.4.6.9** that require MS4 owners to document impervious surfaces and increase rates of infiltration into the ground. We **request** language that accounts for situations when municipal boundaries rest largely on contaminated soils. We support additional language and incentives in the draft permit that encourage green infrastructure, BMP, and Low Impact Development.

Section 3.1.1. We **support** the language that allows the permittee to start their monitoring program no later than the beginning of the second year of the permit unless otherwise indicated in the permit. We recognize this as an adequate amount of time for the permittee to plan and hire contract work if necessary to carry out this monitoring.

Section 3.1.2. We **support** the requirement that at the least one dry weather and one wet weather monitoring event be completed for each outfall within 5 years of the effective date of this permit. We strongly feel that this monitoring requirement is within the capacity of MS4 owners to complete. We expect that 50% of the pipes will not be flowing during dry weather resulting in a diminished burden. A number of watershed groups have proven that this work can be accomplished even with their fundraising limitations.

We **request** that language be inserted into section **3.1.2** that states:

- a) If a pipe is submerged, then a sample must be taken from the next available access point upstream in the pipe.
- b) If a pipe is submerged in a tidally influenced area, the pipe must be sampled within 2 hours prior to low tide.

The reason for this second requirement is that samples collected during an incoming tide will not be representative of the effluent from the pipe.

Section 3.1.3. We **strongly support** and **congratulate** the EPA for including the language in section 3.1.3 on screening and monitoring at locations where stormwater from one MS4 is transferred to another MS4. These areas are often among the least recognized problems and slowest to be repaired. Including specific language to address the issue will assist in identifying and remediating problems. We would **request** that these sites be listed as areas of prioritization during the first year of testing.

Section 3.1.4.5. We object to section **3.1.4.5** that allows an MS4 owner (permittee) to perform in-stream monitoring which is representative of one or more discharges. This language provides for a too broad and open interpretation by the MS4 owner. In many cases, the measurement from a stream is not representative of the pipes that are contributing pollution as the pollution is often substantially diluted when it reaches ambient water flow. In the case where MS4 owners or municipalities maintain a high density of outfalls within a short stream section, a superior solution will be for the municipality to use section **1.8.1** to seek relief from circumstances that deserve a pragmatic approach.

Section 3.2.1. We request that the language of section **3.2.1** be modified to say that 25% of outfalls shall be tested by the end of the second year (allowing some testing in the first year), 50% by year three, 75% by year four and 100% by year five.

Section 3.2.2. We **suggest** that section **3.2.2** should not include chlorine, turbidity, potassium and pH as parameters requiring measurement. While these parameters are certainly appropriate to a number of MS4 permittees we would suggest that an appeal pursuant to Section **1.8.1** is appropriate to request these parameters on a case-by-case basis. We believe that a visual observation will serve as an adequate substitute for turbidity.

Section 3.2.5. We **suggest** that section **3.2.5** should include language that requires photo documentation of the state of a pipe and that can be used as a reference in the future.

Section 3.3.1. We **request** that section **3.3.1** state that monitoring can occur after **or during** any storm event.

Section 3.3.2. Section **3.3.2** states in pertinent part: *“The permittee shall document the number of outfalls monitored and monitoring results each year in the annual report.”* We request that this language should be amended to include reporting in the SWMP and should be modified to ensure proper reporting of this information. The annual report should include a record of monitoring, identification of pipes by a unique identifier, a GPS coordinate down to 5 digits for each outfall and a usable map that can be used by an outside agency or citizen group. This permit should require that the SWMP and Annual Report be made available on the website of the MS4 owner within a certain time period.

Section 5. We believe that **Section 5** places too large a burden on individual citizens and advocacy groups to access data. The language in this document on reporting should be altered to make the documents more accessible. **Documents should be required to be posted online on the MS4 permittee’s website.** Allowing and even requiring that people travel by personal vehicle to an office to photocopy forms flies in the face of conventional technology and ‘open government’. A timeline should be incorporated into the permit as to when these documents will be made available online to the public.

We would ask that the deadline for reporting requirements be changed from 30 days to 60 days to provide additional latitude to municipalities at the end of the summer.

We **strongly urge** the EPA to consider language that would require owners of MS4 to place their data into the WQX System.

We **strongly urge** the EPA to require MS4 owners to notify relevant watershed organizations and other interested parties of public meetings related to storm water and water quality.

Finally, we recognize that MS4 owners will perceive the monitoring requirements to be an “onerous” or costly burden. **We encourage the EPA to find language that promotes the opportunity for MS4 owners to work with watershed groups and to use the data gathered by these teams of watershed monitors.** Specifically, we request language that allows and encourages a municipality to use data collected by a watershed group, state or federal agency to begin the prioritization of projects. Allowing a municipality to gather proof of being “clean” or a “dirty” pipe from prior data collected by other entities will accelerate the repair work that is required.

We would like to again thank the Environmental Protection Agency for this opportunity to comment on the Small Municipal Separate Storm Sewer System discharge permit in Massachusetts North Coastal Watersheds. We appreciate the hard work that has gone into this permit, and applaud the improvements of this permit over the previous permit.

Very truly yours,

EKongKar Singh Khalsa  
Executive Director  
Mystic River Watershed Association