

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
BOSTON REGION

In the Matter of:

PUBLIC HEARING:

RE: NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMITS FOR STORMWATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4)
IN MASSACHUSETTS NORTH COASTAL WATERSHEDS
NPDES PERMIT NOS. MAR041800, MAR042800 AND MAR043800

Auditorium
10 Causeway Street
Boston, Massachusetts

Thursday
March 23, 2010

The above entitled matter came on for hearing,
pursuant to Notice at 10:15 a.m.

BEFORE:

DAVID WEBSTER, Chief, Industrial Permits Branch
THELMA MURPHY, Permit Writer
U.S. Environmental Protection Agency
New England Region I
One Congress Street, Suite 1100
Boston, MA 02114

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P R O C E E D I N G S

(10:15 a.m.)

1
2
3 MR. WEBSTER: Good morning. My name is David
4 Webster. I'm the Chief of the Industrial Permits Branch
5 with New England Regional Office of the United States
6 Environmental Protection Agency, also known as Region 1 EPA.
7 Joining with me here this morning is Thelma Murphy, EPA's
8 permit writer for the permits which are the subjects of this
9 hearing.

10 This public hearing, concerning the reissuance of
11 the National Pollutant Discharge Elimination System or
12 NPDES, or "nipdees", general permits for storm water
13 discharges from small municipal separate storm sewer systems
14 or MS4s to certain waters of the north coastal watersheds of
15 the Commonwealth of Massachusetts shall come to order.

16 First, for clarification, a municipal separate
17 storm sewer system or MS4 is a publicly owned system of
18 drains, gutters, catch basins, pipes, conveyances, treatment
19 units, outfalls and other devices used to collect and
20 convey, treat and discharge storm water to surface water.

21 Along with describing a municipality's storm water
22 collection system, the term MS4 also includes systems
23 similar to separate storm water systems in municipalities
24 such as systems at military bases, large hospitals or prison
25 complexes and highways and other thoroughfares.

1 EPA Region 1 issued the current general permit for
2 the storm water discharges from the small MS4s on May 1,
3 2003. That permit expired on May 1, 2008.

4 EPA is now proposing to reissue the small MS4
5 general permit for MS4s in certain geographical areas. The
6 new small MS4 general permit continues to apply to small
7 MS4s located in urbanized areas. At this time, EPA is not
8 designating any additional small MS4s as requiring coverage
9 under this permit.

10 Region 1 EPA proposes to reissue three NPDES
11 General permits for storm water discharges to certain waters
12 within the commonwealth of Massachusetts from MS4s in the
13 north coastal watersheds of the Commonwealth of
14 Massachusetts. The permit numbers for these three general
15 permits are MAR041800 for traditional MS4s, meaning MS4s
16 owned by cities and towns.

17 MAR042800 for non-traditional MS4s, meaning MS4s
18 owned by other public facilities other than transportation
19 facilities.

20 And finally, MAR043800, for non-traditional
21 transportation systems MS4s meaning MS4s owned by other
22 public facilities that are transportation facilities.

23 Thus, the permit which is the subject of this
24 hearing is actually three general permits. Each general
25 permit is applicable to particular entities within

1 Massachusetts' north coastal watersheds geographical area.

2 Since most of the permit terms and conditions are
3 identical across all three permits, for simplicity's sake, I
4 will be referring to these three general permits as the
5 Massachusetts north coastal small MS4 general permit or
6 simply, the permit.

7 The permit will be issued in final form upon
8 consideration of comments received during the public comment
9 period. Comments can be made in writing to EPA or orally
10 during this hearing.

11 The NPDES program issues permits to all facilities
12 that discharge to waters of the United States. The permit
13 writer develops effluent limits, best management practices,
14 monitoring requirements, reporting requirements, and
15 eligibility requirements based on information from the
16 facilities, Federal regulations, State water quality
17 standards, technical guidance published by EPA and the
18 Street, and State and Federal policy and other information.

19 The conditions in this draft permit were
20 established pursuant to the Clean Water Act, Section 402
21 (p) (3) (iii) to ensure that pollutant discharges from small
22 MS4s are reduced to the maximum extent practicable or MEP,
23 protect water quality and satisfy the appropriate water
24 quality requirements of the Clean Water Act.

25 The new draft Massachusetts north coastal small

1 MS4 general permit builds upon the requirements of the
2 previous small MS4 General permit issued in 2003. This new
3 draft permit requires small MS4s to continue to implement
4 the storm water management programs required by the previous
5 permit including the six -- including six control measures.

6 The new permit contains more specific requirements
7 and best management practices for each control measure.

8 Under the provisions of the draft general permits,
9 owners and operators of small MS4s that discharge storm
10 water will be required to submit a notice of intent or NOI
11 to Region 1 EPA to be covered by general -- by the general
12 permit and will receive a written notification from EPA of
13 permit coverage and authorization to discharge under the
14 general permit.

15 More information on the NPDES program available in
16 the NPDES program summary entitled Water Permitting 101.
17 Copies are available this morning.

18 Along with this documented there is a list of web
19 addresses where you can find additional information on the
20 NPDES program.

21 Also available today, we have a multi-page table
22 presenting a summary of requirements contained in the draft
23 Massachusetts north coastal small MS4 general permit. Also
24 available is a multi-page table presenting a comparison of
25 the draft permit to the 2003 general permit requirements.

1 Both of these -- and I think, we also have a
2 frequently asked questions document out there. All those
3 documents are on the EPA website and they are available for
4 handouts today.

5 EPA released the draft NPDES Massachusetts north
6 coastal small MS4 general permit on January 25, 2010 with a
7 notice of availability published in the Federal Register on
8 February 4, 2010 as recorded in the Federal Register 75 page
9 78786.

10 The public comment period is from February 4, 2010
11 to March 31, 2010. The legal notice for this hearing was
12 published in the Federal Register on February 4, 2010.

13 Since February 4th, the draft NPDES Massachusetts
14 north coastal small MS4 general permit, and a fact sheet
15 explaining the draft general permit, and supporting
16 documents have been available to interested parties for
17 review and comment.

18 The fact sheet provides a brief summary of the
19 basis for the draft general permit condition and significant
20 factual, legal and policy questions considered in preparing
21 the draft general permit.

22 You have probably received or have seen copies of
23 the draft general permit and fact sheet. The draft general
24 permit, indexes and fact sheets are available.

25 And I'm going to read the website. Although, it

1 is in the handouts as well.

2 <http://www.epa.gov/region01/NPDES/stormwater> -- one word --
3 [\draft_manc_sms4gp.html](http://www.epa.gov/region01/NPDES/stormwater/draft_manc_sms4gp.html).

4 It's also on multiple handouts, or ask anybody
5 from EPA what that address is.

6 You may also request to receive a hard copy of the
7 draft general permit and fact sheet. And we have a few
8 copies here today.

9 As previously mentioned, comments can be made in
10 writing to EPA or orally during today's hearing.

11 Today's hearing is an informal, non adversarial
12 hearing providing interested parties with an opportunity to
13 make oral arguments and to submit written comments on the
14 proposed general permits.

15 There will be no cross examination of either the
16 panel or the commenters. Any questions directed to the
17 commenters from a panel member will be for clarification
18 purposes only.

19 The public hearing is being recorded. And the
20 transcription will be part of the official administrative
21 record for this general permit.

22 However, to ensure the record's accuracy, we
23 highly recommend that you submit written comments in
24 addition to the comments you make this morning.

25 As I described earlier, the public comment period

1 will close at midnight, March 31, 2010. Following the close
2 of the public comment period, EPA will review and consider
3 all comments received during the public comment period both
4 in writing and at today's public hearing. EPA will prepare
5 a document known as a response to comments that will briefly
6 describe and address significant issues raised during the
7 comment period and what provisions, if any, the draft permit
8 has been changed and the reasons for the changes.

9 A notice of availability of the final small MS4
10 general permit for the Massachusetts north coastal
11 watersheds and a response to comments will be published in
12 the Federal Register once the general permit is finished.

13 In addition, the notice of availability and both,
14 the response to comments and the final general permit will
15 be mailed for e-mailed to everyone that commented on the
16 draft general permit.

17 The actual complete final small MS4 general permit
18 the Massachusetts north coastal watersheds and the response
19 to comments will be available on the EPA website as well.

20 Under section 509(b) of the Clean Water Act,
21 judicial review of this general permit can be had by filing
22 a petition to review in the United States Court of Appeals
23 within 120 days after the general permit is considered
24 issued for the purposes of judicial review.

25 Under Section 509(b) (2) of the Clean Water Act,

1 the requirements of this permit may not be challenged later
2 in civil or criminal proceedings to enforce these
3 requirements.

4 In addition, this permit may not be challenged by
5 other agency proceedings -- in other agency proceedings.

6 To begin requests -- to begin, I will be
7 requesting comments from Federal, State and local officials
8 and members of the public in that order. I will use the
9 attendance cards that were prepared to get a general sense
10 of the order of people to speak. These cards will be used
11 to notify people and also, to notify you of the subsequent
12 final permit decision.

13 When called upon to speak, you should come to the
14 podium to speak. I'd ask that, before you begin your
15 statement, please identify yourself and your affiliation for
16 the record.

17 There's a fairly large number of people that have
18 indicated they want to comment today. In order to have as
19 many participants as possible to express their views, I ask
20 that you try to limit your comments to five minutes.

21 If, at any time, you are asked to stop, but you
22 have not finished, I will ask you to defer the remainder of
23 your comments until each person has had an opportunity to
24 speak. Then, if there is time at the end of the morning, we
25 will give you an opportunity to come back and finish up.

1 If you have a written statement, you may read it
2 if it can be done in the five minutes. If not, I'll ask you
3 to summarize the statement. In either case, I encourage you
4 to submit the written statements tonight before the close of
5 the public comment period on March 31st.

6 With that introduction and kind of the rules for
7 the hearing, I'd call Henry Barbaro from the Massachusetts
8 Department of Transportation.

9 MR. BARBARO: Thank you. Okay. Five minutes.

10 Okay. I have a bunch of notes here and I've been
11 taking them furiously this morning.

12 My name is Henry Barbaro. And I supervise the
13 wetlands units within the Environmental Services Section of
14 the Highway Division within the Massachusetts Department of
15 Transportation.

16 It sounds highly bureaucratic, but, it's not so
17 bad.

18 Before -- before I touch upon Mass DOT's comments,
19 I wanted to make more of a personal observation. And what
20 I'd like to do is commend the authors of the National
21 Research Council's report titled Urban Storm Water
22 Management in the United States. And this was the basis for
23 this other comment period dealing with the proposed rule
24 changes. That comment period ended February 26th.

25 And it has to do with just the fact that they

1 acknowledge -- the simple thing, they acknowledged
2 population growth as an important driver of urban sprawl.

3 And what they said was, these findings confirm the
4 common sense, but often unacknowledged, proposition that
5 there is a strong positive relationship between sprawl and
6 population growth.

7 Now, why I bring that up is because, in July of
8 '08, there was a webinar and it was called Storm Water 101,
9 The Basics and Intro the NPDES Storm Water Program. And one
10 of the slide says, it is how and where we are growing that
11 are driving our significantly increasing rate of land
12 consumption, not domestic population growth.

13 And I -- I thought that was a bit
14 counterintuitive. So, I'm happy that the NRC report has
15 acknowledged this. And the fact that they do cite this
16 population growth as primary driver of urban sprawl, I
17 think, lends credibility to the report.

18 All right. So, on to the highlights of the Mass
19 DOT's comments. And we've reviewed the draft MS4 permit for
20 the north coastal Massachusetts. And we're going to provide
21 a variety of comments for the written comment period as of
22 March 31st.

23 But, here are the highlights. The applicability
24 of many of the requirements to Mass DOT, that category of
25 these rules applying to Mass DOT, the costs and scheduling

1 of installing BMPs for discharges to impaired waters, cost
2 and schedule for a phosphorus control plan within the
3 Charles River watershed, illicit discharge detection,
4 including the cost, scheduling and other requirements,
5 calculating impervious areas, storm water pollution
6 prevention plans and maintenance facilities, and wet weather
7 monitoring, which Thelma just told us relates to identifying
8 and finding illicit connections.

9 So, I'm going to briefly expand on two points.
10 One is the applicability of this proposed permit to Mass DOT
11 and the other one is the illicit discharge detection
12 element.

13 First of all, applicability, Mass DOT operates its
14 highway -- highway network over an expansive area that spans
15 much larger and more diverse areas in comparison to a
16 traditional MS4.

17 Our drainage system, within the NPDES
18 jurisdictional area includes more than 17,000 outfalls and
19 2800 miles of road. These roads span multiple watersheds,
20 are often isolated and discontinuous and are separated by
21 long distances.

22 Therefore, compliance with these permits is very
23 costly and oftentimes results in limited water quality
24 benefits.

25 The Mass DOT owns relatively narrow corridors and

1 is with very limited space, in addition, immediately
2 adjacent to almost all of its roadways that it operates.
3 These pre-existing corridors and the lack of available space
4 can severely limit the area that is available for installing
5 BMPs.

6 Also, the area of impervious surface that most
7 transportation projects require is fixed by lane number and
8 lane width requirements. Safety considerations dictate the
9 lane configuration with an available space for BMPs.

10 Therefore, Mass DOT cannot realistically comply
11 with -- for example, the proposed rules for decreasing
12 impervious area. We feel that Mass DOT, for these reasons,
13 should have a separate or individual permit that addresses
14 these unique constraints.

15 My last -- or my second and last point, and
16 hopefully, I am close to being on time, it has to do with
17 illicit discharge detection. Our highways, due to their
18 setback and isolated and linear nature are intrinsically
19 unlikely to have illicit drainage connections. This has
20 been acknowledged in the NRC urban storm water management in
21 the United States report, which I cited earlier, and
22 indicates that highway systems have a low potential for
23 illegal drainage connections.

24 In fact, Mass DOT has been performing illicit
25 discharge reviews. But, from the many miles that we've

1 reviewed, we have not identified one illicit drainage
2 connection.

3 Let's see. For example, the primary highways
4 within the lower Charles River basin were investigated for
5 illicit discharges and connections. This includes the towns
6 of Wellesley, Dedham, Newton, Waltham, Weston, Watertown,
7 Cambridge, Boston, Arlington, Belmont, Brookline, Lexington,
8 Lincoln and Somerville.

9 All of these -- we looked at all of these urban
10 areas, our highways through these urban areas, yet, not one
11 illicit discharge was identified.

12 Consequently, we estimate that the illicit
13 discharge efforts, the investigative efforts would cost Mass
14 DOT in the range of 5 to \$7,000,000 with limited, if any,
15 water quality improvements.

16 And this relates to the wet weather sampling which
17 is also costly. Again, Mass DOT operates approximately
18 17,000 outfalls. And we have been conducting wet weather
19 monitoring -- if we were to conduct wet weather monitoring
20 at these outfalls, it would be very expensive and time
21 consuming. We are estimating that, for each outfall, we are
22 in the vicinity of \$150.

23 So, the total, just analytical cost for sampling
24 all of these outfalls would exceed \$2.6 million. But, this
25 does not include the costs that have to do with labor and of

1 sampling these outfalls as well as all the traffic control
2 that would be necessary. And these costs would be much
3 higher than the 2.6 million.

4 So, in close to closing here, as a recap, it has
5 been Mass DOT's experience that virtually all illicit
6 discharges that we have identified have been identified by
7 the maintenance and construction crews and with follow-up
8 investigations by the environmental services section.

9 So, Thelma was looking for suggestions. We feel
10 that our system -- that for our system, the Mass DOT highway
11 network, education of our staff and direct action to remove
12 any identified connection is a more efficient use of
13 taxpayer money, rather than methodically investigating every
14 mile of road.

15 And that concludes my brief statements.

16 And I just wanted to thank EPA very much for the
17 opportunity to express our concerns on this draft MS4
18 permit.

19 Thank you.

20 MR. WEBSTER: Thank you, Mr. Barbaro.

21 I would just call Mark Krackiewicz from the
22 Charles River Conservatory. Sorry about that.

23 MR. KRACKIEWICZ: Good morning. My name is Mark
24 Krackiewicz, a board member of the Charles River
25 Conservancy. I speak for the Conservancy today.

1 The Charles River Conservancy has long believed
2 that the public investments made, the improved waste water
3 treatment, elimination of combined sewage overflows and
4 management of strong water outflows to make the Charles
5 River fishable and swimmable should be accompanied by active
6 measures to restore public swimming to the Charles.

7 Accordingly, with support from the Boston
8 Foundation, the Massachusetts Environmental Trust, and the
9 Cabot Family Charitable trust, the Conservancy has
10 undertaken research on possible sites to restore swimming in
11 the Charles and on swimming structures.

12 Public education, and advocacy for the return of
13 swimming has included support of the annual Charles River
14 One Mile Swim Race. Public exhibits of river swimming
15 facilities in other countries, notably Switzerland. And
16 education efforts through our newsletter and other media.

17 The Conservancy is actively supporting the Charles
18 River Water Quality Commission established under recent
19 Massachusetts legislation to study how water quality can be
20 further improved in the Charles and public swimming enabled.

21 As you all know, a major remaining impediment to
22 swimming in the Charles is the summer occurrence in the
23 Charles River of excessive phosphate loads causing toxic
24 algae blooms. These result largely from storm water runoff,
25 especially in the wet season, and after storms, and during

1 the dry season wastewater treatment outflows.

2 To reach consistently swimmable water quality
3 standards, phosphorus loads and pollution from storm water
4 systems will need to be reduced.

5 In view of its interest to returning public
6 swimming to the Charles, the Charles River Conservancy
7 supports the requirements that the draft general permit
8 place on municipalities to better monitor, prioritize and
9 address pollution loads from their separate storm systems.

10 The Conservancy has also previously endorsed the
11 proposed Massachusetts Department of Environmental
12 Protection's storm water management regulations.

13 The provisions of EPA's draft general permit
14 requiring preparation of phosphorus control plans by
15 communities bordering the Charles are particularly
16 noteworthy. However, four years seems an excessively long
17 allowance of time before the plans are due.

18 Further, a 10 year period for implementation of
19 the plans is overly generous.

20 Under the prior general permit, communities have
21 already had sufficient notice that actions were going to be
22 require them to curtail pollution loads from storm water
23 systems. Managers should have prepared themselves
24 accordingly.

25 I have enough gray hair and I worked in the State

1 government back in the mid '70s. I remember, we were
2 talking about these sort of things 30 years under section
3 208 of the Clean Water Act.

4 Since then, I've had a different career. I hoped
5 before I ended up in a wheelchair, we will see these plans
6 implemented.

7 The Conservancy recommends that the general permit
8 require municipalities to post on line easily accessible
9 copies of the storm water management programs. Phosphorus
10 control plans, water quality monitoring reports and progress
11 reports.

12 The Conservancy operates an active volunteer
13 program along with the park plans for the Charles River.
14 Ready access to such information would allow our volunteer
15 organizers to educate and brief volunteers on efforts being
16 made by municipalities to reduce pollution loads from storm
17 water runoff's. And thus, further public outreach in
18 support of storm water management efforts.

19 We urge EPA to incorporate the suggestions made by
20 the Conservancy and our fellow environmental groups here
21 today, and above all, to finalize and issue the permit in a
22 timely fashion so that we can all begin to benefit from
23 reduced pollution loads in our rivers.

24 Thank you.

25 MR. WEBSTER: Thank you very much.

1 I'd next call on, I think it is David Burlock from
2 MWH. Does that make any sense?

3 I'm having a hard time with the handwriting?

4 THE REPORTER: David Bedoya?

5 MR. WEBSTER: Bedoya?

6 MR. BEDOYA: No, no. It's a mistake. I wanted to
7 check no. Sorry.

8 MR. WEBSTER: Oh, okay.

9 Mark Coviello, the Town of Natick Town Engineer.

10 MR. COVIELLO: Good morning. My name is Mark
11 Coviello. I am the Town Engineer for Natick. The
12 engineering department is responsible for the management of
13 the storm water plan for Natick.

14 Many of the towns here would agree that, we are
15 not opposing the intent of the program. But, the
16 implementation of the very extreme requirements set forth in
17 this new permit will not hinder the Town's ability to
18 perform these tasks effectively, it may also hamper
19 municipality's ability to adequately perform the tasks that
20 were most effective during the current permit.

21 More municipality involvement should have occurred
22 during -- during the implementation of this current permit's
23 requirements.

24 A one size fits all permit is being proposed that
25 fails -- it fails to reflect the diversity among the MS4

1 regulated communities and the steps that these communities
2 have already taken to improve storm water quality, and to
3 reduce storm water volume by increase recharge it to
4 groundwater.

5 As will be repeated by many of the communities
6 here today, if this permit is approved in its entirety, it
7 will cause major economic problems for the towns. We are
8 already struggling to keep our budgets balanced, to
9 incorporate some of these requirements would bring hardship
10 and decisions that could impact public safety, education and
11 other aspects of the municipal life.

12 There is no guarantee that the money spent will
13 yield enough results to make the expenditure of the money
14 warranted.

15 Just a few comments with -- that we had with the
16 issues of this permit. We will summarize those in more
17 detail in our written comments.

18 Wet weather sampling. There are too many
19 variables with this -- with this testing that could cause
20 skewed results that will not accurately depict the
21 impairments that are occurring.

22 A large expenditure of money will occur for a task
23 that will yield questionable results at best.

24 I think we heard earlier today that depending on
25 when you go out and actually sample after a storm event, the

1 results could vary greatly from the first flushable storm
2 'til some time after the storm has worked its way through
3 the system. It also has to do with the frequency of storm
4 events that happen.

5 You could test, right after a storm event that we
6 just had, where all the system -- where all the impurities
7 flush through the system. If we had a rainfall event in a
8 couple of weeks from now, and we went out and test, the
9 results would be quite different than if we were to test for
10 the storm that we just had.

11 Catch basin and street sweeping frequency. This
12 task does not take into consideration any of the work that
13 has been performed during the previous permit by the Town on
14 maximizing cleaning while maximizing the associated
15 benefits. To go to a more frequent schedule for street
16 sweeping and sidewalk cleaning will put a strain on many if
17 not all towns.

18 In regards to the catch basin cleaning, the 50
19 percent threshold will require more work for towns
20 investigating and measuring at each catch basin until they
21 meet this threshold. And then, once -- then, once we reach
22 the 50 percent designation, document the amount of material
23 taken from each catch basin.

24 In Natick, cleaning the structures on a once every
25 three year cycle has proven to be beneficial for a storm

1 water standpoint as well as a financial one.

2 With regards to phosphorus TMDL. The removal
3 percentages were created -- the removal percentages in this
4 new permit were created using land use, and not taking into
5 consideration what is actually occurring by field tests to
6 determine the results.

7 We believe that this permit -- we believe that if
8 this permit is finalized, the EPA should work -- before this
9 permit is finalized, EPA should work with the municipalities
10 to revise the permit so that it will still meet the intent
11 of what EPA is looking to accomplish, but will allow the
12 towns to perform these tasks in a manner that will not cause
13 adverse financial impacts.

14 Just a little information about Natick. Natick is
15 approximately 16 square miles, with a population of 34,000.

16 We are split between two watersheds.
17 Approximately half of Natick is -- drains into the Charles
18 River watershed, and the other half is into the SUASCO,
19 which is the Sudbury, Assabet, Concord River watershed.
20 This draft permit for the area that includes the majority of
21 the SUASCO watershed has not yet been issued to date, which
22 may raise additional concerns for Natick.

23 We have over 500 drainage outfalls, approximately
24 500 -- approximately 4500 catch basins that we are
25 responsible to clean. We have approximately 1800 drains

1 manholes, approximately 110 miles of drainage pipes, and
2 numerous water quality structures that we are responsible
3 for.

4 So, you can see that we are concerned with the
5 financial impacts.

6 We estimate that this draft permit will cost
7 Natick approximately \$250,000 a year, above our budget for
8 the current Phase 2 permit.

9 Thank you.

10 MR. WEBSTER: Thank you.

11 I'd call Stephen Fader from Wellesley DPW.

12 MR. FADER: Thank you. My name is Stephen Fader.
13 I am the Town Engineer for the Town of Wellesley,
14 Massachusetts.

15 Wellesley is primarily a residential community
16 located about 13 miles west of Boston in the lower Charles
17 River basin. It has a population of approximately 26,000.
18 And Wellesley has been working toward the reduction and
19 elimination of pollutants in its municipal storm water
20 discharges, well before the initiation -- excuse me, of the
21 NPDES Phase 2 permit program in 2003.

22 The town executed a voluntary memorandum of
23 understanding, MOU, with the EPA in 1996. And at that time,
24 began implementing many of the minimum control measures that
25 were eventually required under the 2003 notice of intent.

1 That said, I'd like to now comment on some
2 specifics on the permit program that is now before us.

3 The proposed permit appears to be written in a one
4 size fits all format. It does not reflect the differences
5 among the communities.

6 Each of these communities have taken various steps
7 to comply with the original five year permit. Steps
8 implemented during the original permit period varied from
9 community to community with varying results.

10 The proposed MS4 permit takes none of this into
11 account and leaves no flexibility in its level of
12 compliance.

13 One of the provisions in both the lower Charles
14 River MOU program in the 1990s and the 2003 general permit
15 was the ability for the town to tailor the BMPs selected to
16 achieve the maximum benefit utilizing available financial
17 resources and manpower.

18 It would appear that, under the proposed notice of
19 intent, there is considerably less flexibility. For
20 instance, the requirement to sweep all streets and sidewalks
21 twice a year will effectively double the street sweeping
22 budget.

23 The requirement to maintain catch basins at no
24 more than 50 percent full means and that we will have
25 significantly reduced existing storage capacity in every

1 catch basin and an increase of the catch basin cleaning
2 frequency. This will again result in a higher cost to
3 perform this function.

4 The requirement to perform dry and wet weather
5 sampling of all outfalls is especially burdensome.
6 Wellesley has 330 outfalls. Timing of the samples is
7 critical during wet weather and has proven to be difficult
8 to schedule to obtain proper samplings that are
9 representative of the first flush of a runoff.

10 It's difficult to find an employee that will go
11 out at 2:00 o'clock in the morning to take the first flush
12 when that occurs at that time.

13 Wet weather sampling will also include testing for
14 parameters, such as E Coli and phosphorus that cannot be
15 done in the -- excuse me - in the field.

16 While it is acknowledged that there is a provision
17 for in stream representative monitoring, the NOI is unclear
18 as to the extent that this may be allowed. It would seem
19 that some streamlining of the requirements could be
20 accomplished using either the IDD approach of sampling by
21 priority catchments, or a systematic approach of 25 percent
22 sampling per year.

23 The cost to monitor and sample 330 outfalls is
24 extremely -- is extraordinary and serves to place a severe
25 financial burden on the town.

1 Another concern is the aggressive schedule that
2 EPA proposes for implementation of the program. Although
3 the general permit appears to have -- to have been two years
4 in development, the permittee will have only 90 days to file
5 their NOI after it is finalized. Within 120 days after
6 that, the formal storm water management program must be
7 complete.

8 There are numerous elements of the program that
9 the town will most likely have to utilize environmental
10 consultants for assistance.

11 This will require compliance with statutory
12 procurement requirements and can be extremely time
13 consuming. The overwhelming majority of the work performed
14 for the initial five year permit was accomplished in house.
15 This will no longer be possible and at a significantly
16 greater expense.

17 As I indicated earlier, the outfall monitoring
18 program will be expensive. The cost of street sweeping and
19 catch basin cleaning will increase dramatically.

20 These are just two components of the proposed
21 requirements. Time and space prohibit listing of all the
22 issues municipalities will face as they work toward
23 compliance with the requirements of the new permit.

24 Preliminary projections indicate that this permit
25 will cost Wellesley somewhere between \$250,000 a year to

1 \$500,000 a year to comply with.

2 Nevertheless, the submittal of the NOI is a
3 commitment to implement all the requirements of the general
4 permit. With that said, we are being asked early in the
5 process to commit to programs that there are no guarantees
6 that there will be adequate funding in place now or over the
7 five year permit life.

8 The requirements under the proposed permit are
9 well beyond the normal operating budgets of town government.
10 We may have to explore nontraditional funding mechanisms
11 such as storm water utilities, or tax override.

12 Any of these approaches will require town meeting
13 and/or voter approval. Thus, there is no guarantee the
14 funding can even be obtained.

15 It may not be feasible to comply with some of the
16 requirements, even though town government is committed to
17 implement them.

18 Further, there are no guarantees that compliance
19 with the permit requirements, and expenditure of significant
20 funds will have significant benefit to our waterways.

21 Finally, the stringent requirements of the
22 proposed small MS4 general permit were developed with little
23 input and participation from municipalities. Some input is
24 being solicited now, at the very last minute.

25 Hence, the target group expected to comply with

1 the permit requirements has had virtually no input into its
2 development. This does not represent an open and fair
3 process.

4 The date for submission of NOI's should be placed
5 on hold until municipalities have had an opportunity to
6 engage the regulatory agencies in an open dialogue regarding
7 permit requirements.

8 The town of Wellesley is committed to improvement
9 of its waterways and those of the Commonwealth. However, we
10 urge EPA to implement these changes with goals that are more
11 realistically attainable and within the financial
12 constraints of the current economic climate.

13 Thank you for the opportunity to present our
14 comments.

15 MR. WEBSTER: Thank you very much.

16 I then call Patrick Herron from the Mystic River
17 Watershed Association.

18 MR. HERRON: Good morning. I want to thank the
19 EPA for holding this open hearing this morning to share
20 concerns and our support for the MS4 permit.

21 My name is Patrick Herron. And I am the Water
22 Quality Monitoring Director at the Mystic River Watershed
23 Association just north of Boston.

24 We have come here this morning to express for the
25 permit, which we think is a great improvement over the 2003

1 permit and will really move our waterways toward improvement
2 in quality.

3 The Mystic River Watershed Association will be
4 working to develop a very detailed letter in support of this
5 permit, and addressing some of the concerns about the
6 municipalities about costs and ways that watershed
7 organizations can help achieve much of this work.

8 Today, I just want to speak for a moment about one
9 particular part of the permit, which is the sanitary sewer
10 overflows. Sanitary sewer overflows are the result of the
11 storm water making their way into the sewer system.

12 The amount of language in the permit around the
13 sanitary sewer overflows is limited, but does detail
14 requirements about reporting. Some of those requirements
15 were in the 2003 permit, as well if I understand correctly.

16 This is a very typical -- the materials I'm going
17 to show, by the way, are on our website as well. But, this
18 is a very typical scene that many of you saw during this
19 most recent incredible storm.

20 This is a man hole in the middle of the street,
21 where the storm water has contributed to the sewage flow
22 getting so high as to erupt onto the street.

23 I'm just going to speak here, that way it will be
24 easier for me to come over here.

25 THE REPORTER: I don't think that's a good idea.

1 MR. WEBSTER: She can't hear you over there.

2 MR. HERRON: Oh, sorry about that.

3 This is basically what it looks like up detailed
4 and close. Often, you will see toilet paper coming out of
5 the sewer.

6 The arrow on the right.

7 Oh, we're good.

8 So, this is a picture from a municipality within
9 our watershed. This is an overflow occurring in the circle.

10 These pictures are from this most recent storm,
11 but, they are representative of most large storms that we
12 have. So, these occur multiple times every year.

13 This particular sewage overflow was continuing as
14 of Wednesday afternoon.

15 This is the storm drain right next to the sewage
16 overflow that -- that's toilet paper that is covering the
17 outflow. This is about 100 yards from the Mystic River.

18 You can see that the flow can be quite significant
19 in some areas. That is an area where that is sewage and
20 water that has filled up the road. This is a place where
21 this occurs probably once a year and has occurred as long as
22 the residents have lived in this location.

23 This is the place where the municipality is trying
24 to transport their sewage into the MWRA trunk lines. At
25 that point, the MWRA trunk lines are already filled with the

1 storm water from the municipalities upstream, along with the
2 sewage.

3 There are children who live both in that house
4 across the street and the house that is just to the left of
5 where I'm making reference to.

6 This is just to get a sense of the flow coming
7 from those two manholes as well. Thelma.

8 This is just another sewage outflow. This is just
9 actually being pumped from the sew system into the outflow.
10 Again, we're about 100 yards from the Mystic River.

11 Again, you know, the municipalities are working
12 incredibly hard during a storm like this. And what choice
13 does a municipality have when the sewage will back up into
14 somebody's house.

15 This is a sanitary sewer overflow that was
16 documented where you can see the toilet paper just has caked
17 the landscape. This is -- this went on for four or five
18 days.

19 I guess, what I'd like to make reference to
20 specifically, in terms of the sanitary sewer overflows is,
21 we have really known causes that are occurring.

22 There are three sources of inflow, predominantly.
23 There are probably others that people could detail to me.
24 But, we have catch basins that are hooked up to the sewer
25 systems in most communities, in limited places. We have

1 roof drains and sump pumps that are both put into the sewer
2 system.

3 These are very difficult situations to resolve.
4 But, they are not intractable as some would have you -- some
5 would suggest.

6 There is a strong need for the SSO reporting
7 requirements in this document, particularly strong language
8 about detailing the volumes and the seriousness of what are
9 a health concern for the people who live in these
10 neighborhoods.

11 There is very little public outreach in most
12 communities about what this means for people who live on the
13 street, for the people who walk their dogs, for the kids who
14 walk to school.

15 We should require, within this permit, a program
16 to inventory these areas that are contributing significant
17 inflow to the sewer system.

18 This is an MWRA release point on the Mystic River.
19 This is a 7 -- I think, it is a 7 foot by 6 foot wide relief
20 point that's dumping into the Mystic River. This is really
21 a -- we don't really know how big an impact this is.

22 This is millions of gallons over three or four
23 days. And this happens every year.

24 I had somebody stand there just to give you a
25 sense of the size of the problem. This is -- what does MWRA

1 -- what can they do. This is a point where they are taking
2 the storm water from the municipalities upstream. They
3 can't turn the storm water away.

4 MWRA is doing what they have to do to make sure
5 that this isn't going into people's homes.

6 But, I think, it makes reference to how the inflow
7 from each community is contributing down stream to a much
8 larger problem, millions of gallons of sewage and storm
9 water.

10 You can see -- it's difficult to see, but that is
11 a plume that comes about a third of the river.

12 And this is the Alewife Brook pumping station, and
13 this is the last reference I will make to it. This is the
14 pump station overflowing as it does, about once a year.
15 This is raw sewage that is just flowing out into Alewife
16 Brook.

17 MR. WEBSTER: I'd like to try to wrap up, if you
18 could.

19 MR. HERRON: Okay. I guess, the point very
20 quickly is sanitary sewer overflows are all about storm
21 water. And the MS4 permit really needs specific language
22 that moves municipalities to address storm water in the
23 sewer systems.

24 And finally, last slide, it is this failure to
25 remove this inflow that is resulting in an environmental and

1 health cost for the citizens who live downstream of the
2 communities that contribute this inflow and result in a
3 large release of sewage and storm water for long periods of
4 time.

5 Thank you very much.

6 MR. WEBSTER: Thank you.

7 I'm calling on Thomas Hayes from the Town of
8 Burlington.

9 MR. HAYES: Good morning, my name is Tom Hayes. I
10 am the Town Engineer in Burlington.

11 The Town of Burlington supports pollution
12 reduction. We support clean storm -- excuse me -- clean
13 storm water.

14 Phase 2 regulations from '04 were a very good
15 start. We were very proactive. We felt we complied with
16 the regulations. We also support continued and high levels
17 of pollution prevention. But, you know, we feel that the
18 draft permit really goes too far and goes too fast.

19 The paper work burden for the Town is staggering.
20 The costs of -- I've got some estimates for the paper work
21 alone to comply with the permit. We're talking anywhere
22 between 80 and \$150,000 per year.

23 That does not include chasing illicit connections
24 as well as all doing all the wet water -- wet weather and
25 dry weather monitoring.

1 The Town of Burlington is a very spread out
2 community. It was a rural community. And we are urbanized
3 now.

4 But, we do not have a centralized drainage system.
5 I have spoken to other urbanized communities and they have
6 25 outfalls. They may have 50 outfalls. We have hundreds
7 of outfalls.

8 The costs and the logistics, the mechanics of
9 actually doing the sampling is really incredible.

10 You could imagine the burden, the costs for these
11 small communities in these economic times to comply with
12 this permit.

13 We do -- again, we do support pollution reduction.
14 If the EPA continues to chase this permit at the current
15 level of detail, we would make a few suggestions.

16 We would -- we would foster more collaboration,
17 more partnership with the EPA, the DEP, the different
18 communities.

19 Some -- you know, I don't want to stand here and
20 say, we don't want to do this because it costs too much. We
21 want to -- we want to comply. We want clean storm water.

22 Some of the things that -- a few suggestions.
23 We'll get into maybe more detailed responses with some of
24 the nitty-gritty type things, but, some of the big
25 components that we need help with is reports.

1 A lot of these reports, we spend a lot of time, a
2 lot of staff time, a lot of consultant's time generating
3 some of these reports. If we could have streamlined
4 templates from the EPA, a very simple. Let's get the
5 information down point by point.

6 Education. Instead of having 85 communities or 84
7 communities all spinning their wheels trying to develop
8 their own educational programs and their own websites, maybe
9 we can have the EPA DEP develop websites, a generic website
10 that we all can link to, and use that.

11 The same thing with brochures. Why should we all
12 create our own individual brochures. Maybe there is a
13 little bit of originality in each -- in each community,
14 maybe a little bit of fine tuning. But, if we had some
15 templates, some pamphlets, some door hangers, things that we
16 could easily download, print out, pass out at schools, those
17 type of things.

18 And also sampling. We have a very spread out
19 drainage system.

20 If -- if there were provisions to say break the
21 community down into mini basins, to allow us to do some in
22 stream sampling. If -- if we don't find pollution during a
23 storm on a particular stream or drainage ditch, then, most
24 likely, you're not going to have an illicit connection
25 upstream.

1 That's my two cents. And thank you very much for
2 allowing me to comment.

3 MR. WEBSTER: Thank you.

4 Calling Chip Fontaine from Weymouth.

5 I'm going to pass.

6 Susan Beede from Mass Rivers Alliance.

7 MS. BEEDE: Good morning. My name is Sue Beede.
8 And I am the Policy Director for the Massachusetts Rivers
9 Alliance.

10 The mission of the alliance is to protect and
11 restore rivers in Massachusetts. We represent 26
12 conservation groups around the state as well as individuals.

13 In addition to our testimony today, we will also
14 be submitting detailed written comments on the draft permit.

15 Storm water is the biggest polluter of most
16 rivers, streams, lakes, ponds, wetlands in coastal areas in
17 Massachusetts.

18 It washes dog poop, phosphorus, nitrogen,
19 gasoline, oil, road salt, metals and sediments into nearby
20 waters making them unfit for swimming, drinking, and shell
21 fishing after rain storms.

22 Storm water also erodes and scours river and
23 stream beds, destroying habitats of fish, frogs and aquatic
24 insects.

25 As we witnessed this past week, heavy rains turn

1 storm watcher into flood water which threatens public safety
2 and damages property at great cost to society and
3 individuals.

4 Yet, storm water is also a valuable resource.
5 It's rainwater. Rainwater that is fairly clean until it
6 lands on the road, roof, parking lot or hard packed ground.

7 We need to capture and infiltrate this rainwater
8 into the ground to replenish groundwater supplies so that
9 people and rivers and streams have enough water in the
10 summer and during times of drought.

11 Getting more rainwater into the ground,
12 particularly in highly urbanized areas will also reduce, and
13 even prevent flooding.

14 We will spend millions of dollars to repair the
15 flood damage caused by this recent storm. And there are
16 more Northeasters to come.

17 This was a big storm. But, this is -- this is not
18 such an uncommon occurrence. And with climate change, it
19 will become a more frequent occurrence.

20 To reduce storm water pollution and future
21 flooding, we need to invest in our storm water systems and
22 manage new and existing development so that our cities and
23 towns can absorb and store rainfall, at least, the first one
24 to two inches of rainfall.

25 We believe that EPA's draft permit will help move

1 us towards making these important changes, and continue the
2 changes that many communities have already made under the
3 existing permit. And we commend them for that work.

4 I'd just like to finish up by mentioning a few
5 provisions of the permit that we feel are particularly
6 important, and some that need a little strengthening.

7 First, we strongly support the language requiring
8 elimination of all illicit connections to storm sewers, and
9 as Patrick was just thinking about, the elimination of
10 sanitary sewer overflow.

11 We also think that the requirement to monitor
12 storm water discharges from outfalls is equally important.
13 You may not realize this, but, the State of Massachusetts
14 does not require water suppliers to test or even map storm
15 water discharges into public drinking water supplies. They
16 encourage it. But, it's quite a potential threat to public
17 health, that we don't currently have to do that.

18 Same with shellfish beds. Our Towns run shellfish
19 bed programs, but, they don't -- but, they don't actually
20 sample storm water discharges to those beds. The State does
21 that every 12 years.

22 Another provision that we strongly support is the
23 requirement to estimate and track changes in the number of
24 acres of impervious surface that is directly connected to
25 the storm sewer system.

1 And then, just two things, we would like to see
2 strengthened. It would be great if this permit could put
3 greater emphasis on the protection and restoration of
4 critical waters. Again, public water supplies, bathing
5 beaches, and shellfish beds, as well as sensitive aquatic
6 ecosystems.

7 And in fact, some of the monitoring, perhaps,
8 could be prioritized to really focus on areas where people
9 come into contact with water and where there are known
10 problems.

11 Last, the permit should require, not merely
12 encourage, that new development of one or more acres capture
13 at least the one inch storm.

14 And this would mean capturing 90 percent of the
15 rainfall that comes in a typical year.

16 In conclusion, the Mass Rivers Alliance strongly
17 supports this permit and urges EPA to issue it within the
18 year.

19 Thank you.

20 MR. WEBSTER: Thank you, Ms. Beede.

21 Sue Tamber from Watertown DPW?

22 MS. TAMBER: I'll pass.

23 MR. WEBSTER: Frank Killilea from Beverly?

24 MR. KILLILEA: I pass.

25 MR. WEBSTER: Kate Bowditch from the Charles River

1 Watershed Association.

2 MS. BOWDITCH: Good morning. My name is Kate
3 Bowditch. I am from the Charles River Watershed Association
4 where I am the Director of Projects.

5 First of all, I would like to thank EPA for
6 holding this public hearing, and also for spending a fair
7 amount of time over the last several years working with
8 municipalities and environmental organizations as well as
9 within your own agency and the Massachusetts Department of
10 Environmental Protection to evaluate the previous permit and
11 discuss ways to improve that permit, which has resulted in
12 the draft permit that we are discussing today.

13 Obviously, as you heard from a number of people,
14 the level of effort that municipalities and State agencies
15 have put in to comply with the existing permit have been
16 significant. And the improvements have been marked.

17 Obviously, we have had a lot of water quality
18 benefits.

19 I think, the results of this week's storm also
20 demonstrate, we've had tremendous flood reduction benefits
21 as a result of a lot of the work that municipalities have
22 put in over the past decade to improve their systems.

23 And to me, this really speaks to the importance
24 and the value of these kinds of regulatory programs. And
25 the efforts that municipalities then put forth as a result.

1 A lot of work has gone into mapping systems,
2 understanding outfalls, recognizing areas where there are
3 regularly buildups of sediment and other kinds of problems,
4 cross connections, old collapsing sewers, roots that have
5 entered sewer systems, all of those things that have been
6 identified and improvements to that infrastructure that has
7 been made has largely been the result of the regulatory
8 program that has been in place.

9 I think, there is also a really important economic
10 benefit that we all need to recognize to improving storm
11 water across the Commonwealth. Certainly, in the Charles
12 River, where we do most of our work, we have seen
13 tremendous, tremendous changes in the last 15 years in
14 property values and in the way people perceive the river.

15 You heard from the Conservancy this morning, we
16 are now working on looking into the feasibility of swimming
17 in the Charles, which, 15 years ago, people literally
18 laughed about the possibility of doing.

19 So, these improvements are really important. They
20 have broad -- broad reaching application.

21 It is a significant level of effort that is
22 required of everybody, particularly, an enormous burden on
23 municipalities. And we recognize that.

24 I certainly appreciate the significant level of
25 clarity and detail that is represented in the new draft

1 permit, in particular, the minimum measures that are
2 described in more detail than in the previous permit. The
3 details for the storm water management plans, particularly,
4 the IDDE program, that is much more carefully detailed in
5 this draft permit, and the monitoring programs.

6 I think, it's very helpful to everybody to
7 understand exactly what the expectations are. People can
8 plan more appropriately now that, I think, a lot of these
9 things have been spelled out better.

10 CRWA very strongly supports the increased
11 monitoring requirements in the new permit. We have been
12 monitoring water quality in stream and at outfalls for many,
13 many years.

14 And while we recognize and appreciate that storm
15 water monitoring, especially wet weather monitoring, has a
16 very high level of variability, depending on when you
17 sample, the type of storm, etcetera, the data that we obtain
18 from these sampling events, over time, creates a
19 tremendously important and powerful data set that helps
20 everybody understand trends, the impacts of changes, the
21 impacts of improvements over time.

22 And we really strongly support those provisions of
23 the draft permit.

24 One of the other things that I think could
25 actually be strengthened in the language of the permit is

1 the importance of the person who is dedicated to managing
2 the storm water program for the municipality or the other
3 nontraditional MS4.

4 This is really about who is doing the work, how
5 well supported they are within the municipality in terms of
6 their authority, their ability to work on budget issues,
7 their ability to talk to decision makers, etcetera.

8 Municipalities that have really invested and
9 embraced their storm water management plans and have some
10 storm water managers who are really involved, have largely
11 had very successful programs that have made tremendous
12 progress and made a tremendous difference to their own
13 towns.

14 Municipalities that have not chosen to or not been
15 able to really invest significantly in this program, and
16 don't have a person of particular authority or relevance and
17 perhaps Town administration have been less successful in
18 their programs.

19 We will -- Charles River Watershed Association
20 will be submitting detailed written comments before the
21 close of the comment period.

22 I do have a couple of other specific things I
23 would like to mention. As you heard from several other
24 speakers already, we believe, particularly, with regard to
25 the phosphorous control plans, that the four year

1 implementation -- sorry -- the four year planning period and
2 the 10 year implementation period is excessively long.

3 We recommend that, in the final permit, there be
4 some benchmarks or particular ways to ensure that progress
5 is actually being made along the way.

6 We also strongly support what we have heard from
7 many municipalities, that they need additional resources to
8 undertake this work. Whether those are financial resources
9 provided through programs like the SRF, or, whether they are
10 technical support and outreach from the State and Federal
11 government.

12 But, this is an undertaking that is on the scale
13 of wastewater treatment plants and CSO control plans. It is
14 really important that municipalities be supported in this
15 effort if they are going to succeed.

16 EPA itself also needs additional resources for
17 this program to succeed. Managing all of these permits is
18 going to be tremendously complicated. Enforcement is going
19 to be probably a major issue.

20 And clearly, EPA currently does not have the
21 resources to implement this program successfully.

22 There is also a major issue, we believe, of
23 fairness that this permit brings up. Certainly, in terms of
24 the requirements of the nontraditional MS4s, in particular,
25 the Massachusetts Department of Transportation, it's

1 certainly important that the State be held to the same
2 standards as municipalities.

3 And we do not agree that the Department of
4 Transportation and its highway system is somehow less able
5 than municipalities to achieve compliance with this program.

6 We think that it would be important, in the
7 language of the permit and supporting documents, to provide
8 municipalities with more clarity about developing storm
9 water utilities, which may well be an important way that
10 municipalities can come up with the resources or help come
11 up with the resources to support their programs.

12 We also believe that the expansion of the
13 regulations through residual designation authority is an
14 important potential way for storm water regulation overall
15 to be improved.

16 Many municipalities right now simply have to take
17 in all of the storm water that is discharged to their system
18 from private properties. And they don't have the capacity
19 to regulate that storm water any way.

20 And we believe that, in many cases, such as has
21 been suggested in the Charles, that expanding Federal
22 regulation of certain private properties is an appropriate
23 component as storm water management evolves in the coming
24 years.

25 In conclusion, as I said, we will submit written

1 comments.

2 I would like to just provide a few, I think,
3 interesting results of some research that we did in the last
4 few months. And this reflects really on the need for
5 fairness and the need for EPA to have increased resources to
6 work on this issue.

7 Some municipalities in the Charles have done
8 extremely well and have been very aggressive in their
9 programs. And others still have a long way to go.

10 Just a few quick facts. We have 35 municipalities
11 in the Charles. Of those, there are 11 of the 35 that have
12 not submitted their 2009 annual report. And we have one
13 municipality that has not submitted a report since 2006.

14 Just one other simple thing we evaluated was
15 whether municipalities had complied with the requirement of
16 the existing permit that they pass bylaws about illicit or
17 illegal cross connections, erosion, sedimentation control,
18 and post construction runoff control.

19 Nine of the municipalities in the Charles have not
20 passed erosion sedimentation control bylaws. 10 have not
21 passed post construction storm water bylaws. And 12 have
22 not passed illicit cross connection bylaws.

23 I bring these numbers up, not to necessarily
24 criticize those municipalities directly, because it can be a
25 complicated process, but simply, to point out the fact that

1 it's extremely important that EPA work more aggressively
2 with communities to ensure that they are able to undertake
3 and comply with the permit regulations.

4 Thank you very much.

5 MR. WEBSTER: Thank you very much.

6 I'd call on Bill Stansfield from Peabody.

7 Is there a representative from Peabody here?

8 Bill Stansfield, I think it is.

9 Anthony DelGaizo from Needham?

10 MR. DELGAIZO: My concerns have been expressed by
11 other speakers.

12 MR. WEBSTER: Okay. Thank you.

13 JT Gaucher from Hopkinton?

14 MR. GAUCHER: I'll pass.

15 MR. WEBSTER: Oh, oh. Mystic River Watershed
16 Association, a Mr. Khalsa maybe?

17 MR. KHALSA: Thank you. I apologize. I gave you
18 my full name.

19 MR. WEBSTER: Okay. You can introduce yourself.

20 MR. KHALSA: Thank you.

21 My name has a lot of consonants all in a row. It
22 is a little bit of a tongue twister.

23 My name is EkOngKar Singh Khalsa. I'm the
24 Executive Director of the Mystic River Watershed
25 Association. And for business purposes, everyone calls me

1 Ek. So, that's for the record.

2 I would like to yield my time to other speakers in
3 consideration of how many people are here. Except to say
4 that the Mystic River Watershed Association will be
5 submitting detailed comments in support of the permit. And
6 we also recognize the extraordinary amount of work that the
7 municipalities and other public agencies are doing to
8 address this problem.

9 We feel very strongly, however, that there is
10 tremendous benefits to address the issues, particularly in
11 the Mystic River Watershed where we are somewhat behind
12 other locations in terms of meeting the requirements of the
13 original EPA MS4 permit.

14 Thank you very much for the opportunity.

15 MR. WEBSTER: Thank you, Ek.

16 Dave Hickey from Winthrop?

17 MR. HICKEY: Our comments have been expressed by
18 other speakers.

19 MR. WEBSTER: Thank you.

20 Samantha Woods from the North and South Rivers
21 Watershed.

22 MS. WOODS: Thank you very much. My name is
23 Samantha Woods. And I am the Executive Director for the
24 North and South Rivers Watershed Association, which is the
25 40 year old environmental advocacy group located on the

1 south shore of Massachusetts with approximately 2200
2 members.

3 While this permit will not cover our watershed, we
4 believe, it sets a precedent for what will be in a permit
5 forthcoming that will cover our area. And so, we'd like to
6 go on record today with some of our comments.

7 We wholeheartedly support the new permit and hope,
8 in fact, that you can strengthen it in some key aspects.
9 And I just wanted to comment that many of our concerns have
10 already been raised, and in particular, by our sister
11 watershed organizations. We support many of the things that
12 they have said. And we will be submitting also, our written
13 comments on the permit.

14 Our rivers, like many in the state, in fact,
15 probably 60 percent of all waters in the state of
16 Massachusetts continue to not meet State and Federal water
17 quality standards. Largely as a result of storm water
18 pollution.

19 For us, this results in shellfish bed closures and
20 poses potential hazards for recreational uses of our rivers
21 and streams, and has, indeed, resulted in drinking water
22 quality being hampered -- hindered, degraded by salt, in
23 fact.

24 We, along with our Towns have made improvements to
25 water quality. However, the continued rate of paving over

1 of our watersheds exceeds our ability to keep up with it.

2 Two things that we think are necessary in order to
3 combat the storm water pollution. One, that has been
4 referred to already is the need for -- and it was a
5 requirement in the previous MS4 permit, for Towns to
6 regulate post construction runoff through the implementation
7 and passage of storm water by laws.

8 We have been active in our own watershed in trying
9 to pass that. But not every community, in fact, many of our
10 communities have not passed that part of the previous
11 provision. And we hope that that will be strengthened in
12 this more recent permit.

13 And we hope that those storm water bylaws also
14 have some teeth, that they require predevelopment hydrology
15 as the goal for new and redevelopment projects.

16 Two, the other thing that we are most concerned
17 about is the percentage of impervious coverage in our
18 watersheds.

19 There are plenty of scientific reports and data
20 that are available that show a direct relationship between
21 the percent impervious coverage in a watershed, and the
22 degradation of that stream and river health.

23 We believe that connecting percent impervious
24 coverage in impaired watersheds to water quality should be
25 part of the permit. And it might be useful in prioritizing

1 where we are going to concentrate some of our efforts,
2 because we definitely hear the communities' concerns about
3 resources.

4 We also have that same problem. And we think
5 percent impervious coverage is a really good indication to
6 use to concentrate some of the efforts for monitoring and
7 for prioritizing remediation in our watersheds.

8 And thank you very much. I will submit the rest
9 of our comments to you by March 31st.

10 Thank you.

11 MR. WEBSTER: Peter O'Cairn from Sharon

12 I'll come back to that one.

13 Robert Swanson from Foxboro.

14 MR. SWANSON: I'm Robert Swanson from the Town of
15 Foxboro. I am the Highway Superintendent there.

16 The amount of expenditures that we're going to
17 have to incur to do this program, if approved, has been
18 quite outstanding, and just astounding to everyone I have
19 had to deal with in my budget process this year.

20 We subcontract out our street sweeping. To go to
21 double that -- we only sweep our streets once now, to double
22 that, I don't know where we are ever going to get this
23 money. It's -- it's something we can't deal with at this
24 time with -- with the economic situation in town.

25 My highway department is already down 22 percent

1 staff level. And it's the Highway Department that most of
2 this falls on.

3 I've heard many Town engineers and engineering
4 departments come up here today. We don't even have an
5 engineering department.

6 I am an engineer. And I try to do as much as I
7 can. But, there's many communities, I think, that don't
8 have engineering departments, that -- that their charge is
9 more for getting out in the field and doing the work.

10 The engineering departments, of which I've worked
11 in some, I think, are better suited to handle this.

12 Is Foxboro guilty of something for not having an
13 engineering department? I'm not sure. All I know is we
14 don't have one.

15 I hope the EPA will recognize that there are many
16 communities out there that just cannot burden this --- this
17 financial situation right now. And come with a longer
18 schedule for making us adhere to these regulations.

19 Thank you.

20 MR. WEBSTER: Thank you very much.

21 Thomas Ferry from Dighton?

22 Thomas Daley, I think it is, from Commissioner of
23 Public Works in Newton.

24 MR. DALEY: Good morning. Thank you.

25 You know what I'm hearing this morning is a lot of

1 very similar themes. It doesn't matter who the speaker is.

2 I can -- I honestly believe, particularly knowing
3 a lot of the people in the room, that we are all on the same
4 page here. We are all here for the same goal, which is to
5 improve water quality in our local rivers and streams.

6 With that being said, the City of Newton in
7 particular, we have had a very proactive program for a
8 number of years now. We are currently monitoring and
9 testing 143 outfalls in the city of Newton.

10 I'm accompanied by Maria Rose, our Environmental
11 -- Environmental -- yeah -- Engineer. Excuse me, Maria.
12 You know, she was specifically hired, the position was
13 created for this type of work, to deal with the NPDES
14 permits and improve storm water that is entering the Charles
15 River. I was glad to see some of the slides from one of the
16 previous speakers showing some of the pictures.

17 He talked about inventory inflow, yeah, inventory
18 your inflows, the inflow problem.

19 We currently, in the City of Newton are doing
20 that. We are inventorying inflow sources, sump pumps, roof
21 drains. It's going to take us probably another year and a
22 half to do that, but, we are proactively doing that.

23 Why am I saying this?

24 Well, I'm saying this so, you know, you good
25 people realize, you know, we are not up here just to

1 complain about something that may be coming down the pike.
2 We are actively moving forward to improve the situation. We
3 want to improve our situation.

4 We fortunately are in a unique position. We are
5 one of very few municipalities in the Commonwealth who has a
6 storm water utility. I can't imagine facing some of these
7 issues right now without that behind us.

8 With that being said though, however, you know,
9 that storm water utility was created in about 2006. Our
10 operating budget is about \$700,000 a year.

11 So, that's what we're spending currently annually
12 already on dealing with storm water.

13 But, that rate structure was established and put
14 together for a number of items, not just water quality.
15 Some of it was water quality, but, the other issue was, you
16 know, aging infrastructure, over 100 years old, to make
17 improvements there, to make improvements on flooding,
18 flooding issues throughout the city. And we had our hands
19 full this past week. It wasn't purely just water quality
20 funding.

21 Particular concerns that we have with the current,
22 the proposed permit, I should say, is the cost associated
23 with investigating 50 percent of our infrastructure. That's
24 going to be quite burdensome for us. We have 325 miles of
25 drainage piping right now, 12,000 catch basins plus, you

1 know, we are also monitoring the 143 outfalls.

2 Another concern is the cost of developing and
3 implementing the phosphorous control plan. We are quite
4 concerned about that.

5 You know, we concur with Wellesley's comments
6 about costs. You know, we're probably -- we haven't done
7 some real hard numbers, but, we're guessing right now,
8 anywhere from a quarter of a million to 400,000 on top of
9 what we're already doing.

10 So, there are some significant costs.

11 And that doesn't -- I mean, I'll be honest with
12 you, I found out today about the sidewalk cleaning
13 requirement. We have over 500 miles of sidewalk. We are
14 not cleaning them.

15 We do a very good job of cleaning our streets.
16 And we clean them quite regularly. However, we are not
17 cleaning our sidewalks.

18 We do -- with that being said, there are areas in
19 our squares that we do go out daily with crews and clean
20 litter, etcetera. So, we are making efforts at keeping
21 things clean to keep the storm water improved.

22 The gentleman who put the slides up, you know,
23 talked about known causes of pollution, absolutely. And I
24 saw SSO's, you know, in the last few days. We know where
25 these things are.

1 I honestly would rather spend the money that we
2 would be spending on some of these other items, these
3 planning and investigative analysis items -- I would rather
4 spend those funds on infrastructure to actually make
5 improvements in the field and basically get more bang for
6 your buck. We know where a lot of these things are now.

7 Heard some discussion about budgets. I've been in
8 the public sector for about 20 years now. This is the worst
9 budget year I've ever seen.

10 This is a particularly difficult time for EPA to
11 roll out this type of a program. It is just not going to
12 make your lives any easier to sell.

13 Three years ago, we hit what I call the -- well,
14 it was basically the tipping on the budget standpoint. We
15 got to the point that year, we did not have enough money to
16 get through the year. We ran out of asphalt patching money
17 in November. That was three years ago. Things have not
18 gotten any better since that point.

19 Currently, I'm looking for asphalt money again
20 this year, right now, to continue, so that we can continue
21 patching potholes through the spring.

22 We are, you know, in dire straits. And I'm sure
23 other municipalities are in the same boat.

24 Speaking more broadly for other municipalities
25 without a storm water utility, knowing the budget situation

1 with the way they are out there, you know, we talk about
2 stimulus packages coming down from the Federal government,
3 etcetera. We want to create jobs.

4 I know right now, my budget process I'm going
5 through, any of the most minor changes I make, directly
6 affects someone's job.

7 You know, we have discussions. We were told to
8 cut half a million dollars a couple weeks ago. That's what
9 I've got to cut.

10 But then, we need to increase somewhere that we
11 had to increase. Well, guess what? That means, another
12 person or two. And those additional funds for Wellesley,
13 250, \$400,000, well, we're saying 250, \$400,00.

14 You see a \$250,000 increase here, four to five
15 jobs, guaranteed, if I didn't have a storm water utility.
16 With the storm water utility, it still will be an impact.

17 But, I'm one of, I think, three in the state. The
18 rest of these communities don't have that option.

19 So, whatever money now has to go out in increase
20 is going to affect people's jobs, good, middle income
21 positions with benefits. I hate to say it, but opposite of
22 what the stimulus package is to do.

23 So, just to close, you know, I caution EPA. You
24 know, there is a balancing act here. You know, I'm not
25 against this. There is a balancing act between bang for the

1 buck, too much monies that would be required for too much
2 analysis for us actually getting work done in the field.

3 We want to get work done in the field. We want to
4 make the hard improvements to make it happen.

5 And so, I just urge you to, on top of that, really
6 collaborate with the Towns. Because sitting around the
7 table and collaborating with us, we're all in the same boat.
8 We want to accomplish the same things. We might have some
9 really good ideas on how to make significant improvements.
10 You know, again, more bang for the buck.

11 Thank you.

12 MR. WEBSTER: Thank you very much.

13 Jeff Bina from -- which town is that? Weymouth
14 DPW?

15 It might be Jeff Bink.

16 THE REPORTER: Weymouth.

17 MR. WEBSTER: Weymouth?

18 Steve Pearlman, Neponset River Watershed
19 Association.

20 MR. PEARLMAN: I'm Steve Pearlman with the
21 Neponset River Watershed Association. Our watershed begins
22 pretty close to Gillette Stadium in Foxboro and the river
23 discharges in to Dorchester Bay.

24 I had some prepared remarks. But, I'd like to
25 skip that and get -- and respond to this issue of cost.

1 There is no question this is going to cost
2 municipalities a lot of money. And the money is going to be
3 hard to come by.

4 I've also heard some excellent suggestions from
5 municipalities about how this general permit might be
6 changed in ways to save money.

7 But, I just wanted to go through a list of things
8 that towns can either do to reduce their own costs or to get
9 additional funding.

10 All right. Number one, when there is a general
11 permit, such as the 2003 general permit, and that has very
12 vague requirements and little or no --.

13 Okay. When you have a general permit like the one
14 we had in 2003, that has very little in the way of specific
15 requirements and specific deadlines, you are not going to
16 get your town meeting, or whatever form of government you
17 have, to put this high on their priority list.

18 If EPA says, you have to do X, Y and Z by a
19 certain time, you are more likely to get the money. That's
20 number one.

21 Secondly, there is a lot more that Towns can you.
22 And this general permit actually requires some and
23 encourages others to get private -- the private sector to
24 pay for some of those. If you've got a strict bylaw on
25 construction site rules and post-construction, then, you're

1 going to get less storm water and less polluted storm water
2 going into your storm sewers.

3 Now, I just want to make one other prefacing
4 comments. EPA, on its website, has a document called NPDES
5 Phase 2 Small MS4 Permit Program SWMP Summaries and Select
6 Metrics, Permit Year 6.

7 I would encourage people to look at that, because,
8 I think, you're going to find a very high level of
9 noncompliance.

10 For example, a couple of the -- three of the only
11 things in the 2003 permit that are very specific is it that
12 every Town must have a bylaw covering three things IDD,
13 illicit discharge detection and elimination, construction
14 site runoff, and post -- post construction controls, storm
15 water controls.

16 More than 40 percent of the Towns, according to
17 this EPA document have not done that. In six years, they
18 have failed to adopt any of those.

19 So, if you think this permit is working, and that
20 you don't need a stricter permit, I think I can make a
21 strong case that we do.

22 Now, it doesn't mean that people don't have --
23 haven't made very good points, and that people have very
24 difficult budget problems. But, the current system isn't
25 working.

1 All right. So, the next point is that the new
2 permits require stricter bylaws in all these areas and that,
3 in essence, just to state it briefly, put some of the costs
4 on the private sector.

5 And another way of doing that is somebody just
6 spoke about, was a storm water utility. If people are
7 adding storm water to your system, they ought to pay for it
8 and help offset your costs.

9 In addition, while there is nothing in the general
10 permit that requires this, there is also nothing that
11 prevents Towns from making existing development where, after
12 all, most of the storm water comes from existing
13 development. I'm not talking about home owners. I'm
14 talking about shopping malls, large developments. To do
15 more, to reduce the amount of storm water and the quality of
16 the storm water that they're putting into the storm sewers.

17 The DEP made an effort to do that. It doesn't
18 seem to have gone anywhere because there is a lot of
19 opposition.

20 But, a Town can write such a bylaw any way it
21 wants. It can add -- it can note that, if there are site
22 constraints, don't have to do it.

23 Another way this can be done is by having an
24 expansive definition of what is redevelopment.

25 In DEP's proposed permit, they talked about

1 repaving a parking lot being redevelopment. Again, some
2 parking lots, no place to put storm water controls. Others,
3 you can put rain gardens between what are now concrete
4 divisions between rows of parking spaces.

5 So, Towns can get existing development to
6 contribute as well.

7 Next, watershed associations such as mine carry on
8 extensive public education projects. And we've partnered
9 with three towns out of 13 in our watershed in doing that.
10 Most particularly, I think we've got a great program in
11 Sharon. So, we know a lot about this. We've been
12 successful.

13 But, many watershed associations, ours included,
14 do water quality monitoring. In fact, our watershed hasn't
15 been monitored by DEP since 1994. We do the water quality
16 monitoring. We can help you do the water quality
17 monitoring.

18 We've helped many Towns -- well, some of them may
19 not view it as being helped. But, we have identified lots
20 of illicit connections and worked with Towns to get those
21 eliminated.

22 Number five, if my numbers are correct, we
23 certainly agree that more Federal and State money is needed.

24 And lastly, and this may be the most important of
25 all, people balk at spending money on public education on

1 storm water runoff and water pollution. Poll after poll has
2 shown 80 percent or more of Americans are extremely -- view
3 themselves as being extremely concerned about water
4 pollution.

5 That's 80 percent of the Democrats. That's 80
6 percent of the Republicans. That's 80 percent of rich
7 people. That's 80 percent of poor people. That's 80
8 percent of white people and minorities.

9 Do you really think that your Town, and most of
10 you work for the Town, but, do you really think that your
11 Town government has done everything that they can take
12 advantage of that? To explain to people, well, maybe --
13 maybe this is going to cost us a little more. And maybe you
14 ought to support it.

15 Public education, which is another thing watershed
16 associations can help you with, will pay for itself. There
17 is no way you are going to get the money you need without
18 the support of the public.

19 Thank you.

20 MR. WEBSTER: Thank you very much.

21 I checked. I have three more people that
22 identified to talk. And then, I'll try again the people
23 that didn't.

24 And then, after that, I will ask if there is
25 anybody who hasn't had a chance to speak if they want to

1 speak.

2 So, hang on if you've been waiting or you didn't
3 sign up.

4 Make that four.

5 Cynthia Liebman. Conservation Law Foundation.

6 MS. LIEBMAN: Good morning. My name is Cynthia
7 Liebman. I am a Staff Attorney at the Conservation Law
8 Foundation.

9 The Conservation Law Foundation or CLF as we are
10 known has been actively involved in protecting New England's
11 water quality as well as advocacy on the storm water issues
12 to make sure that storm water is properly managed in a
13 sustainable way.

14 Our perspective on the draft MS4 permit is that
15 there is a long way to go, both in terms of strengthening
16 the permit requirements themselves to comply with legal
17 standards and to ensure that water quality standards are
18 met.

19 But also, in terms of EPA's enforcement and the
20 expectation of meaningful compliance by permittees.

21 We recognize that municipalities' level of effort
22 and compliance under this program has varied widely. And
23 you've heard that this morning.

24 But, overall, EPA's own statistics demonstrate
25 that this program has not been given the effort and

1 attention it requires, given that storm water is still the
2 number one cause of water quality problems throughout
3 Massachusetts.

4 As EPA's data shows, only 163 out of 238 Towns
5 submitted their annual report for your six which was 2008 to
6 '09. Only 25 percent of communities reported that they were
7 doing outfall inspection and monitoring. And 30 percent
8 still had not completed outfall mapping.

9 These are just baseline requirements that
10 municipalities have been aware of since 1999 in some cases.

11 And they're just the first steps, prerequisites to
12 fully achieving what this permit program requires, which is
13 the systematic analysis of impervious area, a plan for
14 retrofitting existing infrastructure and low impact
15 development and new developments to meet water quality
16 standards.

17 Significant investment in how storm water is
18 managed is going to be critical in Massachusetts for public
19 health for managing infrastructure as the climate changes,
20 and for ensuring that we have livable and attractive cities
21 and towns.

22 I'll briefly highlight some of the provisions of
23 the permit that are notable to us.

24 First, overall, we call for strong public
25 participation provisions throughout the permit. In

1 particular, all storm water management plans, that includes
2 the storm water management plan itself, not just the NOI,
3 monitoring data, phosphorus control plans, and other
4 information generated in compliance with the permit should
5 be made available online in real time, so that the public
6 can know what is happening in their town, identify problems
7 and fully support full implementation of the permit's
8 requirements.

9 There are two bottom-line requirements for this
10 purpose. The first is that all NPDES permits must ensure
11 that water quality standards are met.

12 And the second is a maximum extent practicable
13 standard that applies to certain provisions of the permit.

14 And first, I'll talk about some requirements that
15 relate to water quality standards.

16 We recognize that EPA has made efforts to clarify
17 these provisions. And to clarify that the mandate can
18 ensure water quality standards are met, applies across the
19 board in all impaired waters, not just those of TMDLs.

20 This is an important improvement over the prior
21 permit. However, though currently which is problematic, in
22 that it appears to create a presumption that water quality
23 standards are met, if the permittee fully satisfies all
24 other permit requirements. And allows a 60 day grace period
25 to correct instream exceedences of water quality standards

1 if they are brought to the permittee's attention.

2 Both the presumption and the grace period appear
3 inconsistent with the legal requirement of 40 CFR 122.4,
4 that all NPDES permits ensure attainment of water quality
5 standards, and we call for those to be changed accordingly.

6 In regards to discharges to waterways with an
7 approved TMDL, in general, we support the work EPA has done
8 to clarify how TMDLs map onto requirements for the MS4
9 permittees. And specifically, the attempt to map those out
10 in an appendix of specific TMDLs.

11 There is a very important clarification that has
12 been made in this draft permit, section 2.2.1, that, a TMDL
13 is not a license to pollute. And we recommend this be
14 retained in the final permit.

15 We support the requirement that municipalities in
16 the Charles watershed develop a phosphorus control plan to
17 achieve consistency with the allocation of the lower Charles
18 TMDL.

19 However, we do have a number of objections to this
20 section as it is currently drafted.

21 First, the 10 year time frame for implementation
22 of the phosphorus control plan is too long. A five year
23 time frame is the maximum time period that would be
24 consistent with the Clean Water Act and NPDES regulations
25 for a full implementation of the phosphorus control plan.

1 We also urge EPA to include interim benchmarks and
2 to have a shorter time frame for creation of the plan.

3 It's important that the permit contains enough
4 specificity to ensure that Towns are ineffectively tracking
5 and achieving the required reductions in phosphorus. And we
6 have some more specific suggestions in that regard that I
7 will put in my written comments.

8 But, in particular, I'll note that there is some
9 language that appears to create the option for a training
10 program. And if that is the case, then, we urge the
11 perimeters be clearer and objective measures be required to
12 account for the reductions in phosphorus.

13 There are some important clarifications in this
14 draft permit as compared to the 2003 permit as it relates to
15 new or increased discharges to impaired waters and also the
16 anti-degradation requirement.

17 These are important because, the price of
18 development in Massachusetts is still high. And new
19 development and redevelopment often present the most
20 efficient opportunities to prevent water quality problems or
21 correct those that exist.

22 In addition, our view is that, at least in regards
23 to the change in language regarding new or increased
24 discharges, that change is legally required to meet the
25 requirements of 40 CFR 122.4 in case law.

1 We urge EPA to better explain and/or reduce the
2 current threshold of one or more acres of new impervious
3 surface that triggers the requirements for increased
4 discharges. And we recognize that it's a very helpful
5 change to have increased discharge defined, and to have some
6 more specifics as to what happens when there is an increased
7 discharge.

8 But, we would ask for a lower threshold or more
9 explanation as to why one acre is appropriate.

10 In terms of anti-degradation, we support EPA's
11 efforts to spell out more clearly what this analysis must
12 include, where there is -- where it is currently written.
13 However, there are some areas where we think it needs
14 strengthening.

15 One is that, it should be clarified that
16 anti-degradation requirements apply proactively to all
17 permitted activities regardless of whether there is a new or
18 increased discharge.

19 This means that, under State law and the Clean
20 Water Act, that existing water quality can't be degraded.
21 And we think that's an important requirement that be better
22 explained in this permit.

23 We recommend that EPA not limit the list of TMDL
24 waterways where TMDL related requirements apply to those
25 that are effective on the date of the permit.

1 As new TMDLs are approved during the permit term,
2 they ought to be considered as well to trigger TMDL
3 requirements.

4 In terms of monitoring, CLF supports the
5 monitoring requirements in the draft permit, including wet
6 and dry sampling of each outfall.

7 In fact, the monitoring requirements could be
8 further strengthened from our perspective to include
9 additional samples and more specificity about under what
10 conditions the samples are to be taken.

11 As our collaborating watershed organizations have
12 already explained, monitoring data is incredibly important
13 to tracking trends and determining where problems are, and
14 what's working and what's not.

15 With regard to the six minimum measures, we
16 strongly support the increased post-construction
17 requirements in the draft permit. In particular, it's the
18 new requirement that Towns track impervious cover as well as
19 directed -- directly connect an impervious area, assess
20 possible locations for a low impact development retrofits
21 and assess the possibility of requiring low impact
22 development town wide are critical actions without which,
23 it's unlikely water quality standards will be met in the
24 future across broad portions of Massachusetts waterways.

25 Low impact development has been increasingly

1 demonstrated to be the current standard. It's demonstrated
2 to be effective, and in many cases, more cost effective than
3 conventional infrastructure and EPA itself has recognized
4 this.

5 After Congress passed the Energy Independence and
6 Security Act, section 438, and consequently, triggered EPA
7 to issue a guidance requiring all Federal facilities to
8 infiltrate and treat up to the 95th percentile storm.

9 So, low impact development and green
10 infrastructure is no longer a far out concept. And for
11 these reasons, we urge that EPA more specifically require
12 low impact development throughout the permit as the current
13 expression of what is the maximum extent practicable.

14 I'll just point out, because I know there are
15 municipal officials in the room, that low impact development
16 has also been shown, and in some cases, actively planned for
17 in cities like Philadelphia and New York, as a way to reduce
18 the burden on the aging sewer infrastructure, and as a way
19 to manage costs better over the long run.

20 And we encourage Towns to consider this going
21 forward, in addition to EPA, including it in the permit.

22 Before I conclude, I would like to echo the
23 Charles River Watershed Association's comments regarding the
24 Department of Transportation. We urge EPA to clarify that
25 the State is subject to and held to the same standard as

1 municipalities, if not more, in fulfilling their obligations
2 the under the storm water regulations and permit.

3 We do not agree with the DOT's comments that it is
4 impossible for them to comply. In fact, we think it's
5 critical that the State protect the resources of the
6 Commonwealth and no less is acceptable.

7 Thanks for the opportunity to comment and CLF will
8 submit further written comments.

9 MR. WEBSTER: Thank you very much.

10 George Comiskey from Parker River Clean Water
11 Association.

12 MR. COMISKEY: Hi, I am a board member of the
13 Parker River Clean Water Association. We represent the
14 towns of Boxford, Newbury, Rowley, Georgetown, as well as
15 some other towns, such as Newburyport, Ipswich, West
16 Newbury.

17 Many of the towns that are involved in our
18 watershed association are very interested in water quality.
19 We do water quality monitoring throughout the watershed.

20 We see these new EPA regulations as a way to
21 cooperate with municipalities. We know hope they're
22 adopted.

23 We also, water quality is also on the minds of
24 many participants in our program.

25 Some of the towns are suffering from the effects

1 of poor water quality. The towns of Raleigh and Newbury are
2 considered impaired. The shellfish industry has many of
3 their flats closed. The town of Boxford, 100 wells are
4 contaminated by a nearby salt shed.

5 So, when you look at these, instances, you have to
6 say, you know, how can we afford not to implement some of
7 these changes.

8 So, we will be submitting written comments also,
9 but I thank you for your time.

10 MR. WEBSTER: Thank you very much.

11 Gary Agrassian from Attleboro?

12 Roger Frymire, citizen.

13 MR. FRYMIRE: My name is Roger Frymire, a
14 Cambridge resident. I am not a member of any of these
15 watershed associations, but I have been a volunteer water
16 quality monitor and sampler cooperating with several of them
17 for more than 10 years now. I have a lot of experience
18 sampling both the rivers and a lot of your town outfalls. I
19 believe, I've met at least half of you Town Engineers at one
20 point or another in the past year.

21 I definitely have some comments on the permit. I
22 appreciate the fact that the EPA has been going through a
23 protracted permit. They issued a draft permit for the
24 Worcester Phase 1 storm water permit. I commented on that.

25 They issued a draft permit for the State of New

1 Hampshire MS4 permit. I commented on that.

2 And I can see the results of my comments already
3 in this draft permit.

4 So, there's not a lot in this permit that I object
5 to.

6 But, I do think that the Cities have a good point
7 as to the monitoring possibly being a little bit much for
8 them right now. And I have a few suggestions for how the
9 burden to the Cities might be made a little bit easier.
10 Possibly, the Cities would want to pick up on some of this
11 and support me in some of these comments.

12 I will work backwards through the permit.

13 Section 5.3, the annual reporting requirement,
14 requires that annual report to come out on August 1st, 30
15 days after the close of the year for which it is reporting
16 on.

17 At the end of the summer, that's an awful fast
18 turnaround. I think, that should be moved to at least a 60
19 day time period, so that the Towns might have a little more
20 chance to have somebody that's not on vacation do it, and
21 not have to hire a consultant to do it on such a rush basis.

22 Backing up in the permit, on the analights
23 (phonetic) that are required for the monitoring for wet and
24 dry weather, the pH requirement in particular, in the course
25 of my sampling, I took at least 4 to 500 pH readings, and I

1 couldn't find a single worthwhile datum in those 3 to 400.

2 pH also requires an extensive calibration. Every
3 time before you go out, requires reagents to calibrate with.
4 And the meter probe itself, being made of glass, is prone to
5 break. It's moderately expensive to replace.

6 I don't see any good reason for having a pH
7 monitoring requirement in this permit. It may be applicable
8 to industrial permits in industrial areas, but, I think,
9 it's simply a burden on the communities.

10 As far as wet weather sampling, section 3.3.1
11 says, monitoring may occur after any discharge event. I
12 just want to stretch that out a little bit more and say, it
13 may occur during or after any discharge event.

14 The most meaningful wet weather data I have gotten
15 has been by going out during a rain, actually during the
16 most intense parts of the rain, when cross connections from
17 sewers, that don't activate in any lesser storm may be
18 there.

19 So, waiting until after the storm just doesn't do
20 it.

21 While talking about wet weather sampling, I want
22 to say that defining any time an outfall is running as being
23 wet weather sampling seems to me to say that, the one dry
24 weather sample you do, could also qualify as a wet weather
25 sample for those outfalls that run during dry weather.

1 I'm not actually adverse to that, because, most of
2 the outfalls where I found problems in wet weather, they
3 either were already evident in dry weather if they were
4 running, or, the ones that weren't running during dry
5 weather, they became evident.

6 So, if you are doing wet weather sampling of only
7 those outfalls that only run in wet weather, I could be
8 satisfied with that.

9 Section 3.1.3, and 2.4.1C having to do with
10 interconnections with other MS4s, I am very glad to see that
11 those interconnections are both going to be required to be
12 mapped and sampled. In the few instances where I have had
13 Towns cooperate with me and go to their borders and pop
14 manholes, I have found a much higher incidence of much more
15 polluted waters, sewage especially, coming in from other
16 cities, across boundaries, out of sight, out of mind.

17 It's in a pipe when it goes to another town. It
18 hasn't been looked at historically.

19 And I think, that needs to be a very firm
20 requirement and a first priority in what you need to go out
21 and do sampling at.

22 I very much approve, on page 35, section 7, of
23 having a 50 percent requirement for doing your IDDE
24 investigations by year three and 100 percent by year five.
25 Just finding out that you have dirty outfalls isn't enough.

1 You have to go to the outfalls. You have to find
2 the source of the problems and fix them.

3 There is a requirement that, if it is contributing
4 -- this is 2.1.1C, if it is contributing to the impairment
5 of a waterway, you have 60 days to fix the problem that you
6 find.

7 There is a caveat there. 60 days to either fix it
8 or come to a written agreement with DEP or EPA to a time
9 schedule which you will be able to fix.

10 Unfortunately, if there is large scale sewer
11 collapses, other big problems, you are going to have to go
12 through a budget cycle, a timing cycle, design cycle. It
13 can be two to three years before you are going to be able to
14 fix some of these problems.

15 The 60 days is just to be sure that you're putting
16 it on your calendar. You are committing to getting the
17 funding from your City. And we are finally going to stop
18 some of this sewage entering our waterways.

19 Section 2.4.4.7, in your inspections of all your
20 outfalls, requiring a unique field identifier, or label to
21 be put on the outfalls, that's going to help me quite a bit
22 in knowing what outfall I am sampling, being able to report
23 to a City that I found something at this particular outfall,
24 and yes, it is your outfall. It's not the DCR outfall that
25 is 10 feet away.

1 When they're that close, a GPS coordinate just
2 doesn't quite do it.

3 The EPA has a data standard for a GPS data which
4 is decimal degrees to five decimal places, like 42.1, 2, 3,
5 4, 5 degrees. And that gets you within about three to 10
6 feet, which is plenty close enough. I figure, 20 feet
7 accuracy is close enough for government work for outfall
8 identification.

9 So, I'm hoping that there be a requirement for you
10 to actually identify the placement of each of your outfalls
11 to that precision.

12 Section 2.3.1, which defines what is a new
13 discharge, I really hope that you can clarify the language
14 to specify that a new discharge does not include a new storm
15 water outfall caused by sewer separation.

16 Sewer separation is the only way we are improving
17 a lot of the problems with CSO overflows and SSO overflows.

18 And I really back the City of Cambridge who is
19 doing sewer separation above and beyond what is required by
20 the Federal Court Boston Harbor Cleanup that they not have
21 to treat this extra work as a new discharge.

22 Otherwise, all this extra work is going to come to
23 a halt, a complete halt because they are not going to be
24 able to remove 100 percent of the phosphorus from storm
25 water separated from a currently combined area.

1 The 2.2.1 provision where TMDLs will only be
2 enforced if they are, in effect, at the start of the permit.
3 I question that. I understand it. But, I question why a
4 TMDL, as it is approved, couldn't be rolled in to the
5 ongoing permit. We obviously wouldn't expect every aspect
6 of it to be finished within the first five years of this
7 permit term, as we are with the current TMDL's for bacteria
8 and phosphorus.

9 But, to put that on a new five year rolling term
10 seems to me reasonable.

11 The storm water management plan in section 1.1,
12 being subject to public input, and to be made publicly
13 available, and specifically, the fact that it will include
14 your map, at the moment, it will include the map you have
15 out where the outfalls are.

16 And eventually, in future years, as you complete
17 your system map, it will include the rest of your map.

18 I'm hoping that you Cities can put most of this
19 information on line, so I don't have to go to each
20 individual engineering office and ask to see this
21 individually.

22 I also like section 1.8.1 where, at any time, any
23 interested person can petition that one of these permittees
24 be required to apply for an individual or alternative
25 permit.

1 There have been a few instances where Cities just
2 are not keeping up. I mean, in the old permit we saw it.
3 The EPA actually had to issue section 308 and 309 letters to
4 Cities that were falling horridly behind in complying with,
5 what I consider the minimum requirements of the first phase
6 of this permit.

7 And I also liked section 1.7.4, the NOI comment
8 period being open to the public for 30 days.

9 Hopefully, I won't have many comments to make,
10 because, this permit as is written, satisfies most of my
11 requirements for what the Cities should be doing.

12 Now, I have three somewhat out of the box thinking
13 points.

14 The requirements for sampling, which the Cities
15 seem to think is so onerous, my personal requirement is a
16 little less than what the EPA is asking for. I would be
17 satisfied with a single sample from every outfall just for
18 bacteria.

19 For the ones that run in dry weather, a dry
20 weather sample. And for the ones that only run in wet
21 weather, the wet weather sample.

22 And some Cities, I agree, that bacterial sampling
23 is difficult because it has a limited hold time for getting
24 to the lab. And some Cities have done a decent job in
25 inventorying their potential IDDE problems by just doing

1 field sampling for ammonia and surfactants.

2 I would consider that as being reasonable, until
3 it is shown not to be.

4 If a City wanted to propose just doing ammonia and
5 surfactant sampling, because they can do it with their
6 personnel in the field, more rapidly, and if they actually
7 are able to do -- to start their IDDE program, and identify
8 things more rapidly, that's reasonable.

9 In your storm water management plan, and your
10 yearly update, you're going to be required to consider all
11 information which will be including information that
12 watershed associations and the DEP and EPA may have gathered
13 that say that, yes, you have bacterial problems.

14 But, I want to get the actual work done in the
15 ground to stop the sewage coming out of your storm water
16 drains. I want the work done.

17 I am not necessarily a fan of seeing you spend a
18 lot of your money just sampling.

19 The second thing outside the box here is, the most
20 problems I've seen, are in the most urban areas, the high
21 and medium density residential areas.

22 I've sampled the entire length of the Charles
23 River. And once I get outside of Route 128, when you get to
24 one or two acre lot sizes, and the town centers are like two
25 by four blocks, I have found extremely few IDDE problem

1 outfalls in my sampling.

2 I mean, there are one or two clusters, the cities
3 that, for whatever reason, have extremely collapsed
4 infrastructure. But, the current draft permit exclusion for
5 drainages which are 90 percent pervious or more, I think,
6 they could actually relax that to, if there are no more than
7 20 or 25 percent impervious, to remove the sampling
8 requirements for those. I think, that would be a reasonable
9 move.

10 And for Cities that have done sampling throughout
11 their city, if they could correlate impervious with the data
12 that they actually have, I think, you could make a case for
13 some specific cut off there.

14 My third outside the box thinking here goes back
15 to Patrick Herron's slide show of SSOs.

16 Inflow into the sewer system is causing huge
17 problems. Yes, it's in the bigger storms. Probably not
18 until you get to at least a two inch storm. But, we are
19 getting a couple of three inch or bigger storms every year
20 now.

21 And we are seeing not just the Mystic River -- I
22 mean, the MWRA overflows, but individual city outfalls.
23 Unfortunately, seem to be happening on at least an annual
24 basis at some places.

25 The MWRA has a permit coming up. And the rumor on

1 the street is that all the MWRA committee -- all the MWRA
2 member communities are going to be added to that permit as
3 co-permittees specifically for the inflow and infiltration
4 components of that permit.

5 I think that, if Cities object to that enough,
6 that, if they would want to suggest that this permit could
7 have provisions in it which could sufficiently attack the
8 inflow problem causing SSOs sufficiently, that they might be
9 able to get out from under being co-permittees on the MWRA
10 permit.

11 I'd like to suggest the EPA really look hard at
12 finding a way to put the inflow problem, the inflow of storm
13 water into the sewers, into the storm water MS4 permit.

14 Thank you very much.

15 MR. WEBSTER: Thank you, Mr. Frymire.

16 Now, I'm going to call the people that I called
17 and didn't respond, unless they were just having a break
18 during that time.

19 And then, after that, I'm going to see if there's
20 anybody that hasn't spoken that would like to speak.

21 Bill Stansfield, Peabody.

22 Peter O'Cairn from Sharon.

23 Tom Ferry from Dighton.

24 Jeff Bina from Weymouth.

25 Gary Agrassian from Attleboro.

1 Is there anybody that has not had an opportunity
2 to speak that would like to speak at this public hearing
3 before it closes?

4 If that's the case, I guess I'm just going to say
5 a couple of things.

6 One is, I greatly appreciate, you know, the
7 interest that you've had, and come out here. This has been
8 an incredible experience for myself.

9 I appreciate the thoughtfulness, you know, the
10 comments. And that, you know, Thelma had asked at the
11 beginning, to try to make them constructive, and I think you
12 did that.

13 You know, a lot of suggestions from a lot of
14 different perspectives out there, whether it has to do with
15 your Town department, or you know, what you saw in the
16 storm, or budget cycles or, you know, from a lot of
17 different perspectives.

18 I also appreciate the fact that a lot of you did a
19 lot of homework and research and coming up with that and a
20 careful read of the permit, and coming up with things that
21 Thelma and I probably knew were in there, but maybe a couple
22 of ones saying, oh, we need to go back and check into that,
23 and maybe provide some clarification on it.

24 It's very helpful to hear those experiences that
25 the communities and the watershed groups have.

1 Somebody got it right in saying it's a balancing
2 act. We've worked pretty hard on this permit and agonized
3 about a lot of the details. And kind of tickled to find
4 that some people found those details, and some of the
5 nuances that are in there, whether it's a sampling, or the
6 compliance with the Clean Water Act, and stuff, because
7 that's what's taking up a lot of time.

8 We're very much aware that it is a balancing act.
9 And I think, your comments would be very helpful for us to
10 consider in moving forward.

11 I would again remind you that the draft permits
12 and appendices and fact sheets are available on the website.

13 I'll put in a plug too. I was also pleased to
14 hear that you found a lot of things on the website, and got
15 your attention, and even provided some research on it too.

16 That's the place to go. We update that website
17 and put a little update on information on the status of
18 things every month at least.

19 And it has -- and that's where the tools will be.
20 We don't get a chance to advertise very often, so, I'll do
21 it here, that, we have, and certainly, anything as far as
22 the progress of this permit or other MS4 permits will be on
23 that website.

24 Please remember that the public comment period
25 ends midnight, March 31, 2010. And you may send written

1 comments up 'til that time, postmarked up 'til midnight that
2 night, and or by e-mail to Thelma.

3 Thank you very much.

4 This closes the public hearing.

5 (Whereupon, at 12:24 p.m., the hearing was
6 concluded.)

CERTIFICATE OF REPORTER AND TRANSCRIBER

This is to certify that the attached proceedings
before: U.S. ENVIRONMENTAL PROTECTION AGENCY
in the Matter of:

RE: NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMITS FOR STORMWATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4)
IN MASSACHUSETTS NORTH COASTAL WATERSHEDS
NPDES PERMIT NOS. MAR041800, MAR042800 AND MAR043800

Place: Boston, Massachusetts

Date: March 23, 2010

were held as herein appears, and that this is the true,
accurate and complete transcript prepared from the notes
and/or recordings taken of the above entitled proceeding.

M. Rossi 03/23/10

Reporter Date

M. Rossi 04/05/10

Transcriber Date