



COMMONWEALTH OF MASSACHUSETTS
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United States Environmental Protection Agency
Office of Ecosystem Protection
Mail Code: OEP06-4
5 Post Office Square – Suite 100
Boston, Massachusetts 02109-3912

Attn: Thelma Murphy
Murphy.thelma@epa.gov

RE: COMMENTS TO THE DRAFT SMALL MS4 STORMWATER PERMIT

Dear Ms. Murphy:

The Town of Wellesley, located in the lower Charles River Basin, has been working toward the reduction and elimination of pollutants in its municipal stormwater discharges long before the initiation of the NPDES Phase II permit program in 2003. The Town executed a voluntary Memorandum of Understanding (MOU) with the EPA in 1996 and at that time began implementing many of the minimum control measures that were eventually required under the 2003 Notice of Intent.

The proposed MS4 general permit has been developed in a one size fits all format. It does not reflect the diversity among the MS4 communities, each of whom has taken various steps to comply with the original 5-year permit. The steps implemented during the original permit period vary from community to community and with varying intensities. The proposed MS4 permit takes none of this into consideration and leaves no flexibility in its level of compliance.

One of the provisions in both the Lower Charles River MOU Program in the late 1990's and the 2003 general permit was the ability for the Town to tailor the Best Management Practices (BMP's) selected to achieve the maximum benefit utilizing available financial resources and manpower. This allowed the communities to comply with the permit requirements in a cost effective manner. Under the proposed Notice of Intent (NOI), there is considerably less flexibility without a clear benefit to be gained from the additional workloads. For instance, the requirement to sweep all streets and sidewalks twice a year will effectively double the Town's street sweeping budget, even though the

current single town wide sweep in the spring effectively captures the winter accumulation of road salt and sand. The requirement to maintain catch basins at no more than 50% full means that the Town will have significantly reduced the existing storage capacity in every catch basin and increased the catch basin cleaning frequency again without significantly improving water quality since the catch basins are designed with storage capacity in mind, i.e.: 4-foot sump. This will again result in a higher cost to perform this function.

The requirement to perform dry weather and wet weather sampling of 25% of all outfalls annually is especially burdensome to the Town. The Town of Wellesley has 330 outfalls. Timing of the grab samples is critical during wet weather and will be difficult to schedule to obtain samples that are representative of the first flush of runoff. The wet weather sampling will also include testing for parameters such as *E.Coli* and phosphorous. The wet weather analytical monitoring results will be highly variable and may not be an indicator of a problem or may even mask a problem because of the following: storm intensity and duration of rainfall when the sample is taken; the timing of when the sample was taken, such as the first flush of the storm or sometimes thereafter; time period between storms; and the time of year and temperature when the samples are taken. The cost to monitor and sample 330 outfalls is extraordinary and serves to place a severe financial burden on the Town. Currently the Town does its best to obtain samples as soon after the first flush as possible, although it is not always feasible due to time of day and availability of personnel.

Previously, the Town has been able to utilize staff personnel for the implementation of its stormwater activities. Minimal use of outside consultant services was required. There are numerous elements of the proposed permit for which the Town will need to utilize environmental consultants for assistance. This will require compliance with statutory procurement requirements and can be extremely time consuming. The overwhelming majority of the work performed for the initial 5-year permit was accomplished in-house. This will no longer be possible and will require a significantly great expense.

As indicated earlier, compliance with the outfall monitoring portion of the permit will be expensive. The cost of street sweeping and catch basin cleaning will increase dramatically. These are just some of the components of the proposed requirements. Development of a Phosphorus Control Program (PCP) will be another requirement. Time and space prohibit listing all of the issues municipalities will face as they work toward compliance with the requirements of the draft MS4 permit. Preliminary projections indicate that this permit will cost Wellesley \$250,000 to \$500,000 per year to comply. Nevertheless, the submittal of the NOI is a commitment to implement all the requirements of the general permit. That said, the Town is being asked early in the process to commit to programs that for which there are no guarantees that adequate funding will be in place now or over the 5-year permit life. The requirements under the proposed permit are well beyond the normal operating budgets of Town government. The Town may have to explore non-traditional funding mechanisms such as creation of

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a stormwater utility or tax override. Any of these approaches will require Town Meeting and/or voter approval. Thus, there is no guarantee the funding will be obtained. It may not be feasible to comply with some of the requirements even though Town government is committed to implement them. Furthermore, there are no guarantees that compliance with the permit requirements and expenditure of significant funds will have significant benefit to our waterways. So says the EPA's own consultant. The requirements of the draft permit represents an unfunded mandate and are significantly different from the original Clean Water Act requirements of the mid-1970's, which were accompanied by a 90% grant reimbursement program.

Finally, the stringent requirements of the proposed Small MS4 General Permit were developed with little input and participation from municipalities. Some input is being solicited now, at the very last minute. Hence, those expected to comply with the permit requirements have had virtually no input into its development. This does not represent an open and fair process. The date for submission of NOI's should be placed on hold until municipalities have had an opportunity to engage the regulatory agencies in an open dialogue regarding permit requirements. Establishment of a "working group" for this purpose is appropriate. The Town of Wellesley is committed to improvement of its waterways, including the Charles River. However, we urge the EPA to implement these changes with goals that are more realistically attainable and within the financial constraints of the current economic climate.

Very truly yours,



Cynthia Stone Creem
State Senator

cc: M. Pakstis, Director
J. Curby, Asst. Director
H. Larsen, Executive Director
S. Fader, Town Engineer
State Representative, A. Peisch