

March 31, 2010

EPA – Region 1
Attn: Thelma Murphy
Office of Eco system Protection
5 Post Office Square – Suite 100
Mail Code: OEP06-4
Boston, MA 02109-3912

Re: NPDES Small MS4 General Permit
Public Comments on the Draft Permit for the North Coastal Watershed

Dear Ms. Murphy:

In our role as consultants, our professionals here at Weston & Sampson are responsible for advising and assisting many municipal clients that own Municipal Separate Storm Sewer Systems (MS4s). Through the services that we have provided, and are continuing to provide, we have a strong understanding of the challenges that these communities face in complying with stormwater permit requirements under the National Pollutant Discharge Elimination System (NPDES) program. Based on that understanding, and in response to EPA's request for public comments, we offer the following comments and suggestions on the draft General Permit for the North Coastal Watershed.

Comment #1 - The permitting period should be coordinated with the municipal fiscal year and budget process.

The current economic climate presents many competing interests for municipal funds, particularly at a time when State aid to municipalities is under constant threat of further reductions. Each year the budgeting process becomes more competitive, and the special taxation limitations in place in Massachusetts imposed under Proposition 2-1/2 make the options for funding new costs even more difficult. Municipalities require time to carefully plan large financial commitments, and educate their voters as to the need for these expenditures.

With respect to the municipal fiscal year, running from July 1st to June 30th, the municipal budgeting process commonly begins in the prior calendar year. Therefore, it is important that communities understand the costs facing them in the coming fiscal year no later than December, so that these financial commitments can be included, explained, discussed and approved for funding in the next fiscal year's budget.

In order to meet these standard requirements, EPA should make the final General Permit available to all municipalities no later than December 1st, and requirements for expenditures to comply with that permit should not be required until the fiscal year beginning July 1st of the

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following year. In this regard, the permit period should measure each permit year on the municipal fiscal year cycle – July 1st to June 30th, including Year 1.

Comment #2 - Funding assistance programs should be established and should be made available to MS4s.

The program requirements of the NPDES MS4 permit necessitate significant expenditures of resources, both money and staff time. Historically, EPA had assisted communities in meeting the NPDES program requirements for eliminating wastewater pollution by providing funding assistance (notably grants). Many municipalities have taken advantage of grant and loan funding in the past to improve their ability to protect our nation's waters. Current funding programs (such as the Chapter 319 Water Quality grant program) prohibit the use of grant funds for stormwater compliance that is required under regulations. While the reduction of stormwater pollution to our resource waters is an important goal, to expect communities to do so without any type of assistance program brings into question the national commitment to this goal.

To reinforce the importance of the NPDES stormwater permitting program, some form of community funding assistance related to the program should be requested from Congress. In addition, the prohibitions against using existing available funding programs for stormwater compliance should be removed. Unfortunately, without some basic funding commitment at the national level, many municipalities see the stormwater regulations as an "unfunded mandate". Further, without some financial backing as a sign of a national commitment, responsible municipal officials may not be able to convince local voters and decision makers to fund the needed stormwater programs. We urge EPA to request that a dedicated funding source be made available to all municipalities covered by the NPDES MS4 permitting program.

We have prepared several additional comments on the technical requirements in the draft permit, and have attached those comments hereto for your consideration. Thank you for this opportunity to comment on the draft permit process, and we hope that you accept these comments in the interest of improving the ability of municipalities to comply with this and future permitting programs.

Very truly yours,

WESTON & SAMPSON ENGINEERS, INC.



Kent M. Nichols, P.E.
Vice President

Attachments/Enclosures

cc: file

**NPDES Permit for MS4 Discharges
North Coastal Watershed Draft**

Considerations for Public Comment

General:

1. Comment: General. The draft permit does not detail the steps between posting of the Notice of Intent for public comment and issuing Authorization. For example, who will receive public comments and who makes the determination if these comments are substantive? If they are deemed substantive, who will address these comments and what period of time will be allotted for the response? Furthermore, should this process substantially delay issuance of a formal Authorization by the EPA, will an extension then be granted to the permittee for completion of permit items; particularly, those required within the first year?

Recommendation: In Section 1 of the permit, add specific language to clarify responsibilities and timelines regarding the public notice process.

2. Comment: General. Permittees should be given a minimum of one full permit year to complete the requirements for permit year one, especially given the number and magnitude of required elements. If the authorization date is anything other than July 1st, the amount of time permittees are allowed to complete the multitude of Year 1 requirements will be unfairly reduced.

Recommendation: The EPA should define permit year one as ending on June 30th following a period of not less than 12 months after the authorization date. In order to meet this requirement, EPA should make the final General Permit available to all municipalities no later than December 1st. This will provide permittees with the full year needed to complete the first year requirements, as well as set apart a portion of time to comply with Parts 1.7 through 1.9 of the permit.

3. Comment: General. The number and magnitude of the requirements in the first permit year is too substantial for municipal personnel and budgets.

Recommendation: Move a selection of year one requirements back to year two in order to allow permittees reasonable time to complete parts 1.7-1.10 in addition to the multitude of tasks currently requested for year one. A suggestion would be to make the focus of year one the written Stormwater Management Program (SWMP), including the requirements of Part 1.10, and also related written protocols/procedures located throughout the permit that are required to be developed and incorporated into the SWMP. The focus of year two could then be implementation of many of the Good Housekeeping/Pollution Prevention tasks required by 2.4.7.1-2.4.7.2. This suggestion would provide far more reasonable and balanced deadlines for municipal budgets.

4. Comment: Part 1.10. The permittee is required to develop a written SWMP within 120 days following the permittee's receipt of authorization from EPA to discharge under the permit. There are a number of items required under the permit that must be incorporated into the SWMP that have a longer lead time than 120 days.

Recommendation: Provide clarification regarding EPA's intent for the SWMP and how often modification of the SWMP is required. As indicated above, a suggestion would be to make the focus of year one completion of the written SWMP, including the requirements of Part 1.10, and also related written protocols/procedures located throughout the permit that are required to be developed and incorporated into the SWMP.

5. Comment: Part 2.1.1.c. The requirement to eliminate conditions causing or contributing to the exceedance of water quality standards within 60 days of becoming aware is not reasonable. This requirement is both too broad (covering any/all parameters and conditions with no relation to any potential impact on the waterbody), and the time limit to locate and remove all conditions is downright absurd. This part also overlaps with Part 2.4.4.2 of the permit.

Recommendation: Part 2.1.1.c should be revised to work in conjunction with Part 2.4.4.2, providing a requirement for the permittee to develop and implement a plan and schedule to *investigate* the potential condition(s) causing or contributing to an exceedance of water quality standards within 60 days. Once the conditions are identified by the investigation of Part 2.1.1.c, then Part 2.4.4.2 would require their removal within 30 days.

6. Comment: Part 2.3.2. The definition for a *new discharger* is unclear, as the terms *New Source* and *Site* are not defined. In addition, these terms, as well as *New Discharger*, are not contained in the definitions section provided in Appendix A.

Recommendation: Add definitions for these terms to Appendix A.

7. Comment: Part 2.3.2.1. The requirement for each new discharge to impaired waters without a TMDL to have an Individual Permit does not make sense for municipalities or EPA/DEP. Communities where growth and/or redevelopment are occurring could conceivably have a large number of Individual Permits, causing an unnecessary administrative burden on all parties.

Recommendation: Delete the requirement for all new discharges to have an Individual Permit. Instead, add specific clauses into the General Permit similar to that done for TMDLs, and provide EPA discretion to require an Individual Permit if deemed necessary to add controls over and above those provided by the MS4 General Permit.

8. Comment: Part 2.3.3.f. The requirement for each new discharge to outstanding resource waters to have an Individual Permit does not make sense for municipalities or EPA/DEP. Communities where significant growth and/or redevelopment are occurring could conceivably have a large number of Individual Permits, causing an unnecessary administrative burden on all parties.

Recommendation: Delete the requirement for all new discharges to have an Individual Permit. Instead, add specific clauses into the General Permit similar to that done for TMDLs, and provide EPA discretion to require an Individual Permit where deemed necessary to add controls over and above those provided by the MS4 General Permit.

9. Comment: Part 2.4.4.4. The requirement to evaluate the sources of non-stormwater discharges in Part 1.4 of the permit and determine whether these sources are significant contributors of pollutants to the municipal system is not detailed enough. There is also no timeframe provided for completion of this task.

Recommendation: Provide further guidance regarding how these sources are to be evaluated and a timeframe for completion of this task. A suggestion would be to limit the evaluation to only those non-stormwater discharges that may be encountered during implementation of the IDDE program.

10. Comment: Part 2.4.4.7. The requirements for the Outfall Inventory are not clear due to the addition of the phrase "...for each stream mile within its regulated jurisdiction..." Is EPA trying to require that the permittee conduct a shoreline survey along every mile of water body to which its' MS4 has discharges? Or, is EPA simply trying to clarify that it expects the permittee to visit the actual discharge point of each and every outfall from the MS4? To require a full shoreline survey is both

unreasonable and outside the scope of the MS4 permit (unless a permittee had no information on where its MS4 outfalls discharge). The number of miles of shoreline in many MS4 communities is very large, and many of the outfalls along these shorelines are not owned by the MS4.

Recommendation: Limit the inventory to locating outfalls from the MS4 by deleting the phrase “for each stream mile within its regulated jurisdiction” in its entirety.

11. Comment: Part 2.4.4.8.c. The timeframe provided for delineating, ranking, prioritizing and inventorying problem catchments is not reasonable. All items need to be completed one year from the effective date of the permit. However, mapping of the MS4 does not have to be completed for two years from the effective date of the permit. It is impossible for catchments to be delineated, ranked, prioritized, and inventoried if mapping of the MS4 is not complete.

Recommendation: Based on the timeframe provided for mapping; delineating, ranking, prioritizing and inventorying problem catchments should be completed during year three of the permit at the earliest. The timeline for completion of IDDE Program Milestones as outlined in Part 2.4.4.8.g. of the permit should be extended to accommodate this change in schedule.

12. Comment: Part 2.4.4.8.e. The permittee is required to develop and implement mechanisms and procedures designed to prevent illicit discharges and Sanitary Sewer Overflows (SSOs). A timeframe is not provided for implementation of these procedures. The permit also does not indicate where this task must be documented whether in the SWMP and/or Annual Reports.

Recommendation: Provide clarification regarding a timeframe for completion of this task and provide information regarding required documentation.

13. Comment: Part 2.4.4.8.h. The requirement to train employees annually on the illicit discharge detection and elimination (IDDE) program does not specify what employees must be included in the training. To require the MS4 to train “all” employees would not be reasonable, nor is there any measurable benefit to training staff not in a position to have involvement in the IDDE program or opportunity to encounter illicit discharges.

Recommendation: Language should be added to Part 2.4.4.8.h of the permit to set reasonable expectations for types of employees or department who should receive the IDDE training.

14. Comment: Part 2.4.6.7. Permittees are required to develop a report assessing current street design and parking lot guidelines and other local requirements that affect the creation of impervious cover. The permit does not indicate whether this is a separate report that needs to be completed or whether it only needs to be part of the SWMP. The SWMP must be completed within 120 days which does not fit the timeline for completion of this task.

Recommendation: Clarification should be provided in the permit as to whether the permittee is required to develop a separate report. The timeline for completion should also be clarified as it relates to development of the SWMP.

15. Comment: Part 2.4.6.8. Permittees are required to develop a report assessing existing local regulations to determine the feasibility of incorporating green practices when appropriate site conditions exist. The permit does not indicate whether this is a separate report that needs to be completed or whether it only needs to be part of the SWMP. The SWMP must be completed within 120 days which does not fit the timeline for completion of this task.

Recommendation: Clarification should be provided in the permit as to whether the permittee is required to develop a separate report. The timeline for completion should also be clarified as it relates to development of the SWMP.

16. Comment: Part 2.4.6.9.c-d. EPA's requirement for permittees to reduce the frequency, volume, and peak intensity of stormwater discharges from existing MS4-owned properties and infrastructure is not reasonable or justifiable. If discharges from the MS4 contain no pollutants in excess of water quality standards and cause no excessive erosion or scour, then there is neither a need for, nor legal justification to require, these discharges to be retrofitted with flow-control BMPs.

Recommendation: Add language to items 2.4.6.9.c-d limiting the requirement for inventory, ranking, and implementation of flow-control BMPs to only those properties or outfalls causing a documented water quality violation or erosion impact.

17. Comment: Part 2.4.7. Many of the requirements included as part of the Good Housekeeping and Pollution Prevention minimum control measure are extremely onerous to those communities that lack manpower and have limited operating budgets. For many of the items, it is not possible to make the repairs required in the allotted timeframe especially when funds to make these repairs have to be incorporated into municipal fiscal budgets ahead of time.

Recommendation: Extend timeframes provided to make necessary repairs. Reduce the extent of requirements to make them more manageable for communities given their current limited resources.

18. Comment: Part 2.4.7.1.b. The requirement that floor drains in all municipal facilities must be inventoried and the permittee must ensure that all floor drains are not connected to the MS4 within six months of the effective date of the permit is not feasible. As written, this would include every floor drain in every municipal facility, of which some municipalities have many. This would be a time-consuming and costly task to complete.

Recommendation: Revise Part 2.4.7.1.b. to extend the timeframe for completion of this task. Provide information regarding acceptable methods for ensuring that floor drains are not connected to the MS4. Is dye testing required or are as-builts acceptable?

19. Comment: Part 2.4.7.1.d.i. requires the permittee to establish, within six months of the effective date of the permit, a program to repair and rehabilitate its MS4 infrastructure. This requirement is vague and requires additional clarification. Is EPA just looking for municipalities to demonstrate that they have a Capital Improvement Plan (CIP) for their MS4 or is EPA looking for a comprehensive condition assessment and associated improvement plan? The latter would be far too costly for the permittees.

Recommendation: Revise Part 2.4.7.1.d.i to clarify that the permittee must develop/implement or already have in place an appropriate CIP for its MS4 infrastructure and that the permittee does not have to complete a comprehensive condition assessment of all MS4 infrastructure.

20. Comment: Part 2.4.7.1.d.iii. The requirement that cleaning and maintenance of catch basins shall be optimized so that no sump is more than 50 percent full for those catch basins tributary to impaired waters is unrealistic. In some communities, all catch basins are tributary to impaired waters, so this requirement would extend to every catch basin in the community. In addition, in many communities, catch basins have dirt bottoms making it difficult to determine when they are half full. There is also not enough detail provided in the permit regarding how often catch basins would need to be inspected. This requirement would have huge cost implications based on how frequently the catch basins would need to be inspected.

Recommendation: Revise Part 2.4.7.1.d.iii to require catch basins to be inspected in conjunction with routine cleanings only and not at separate intervals. During routine cleaning, the amount of sediment removed will be documented and a determination can be made regarding how frequently catch basins need to be cleaned going forward. The entire five year permit term should be allotted to complete simultaneous inspection and cleaning of all catch basins to develop an appropriate schedule for future catch basin cleanings.

21. Comment: Part 2.4.7.1.d.viii. The requirement that “All permittee-owned stormwater structures shall be inspected annually at a minimum” is not feasible. As written, this would include every pipe, manhole, catch basin, or other structure making up the entirety of the MS4 facilities. This is likely not EPA’s intent.

Recommendation: Revise part 2.4.7.d.viii to require inspection of all structural BMPs as listed in the permit. If inspection of additional structures is desired, list those specifically, but delete “all” structures.

22. Comment: Part 2.4.7.2.b.v. requires that all areas of facilities that are exposed to stormwater and all stormwater control measures be inspected on a quarterly basis. Quarterly inspections are excessive.

Recommendation: Revise Part 2.4.7.b.v. to require that facility inspections occur annually rather than quarterly.

23. Comment: Part 3.1.4. The permittee-specific monitoring plan to reduce the number of outfalls monitored should also be applied to dry-weather sampling. If a permittee completed dry-weather sampling under the MS4-2003 consistent with the requirements of the draft MS4-2010, the permittee should be able to utilize this data to reduce the frequency of dry-weather monitoring at outfalls where prior monitoring has demonstrated that no discharge of pollutants is occurring.

Recommendation: Add a new Part 3.1.5 to the permit detailing the allowable conditions under which a permittee can develop within year one of the permit a permittee-specific monitoring plan for dry weather that reduces the number of outfalls monitored based on a set of conditions such as past monitoring data. Include a requirement for the permittee to periodically revisit these outfalls (once every five to ten years) to ensure that no new pollutant sources are present.

24. Comment: Part 3.3.1. The requirements related to wet-weather monitoring are not provided in sufficient detail. Inspection must be performed during wet weather, defined as sufficient intensity to produce a discharge; however, it is not clear whether a discharge must be observed at every outfall to achieve compliance. Does the permittee have to return to an outfall repeatedly until a discharge is actually observed, even when substantial rainfall events have occurred? To require the permittee to mobilize staff, equipment, and laboratory services an unlimited number of times to actually observe each and every outfall flowing, places an unreasonable burden upon the permittee. In addition, a storm of sufficient intensity and duration to allow flow to be observed at every outfall is not likely occur with sufficient regularity to facilitate compliance, particularly in MS4s with large numbers of outfalls.

Recommendation: Set specific minimum storm parameters, for both time and rainfall amount, so that the permittee can make a reasonable determination as to whether to mobilize for the wet-weather inspection effort. Set the minimum storm parameters at a level expected to produce discharges at the majority of outfalls. Eliminate the requirement for discharges to be observed at each and every outfall.