



TOWN OF FRAMINGHAM

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January 4, 2011

Ms. Kate Renahan, Office of the Regional Administrator,
U.S. Environmental Protection Agency (EPA) - Region 1
5 Post Office Square – Suite 100 – Mail Code: ORA01-1,
Boston, Massachusetts, 02109-3912

Re: Comments on the Draft Massachusetts Interstate, Merrimack and South Coastal
Small MS4 General Permit

Dear Ms. Renahan,

The Town of Framingham currently operates its storm sewer system under the NPDES Phase II Municipal Separate Storm Sewer System (MS4) General Permit (Permit No. MAR041116). As a Phase II MS4 community, we have a population of approximately 70,000 residents and a land area of 26 square miles containing mixed land use. The Town's infrastructure includes approximately 250 miles of roadways, 65 miles of storm drainage pipes, 10,000 storm drainage structures, 500 storm drainage outfalls, 450 Town owned properties, and 50 Town owned buildings. Our sanitary sewer system is separate from our stormwater sewer (aka drainage) system. All runoff ultimately flows to the Sudbury River; therefore the Town lies completely within one watershed.

The Town supports the improvement of water quality in its already impaired watershed, the Sudbury River, located in Massachusetts, a state where there is no county support of stormwater management as in many other states. We work very closely with the Massachusetts Department of Environmental Protection (MassDEP) and EPA managers to implement the existing stormwater regulations. We have reviewed the proposed draft permit for the Massachusetts watersheds and have the following major comments on the Draft Massachusetts Interstate, Merrimack and South Coastal Small MS4 General Permit:

- 1) The cost of implementation will be a significant burden to the Town. The Town has many high priority needs competing for limited available funding. The new requirements contained in the Draft General Permit amount to unfunded federal and state mandates with the burden of implementation falling upon local communities.
 - a) Costs associated with complying with the Draft General Permit to Framingham are estimated at \$1,400,000 in one-time costs (including \$900,000 for road maintenance equipment) and \$600,000 additional annual costs above the \$650,000 the Town currently spends on MS4 operations (including street sweeping, catch basin cleaning and maintenance, monitoring, education, and other permit requirements). Annual capital and operating costs would increase further depending on the

- level and extent of stormwater management facility retrofits required of the Town by the permit. The Town has difficulty funding current stormwater management capital and operational needs. It has been estimated that an additional \$300,000 in operating costs and \$1,500,000 in capital costs are required annually to adequately maintain the existing drainage system.
- b) The Town has an increasing problem with maintaining drainage channels via dredging and brush clearing that would cost approximately \$120,000 per year (or \$1,800,000 over a 15-year cycle). Most of the channels have not been cleaned in over 40 years, and the silt/sediment build up is causing significant damage to homeowners. It will be a significant burden to the Town to meet the permit requirements under the limitations imposed by other agencies. We recommend that the dredging (Section 404) permits be revised to limit the oversight of the US Army Corps of Engineers to true waterways rather than all tributaries.
 - c) Although there are currently no Total Maximum Daily Load (TMDLs) standards for water bodies in the Town, we understand that these standards will be developed within the next 5 years, and that Framingham will be required to operate its MS4 under the new standards (Section 2.2). Compliance with the requirements associated with potential TMDLs will increase Town costs by at least 25 to 50% beyond the amounts cited above.
 - d) For receiving waters both with and without approved TMDLs (Sections 2.2.2 and 2.3.1), requiring the installation of BMPs in municipal systems to meet all impaired water quality standards is an enormous and expensive undertaking
- 2) The timeframe for implementation is extremely aggressive. We anticipate that meeting the EPA permit goals outlined in the draft permit will take at least 15 years to implement. This is because we will need to both understand and prioritize the drainage problems within Town, and set in place funding mechanisms to accomplish the work. Specifically:
- a) The Town owns about 450 parcels of land, including over 50 buildings and 60 parks. Under Section 2.4.6.9 of the Draft General Permit, these sites may require retrofitting with structures using best management practices (BMPs). Because of the heterogeneous geology and widely varying topography in the Town, each site will require a separate analysis to identify an appropriate BMP.
 - b) The Town is currently in the second phase of developing a Stormwater Master Plan; we estimate the entire plan will be completed in about 5 years. Once this phase is completed in the summer of 2011, we expect that about one-half to two-thirds of the Town's most critical drainage infrastructure will have been inspected and analyzed for improvements, including best management practices. However, Phase I and Phase II of the Stormwater Master Plan have been limited to roadway related stormwater infrastructure. The 450 Town owned properties outside of the Towns roadways have yet to be included in the Stormwater Master Plan.
 - c) The Town has a significant and geographically diverse farming community. It will be difficult to separate water quality results that exceed phosphorus or nitrogen standards from natural sources or manmade sources such as farm-generated over-fertilization or lawn-generated over-fertilization.
 - d) Under Section 2.4.4.8 of the Draft General Permit, the Town would be required to identify specific commercial operations such as garden centers, car washes, and similar potential sources of adverse water quality. At this time, the Town has only been required to monitor outfalls for potential illicit discharges, not to aggressively target the operations themselves for monitoring.
 - e) Section 2.4.4.6 stipulates that the permittee shall develop a map of the separate storm sewer system within 2 years of the effective permit date. While much of the Town's roadway stormwater infrastructure is mapped into a geographic information system (GIS), the storm drainage systems on the 450 Town-owned properties are not mapped. This may be a significant effort. In addition,

it is not clear which outfalls will need to be monitored for water quality standards, impairments, and general outfall monitoring.

- 3) The Town believes that regulatory changes should be promulgated at the state or federal level, not the local level. There are many reasons why this makes more sense than requiring municipalities to promulgate their own regulations.
 - a) Watersheds contain more than one municipality, and conversely one municipality may be contained within two or more watersheds. Therefore a regulation promulgated by one community may be contradictory to those promulgated by another community.
 - b) Local ordinances are not easily enforceable and do not have the strength of state or federal laws. For example, the number of citizen appeals to enforcement procedures for violations of the Wetlands Protection Act through the Conservation Commission is increasing dramatically. In the past two to three years, the Town of Framingham has seen an average of seven concurrent appeals, whereas in past years there would be perhaps two or three concurrent cases. These appeals create tremendous costs to the Town in staff time and legal expenses. The Town believes regulation and enforcement should be at the state or federal level, or that additional financial support be provided to the Town.
- 4) Where the source of impairment is known to be upstream, the downstream municipality should not be required to analyze for pollutants even though they may be present in the water. This would be an inappropriate burden for any municipality. In the case of the former Nyanza Inc. in Ashland, metals such as mercury as well as chlorinated organic compounds were deposited in the Sudbury River as part of the company's operations. The EPA has declared this a Superfund site. The entire reach of the Sudbury River that includes the Town of Framingham has been contaminated by mercury. The Town of Framingham recommends that such impairments be monitored by others.

The Town has the following comments related to specific sections/sub-sections of the Draft Permit:

- 1) Section 1.2.1 states that the regulations only apply to the "urbanized" areas of each community – those with at least 500 people per square mile. Section 1.4 states that "irrigation water" is excluded as a non-stormwater discharge. This may result in an exclusion of agricultural areas, which tend to be major contributors to stormwater pollution, especially with regard to nutrients.
- 2) Section 1.10 of the Draft General Permit requires that the written Stormwater Management Program (SWMP) must be completed within 120 days following the permittee's receipt of authorization from EPA to discharge under the Permit. The Town anticipates that there will be a significant effort and inter-departmental coordination and planning that will be required to develop a comprehensive SWMP that will be require more than 120 days and requests additional time.
- 3) Section 2.1.1 requires that discharges not cause or contribute to an exceedance of water quality standards. Section 2.4 requires that the discharge of pollutants be reduced to the maximum extent practicable (MEP). These directives appear to be in conflict. MEP is the statutory standard that establishes the level of pollution reductions that MS4 operators must achieve. Application of pollution controls to the MEP may not assure that discharges do not cause or contribute to an exceedance of water quality standards. Since MEP is the statutory standard for MS4s, it should apply throughout the permit and be the governing standard to determine compliance.
- 4) Section 2.1.1 also states that if a discharge causing an exceedance of a water quality standard is discovered, the community is instructed to fix it within 60 days or document in the Stormwater

Management Plan (SWMP) an estimated timeframe to correct the problem. This implies that the SWMP is an evolving document with constant updates to the regulators. If such updates are required, they should be limited to annual updates, rather than requiring continuous revision. Update requirements should be clarified in the Final Permit.

- 5) Section 2.3.3.b.iv requires that stormwater controls be designed such that there is no discharge of stormwater from the volume associated with a 1-inch storm event. The Town feels that this requirement is very stringent and recommends that this requirement be changed to maximum extent practicable (MEP).
- 6) Section 2.4.4.2 accurately recognizes that 6 months is not enough time to pursue and resolve a legal dispute with a discharger unwilling to comply; this could take years, and no time limit should be placed on such a dispute where it is beyond the control of the community.
- 7) Section 2.4.4.7 requires that the outfall inventory must be completed by the end of the permit term. The Town has completed the outfall inventory under the current permit. The Final Permit must clarify if the Town is exempt from re-inspecting these outfalls.
- 8) Section 2.4.4.8 mentions that areas with sanitary sewers over 50 years old should be considered as having a high illicit discharge potential. Note that in Framingham, the majority of sewers are over 50 years old. Therefore, a further division of priority areas would be required.
- 9) Sections 2.4.6.5 and 2.4.7.2 of the Draft General Permit water quality improvement standards include requirements for silt and sediment. The Town currently focuses on preventing silt and sediment deposit into streams from the roadway. However, most of the silt and sediment in the drainage channels, streams, and brooks is from leaching of surrounding fine soils and organics (including nitrogen and phosphates) into the natural drainage channels. Dredging or excavation to remove this sediment would help relieve flooding and adverse impacts to residents and business. However, Section 404 requirements administered by the United States Army Corp of Engineers (USACOE) make it very difficult for the Town to perform this work. The Town requests that the EPA work with the USACOE to support management of drainage channels, especially small non-navigable channels. Water quality would be improved and property flooding reduced if excessive silt and sediment were removed from the natural channels. Removing regulatory hurdles from smaller tributaries would help improve the water quality in the Town's drainage system.
- 10) Section 2.4.6.9 lists the requirements to measure and monitor changes in impervious area. The rate of land development in Framingham may be significantly slower compared to other communities as the Town is nearing full-buildout conditions. This results in significantly lower rates of changes in impervious area (IA) and directly connected impervious area (DCIA). Measuring and monitoring impervious area will be burdensome that will take staff away from more valuable functions while resulting in little benefit to the municipal stormwater managers. If change in impervious surface over time is a metric of interest to Federal and State regulators then perhaps every 10 years regulators can utilize advances in satellite imagery or other statewide GIS data to track this information. Stormwater managers should not be charged with gathering data that does not provide them with useful information. Also, many of the data needs exist at a regional or state level and not at a town level (i.e., impervious surfaces are provided by MassGIS). The use of this regional data at the local level may in fact lead to future confusion and contradictory efforts. It is recommended that the Town should not be responsible for providing information where regional or state level information already exists. The States should be tasked by the EPA to conduct this analysis.

- 11) Section 2.4.7 outlines the requirements for good housekeeping and pollution prevention from municipal facilities. These appear to be reasonable and achievable, with the exception of the following two provisions: (1) investigating municipal buildings to identify all floor drains may be a challenging task, especially in a 6-month timeframe, for facilities such as school buildings and public meeting spaces; and (2) the requirement to clean all catch basins when they are 50 percent full could potentially require frequent cleaning of all catch basins in areas where deep sump basins have not yet been installed and may be excessive compared to the associated benefit. Town departments responsible for catch basin cleaning strive to maximize efficiency in light of local budgets and staff shortages. For the roadways, greatest efficiency is realized when catch basins are cleaned following a geographic pattern, i.e., all basins in a given area are cleaned one after the other before moving on to a new area. Cleaning catch basins when they become 50 percent full is contrary to efficient use of manpower and cannot be implemented in a practical way. Furthermore, the inspection and cleaning of stormwater structures should be modified to be at the same frequency, allowing both to be performed at once.
- 12) Section 2.4.7.1 requires that within one (1) year from the effective date of the permit, written operations and maintenance procedures for municipal activities be developed. The Town requests anticipates that significant effort in planning and coordination with various Town departments is needed and requests that full Permit Term (5 years) be granted for this effort.
- 13) Section 2.4.7.2 requires quarterly inspection of facilities under a Stormwater Pollution Prevention Plan (SWPPP) is inefficient and wasteful. The Town recommends an annual inspection of facilities and semi-annual inspection (spring and fall) of discharge points. Also, the Draft permit requires that SWPPPs be developed and implemented for maintenance garages, public works facilities, transfer stations, and other waste handling facilities. The Town recommends that a comprehensive SWPPP that covers all of the facilities be required rather than developing individual SWPPPs for each of the facilities. Developing and implementing individual SWPPPs will result in significant cost burden to the Town.
- 14) Section 3.2.1 and Section 3.3.2 require monitoring of 25% of all outfalls each year in both wet and dry weather conditions. This requirement will result insignificant costs and will not produce data that could be used to significantly improve the water quality. . This should be lowered to a more achievable level, such as 10% per year, starting with known problem areas. Because of the vagaries of stormwater quality, wet weather monitoring is of little value. Such monitoring should be kept to a minimum with representative sampling rather than monitoring of all outfalls. Representative sampling could be used to provide a general overview of stormwater quality. This overview will no doubt affirm what is already well known and documented – stormwater quality is highly variable and can be very poor.

The monitoring data from the NPDES Phase I communities that was required to be collected at significant costs proves to be of any benefit. The data was collected with no clear objective, with no basis for quality control and level of training for the sampling teams. If monitoring is required then the objectives must be clearly laid out with well defined universal guidelines for sampling plans.
- 15) Sections 4.1 and 4.2 The Town agrees with the requirements for stormwater inputs into drinking water supply areas and the encouragement of groundwater recharge where feasible.
- 16) Section 5.1.5 states that “EPA or MassDEP may require the permittee to add, modify, repair, replace or change BMPs or other measures” at any time. This is open-ended and onerous. More specific allowances should be made for how long a community will be given to make changes if they are requested or required by the regulatory agencies.

Ms. Kate Renahan
January 4, 2011

17) Where some of the permit requirements extend for a period of 10 years, it seems that record keeping should be required for longer than a five-year period.

Sincerely,

Town of Framingham Board of Selectmen



Dennis L. Giombetti



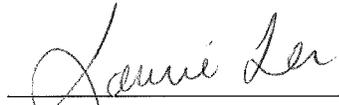
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Laurie Lee

cc: Senator John F. Kerry
Senator Scott Brown
Congressman Edward J. Markey
Senator Karen Spilka
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