



**TOWN OF LEICESTER STORMWATER COMMITTEE
C/O LEICESTER HIGHWAY DEPARTMENT
PETER SALEM ROAD
LEICESTER MA 01524**

Ms. Thelma Murphy
US Environmental Protection Agency
One Congress Street-Suite 1100
Boston MA 02114-2023

RE: Draft Small Municipal Storm Sewer System (MS4)
General Permit for Stormwater Discharges from Small Municipal
Separate Storm Sewer Systems in Massachusetts Interstate, Merrimack, and South Coastal Watersheds (hereafter referred to
as the Draft IMS MS4 Permit)

Dear Ms. Murphy:

Thank you for the opportunity to comment on the Draft MS4 permit. We have received and reviewed the documentation and will be attending and commenting at the EPA hosted public hearings.

Such as many smaller communities in Massachusetts our comments are similar in nature but seem to in summary break into 3 major categories:

- The compliance with the Permit Conditions and Requirements is very Cost Prohibitive
- Numerous Conditions and Requirements of the Permit are Vague
- The Timeline Outlined in the Permit is seemingly Unrealistic

We have attached our comments to this cover letter in a more thorough manner and we thank you for your time and consideration in your review of our concerns.

Sincerely,

Ruth Kaminski

Ruth Kaminski, Town of Leicester Storm Water Facilitator
And the Storm Water Committee
Thomas Wood, Leicester Highway Superintendent
Michael Knox, Cherry Valley Rochdale Water and Sewer District
Glenda Williamson, Leicester Conservation Commission
Thomas Buckley, Leicester School Department

Cc: Senator John Kerry; Senator Scott Brown
Congressman, Richard Neal; Congressman, James McGovern
State Representative, John Binienda; State Senator, Michael Moore
Town of Leicester: Board of Selectmen; School Committee; Finance Advisory Board; Planning Board; Conservation
Commission; Cherry Valley Rochdale Water/Sewer District; Leicester/Hillcrest Water/Sewer District; Moose Hill Water
Commission;

Attachments: Letter of support from Board of Selectmen
Summary of comments to be made verbally at public hearings across the Commonwealth
Extensive Comments from Stormwater Committee on behalf of the Town of Leicester

SUMMARY COMMENTS TO BE MADE VERBALLY IN PERSON AT THE PUBLIC HEARING ON BEHALF OF THE TOWN OF LEICESTER MASSACHUSETTS:

The following represents comments for this Public Hearing from the Town of Leicester, but also echo the concerns of a number of small communities in the Merrimack, Interstate South-Flowing, and Southern Coastal Watersheds.

The objectives of the Draft IMS MS4 Permit are admirable, but have been delineated in such a way that few small communities like Leicester- with a population of approximately 11,000 people and small Town departments- will be able to satisfy.

Leicester's concerns center around the fact that the Draft Permit is far too prescriptive in its requirements, has unreasonable deadlines for compliance with individual components, and does not differentiate between the needs, abilities, and successes of individual MS4s. Individual communities should be encouraged to apply the knowledge gained during their efforts under the 2003 Permit, and to focus limited stormwater budgets on parts of the urbanized area with the highest need; the Draft Permit does not have this flexibility.

For example,

- o The requirement to clean streets and sidewalks twice a year is not feasible in Leicester due to existing department staff levels and budgets.*
- o Mandatory education and outreach components aimed at impaired waters decreases the community's ability to focus on issues that may have higher priority.*
- o Requirements to provide IDDE training to all staff, wet- and dry-weather sampling of all outfalls within the Permit term, and development of O&M Plans for each municipal facility are not economically feasible for small towns.*
- o The mandated evaluation of sources of nitrogen and phosphorus to impaired waters will reduce the amount of funding available to tackle potential sources that have already been identified.*
- o Submittals required under the Final MS4 permit need to be aligned to the municipal budget period so that funding can be allocated in a thoughtful and reasonable way, and we request USEPA to consider new and more functional timelines for compliance with individual sections.*

Finally, from a "big picture" perspective, the Draft MS4 Permits developed by USEPA Region 1 do not mirror the federal voice on nonpoint source pollution.

- It is inefficient to require hundreds of communities to complete common actions such as GIS management of data layers, development of educational materials, and update of IDDE programs instead of developing these tools at a federal level and making them available to the communities.*
- Federal funding programs such as 319 grants and SRF programs should not only **allow** but should **encourage** communities to seek out this funding for stormwater construction and Best Management Practices within the MS4 urbanized area: these uses are in compliance with the spirit of the Clean Water Act and may provide the only mechanism for some communities to tackle larger issues. USEPA taking the lead on stormwater issues would make it more palatable to community leaders and residents, and would provide tools that could be used by many, many municipalities, allowing them to focus limited budgets on making real improvements to water quality within their community.*

The Town of Leicester thanks you for your consideration.

GENERAL COMMENTS

- USEPA should align all reporting and regulatory timelines and milestones to the municipal budget cycle in Massachusetts, i.e., July 1 through June 30, and for which communities typically begin planning in December and January. Town Meetings are held in spring to authorize budgets for the upcoming fiscal year. Realignment will allow for appropriate evaluation and discussion of priorities for the coming budget year, and will minimize unanticipated funding needs mid-budget cycle. Similarly, USEPA should provide a realistic update on the revision period for the Draft IMS MS4 Permit. New Hampshire communities have been waiting nearly three years for a new MS4 Permit, complicating the municipal department budgeting process and impairing the ability of the communities to secure funding when it will be needed. Clarity and accountability in the Permit timeline will give MS4 communities the time they need to secure the funding necessary to satisfy their commitments.
- USEPA and other agencies within the federal government should strongly reconsider current prohibitions on the use of Section 319 Grants (i.e., grants under the Nonpoint Source Pollution Program) by municipalities in areas designated as “urbanized” under the MS4 program. The objectives of the 319 Grant funds are consistent with the MS4 program. While allowing use of 319 Grants for MS4 work will make the grant program more competitive, it will also ensure that the funds go toward improvements in areas with the absolute highest need. This substantial, measureable environmental improvement is in the spirit of the Clean Water Act while also working toward the objectives of the Draft IMS MS4 Permit. Furthermore, there needs to be a decision at the federal level to encourage and allow the use of federal monies in Clean Water State Revolving Fund (SRF) programs not just for stormwater planning and pollution reduction, but also for construction and upgrade of stormwater infrastructure, including Best Management Practices.
- USEPA has included a number of timelines and milestones in the individual sections of the Draft IMS MS4 Permit. Many of these timelines seem arbitrary and nearly all of them will be impossible for most MS4 communities to satisfy. The NOI process should allow each MS4 to propose a schedule for its activities under the permit. This eliminates the prescriptive nature of the current Draft IMS MS4 Permit, and allows the Towns to apply the knowledge and data they gathered during the 2003 MS4 Permit term. This flexibility will enable each MS4 community to focus limited funding where it is most needed and where it will have the best impact.
- USEPA has a number of resources available in GIS that would benefit all communities covered by the Draft IMS MS4 Permit. These resources include layers that show the following features or conditions: 303(d) waters; waters with approved TMDLs; endangered species; impervious surface; drinking water supplies; shellfish beds; fishing areas; underground injection control (UIC) locations; and critical habitat. All MS4 communities should be provided with access to these GIS resources to eliminate the duplication of cost and effort associated with each community surveying and mapping each of these features independently.
- The Final IMS MS4 Permit should encourage MS4 communities to work with surrounding MS4 communities to develop, implement, and share educational and outreach resources. This will spread the development cost across multiple communities, allowing each to accomplish the largest benefit with limited budgets.
- Many MS4 communities mapped, inventoried, and inspected outfalls that discharge flow from a catchment to areas other than a “stream mile”, a term referenced in the Draft Northern Coastal MS4 Permit and the Draft New Hampshire MS4 Permit and in a slightly different way in the Draft IMS MS4 Permit. These outfalls do contribute drainage to the watershed of surface water, but do not discharge directly to the surface water. Please provide expanded definitions in the Final IMS MS4 Permit (and all other Permits, consistently) for the discharge locations and configurations that constitute an outfall.

SPECIFIC COMMENTS

- Section 1.10: The deadline for each MS4 community to develop a Stormwater Management Plan (SWMP) within 120 days of USEPA’s approval of the community’s NOI is far too short. The SWMP document lays out the objectives of each community’s work under the five-year IMS MS4 Permit, and must incorporate a number of prescriptive actions and evaluations defined throughout the rest of the Draft IMS MS4 Permit. A SWMP needs to be reviewed carefully by the administrative agents of each MS4, who will be responsible for authorizing annual funding adequate to accomplish each requirement. The 120-day deadline does not allow this and will result in a SWMP that does not reflect the best use of an MS4 community’s limited funds. The Draft IMS MS4 Permit has been in development by USEPA for at least three years (since the expiration of the 2003 MS4 Permit in May 2008) - MS4 communities should have more than four months to produce a document explaining how they plan to achieve compliance with it.

- Section 2.4.2 (Public Outreach) and Tables G-1 and G-2: These tables outline MS4 communities with waters that have phosphorus TMDLs (Table G-1) and nitrogen TMDLs with discharge to Long Island Sound (Table G-2). Based on impaired waters falling into these two categories, the MS4 communities are required to incorporate certain alternate practices into their public education and outreach components. These outreach requirements include such things as alternatives to phosphorus-based detergent, proper application of fertilizers, yard waste composting, and alternatives to traditional fertilizer. This approach is very prescriptive, and does not allow the MS4 community to focus on area-specific issues identified during the 2003 MS4 compliance effort. These alternate practices are important, but may not be the highest educational need in the community, and may not reduce phosphorus and nitrogen loadings as much as a different outreach campaign aimed at a community-specific issue. The Final IMS MS4 Permit needs to include the flexibility for the MS4 community to address the community-specific needs with limited education and outreach budgets.
- Section 2.4.2.2: The Draft IMS MS4 Permit now includes a requirement to “assess the overall effectiveness” of an educational program. Many of the current assessment tools include surveys where respondents have motivation for participation, such as being entered to win a drawing. Other assessment tools include evaluation forms, such as for an erosion and sedimentation control course aimed at contractors. In both cases, the responses may be biased and not reflect actual effectiveness, and both require a substantial administrative component to process. If USEPA includes a measurement component in the Final IMS MS4 Permit, it should also produce tools and examples that the MS4 communities can use to satisfy this requirement. These tools would be used by all communities, reducing the developmental burden on the shoulders of all MS4s.
- Sections 2.4.4, 2.4.5 and 2.4.6: These sections refer to an “ordinance, by-law, or other regulatory mechanism” that shall be in effect in each MS4 community to address such issues as IDDE, Construction Site Stormwater Runoff Control, and Post-Construction Stormwater Management. USEPA should provide approved, updated sample language for each of these regulatory mechanisms. Communities may be more willing to revise existing regulatory documents if USEPA has pre-approved a new version of them. This will also reduce each MS4’s substantial cost of legal counsel required to assist in the development and review of new regulatory mechanisms, and increase the consistency of regulatory mechanisms across the State.
- Section 2.4.4.7 (c): This section provides a list of parameters (ammonia, chlorine, etc...) for which each discharging outfall shall be sampled during a dry-weather inventory inspection. This sampling would be considered part of the Dry Weather Screening requirement (Section 3.2). Allowing for use of field test kits for most parameters during this activity is a substantial improvement over previous versions of the new MS4 Permit, provides real-time results, and is much more cost-effective than mandating laboratory analytical testing. However, this full parameter list should not be required by any method for each outfall if observations suggest no evidence of illicit discharges and if the outfall does not discharge to impaired water. Observations similar to those defined in Section 2.4.4.8(d) (IV) could be used as a trigger for screening. In cases where there is no reason to believe that the dry weather discharge contains pollutants of concern, the community should not be required to complete the full screening process. Bacteria samples have an analytical cost of approximately \$35. This cost, plus the very short holding time on the samples, make this sampling procedure onerous. A properly-completed inventory inspection form would reflect the absence of observations that led to this conclusion, and should provide adequate documentation of a ‘clean’ discharge.
- Section 2.4.4.8(c): The Draft IMS MS4 Permit, in this section, requires that the MS4 community rate all drainage catchments and assess each with a “Problem”, “high”, “medium”, or “low” potential for having illicit discharges. The community is then required to address the “Problem” and “high” risk catchments by focusing IDDE investigations in these areas, in order of priority. While it is reasonable for USEPA to require the community to address the “Problem” and “high” areas as top priorities, there needs to be more flexibility with the approach for “medium” and “low” risk catchments. After the community has updated its IDDE Plan, it should be allowed to focus its limited budget on other program components instead of doing mandatory investigations in the “medium” and “low” risk areas. For some communities, best engineering practice may suggest moving on to the “medium” risk areas, where other communities may wish to increase dry weather monitoring efforts or do more public outreach. This flexibility needs to be included in the Final IMS MS4 Permit.
- Section 2.4.7.1: In its current form, the Draft IMS MS4 Permit requires the permittee to develop Operations and Maintenance (O&M) Plans for a variety of municipal facility types and functions. Development of individual O&M plans by facility would require an excessive budget, and is not functionally effective. USEPA should allow each MS4 community to develop one O&M Plan, separate from the SWMP. This will allow for standardization of a number of functions across Town Departments, including but not limited to such activities as: training; materials handling and storage; application of fertilizers; drain inventory; vehicle storage and repair; equipment repair; management of waste oil and other fluids; street, sidewalk, and parking lot cleaning; and road salting and sanding methods. One O&M Plan, implemented consistently by all MS4 departments, will result in far better stormwater pollution prevention in all departments, and will be easier to update.

- Section 2.4.7.1(b): The Draft IMS MS4 Permit, in this section, requires that the MS4 community complete a floor drain inventory of all permittee-owned or permittee-operated buildings and ensure that these drains are not connected to the MS4. This schedule is not adequate to complete such an exhaustive evaluation, and little guidance is given to how the MS4 shall document that drains are not connected. Would MS4 communities be responsible for implementing this requirement in quasi-municipal buildings such as those operated by School Districts instead of by the municipality directly? Instead, during the NOI process, allow each community to submit a list of buildings that it believes are appropriate for an inventory, and provide its own suggested inspection timeline for each, based on the use of each building and materials stored within. It is important to eliminate floor drains as illicit discharges, but the methods of documentation, ownership of responsibility, and priority should be addressed in more detail before putting this requirement into effect.
- Section 2.4.7.1(d): The Draft IMS MS4 Permit implies a preference that catch basin inspections shall be completed at times other than during routine cleaning. This is not feasible for most communities in Massachusetts, which use the routine cleaning efforts as an opportunity for a comprehensive inspection of the basin structure and inverts. Furthermore, most MS4s already know- based on data gathered during the 2003 Permit term- which basins require more frequent cleaning, and which basins do not require cleaning beyond annual. To mandate twice-yearly cleanings steps back several years, has no obvious benefit, and could more than double this line item budget for many communities. Allow the flexibility of each MS4 to determine the appropriate cleaning schedule for its basins, with development of an “optimization plan” for this activity.
- Section 3.3 (Wet Weather Analytical Monitoring): The burden on the MS4 communities to complete wet weather analysis of its outfalls, based on the stringent definitions in this Draft IMS MS4 Permit and the need to reach 25% of its outfalls each permit year, is excessive. The cost to the communities includes not only the cost of field test kits and laboratory analytical testing (for bacteria and other impairment-specific parameters), but also of training staff to process the test kits, having a large number of staff on call during rain events that may produce a discharge, a courier to the laboratory within the holding time of the samples, even during off-hours), and a having number of vehicles available to sample at multiple outfalls consecutively in order to time the samples with the start of the discharge. This would inevitably require the MS4 to use outside consultants, which increases the cost. Based on rain conditions, the MS4 pay for this “on call” support (internal or external) even if a predicted storm event does not produce a discharge. USEPA should re-evaluate the goals of the wet weather analytical monitoring requirement, and allow communities to focus instead on wet weather monitoring at only its highest-priority outfalls.

LASTLY, THE VOICE OF LOCAL GOVERNMENT:

- At the National level the approach is flawed. There is seemingly no outreach voice from National leaders and associated agencies bringing the storm water message to the general public. National leaders and agencies flooded all forms of media advising the general public of the ill effects of Swine Flu and followed with funding. Why is there no effort to do the same with storm water? Often there is a misunderstanding that the locals can solve the local problem, for the most part this is true. However, with the aid of a National voice, the potential to move the local solution in concert with the National agenda would be increased significantly.
- The town of Leicester has demonstrated its commitment to improving its stormwater handling with a limited budget. With a limited budget, it is imperative that funds be spent wisely. As MS4 General Permit requirements become more stringent one of our growing concerns is where is the funding going to come from? Over the past few years increased costs for energy, medical insurance and other fixed costs couple with reductions in State Aid and lack of new growth in the communities, have led to significant budget and staffing reductions. It is obvious that we will need to increase staff to carry out the requirements of this program. Funding the new permit from local taxes will just further impact already stressed Town budgets and further reduce other essential services. The alternative funding, creation of a stormwater utility, can take considerable time to implement and is difficult at best to “sell” to the citizens particularly in this economy.
- Smaller communities, like Leicester, may be able to meet the timeline to assess and identify nutrient loading/discharge but will be in jeopardy of failing to meet the same timeline to implement means and methods to reduce the nutrient component of the permit.
- At best, consideration should be given to smaller communities that demonstrate “best effort”. This effort may not result in full compliance of the permit provisions and timeline but certainly demonstrate a positive move in addressing the managed plan.

- Education is the key to the local success and more emphasis should be placed on the educational component. Until the general public recognizes that everyone contributes to the makeup of storm water support will be limited. The ability for a community to finance a pared down management plan will be close to impossible.
- 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.
- The requirement that “all permit-owned stormwater structures shall be inspected annually at a minimum” is not feasible. As written, this would include every pipe, every man hole, every catch basin, or other structure making up the entirety of the MS4 facilities. The outfall monitoring program requires significant manpower, time and expense to accomplish in the manner required. Added to this cost will be the need for police details for traffic control. Consideration needs to be given to smaller communities with roads controlled by Massachusetts D.O.T. Many town owed roads drain and connect to the State system and vice versa. It is unclear why these points would need to be tested if samples are being collected from the outfalls. No problem with outfalls? Why test transfer points?
- The Permit indicates that it is a must to “ensure that areas used for snow disposal will not result in discharges to waters.” There is a reference to the Snow Disposal Guidance BRPG01-01 on the EPA website. This statement and the guidance document are very ambiguous and it is unclear what is being required. Does a snow disposal site consist of a specific point that snow is piled or does it include the windrows that result from snow removal along the shoulders of roadways? If it is the latter, then it is an unmanageable requirement that municipalities will not be able to adhere to.
- The Permit has requirements for wet-weather sampling of all the MS4 outfalls. Wet-weather sampling results are extremely variable and are effected by other factors such as at what point in a storm a sample is taken and when the previous storm event occurred. The numerous variables and inconsistent results amount to significant data that can not readily be correlated to any known sources or results. Duplicating wet-weather sample results from a particular outfall is nearly impossible. This sampling is extremely costly and there is seemingly no practical benefit.
- The requirement of sweeping town-owned sidewalks a minimum of twice per year is not feasible as smaller communities absolutely do not have the manpower to provide this level of sidewalk cleaning.
- Street sweeping is required twice per year. The sweeping also extends to the sidewalks adjacent to the road and permit-owned parking lots. The second sweeping is to occur in the fall as part of the leaf clean-up. Currently many smaller communities sweep the streets, parking lots, and sidewalks once in the spring. The Towns operate often, only one sweeper and one dump truck per day for five days per week. The program takes three to four months to complete. Apparently, the intention of the required second sweeping is to assist with leaf clean-up. Many smaller towns currently have a compost area where residents are allowed to drive in their bagged leaves for disposal and this is open year round.
- Most of us agree with the goal of improving Stormwater Management and understand the need to clean up discharges to wetlands and waterways. However, from a logical and practical point of view, the proposed implementation schedule is too aggressive particularly for smaller communities.