



City of Lowell
Office of the City Manager

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March 7, 2011

Ms. Kate Renahan
U.S EPA Region 1
Office of the Regional Administrator
5 Post Office Square, Suite 100
Mail Code: ORA01-1
Boston, MA 02109-3912

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

Dear Ms. Renahan:

The city of Lowell has reviewed the Draft Massachusetts Interstate, Merrimack, and South Coastal Small MS4 General Permit ("the Draft Permit") for stormwater management and offers the following comments.

The city of Lowell is in compliance with its 2003 National Pollutant Discharge Elimination System (NPDES) Phase II stormwater permit. As part of this effort, the city has expended both significant funds and considerable time and effort on the stormwater permit, along with additional costs for catch basin cleaning and street sweeping. The city has also implemented various new programs, inspected a large percentage of outfalls, established and enforced new city ordinances, and provided a wealth of public education information related to stormwater to the community.

While the city has demonstrated a clear and proactive interest in protecting its natural resources through stormwater mitigation since the 2003 permit was issued, we are concerned that the new Draft Permit does not recognize and build upon those efforts. Furthermore, the Draft Permit, as presently written, imposes requirements that are beyond the means of the city both in terms of financial and staffing resources. The following items present significant challenges to our community and should be addressed by a revision to the draft permit:

Data Requirements: The Draft Permit requires the gathering, and in some cases mapping, of an enormous quantity of data. Much of this information is required in the first two years in order to perform the analyses required to meet the permit milestones. Even though Lowell has a well-established Geographic Information System (GIS), the data compilation and analysis alone could consume the better part of the five-year permit cycle. The individual data requirements by themselves may be feasible to obtain, but collectively they present a considerable effort involving personnel with a high level of knowledge and skill.

Compliance Timeline: Similar to the compilation and analysis of data, the many milestones described in the Draft Permit may be feasible individually, but when compounded into a five-year permit term, they cannot realistically be met. We would like to see the requirements reduced to a list of achievable goals in a five year period, to allow communities to see progress and to achieve full permit compliance.

Proposed Outfall Sampling: Based on field work performed during the 2003 permit cycle, the city of Lowell has more than 200 stormwater outfalls. During the previous permit cycle, we inspected 100 percent of these outfalls. While the city is encouraged to see that work done previously can be counted toward the sampling requirements and that the majority of analysis can be performed using field instruments, we still find the re-monitoring of 25% of outfalls during dry-weather conditions per year to be cumbersome and costly compared to the environmental benefits. A more realistic monitoring program would involve 10% of outfalls per year beginning with the outfalls in areas most likely to contribute to exceedances of water quality standards.

The wet weather monitoring requirement is even more problematic. The intermittent and variable nature of wet weather flow makes the implementation of a wet weather sampling program for 25% of our outfalls a significant logistical challenge. It is a significant time commitment to deploy staff during rain events to capture flow samples from more than 50 stormwater outfalls per year and to time that deployment to capture the "right" samples to characterize the "first flush" or subsequent stormwater quality. The diversion of our staff from current critical priorities in managing our system to organize our rain storm sampling events will have significant impact on our environmental progress. It is not practical for the city to dedicate manpower to this permit requirement.

Sanitary Sewer Overflows: Under the Illicit Discharge Detection and Elimination (IDDE) program requirements, the draft permit requires the identification and elimination of all sanitary sewer overflows (SSOs) from the sewer system. Our current NPDES permit for the wastewater collection and treatment system (MA0100633) already includes requirements to eliminate SSOs and includes a comprehensive Capacity, Management, Operation, and Maintenance (CMOM) program to evaluate the system for SSOs. The proposed requirement for SSO compliance in the Phase II Stormwater Permit is duplicative and could lead to conflicts in federal permit compliance. This requirement should be eliminated from the stormwater permit.

Financial Impacts to the Community: The Draft Permit will require the expenditure of significantly more funds to fully comply with the new requirements, above and beyond the current annual expenditure of more than \$2,000,000. Without the availability of grant funding or other resources to assist communities, the permit places an unreasonable financial burden upon the regulated communities.

The City of Lowell does not presently have an enterprise fund for stormwater infrastructure improvements. The process to develop, obtain local approval, and implement a stormwater enterprise fund is lengthy and the current permit milestones do not allow the city adequate time to implement this alternative funding arrangement. Without an alternate funding source, the funding to implement the required measures must come from the city's general tax fund. Since the Draft Permit requirements are mandated and communities may face fines for failing to comply, this forces the city to take funds away from other general fund initiatives such as education and public safety. In a time of overwhelming financial constraints, and with limits on the ability to raise municipal taxes, the requirement to divert funds to stormwater mitigation from other essential city services is highly problematic.

Best Management Practices (BMPs): The Draft Permit requires the use of both structural and non-structural BMPs to ensure water quality standards will be met. The regulatory agencies should provide clear direction as to what BMP guidance documents should be used to calculate the percent reduction associated with each BMP, so that all communities are using the same metrics for reporting purposes.

Public Education and Outreach: The Draft Permit includes the production and distribution of eight public education notices, in addition to several ordinances and programs intended to teach the public how to minimize their impacts on stormwater quality. The city has had a proactive stormwater public education program to date and is encouraged to see that the Draft Permit includes links to educational materials that can be used by multiple communities, to reduce the burden on the regulated municipalities.

Catch Basin Inspection and Cleaning: Based on experience with drainage system operations and maintenance, cleaning every catch basin in the city at a specified interval is more realistic than having crews inspect catch basins to measure sediment depths. Communities should have the option of setting up cleaning on a regular schedule rather than performing inspections.

Floor Drain Inspections: Identifying and determining the outlet of every floor drain in every municipal building within one year of the effective date of the permit is a cumbersome requirement. In older cities, plumbing plans are not available for many municipal buildings, and dye testing would be required to understand the plumbing configuration and outlet location of every floor drain. Communities should be required to inspect a certain percentage of municipal buildings each year during the permit cycle, in order to have more time to comply with this requirement.

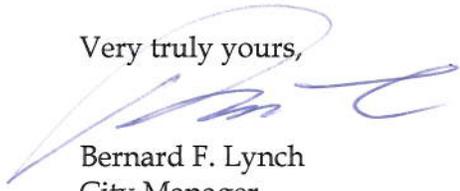
The city of Lowell has a strong record of compliance with the 2003 stormwater permit. We are amenable to continuing our progress toward significant receiving water quality improvements, but the Draft Permit does not adequately recognize our efforts to date or provide a feasible means of achieving full compliance in the future. We hope the

US EPA- Region 1
Ms. Kate Renahan
March 7, 2011
Page 4

regulatory agencies give serious consideration to the comments provided by municipalities who have intimate, hands-on knowledge of the feasibility of implementation of all of the Draft Permit's requirements.

Thank you for your consideration of these matters. Please contact me at 978-970-4000 if you have any questions or would like to discuss these comments further.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Bernard F. Lynch", is written over the typed name.

Bernard F. Lynch
City Manager

cc: City Council
Ralph Snow DPW Commissioner
Mark Young Wastewater Director
Lisa DeMeo City Engineer