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Via Email: [renahan.kate@epa.gov](mailto:renahan.kate@epa.gov)

Re: **Draft NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, Interstate, Merrimack and South Coastal Watersheds, Massachusetts**

Dear Ms. Renahan:

On behalf of Mass Audubon, I submit the following comments on the draft National Pollutant Discharge Elimination System (NPDES) General Permit (GP) for discharges from small municipal separate storm water systems (MS4) in the Interstate, Merrimack and South Coastal Watersheds Massachusetts. The permit area includes all or parts of more than 60 Massachusetts communities.

Storm water flowing across roads, parking lots, disturbed soils, and other areas is a significant source of water pollution. Untreated runoff sends oil, dirt, trash, and animal waste into rivers, streams, lakes, and beaches. This has severe costs - making our waterways unfit for swimming or fishing and contributing to frequent and damaging floods. With climate change leading to increasing high intensity storms, the need to better manage storm water is also important for public safety, and to protect property and infrastructure from storm damage. Mass Audubon supports strong, science-based federal, state, and local storm water regulatory programs and incentives. Although these efforts require expenditure of money and effort, they are important to protect water supplies, swimming areas and habitat for fish and other wildlife, and to prevent flood damage to property and infrastructure.

Mass Audubon previously submitted comments dated March 31, 2010 on the MS4 GP in the North Coastal Massachusetts Area. We support the main approaches of the permit including mapping and monitoring of storm water systems, public education, identification and removal of illegal connections, standards for new development and redevelopment, and common sense good housekeeping practices to prevent pollution by covering and properly managing potential sources such as road salt and exposed soil. We continue to support EPA's proposal to strengthen the GP in several respects compared to the 2003 version. At the same time, we encourage EPA to further optimize the program to maximize its cost-effectiveness and ensure feasibility for compliance. We request that the final permit include provisions mandating the use of Low Impact Development (LID) to the maximum extent feasible for all new and redevelopment projects over one acre; encourage the adoption of local and regional storm water utilities; and focus limited resources on highest priority areas to achieve results.

Recognizing the severe financial constraints most municipalities are operating under, we encourage EPA to emphasize technical assistance and cooperative ventures with municipalities and others to undertake storm water abatement projects. Enforcement is a necessary part of the program but should be pursued only when other steps fail and regulated parties are not making good faith efforts. Both sides have to be willing and able to work toward shared and legally required clean water goals. It is important that the program provide incentives, technical assistance, models and templates to assist municipalities with compliance.

We urge EPA to issue this permit within this calendar year.

### **Low Impact Development (LID)**

LID techniques that mimic natural hydrology and handle storm water in small, dispersed features that filter runoff through plants and soils should be emphasized for all new development as well as redevelopment and retrofitting

of existing inadequately managed impervious areas. Studies show that Low Impact Development techniques such as rain gardens, rain barrels, green roofs, and tree plantings are not only effective, they also reduce costs and improve aesthetics, recreational opportunities, and property values ([www.epa.gov/owow/NPS/lid/costs07/factsheet.html](http://www.epa.gov/owow/NPS/lid/costs07/factsheet.html)). Roof runoff should be treated as a valuable resource rather than a problem – in many instances it can and should be used to irrigate landscaping, for example.

### **Municipal Costs/Storm Water Utilities and Regulations:**

Many municipalities are struggling under severe financial constraints and are understandably concerned about any new or modified regulations that increase their burdens for compliance without providing associated funding. We are sympathetic to these concerns, but also note that there are mechanisms available for communities to offset costs associated with requirements of the permit. MS4 permits can and should provide a vehicle not only for municipalities to improve management of runoff from municipally owned properties and roadways, but also to hold landowners responsible for runoff from private property into municipal drainage systems.

Storm water utilities and local regulations can enable municipalities to require that private landowners whose property adds to the municipality's storm water management costs also contribute to the solution, whether by helping to fund the community's storm water monitoring and abatement projects or by undertaking retrofitting with LID techniques on private properties. Local regulations can require landowners who are contributing to the municipality's storm water discharges to retrofit and retain more of the water on site, or to make payments to the community for receipt and treatment of this runoff. LID systems are generally less expensive to build than traditional systems using pipes and detention basins. LID has many other benefits as well and should be encouraged in all new development and retrofitting. Improved management of storm water also has direct and indirect benefits to municipalities, including protection of water supplies, prevention of storm damage, and enhanced property values.

Another way municipalities can reduce their costs while increasing program effectiveness is to partner with local watershed organizations or other nonprofits or volunteer groups. Many watershed groups have water quality monitoring programs that may be able to work with municipalities to help gather required monitoring data at low cost while conforming with data quality standards. Watershed groups can also assist with education and outreach at a low cost with high quality programs. Such partnerships can have multiple benefits in helping the municipality achieve compliance, as the very involvement of volunteers in water quality monitoring also contributes to requirements for public participation, education, and outreach.

Suggestions for assistance that EPA can provide to municipalities or support through cooperative efforts:

- Formation of state and regional groups of municipalities on joint purchase of retrofit devices, rebates/cost reduction to users.
- Continue to develop models, offer education and support, provide templates for required plans, and reports, and other ways of streamlining compliance.
- Encourage cooperative approaches on required education and monitoring (e.g. standardized information, regional approaches, and municipalities partnering with watershed groups).
- Work with the Massachusetts Department of Environmental Protection (DEP) to strengthen state rules and make sure new developments draining to existing municipal storm water systems do not escape review under the Wetlands Protection Act if the new impervious surface is more than 100 feet from a wetland but nevertheless flows to a municipal drainage system.
- Focus on opportunities such as redevelopment sites, and on spreading and publicizing successful models.

### **GP Proposed Enhancements**

As stated above, Mass Audubon supports EPA's proposal to strengthen the GP in several respects compared to the 2003 version, including improved reporting and record keeping requirements; required elements of the local Storm water Management Program (SWMP); more specific requirements for discharges to areas with and without

Total Maximum Daily Pollutant Loads (TMDLs); minimum control measures; enhanced public participation and education; more specific requirements for elimination of illicit discharges; requirements for both construction period and post-construction storm water management controls; good housekeeping and pollution prevention requirements; outfall monitoring; and periodic and ongoing program evaluation.

### **Support Further Program Strengthening**

While the proposed GP includes several improvements over the 2003 version, Mass Audubon recommends that the final permit include additional provisions addressing the following comments.

Many municipalities do not have an integrated storm water management system that is designed to manage all of the runoff that enters drains and pipes discharging to wetlands and waterways throughout the community. Various segments of storm drains were constructed at different periods of time, and many of these systems were built before standards were put in place. Many of these conveyances simply pipe or channel water from roads and other impervious surfaces to the nearest wetland or water body with little or no intervening treatment. The draft permit attempts to address this through requirements to document the existing systems and map impervious surfaces, then prioritize and implement improvements over time. It is important that the final permit and associated supporting documents make it clear that communities need to address all their conveyances of runoff from paved surfaces to local wetlands and waterways. Some types of discharges including new discharges to waters that already exceed water quality standards, or to Outstanding Resource Waters, or adversely impacting federally listed rare species do not qualify for inclusion in the GP and should be required to obtain an individual NPDES permit. We encourage EPA to work to identify and capture all such discharges effectively within its regulatory oversight, and to assist and support municipalities in their efforts to manage all discharges.

### **Local Regulation of Storm Water on Private Lands**

Our comments on the North Coastal draft GP stated that it would be helpful if the GP was more explicit about the need for and rights of municipalities to regulate storm water management on private land, both in terms of new development and retrofitting of existing substandard storm water to the extent it contributes to the municipality's compliance or noncompliance with the GP. The GP should require elimination or relocation of discharges that affect water supplies, habitat for state or federally listed rare species, fisheries and shellfisheries, and swimming areas. Because existing substandard discharges are so extensive, extensive retrofitting is needed in order for many waterways to meet water quality standards. Local rules and regulations requiring retrofitting of storm water management from existing privately owned impervious surfaces that discharge to local roads and associated storm water conveyances are also needed.

We are especially concerned that this draft GP weakens a critical provision that was included in the draft South Coastal GP. This provision required new development and redevelopment projects of "one or more acres" to comply with some of the DEP Stormwater Standards, specifically, Standards #3 through 6 for new development and Standard #7 for redevelopment. The draft GP for Interstate, Merrimack and South Coastal Watersheds requires projects that "result in two or more acres of impervious surface" to comply with those standards.

Under EPA's 2003 MS4 permit, towns are required to issue storm water permits to all development that disturbs more than one acre. Compliance with the specified DEP Stormwater Standards would not be overly burdensome and would result in significant and measureable environmental benefits. Standard 3 would require recharge of storm water to groundwater, based on existing (pre-development) soil conditions. Standards 4, 5 and 6 would protect water quality by requiring 80% removal of total suspended solids prior to offsite discharge of storm water, requiring source reduction and pretreatment of storm water within areas with higher potential pollutant loads and treatment of the first 1" runoff within areas identified as "critical areas" by the Massachusetts Water Quality Standards. Standard 7 would require redevelopment projects to comply with those standards to the maximum extent practicable. We urge you to restore the "one or more acres" threshold in this GP.

### **Performance standards for LID and Green Infrastructure management techniques**

In order to maximize reduction in runoff volume and pollution attenuation and to replenish groundwater recharge and flow in local streams, storm water regulatory programs should increase the use of LID and Green Infrastructure techniques to manage storm water in new development as well as in retrofits of existing developed areas and paved surfaces. We urge EPA to develop performance standards for the use of these techniques and require that municipalities include them in their Post Construction bylaws.

### **Reporting and Electronic Availability of Information**

The reporting and public participation aspects of the GP should be strengthened to require that all storm water management plans, maps, data, and reports be readily available online, preferably both through a searchable database on the EPA website and on the municipal website. EPA has developed templates for some of the required documentation, and should continue to develop and refine electronic templates with a focus on improving the ease and efficiency of compliance. Standardized electronic forms also assist EPA with posting of data for public access and compilation and analysis of information.

### **Appendix C List of Municipalities**

The list of municipalities in Appendix C is incomplete and does not match the map. For example, in the South Coastal area, four municipalities (Fall River, Freetown, Halifax and Hanson) are shown on the map “Regulated MS4 Areas and Applicable Watershed-Specific General Permits in Massachusetts,” but are not listed in Appendix C. We understand that EPA is aware of errors in Appendix C and will correct that in the final permit.

### **Timeline for Implementation**

Compliance with the 2003 permit has been slow in many areas, and many municipalities are requesting that the proposed timelines in the new permit be extended. Some modifications of timelines may be needed, although EPA should be careful in ensuring that the permit will provide real progress soon on the urgent need to clean up storm water. Outfalls that are discharging polluted runoff into water supplies, state or federally listed rare species habitats, swimming areas, or important fisheries habitat or causing frequent flooding of property or infrastructure should be targeted for early remediation. The schedule for these improvements should not be allowed to extend indefinitely, decades into the future.

### **Conclusion**

Mass Audubon supports a strong, science-based, effective and fair approach to regulation of storm water. The proposed improvements to the MS4 GP for the Interstate, Merrimack and South Coastal region of Massachusetts are positive and should be adopted with a few refinements. We urge you to issue a final permit that is both strong and fair, and to assist municipalities in prioritizing work and achieving results in the most cost-effective way possible.

Sincerely,



E. Heidi Ricci  
Senior Policy Analyst

cc: Ken Kimmell, Commissioner, DEP  
Anne Lowery, DEP  
Fred Civian, DEP