



# Town of Oxford

## Department of Public Works

325 Main Street  
Oxford, Massachusetts 01540

Tel : 508-987-6006  
Fax : 508-987-3934

March 10, 2011

Ms. Kate Renahan  
United States Environmental Protection Agency – Region 1  
Office of the Regional Administrator  
5 Post Office Square, Suite 100, Mail Code ORA01-1  
Boston, MA 02109-3912

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

Dear Ms. Renahan:

The Town of Oxford Department of Public Works (DPW) has reviewed the Environmental Protection Agency's (EPA) draft National Pollutant Discharge Elimination System (NPDES) "General Permits for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems in Massachusetts Interstate, Merrimack, and South Coastal Watersheds" (draft permit). We thank you for opportunity to comment on the draft permit.

The DPW supports the Clean Water Act (CWA) and its amendments as it relates to improving the quality of the waters of the United States. We acknowledge that the NPDES regulation is the regulation an MS4 must follow pursuant to the requirements of the CWA. The DPW is the implementing agency for the 2003 Phase II MS4 General Permit (2003 Permit) and is the operator of the Town's MS4. The DPW has successfully worked to implement the requirements of the 2003 Permit. We have reviewed the draft permit requirements and seriously question whether we can successfully implement the new requirements. After review we have many comments but offer the following comments that carry the greatest concern for the Town of Oxford:

1. Implementing the draft requirements will be costly to the Town. We note that professional consultants well versed in stormwater permitting and NPDES compliance have estimated a total 5-year compliance cost range of \$200,000 to \$1,000,000 for an MS4 the size of Oxford. In a time of declining property values, declining state aid, and declining local receipts, it is simply unrealistic to provide funding to comply with the draft regulations. Further, section 1.10.c states that "*The permittee is encouraged to maintain an adequate funding source for the implementation of this program. Adequate funding means that a consistent source of revenue exists for the program.*" Funding options include funding through taxation or funding through a fee based enterprise account. The Town is taxed to the limit allowed by Proposition 2-1/2. Additional taxes could only be raised by overriding Proposition 2-1/2 and would be impossible given that a vote of the taxpayers would be required in a challenged economic environment. Establishing an enterprise fund

would also be difficult as the residents in Town would question why they would be charged a fee for complying with one-size-fits-all permit requirements that were drafted by a giant federal agency.

2. The timelines for initial permit development outlined in the draft permit are unreasonable for the Town to comply with. The draft permit outlines a 120 day window from the time of EPA's "authorization to discharge" to develop the Stormwater Management Program (SWMP). In other words, the Town has 120 days to carefully consider and develop program commitments for every permit requirement over a 5-year permit duration. We suggest that the 120 day SWMP period be extended to 365 days. More time is needed to not only determine the best way for the Town to develop implementation criteria but also to determine a funding source. (See Comment 1). FY2012 operational budgets have already been developed and will be voted on at Town Meeting on May 4, 2011. If funding through taxation were available, the quickest funding for the SWMP would become available starting FY2013 (July 1, 2012). By that time the permit would be almost through its first year and all permit year 1 requirements would be missed. Starting an enterprise fund would require many public meetings and discussion and could not reasonably be started for at least 2-years. Furthermore, it would take an additional 1-year for the enterprise fund to be fully billed out and paid by residents and businesses.
3. Section 1.7.2.b states that *"the NOI shall be signed by an appropriate official (see Appendix B Subparagraph 11)*. Section 1.10.a states that *"The permittee shall develop a written SWMP. The SWMP shall be signed in accordance with Appendix B, Subsection 11. Appendix B, Subsection B.11, paragraph A.3 states all applications, including NOI's must be signed as follows: "For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official."* Appendix B, Subsection B.11 paragraph B states *"all reports, including SWPPPs, inspection reports, annual reports, monitoring reports, reports on training and other information required by this permit must be signed by a person described in Appendix B, Subsection 11.A above..."*. Appendix B, Subsection D states that *"the CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports, or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.* The Town's principal executive officer is its Town Manager and the Town's ranking elected official is its Chairman of the Board of Selectmen. Neither have jurisdiction as granted by law or local charter over the Oxford School Department. Section 2.4.7.1 states that *"within (1) year from the effective date of the permit, the permittee shall develop, if not already developed, written operations and maintenance procedures for the municipal activities listed below in parts 2.4.7.1 (a-c). These written O&M procedures shall be included as part of the SWMP"*. Section 2.4.7.1.b states schools are included for O&M compliance. If the principal executive and the ranking elected official do not have jurisdiction over school buildings how can EPA reasonably expect the principal executive or the ranking elected official to truthfully certify that proper O&M has been conducted. As the draft permit stands, because of the jurisdictional concerns, the principal executive or ranking elected official could be forced to knowingly sign and certify compliance documents that may not be true and thus could be signed and certified with reasonable fear of financial penalty or imprisonment.

4. Section 2.4.2 requires significant public education and outreach for residents, businesses, developers, and industrial facilities. The draft permit requires two messages for each category over the permit term. The Town does not have the expertise to survey audiences and determine a best fit marketing strategy. Likely the Town would need to hire a public relations firm to effectively and efficiently carry out the public education and outreach campaign. Having individual MS4s (municipalities) develop and administer its own content would provide a disjointed and potentially conflicting voice from town to town. Rather, we suggest EPA develop the education and outreach materials and administer it to the four audiences. EPA would have the means to provide a comprehensive, polished, and unified marketing campaign. The EPA could develop television, radio advertisements, and direct mail campaigns that would not only reach US Census Bureau urbanized areas but also reach out to non urbanized areas where stormwater cleanliness is just as important.

In summary, the Town of Oxford supports the basic provisions of the CWA as it relates to improving water quality. We find, however, that before final issuance this draft permit requires revisions as called for in this comment letter and as called for in comment letters we are sure the EPA will be in receipt of from other municipalities and governmental units. The draft permit is simply too much, too fast for most municipalities to implement. Without a dedicated and sustained source of state and/or federal resources this draft permit sets up municipalities for failure. We strongly suggest that the requirements of the draft permit better reflect the resources available now and into the future.

We thank the EPA for providing this opportunity to comment and look forward to helping create a more practical general permit that has a better chance for success in improving the nation's waterways.

If you have any questions please do not hesitate to contact me.

Very truly yours,



Sean M. Divoll, P.E.  
Director

cc. Town Manager  
Board of Selectmen  
Planning Board  
Conservation Commission