

TOWN OF SOUTHBOROUGH



BOARD OF SELECTMEN

TOWN HOUSE • 17 COMMON STREET • SOUTHBOROUGH, MASSACHUSETTS 01772-1662
(508) 485-0710 • FAX (508) 480-0161 • selectmen@southboroughma.com

February 17, 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, Massachusetts 02109-3912

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

Dear Ms. Renahan:

The Town of Southborough's Board of Selectmen 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). Thank you for the opportunity to provide comments on this draft permit, and we note that the Town's Department of Public Works (DPW) is submitting a separate set of more in depth technical comments to you regarding this draft permit.

The Town of Southborough (the Town) is a mostly rural and suburban community of slightly less than 10,000 people, and is host to a number of significant state roads and highways. Routes 9, 30, 85, 90 (Mass. Turnpike), and 495 all travel through the Town. Additionally, the Sudbury Reservoir and Wachusett Open Channel (emergency water supply sources for the Massachusetts Water Resource Authority) are found in the Town, and occupy great portions of the land area of Southborough, and in many areas have limited, or no, buffers between roadways and the water surface. The Sudbury River forms the southerly border of the Town. Approximately two-thirds of the Town lies within an Urbanized Area, as defined by the 2000 Census.

The Town supports the underlying goal of this draft permit, which is to improve the water quality of the waters of the United States found within its borders. The Town has worked hard to implement the requirements of the original 2003 Phase II MS4 General Permit (2003 Permit), and in several cases have gone above and beyond the requirements of that permit. The protection of the environment and the natural resources of the Town are important to the community.

Based upon a review of the draft permit language, we have a number of concerns with the requirements of the draft permit, as well as with the Town's ability to successfully implement those requirements. We offer the following comments for your consideration:

1. Currently, the Town spends approximately \$40,000 per year to implement the 2003 Permit. The DPW has estimated that the recurring annual costs to implement the draft permit will be at least \$80,000, a doubling of the current annual costs. Additionally, the DPW estimates that one-time costs needed to meet the requirements of the draft permit will range from approximately \$1,300,000 to \$2,300,000. Thus, the approximate total costs to implement the draft permit over its five (5) year time period are at least \$1,700,000 to \$2,700,000. Put quite simply, this represents a huge sum of money that this Town does not have available to spend.
2. The Town has many competing interests for relatively few dollars. The requirements of this draft permit represent an extremely large unfunded mandate placed upon the taxpayers of the Town by the State and Federal governments. The Town already has difficulty funding the basic operational and maintenance costs for the existing drainage system. Implementing the draft permit regulations will be extremely difficult, if not impossible.
3. As outlined in the DPW's comments, many of the proposed requirements of the draft permit are needless, costly, and provide little to no benefit to the environment. For examples, we note the requirements to conduct wet weather sampling of stormwater outfalls, and tracking the amount of impervious surfaces and directly connected impervious surfaces, as measures that serve purely as academic data collection activities, with no tangible benefit being provided to the environment or the Town. If the Federal and State governments believe that this information is necessary to be gathered for their purposes, then they should conduct this data gathering themselves, or provide the necessary funding for local municipalities to do so. In the absence of funding being provided, these requirements should be stricken from the draft permit.
4. We believe that the requirements for public education and outreach are best conducted on a Federal and State level. The Federal and State governments have the ability to pool their collective resources together to prepare a high quality public educational media campaign that could be broadcast statewide on television and radio stations, as well as making materials available to the print media. The draft permits unfairly expect small towns and municipalities to be able to create effective educational public outreach and marketing materials, and then be able to have ways to measure the effectiveness of those materials. This type of function is well beyond the scope of expertise of most, if not all, municipalities. We recommend that the relevant sections of the draft permit dealing with public education and outreach be reconfigured to allow for a statewide media campaign, with less emphasis placed on the participation by local municipalities.
5. The draft permit encourages municipalities to "...maintain an adequate funding source for the implementation of this program." The draft permit fact sheet provided by the EPA clearly demonstrates that the EPA believes that municipalities should strongly consider implementing a stormwater utility or stormwater fee to pay for the requirements of this program. We believe that it would be extremely difficult to convince the taxpayers of the Town to enact additional fees or taxes to pay for implementing the draft regulations. This community is in the midst of its annual budget process, and is approximately \$1,000,000 short of providing level services for the upcoming 2012 fiscal year. To believe that the citizens of the Town will be willing to raise their taxes or pay additional fees to fund

stormwater improvements, when serious discussions are being held to determine the proper funding levels for schools and public safety services, is naïve, at best. We strongly believe that large amounts of money need to be made available at the State and Federal levels to fund these draft regulations. Without such a provision of monies, this Town and many others will simply not have the resources available to implement the requirements of this draft permit.

6. The draft permit sets forth several different design thresholds for the design and construction of stormwater management systems in new developments and re-developments. These thresholds reference the Massachusetts Department of Environmental Protection's (MassDEP) Stormwater Standards. The Town currently requires all development projects which disturb an acre of land to comply with all ten (10) of the Stormwater Standards, through the application for a Stormwater Management Permit and/or Lower Impact Development Permit, both of which are additions to the Town's Zoning Code, and were enacted in response to the 2003 Permit. We believe that either the EPA or the MassDEP need to clarify how any permits, regulations, and bylaws enacted by municipalities in response to this draft permit (and the 2003 Permit for that matter) are affected by the State's Chapter 40B (Ch. 40B) affordable housing zoning law. Ch. 40B allows developers to obtain waivers from local zoning and development regulations for affordable housing developments, if those local regulations serve as an impediment to the development of that affordable housing. This Town has had two recent Ch. 40B developments approved. In these cases, both developers sought compliance voluntarily with the provisions of the SMP, though one disputed the Town's interpretation that the SMP could not be waived due to Ch. 40B. In order for this Town, and others with similar bylaws created in response to the draft permit, to avoid potential future costly litigation in regards to the relationship between Ch. 40B and these draft permit regulations, we ask that the EPA and/or MassDEP clarify that relationship, either in the draft permit or elsewhere.

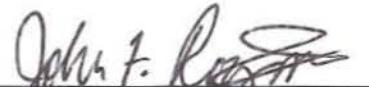
In conclusion, the Town of Southborough is a strong supporter of the protection of the environment, the water quality, and the natural resources of the Town, the State of Massachusetts, and the Nation. But as proposed, this draft general permit is rife with needless, impractical, and extremely expensive requirements that will have little to no benefit to the environment. As stated previously, this Town has taken strong steps to fully implement, and in some aspects, go above and beyond the requirements of the 2003 Permit. The Town fully expects to continue to comply with the 2003 Permit, and to take proactive steps to protect the environment, using available financial and institutional resources. The Town believes that many of the requirements in the draft permit are best instituted on a state and nation wide level, given the greater availability of resources to the EPA and MassDEP. Further, the expectation that small municipalities such as Southborough will be able to easily establish a new source of funding to support stormwater operations in these extremely difficult financial times is quite unrealistic. Without an outlay of large amounts of Federal and State monies, in the form of grants and/or low interest loans, many municipalities will be faced with the terrible calculation of deciding what existing Town services will have to be cut in order to implement the new regulations. As currently drafted, this proposed permit places an unfair burden on local and small governments, and places them in a position ripe for failure and non-compliance. We strongly suggest that the goals and terms of the draft permit be pared drastically back to best reflect the limited resources currently available to all levels of government.

We thank the EPA for providing this opportunity to comment, and look forward to working with you to create a more practical and easy to implement general permit.

Sincerely,



William J. Boland, Chairman



John F. Rooney, Vice Chairman

TOWN OF SOUTHBOROUGH
BOARD OF SELECTMEN

CC: U.S. Senator John Kerry
U.S. Senator Scott Brown
U.S. Representative James McGovern
MA State Senator Jamie Eldridge
MA State Representative Carolyn Dykema
MA State Representative Steven Levy
Frederick Civian, MassDEP Stormwater Coordinator
Jean Kitchen, Town Administrator
Karen Galligan, Superintendent of Public Works
John Woodsmall, Town Engineer
Eric Denoncourt, Town Planner
Beth Rosenblum, Conservation Administrator

WJB/jrw