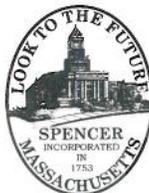


# TOWN OF SPENCER

## Office of Utilities & Facilities

Robert McNeil, PE  
Superintendent  
rmcneil@spencerma.gov



3 Old Meadow Road  
Spencer, MA 01562  
Phone: 508-885-7515  
Fax: 508-885-9416

March 4, 2011

EPA-Region 1  
Attn: Kate Renahan  
Office of the Regional Administrator  
5 Post Office Square – Suite 100 – Mail Code: ORA01-1  
Boston, Massachusetts, 02109-3912

**Re: 2010 Draft Massachusetts Interstate, Merrimack and South Coastal Watersheds  
Small MS4 General Permit Comments**

Dear Ms. Renahan:

The Town of Spencer, Massachusetts, Department of Utilities & Facilities reviewed your Draft General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer System (MS4), and as the agency responsible for implementation of the regulations, respectfully submits the following comments.

Since 2003, the Town of Spencer has successfully implemented the requirements of the Permit, however the Draft Permit provides additional requirements and best management practices for each of the six control measures that may prove too difficult for any town of Spencer’s size given the limited budget and staff to execute. We are concerned that the current economic climate presents the worst possible conditions to apply such strict and costly requirements. Our comments and recommendations follow.

### 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 format 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 in a regional effort. 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 a 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 further, 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...) that each discharging outfall shall be sampled for 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 waters. 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.

With a common goal of improved storm water quality at the municipal level, EPA should allow the phasing in of this expanding program (once issued) to allow for realistic funding and implementation over a ten-year period. The Town of Spencer thanks you for the opportunity to comment on the draft permit requirements for our area. We strongly recommend that EPA consider delaying the implementation of these draft regulations until the comments from the impacted communities can be properly considered.

Very Truly Yours,



Robert D. McNeil III, P.E.  
Superintendent

CC: U.S. Senator Scott P. Brown  
U.S. Senator John F. Kerry  
U.S. Congressman Richard Neal  
State Senator Stephen M. Brewer  
State Representative Anne M. Gobi  
State Representative Geraldo Alicea  
Board of Selectmen  
Adam Gaudette, Town Administrator  
Eben Butler, Highway Foreman  
Aubrey Strause, Tata and Howard