

## TOWN OF SUDBURY

*Office of Selectmen*

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March 11, 2011

EPA-Region 1

Attn: Kate Renahan ([renahan.kate@epa.gov](mailto:renahan.kate@epa.gov))

Office of the Regional Administrator

5 Post Office Square – Suite 100

Mail Code: ORA01-1

Boston, Massachusetts, 02109-3912

Re: Draft 2011 MS4 MA Merrimack Watershed

Dear Administrator:

The Town of Sudbury is writing to submit comments on the EPA's proposed Municipal Storm Sewer General Permit for the Interstate, Merrimack and South Coastal Watersheds in Massachusetts.

Sudbury, like all communities in Massachusetts, wants clean water available for the aesthetic, wildlife habitat, recreation, drinking water, and the intangible benefits clean water brings to a community. Sudbury is 100% reliant on local groundwater wells for our potable water supply while we also deal 100% with residential (and most business and municipal facilities) sewage effluent with individual septic systems. It is therefore imperative that we have a heightened awareness of our impacts on water quality.

Sudbury has been at the forefront of stormwater best management practices before it was mandated. Our Planning Board and Conservation Commission have had strict stormwater regulations in place since the early 1990s. We have met and exceeded all requirements of our 2003 MS4 permit for most all of the six control measures.

The new MS4 mandates look at stormwater issues in a vacuum and do not recognize that without continuing attention to all aspects of municipal infrastructure, strict compliance with our MS4 permit alone will not result in improved water quality and is not sustainable in the long term. At a time when municipal budgets are being drastically cut we must be aware of what we can realistically achieve within the next several years. Stormwater management is of paramount importance, however so is public health and safety, and education. We also must administer our State and local wetland laws, environmental enforcement, our stormwater bylaw, our drainage infrastructure monitoring and maintenance, and our detailed review of pre and post construction review and monitoring. Failure to provide attention and funding to any these existing mandates may result in unwanted impairments to water quality.

The first two years of the new draft permit requires a tremendous capital outlay to develop a Stormwater Management Plan, test a minimum of 25% of all stormwater outfalls. Even in the best of economic climates, municipalities are unable to respond to last minute requirements for budget appropriations. Sudbury's final legislative body is Town Meeting. There is no guarantee that Town Meeting will approve

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Attn: Ms. Kate Renahan  
EPA – Region I

any appropriations needed to comply with the mandates of the new MS4 permit as drafted. This is especially true in the current fiscal climate where funding of new initiatives mean cutbacks to existing programs. Compliance with our MS4 permit will be competing against other essential services for funding. The threat, and reality, of assessing fines to towns for non-compliance of new unfunded mandates places the towns further behind in the financial ability to fund the mandated actions.

The proposed timeframes for action do not permit municipalities the flexibility they need to meet their statutory requirements to appropriate funds. Therefore, these timeframes set the municipalities up for failure and the real possibility of fines. Time and money would be better spent by EPA and DEP working with the communities to achieve reasonable, realistic goals.

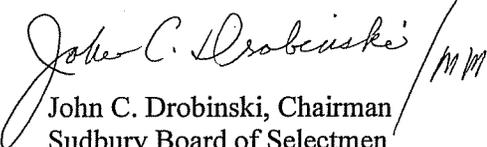
For example, EPA and DEP could generate reporting and monitoring formats or databases for use by all communities. A more watershed based approach to monitoring and data collecting would allow sharing of data. A regional effort, headed by EPA and DEP is needed to investigate and adopt stormwater utilities. Stormwater utilities, if adopted, will need several years at least before they begin to generate funds to be used toward permit compliance.

Sudbury takes exception to the “one permit fits all” design of the draft permit. Towns with numerous TMDLs of pollutants may need stricter criteria and timeframes for compliance. Towns, such as Sudbury, with TMDL assessments mostly all in Category 5 (needing a TMDL) must rely on the State to develop the TMDL. Category 5 TMDLs include waters degraded by excessive nutrients. In Sudbury, the cause of the impairment is, in most cases; outside of the Town borders with the cause of the excessive nutrient load well know to the state and the EPA. Mandating that Sudbury meet the same compliance criteria for the same water body as the polluting town places and undue burden on Sudbury to resolve an issue beyond its borders.

Early in 2010 the Massachusetts Municipal Agency urged the EPA “to amend [its] approach to incorporate goals that are more realistically attainable within the financial constraints of the current economic climate, or wait until adequate federal funding is available to ensure that these requirements do not translate into a harmful unfunded mandate on cities, towns and taxpayers.” Sudbury concurs with this position and is very concerned that EPA/DEP adopted a relatively unaltered permit for the north coastal region after receipt of these MMA comments and numerous comments by others.

To improve the quality of waters in Massachusetts, the only solution is to enact the draft permit with flexibility based on State- identified priorities, while also providing funding to the cities and towns to comply with the permit criteria. No town wants impaired, polluted waters. However, the draft EPA/DEP approach is one which places an unequal, unfunded mandate on towns that recognize the importance of unimpaired waters and which have complied with all unfunded mandates to this point.

Sincerely,

  
John C. Drobinski, Chairman  
Sudbury Board of Selectmen