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via-email

**Town of Topsfield
Stormwater Management Committee
Topsfield, MA 01983**

March 10, 2011

Ms. Thelma Murphy
United States Environmental Protection Agency
New England Region
MA Office of Ecosystem Protection
5 Post Office Square, Suite 100 Boston, MA 02109-3912

Dear Ms. Murphy:

We appreciate the opportunity to comment on the Draft Massachusetts North Coastal Small MS4 General Permit. The Town of Topsfield has long been committed to protecting its water resources. Even before the NPDES Phase II Permit was begun in 2003, Topsfield had adopted a host of bylaws, rules and regulations regulating activities that would have an impact on surface and groundwater. Under the 2003 Permit, Topsfield intensified these efforts through its five year plan.

Topsfield is a small semi-rural community with a population of around 6,000 in an area of 12.8 sq. mi. Over one third of the Town is permanently protected open space. A significant portion of the remaining unbuilt land is wetland or buffer zone. The town depends entirely on septic systems. Approximately 75% of residents are served by the town's water department that draws its water from two well fields within the Ipswich River Watershed area. The other 25% of residents rely on private wells. The town is run and managed in large part by volunteers who serve on the boards and committees responsible for implementing initiatives such as the MS4 program.

With this as background, we make comments in the following areas or concern:

One-size-fits-all approach: The 2003 Permit recognized the diversity among MS4 communities and allowed flexibility in achieving levels of compliance; the Draft Permit lacks this flexibility by aggregating all cities and towns that have less than 100,000 residents into one group. As currently defined, the small systems have the greatest disparity in population density and stormwater system size and complexity. The difference between the largest of the "small" systems and the medium and large systems is simply a matter of scale not a fundamental difference in how the communities are constructed.

A community such as Lawrence with a density of 15 people per acre and a population of 70,000 is more likely to have a different quantity and quality of contamination than a town like Topsfield at 0.75 people per acre. In addition, the requirements for the MS4 storm-water permit do not distinguish between urban or rural areas or between communities that have less than 3% impervious area and those for which that percentage is greater than 70%. They make no allowance for the difference between communities that are served exclusively by on-site septic systems and those that are served by sewer treatment plants that mix sewer and storm drains. We would like to see a fourth permit category, or significantly reduced requirements, for very small systems serving less than 10,000 residents that reflects the limited resources in smaller communities and their more rural and less urbanized nature.

Instead of allowing for the utilization of BMP's to achieve results based on local conditions and circumstances, the Draft Permit imposes mandates to address issues that may or may not even exist in local communities. The requirement that all communities sweep all streets and sidewalks twice a year, for instance, may make sense in urban areas, but hardly seems appropriate in rural areas with swales, no sidewalks or box storm drains to say nothing about the far more limited traffic and causes of pollution on the roads.

Testing and monitoring: There are two major considerations in the area of testing and monitoring. First, communities must have more guidance from EPA and DEP on a reasonable set of methods to track, index and reduce contamination of our water. We need a quick and simple test regime to identify areas of contamination during the screening process and how to isolate sources of contamination.

There are many ways to test water for various contaminants. In a community with our density and entirely dependent on septic systems, what single test would indicate septage infiltration? Would a simple test for laundry brighteners be an adequate test? What other parameters in a rural community might be needed on a wider scale? Nitrate loading from farming, horse manure and residential lawns? Which nitrate test would be adequate to indicate contamination? Similarly, the Draft Permit requires dry and wet weather sampling of all outfalls. The labor required to obtain proper results in such sampling, particularly to ascertain samples of the first flush of runoff, is overwhelming and quite impossible for small towns. Are there automatic testers being developed that could be deployed and maintained to test for storm events?

We recommend that EPA and DEP develop a tool box with reasonable methods that can be accomplished by volunteers to test and monitor our water. These tools need to be simple and need to offer the greatest benefit and best efficiencies to address stormwater in a rural community. Such a tool box would be appropriate for every rural town in Massachusetts.

Along with a tool box for testing and monitoring, small volunteer-run communities need help in training volunteers to meet the standards of the Draft Permit. Volunteers need to be educated and equipped with proper tools if they are to achieve anything meaningful. In addition, in the event the Town does not muster sufficient volunteer help to accomplish what is required, a toolbox of methods would help the Town to write a "Request for Proposals" to engage a firm to accomplish the necessary tests. A set of simple standard tests for volunteers and professionals would narrow the disparity in projected costs from the firms applying to conduct the work. And

the Town would be assured of receiving the appropriate information to address stormwater management guidelines.

Second, insisting on a unified measurement methodology imposes a large financial burden on a small community. One of our neighboring communities has estimated the metrology burden alone to be on the order of \$40,000-50,000. If instead an affected community could avail itself of the most economical approach to conducting the required metrology, more measurements could be undertaken at times when such data is of greater value as for example, during major rain-storm episodes.

Reporting: The increased reporting requirements whether it be for outfall testing and monitoring or catch basin documentation will divert resources that might be better spent addressing problems. The reporting requirements of the Draft Permit, while well-intentioned, ignore the realities of available resources in our communities.

EPA Data: The EPA furnished community data lacks specificity which renders any remedial action problematical. For example EPA cites Hoods Pond to be a category-5 water body because of its alleged mercury content. Topsfield does not discharge storm-water into Hoods Pond, and while there are residential septic systems on its shores, there is no industrial or commercial activity that could possibly be a source of that pollutant. Most likely the mercury found in the water dates to the times when acid rain from Midwest power-plants made NE ponds and lakes uninhabitable. No storm-water management program can remediate that damage, so why turn it into an issue for the permit? Another example to cite is the "pathogen" pollutant in the Ipswich River and Howlett Brook. Topsfield is blessed with large areas of open space populated by diverse groups of wildlife – notably muskrats, beavers, large herds of deer, packs of coyotes, bald eagles, and white herons. All of these leave their marks in and near the waters of these streams. It cannot then come as a surprise that "pathogens" in the form of enteric bacteria are found in the water. A remediation would necessarily mean the extermination of that wildlife. The inhabitants of Topsfield would be very much poorer for it.

Schedule: The schedule for implementing the program is unrealistic. Allowing only ninety days to file the NOI after the permit is finalized and requiring that the Stormwater Management Program be complete within one hundred and twenty days is far too aggressive. Those communities who might be able to accomplish both in-house would need much more time to complete the many elements of the program. Others will have to hire outside consultants in compliance with procurement regulations that extend the selection process, thus leaving little time to complete the work required by the Permit.

Unfunded Mandate: We disagree with the statement that the Draft Permit is a "guideline." Communities are subject to fines and penalties if they do not comply. Such enforcement procedures qualify the Draft Permit as "regulations," subject to the Unfunded Mandate legislation. The cost of this program, estimated to be up to \$60 per capita per year, places an extraordinary and impossible burden on communities that are already sorely pressed to provide even basic services. Most disturbing is that the redundancies and inefficiencies built into the Draft Permit inflate the cost to local communities unnecessarily – whether it be the replication of the same data in multiple towns, mandates to comply where there is nothing of significance to be addressed, or the flexibility to substitute more cost-effective approaches.

The benefits of the MS4 stormwater program are potentially extraordinary, but much more thought needs to be given to requirements, process and funding. We all want to improve the quality of the Commonwealth's water, but we also have to live with the fiscal, human and temporal realities of our capacity to do so. We ask that you defer action on the Draft Permit until such time as the issues above have been addressed. We need more flexible requirements, regional watershed collaboration, a tool box from the EPA, a more realistic schedule, and federal funding assistance. In short, we need an approach that will offer the greatest benefit and best efficiencies to address stormwater management taking into consideration the wide diversity of needs in communities across the Commonwealth.

On behalf of the Stormwater Management Committee,

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