



DEPARTMENT OF THE NAVY

COMMANDER
NAVY REGION, MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

IN REPLY REFER TO:

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EVN40/11/051

JAN 20 2011

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

Dear Ms. Renahan:

**SUBJECT: SUBMISSION OF COMMENTS ON PROPOSED NPDES
GENERAL PERMITS FOR STORMWATER DISCHARGES FROM SMALL
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4S) IN
MASSACHUSETTS INTERSTATE, MERRIMACK AND SOUTH COASTAL
WATERSHEDS**

As the Department of Defense, Regional Environmental Coordinator (REC) for EPA Region I and on behalf of all the military services, I am responsible for coordinating responses to various environmental policies or regulatory matters of interest. I appreciate the opportunity to comment on the proposed NPDES General Permit for Storm Water Discharges from Small MS4s in the Massachusetts Interstate, Merrimack and South Coastal Watersheds.

We support EPA's efforts to develop the next generation of MS4 permits for watersheds with impairments, some of which may be attributed to urban runoff. However, we are concerned that Section 6.2 of the draft permit, which addresses federal development and redevelopment projects, is not supported by EPA's authorities under the Clean Water Act (CWA). Section 6.2 also states that when a permittee is a federal agency, it must comply with Section 438 of the Energy Independence and Security Act (EISA). EISA Section 438 is neither a part of the CWA, nor its implementing regulations. The CWA and its implementing regulations govern the discharge of pollutants, but not the preservation or restoration of hydrology that is outlined in Section 438 of the EISA. Although the Department of Defense is committed to implementing EISA Section 438, we maintain that EPA cannot require implementation of EISA or otherwise regulate the maintenance of hydrology in a NPDES permit. Furthermore, inclusion of the EISA requirement imposes a different standard on federal facilities than on similar non-federal entities (i.e.

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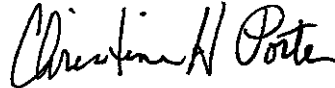
state and local MS4s). This disparate treatment is not allowed under the limited waiver of sovereign immunity found in Section 313(a) of the Clean Water Act. Section 313(a) requires that federal facilities be treated in the same manner and to the same extent as non-federal entities. Therefore, we request that EPA remove the language requiring federal agencies to comply with EISA Section 438 from the draft MS4 permit for these watersheds. Additionally, since the same language imposing EISA Section 438 requirements on federal facilities found in Section 6.2 of this draft permit is also found in the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts Northern Coastal Communities, we request that the section containing this language be removed from that permit before it is finalized.

Although the town of Natick is in the Charles River watershed, the storm water from the U.S. Army Soldier Systems Center - Natick is discharged into Lake Cochituate, which outflows to the Sudbury River, a part of the Merrimack River watershed. Therefore, the U.S. Army Soldier Systems Center - Natick should be "added" to the list of regulated small MS4s in Appendix C of the draft NPDES General Permit for Discharges From Small Municipal Separate Storm Sewer Systems located in the Interstate, Merrimack and South Coastal watersheds in Massachusetts. The General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts Northern Coastal Communities, Appendix C lists U.S. Army Soldier System Center - Natick as a regulated MS4 subject to that permit. Since the U.S. Army Soldier Systems Center - Natick storm water is discharged to the Merrimack River watershed, it should be "deleted" from the list of regulated small MS4s in Appendix C of the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts Northern Coastal Communities.

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Thank you again for the opportunity to comment. If you have any questions, please do not hesitate to contact Mr. David Cotnoir at david.cotnoir@navy.mil or by telephone at (757) 341-0428.

Sincerely,



CHRISTINE H. PORTER
Director for Regional
Environmental Coordination
By direction of the Commander

Copy to:
U.S. Army Ofc of Reg and Govt Affairs, NE (Mr. Robert Mulhy)
USAF Ctr for Engineering and Env (Mr. Thomas Sims)