

W a t e r s h e d A c t i o n A l l i a n c e
o f S o u t h e a s t e r n M a s s a c h u s e t t s

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March 11, 2011

Ms. Thelma Murphy
U.S. EPA – Region 1
Murphy.thelma@epa.gov.

RE: *Proposed NPDES General Permit for Small MS4s in the
MA Interstate, Merrimack and South Coastal Watersheds*

Dear Ms. Murphy:

The Watershed Action Alliance of Southeastern Massachusetts (WAA) is a coalition of eleven watershed associations,* eight of which are within EPA's Interstate and South Coastal Watersheds. We believe that the proposed MS4 General Permit for these watersheds represents a significant improvement over the 2003 General Permit. Overall we strongly support EPA's proposal, although with some reservations.

Compliance with MassDEP's Stormwater Standards

WAA is very dismayed that the proposed permit would weaken an important provision included in the Draft General Permit for the North Coastal Watersheds. The North Coastal Permit would require all new development and redevelopment projects of one or more acres to meet a number of MassDEP's Stormwater Standards. By contrast, EPA's Draft General Permit for the Interstate, Merrimack and South Coastal Watersheds requires compliance with these DEP standards only for projects that disturb one or more acres and, upon completion, "result in two or more acres of impervious surface."

We believe that because municipalities are already required under EPA's 2003 MS4 permit to issue stormwater permits to all development that disturbs an acre of more, having all of them comply with a few basic MassDEP Stormwater Standards would not be a significant burden. Indeed, projects of *all* sizes must comply with *all* MassDEP Standards if even a portion of their work is in or adjacent to a wetland resource area. In fact, when MassDEP in 2009 proposed (but never promulgated) stormwater regulations that have would required some upland projects to meet the Wetlands Stormwater Standards, an article in the February 21, 2009 *Boston/SF* (which reports on commercial real estate news) reported: "*NAIOP agrees that it makes sense to take advantage of*

* The members of the Watershed Action Alliance of Southeastern Massachusetts are: Back River Watershed Assn, Eel River Watershed Assn, Jones River Watershed Assn, Neponset River Watershed Assn, North & South Rivers Watershed Assn, Pembroke Watershed Assn, Save the Bay (Narragansett Bay), Six Ponds Improvement Assn, Taunton River Watershed Alliance, Weir River Watershed Assn, and Westport River Watershed Alliance.

opportunities to have state-of-the-art stormwater controls installed in projects that truly represent new development.” NAIOPs criticism was limited to MassDEP’s proposals to require retrofitting of entire sites when work such as parking lot repaving were to occur.

It is our understanding from talking to MassDEP that at some point they requested EPA to make your MS4 requirements compatible with MassDEPs 2009 proposed stormwater regulations (314 CMR 21.00). These regulations were proposed by an EEA Secretary and a MassDEP Commissioner who are no longer in those positions, and their 2009 proposal has been left in limbo for two years after the close of the public comment period. A MassDEP staff person who was intimately involved with the proposed regulations tells us that after the close of public comments, MassDEP was considering *substantial changes* to what they had proposed, specifically including proposals on which developments would be required to meet MassDEP Stormwater Standards. So it is hard to understand why EPA feels obliged (if it does) to make its MS General Permit compatible with a moving target that in all likelihood will never go into effect.

WAA does understand EPA’s desire to use an “impervious surface” trigger in the MS4 General Permit, since impervious surface has been directly correlated to reduction of fish populations and species in Massachusetts. However, *if an impervious surface trigger is to be added to the General Permit, we believe it should apply to any significant amount of new or redeveloped impervious surface*, not twice as much impervious surface as land disturbance threshold. If an impervious surface trigger is retained by EPA in the MS4 permit, WAA recommends that it apply to disturbance of one or more acres of land that results in *5,000 sq. ft. or more impervious surface*. 5,000 sq. ft. is, of course, the limit on alteration of bordering vegetated wetlands in Massachusetts law. It is also the *trigger used under Section 438 of the federal Energy Independence and Security Act of 2007*:

The sponsor of any development or redevelopment project involving a Federal facility with a footprint that exceeds 5,000 square feet shall ... maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume and duration of flow.”

Finally, it is unclear what is meant in Section 2.4.6.4.a. (new development) or Section 2.4.6.4.b. (redevelopment) by a project “*that upon completion results in two or more acres of impervious surface.*” If EPA retains these provisions in its final General Permit, you need to clarify how the rule would apply under following scenarios. Assuming that a new project caused a disturbance of 1 acre of land on a site which already had 2 acres of impervious surface, would compliance with the specified MassDEP Stormwater Standards be required if the project resulted in:

1. *no new impervious surface or redevelopment;*
2. *no new impervious surface but 1 acre of redevelopment;*
3. *no new impervious surface and but 2 acres of redevelopment;*
4. *0.5 acre of new impervious surface but no redevelopment;*
5. *0.5 acre of new impervious surface and 1.5 acres of redevelopment; or*
6. *1 acre of new impervious surface and .5 acre of redevelopment?*

And for any of the above scenarios that *would* require compliance with DEP Stormwater Standards, how much of the site would have to comply? Would only the new impervious area and redeveloped area need to comply, or would the disturbed areas that remain pervious and/or the existing impervious surfaces which are not redeveloped have to comply as well?

Eco Region Guidance

WAA also recommends that EPA include in its final MS4 permit the standards found in the Eco Region Guidance for rivers & streams and lakes & ponds. We understand that currently EPA only intends these criteria to serve as federal guidance. Although they provide the only meaningful criteria for some surface waters, the state has not adopted them as regulatory requirements. It would be appropriate for EPA to make them mandatory for MS4s.

NOI and Annual Report Forms

Finally, WAA feels strongly that NOI and Annual Report forms need to be changed significantly if EPA and the public are to be able to accurately determine the nature and extent of compliance with the various General Permit requirements. Over the years we have studied a great many NOIs and Annual Reports filed pursuant to the 2003 MS4 Permit and have seen that even where the 2003 MS4 permit sets very specific requirements on municipalities, few towns address all these requirements in their NOIs. This means that many communities are apparently violating the General Permit even before they begin implementing the measures contained in their NOIs! While it is probably too late to change the General Permit to address this problem, we propose that as soon as MS4 permit is finalized EPA issue NOI and Annual Report Forms that include as the first column a comprehensive list of the General Permit requirements, and then have towns fill in the columns identifying the BMPs they intend to use, the responsible Dept./persons, and the measurable goals. We would be happy to assist you however we can in developing such NOI and Annual Report forms.

Thank you very much for this opportunity to comment.

Sincerely yours,

Steve Pearlman
Coordinator

cc: Ann Lowery
Ken Kimmel
Fred Civian
Sue Beede
WAA members