

March 10, 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: NPDES Small MS4 General Permit - Public Comments
Inter-State, Merrimack, and South Coastal Watersheds**

Dear Ms. Murphy:

In our role as consultants, our professionals here at Weston & Sampson are responsible for advising and assisting many municipal clients that own Municipal Separate Storm Sewer Systems (MS4s). Through the services that we have provided, and are continuing to provide, we have a strong understanding of the challenges that these communities face in complying with stormwater permit requirements under the National Pollutant Discharge Elimination System (NPDES) program. Based on that understanding, and in response to EPA's request for public comments, we offer the following comments and suggestions on the draft General Permit for the Inter-State, Merrimack, and South Coastal Watersheds.

Comment #1 - The permitting period should be coordinated with the municipal fiscal year and budget process.

The current economic climate presents many competing interests for municipal funds, particularly at a time when State aid to municipalities is under constant threat of further reductions. Each year the budgeting process becomes more competitive, and the special taxation limitations in place in Massachusetts imposed under Proposition 2-1/2 make the options for funding new costs even more difficult. Municipalities require time to carefully plan large financial commitments, and educate their voters as to the need for these expenditures.

With respect to the municipal fiscal year, running from July 1st to June 30th, the municipal budgeting process commonly begins in the prior calendar year. Therefore, it is important that communities understand the costs facing them in the coming fiscal year no later than December, so that these financial commitments can be included, explained, discussed and approved for funding in the next fiscal year's budget.

In order to meet these standard requirements, EPA should make the final General Permit available to all municipalities no later than December 1st, and requirements for expenditures to comply with that permit should not be required until the fiscal year beginning July 1st of the following year. In this regard, the permit period should measure each permit year on the municipal fiscal year cycle – July 1st to June 30th – including Year 1.

Comment #2 - Funding assistance programs should be established and should be made available to MS4s.

The program requirements of the NPDES MS4 permit necessitate significant expenditures of resources, both money and staff time. Historically, EPA had assisted communities in meeting the NPDES program requirements for eliminating wastewater pollution by providing funding assistance (notably, the construction grants program). Many municipalities have taken advantage of grant and loan funding in the past to improve their ability to protect our nation's waters. Current funding programs (such as the Chapter 319 Water Quality grant program) prohibit the use of grant funds for stormwater compliance that is required under regulations. While the reduction of stormwater pollution to our resource waters is an important goal, to expect communities to do so without any type of assistance program brings into question the national commitment to this goal.

To reinforce the importance of the NPDES stormwater permitting program, some form of community funding assistance related to the program should be requested from Congress. In addition, the prohibitions against using existing available funding programs for stormwater compliance should be removed. Unfortunately, without some basic funding commitment at the national level, many municipalities see the stormwater regulations as an "unfunded mandate". Further, without some financial backing as a sign of a national commitment, responsible municipal officials may not be able to convince local voters and decision makers to fund the needed stormwater programs. We urge EPA to request that a dedicated funding source be made available to all municipalities covered by the NPDES MS4 permitting program.

We have prepared several additional comments on the specific technical requirements in the draft permit, and have attached those comments hereto for your consideration. Thank you for this opportunity to comment on the draft permit process, and we hope that you accept these comments in the interest of improving the ability of municipalities to comply with this and future permitting programs.

Very truly yours,

WESTON & SAMPSON ENGINEERS, INC.



Kent M. Nichols, P.E.
Vice President

Attachment

cc: file

**NPDES Permit for MS4 Discharges
Inter-State, Merrimack, and South Coastal Watershed Draft**

Considerations for Public Comment

1. Comment: General. The draft permit does not detail the steps between posting of the Notice of Intent for public comment and issuing Authorization. For example, who will receive public comments and who makes the determination if these comments are substantive? If they are deemed substantive, who will address these comments and what period of time will be allotted for the response? Furthermore, should this process substantially delay issuance of a formal Authorization by the EPA, will an extension then be granted to the Permittee for completion of requirements within the first year?

Recommendation: In Section 1 of the permit, add specific language to clarify responsibilities and timelines regarding the public notice process.

2. Comment: General. Permittees should be given a minimum of one full calendar year to complete the requirements for permit Year 1, especially given the number and magnitude of required elements. As written, permit Year 1 will begin on the effective date of the final permit and end the following June 30th. Depending upon the effective date, this could substantially reduce the amount of time to complete the Year 1 requirements due to the time required to complete the Notice of Intent, Public Notice/Comment process, and receive authorization from the EPA (120+ days). For example, if the effective date was September 1, 2011, authorization would not likely be granted until around January 1, 2012, and a Permittee would be required to complete all Year 1 requirements by June 30, 2012, only six months later. This is not reasonable.

Recommendation: The EPA should define permit Year 1 as ending on June 30th following a period of not less than 12 months after the effective date. This will provide Permittees with the full calendar year needed to complete the requirements, as well as possibly set apart a portion of time to comply with Parts 1.7 through 1.9 of the permit (obtaining authorization to discharge) and Section 5.3.1 (permit year defined). As an alternative (and depending upon when the permit is finalized), the EPA could administratively set the effective date of the permit approximately 120 days prior to July 1st to directly align with Parts 1.7 through 1.9 and 5.3.1.

3. Comment: General. The number and magnitude of the requirements in permit Year 1 are far too substantial for municipal personnel and budgets.

Recommendation: Move a selection of the Year 1 requirements back to Year 2 in order to allow Permittees reasonable time to complete parts 1.7 through 1.10, in addition to the multitude of tasks currently requested for Year 1. A suggestion would be to make the focus of Year 1 the written Stormwater Management Program (SWMP), including the requirements of Part 1.10, and also related written protocols/procedures located throughout the permit that are required to be developed and incorporated into the SWMP. The focus of Year 2 could then be implementation of many of the Good Housekeeping/Pollution Prevention tasks required by 2.4.7.1 through 2.4.7.2. This suggestion would provide far more reasonable and balanced deadlines for municipal personnel and budgets.

4. Comment: General. There are many requirements contained in the draft permit that require a significant expenditure of time and money by Permittees, but have not been scientifically proven by EPA or other parties to have any measurable impact on the water quality in discharges from the MS4. For example, street sweeping is required on all streets twice per year; however, there is no scientific basis to conclude that sweeping of all streets, or a frequency of twice per year, will have a measurable impact in all MS4s.

Recommendation: Confine requirements to those that have clear scientific basis. Allow Permittees to determine the types and frequencies of BMPs that will have the most impact on water quality in their individual MS4.

5. Comment: Part 1.10. The Permittee is required to develop a written SWMP within 120 days following the Permittee's receipt of authorization from EPA to discharge under the permit. There are a number of items required under the permit that must be incorporated into the SWMP that have a longer lead time than 120 days. For example, Part 2.4.4.8.c.iv requires the Permittee to document the results of the illicit discharge potential assessment and prioritization in the SWMP; however, IDDE task is not required to be completed until the end of Year 1.

Recommendation: Provide clarification regarding EPA's intent for the SWMP and how often modification of the SWMP is required. As indicated above, a suggestion would be to make the focus of Year 1 completion of the written SWMP, including the requirements of Part 1.10, and also related written protocols/procedures located throughout the permit that are required to be developed and incorporated into the SWMP.

6. Comment: Part 2.1.1.c. The requirement to eliminate conditions causing or contributing to the exceedance of water quality standards within 60 days of becoming aware is not reasonable or even feasible, and also overlaps/conflicts with Part 2.4.4.2 of the permit. The requirements are both too broad (covering any/all parameters and conditions with no relation to any potential impact on the waterbody), and the time limit to locate and remove all conditions is downright absurd. Unless a pollutant source has obvious visible characteristics (e.g., foam, color, solids, etc.) that can be easily traced upstream to the source, a comprehensive IDDE investigation will be needed to identify the source(s). Most communities need assistance from outside consultants to complete these investigations, which are secured through annual budget requests and public bidding that can take upwards of a year to complete. The same is true for removal of illicit discharges once they are located, since a good majority of these require excavation and replacement or reconfiguration of municipal infrastructure to support elimination.

As written, Part 2.1.1.c will also cause many Permittees to complete required outfall monitoring (Part 3.0) in a manner that is not cost-effective. Based on our past experience with outfall monitoring, it is cost-effective for Permittees with 100 outfalls or less to complete monitoring of all outfalls in a single year. However, as written, the permit would allow only 60 days to complete comprehensive IDDE identification and removal for every outfall where sample results indicated an exceedance of water quality standards. Since no community could possibly achieve this requirement, Permittees will be forced to spread outfall sampling over the full permit term in order to reduce the potential amount of IDDE.

Recommendation: Revise Part 2.1.1.c to work in conjunction with Part 2.4.4.2, providing a requirement for the Permittee to develop and implement a plan and schedule to *investigate* the potential condition(s) causing or contributing to an exceedance of water quality standards within 60 days. Once the conditions are identified by the investigation of Part 2.1.1.c, then Part 2.4.4.2 would require removal within 30 days, or a plan and schedule for removal of those that cannot be removed within this timeframe.

7. Comment: Part 2.3.2. The definition for a *new discharger* is unclear, as the terms *New Source* and *Site* are not defined. In addition, these terms, as well as *New Discharger*, are not contained in the definitions section provided in Appendix A.

Recommendation: Add definitions for these terms to Appendix A.

8. Comment: Part 2.4.4.4. The requirement to evaluate the sources of non-stormwater discharges in Part 1.4 of the permit and determine whether these sources are significant contributors of pollutants to the municipal system is not detailed enough. Is EPA asking for an inventory of where these discharges exist, or a comprehensive scientific study to characterize the type and quantity of pollutants in each type of discharge? If the latter, EPA would have had to already characterize these wastes in order to legally allow them under the permit, so there is no need to duplicate this effort in the permit. There is also no timeframe provided for completion of this task.

Recommendation: Provide further guidance regarding how these sources are to be “evaluated” and a timeframe for completion of this task.

9. Comment: Part 2.4.4.7. The requirements for the Outfall Inventory are not clear due to the addition of the phrase “...for each stream mile within its regulated jurisdiction...” Is EPA trying to require that the Permittee conduct a shoreline survey along every mile of waterbody to which its’ MS4 has discharges? Or, is EPA simply trying to clarify that it expects the Permittee to visit the actual discharge point of each and every outfall from the MS4? To require a full shoreline survey is both unreasonable and outside the scope of the MS4 permit (unless a Permittee has no information on where its MS4 outfalls discharge). The number of miles of shoreline in many MS4 communities is very large, and many of the outfalls along these shorelines are not owned by the MS4.

Recommendation: Limit the inventory to locating outfalls from the MS4 by deleting the phrase “for each stream mile within its regulated jurisdiction” in its entirety.

10. Comment: Part 2.4.4.8.c. The timeframe provided for delineating, ranking, prioritizing and inventorying catchments does not make sense. Requirements need to be completed one year from the effective date of the permit; however, mapping of the MS4 does not have to be completed for two years from the effective date of the permit. It is impossible for catchments to be properly delineated, ranked, prioritized, and inventoried if mapping of the MS4 is not complete. In addition, this timeframe is not aligned with outfall monitoring, as prioritization of catchments for IDDE is to be completed prior to assessment of outfalls. Since the primary data source used for prioritizing catchments under the IDDE program is the results of outfall monitoring, it simply does not make sense to require prioritization *prior* to sampling.

Recommendation: Based on the timeframe provided for mapping, the requirements of Part 2.4.4.9.c (delineating, ranking, prioritizing and inventorying catchments) should be completed during Year 3 of the permit at the earliest. The timeline for completion of IDDE Program Milestones as outlined in Part 2.4.4.8.g. of the permit should be extended to accommodate this change in schedule. This also would place the IDDE Program Milestones in alignment with the outfall monitoring, which is essential for proper prioritization of catchments for IDDE. It would make sense to include some discussion regarding prioritization as part of scheduling outfalls for monitoring.

11. Comment: Part 2.4.4.8.e. The Permittee is required to develop and implement mechanisms and procedures designed to prevent illicit discharges and Sanitary Sewer Overflows (SSOs). A timeframe is not provided for implementation of these procedures. The permit also does not indicate where this task must be documented whether in the SWMP and/or Annual Reports.

Recommendation: Provide clarification regarding a timeframe for completion of this task and provide information regarding required documentation.

12. Comment: Part 2.4.4.8.h. The requirement to train employees annually on the illicit discharge detection and elimination (IDDE) program does not specify what employees must be included in the training. To require the MS4 to train “all” employees is not reasonable, nor is there any measurable benefit to training staff not in a position to have involvement in the IDDE program or opportunity to encounter illicit discharges.

Recommendation: Language should be added to Part 2.4.4.8.h of the permit to set reasonable expectations for types of employees or departments who should receive the IDDE training.

13. Comment: Part 2.4.6.7. Permittees are required to develop a report assessing current street design and parking lot guidelines and other local requirements that affect the creation of impervious cover. The permit does not indicate whether this is a separate report that needs to be completed or if it can simply be addressed in the SWMP and Annual Reports. The SWMP must be completed within 120 days which does not fit the timeline for completion of this task.

Recommendation: Clarification should be provided in the permit as to whether the Permittee is required to develop a separate report. The timeline for completion should also be clarified as it relates to development of the SWMP.

14. Comment: Part 2.4.6.8. Permittees are required to develop a report assessing existing local regulations to determine the feasibility of incorporating green practices when appropriate site conditions exist. The permit does not indicate whether this is a separate report that needs to be completed or whether it only needs to be part of the SWMP. The SWMP must be completed within 120 days which does not fit the timeline for completion of this task.

Recommendation: Clarification should be provided in the permit as to whether the Permittee is required to develop a separate report. The timeline for completion should also be clarified as it relates to development of the SWMP.

15. Comment: Part 2.4.6.9.c-d. EPA has no legal basis under the Clean Water Act to require Permittees to reduce the frequency, volume, and peak intensity of stormwater discharges from existing MS4-owned properties and infrastructure. If discharges from the MS4 contain no pollutants in excess of water quality standards and cause no excessive erosion or scour, then there is neither a need for, nor legal justification to require, these discharges to be retrofitted with flow-control Best Management Practices (BMPs).

Recommendation: Add language to items 2.4.6.9.c-d limiting the requirement for inventory, ranking, and implementation of flow-control BMPs to only those properties or outfalls causing a documented water quality violation or erosion impact.

16. Comment: Part 2.4.7. Many of the requirements included as part of the Good Housekeeping and Pollution Prevention minimum control measure are extremely onerous to those communities that lack manpower and have limited operating budgets. In addition, many of the required tasks cannot be accomplished in the allotted timeframe because funds to accomplish these tasks have to be incorporated into municipal fiscal budgets at least a year in advance.

Recommendation: Reduce the extent of requirements and extend timeframes provided to make them more manageable for communities given the current financial climate.

17. Comment: Part 2.4.7.1.b. The requirement that floor drains in all municipal facilities must be inventoried and the Permittee must ensure that all floor drains are not connected to the MS4 within one year of the effective date of the permit is unreasonable. As written, this would include every floor drain in every municipal facility, of which some municipalities have many. This would be a time-consuming and costly task to complete, and communities require time to plan and budget for this task.

Recommendation: Revise Part 2.4.7.1.b. to extend the timeframe for completion of this task to the permit term (five years). Specify acceptable methods for ensuring that floor drains are not connected to the MS4 (e.g., review of as-built drawings, dyed water testing, etc.).

18. Comment: Part 2.4.7.1.d.i. requires the Permittee to establish, within six months of the effective date of the permit, a program to repair and rehabilitate its MS4 infrastructure. This requirement is vague and requires additional clarification. Is EPA just looking for municipalities to demonstrate that they have a Capital Improvement Plan (CIP) for their MS4 or is EPA looking for a comprehensive condition assessment and associated improvement plan? The latter would be far too costly for Permittees.

Recommendation: Revise Part 2.4.7.1.d.i to clarify that the Permittee must develop/implement or already have in place an appropriate CIP for its MS4 infrastructure and that the Permittee does not have to complete a comprehensive condition assessment of all MS4 infrastructure.

19. Comment: Part 2.4.7.1.d.iii. The requirement that cleaning and maintenance of catch basins shall be optimized so that no sump is more than 50 percent full for those catch basins tributary to impaired waters is unrealistic. In some communities, all catch basins are tributary to impaired waters, so this requirement would extend to every catch basin in the community. There is also not enough detail provided in the permit regarding how often catch basins would need to be inspected. This requirement would have huge cost implications based on how frequently the catch basins would need to be inspected. In addition, this requirement lacks a period for development and implementation of such a large-scale program.

Recommendation: Revise Part 2.4.7.1.d.iii to require catch basins to be inspected in conjunction with routine cleanings only and not at separate intervals. During routine cleaning, the amount of sediment removed should be documented and a determination made over a period of several years regarding how frequently each catch basin needs to be cleaned. The entire five year permit term should be allotted to complete inspection and cleaning of all catch basins and develop an appropriate schedule for future catch basin cleaning.

20. Comment: Part 2.4.7.1.d.viii. The requirement that “All Permittee-owned stormwater structures shall be inspected annually at a minimum” is not feasible. As written, this would include every pipe, manhole, catch basin, or other structure making up the entirety of the MS4 facilities. This is likely not EPA’s intent.

Recommendation: Revise part 2.4.7.d.viii to require inspection of all structural BMPs. If inspection of additional structures is desired, list those specifically, but certainly delete the requirement for inspection of “all” structures.

21. Comment: Part 2.4.7.2.b.v. requires quarterly inspection of all areas of municipal facilities that are exposed to stormwater and all stormwater control measures. Quarterly inspections are excessive.

Recommendation: Revise Part 2.4.7.b.v. to require that facility inspections occur annually rather than quarterly.

22. *Comment:* Part 3.0 does not provide any relief/reward to Permittees who proactively, and in good faith, completed prior monitoring of their MS4. Although not required by the 2003 MS4 General Permit, a number of communities voluntarily completed this monitoring, and now are being penalized for having done so. If a Permittee has previously completed monitoring, they should be able to apply that past monitoring effort toward compliance with Part 3.0, providing that the monitoring was completed in accordance with the requirements of this permit, and proper documentation of the monitoring is maintained.

Recommendation: Revise Part 3.0 to add a provision allowing Permittees who have completed prior monitoring of the MS4 to prepare a Permittee-specific monitoring plan to be submitted with the NOI, demonstrating past monitoring in compliance with the conditions of this permit and, if desired, proposing and justifying an alternative monitoring plan going forward.

23. *Comment:* Part 3.1.4. The ability to prepare and follow a Permittee-specific monitoring plan to reduce the number of outfalls monitored should be applied to both wet- and dry-weather sampling. As a Permittee collects a database of dry-weather sampling data for the MS4, the Permittee should be able to utilize this data to reduce the frequency of dry-weather monitoring at outfalls where repeated monitoring has demonstrated that no discharge of pollutants is occurring.

Recommendation: Add a new Part 3.1.5 to the permit detailing the allowable conditions under which a Permittee-specific monitoring plan can be developed for dry weather that reduces the number of outfalls monitored based on a set of conditions such as past monitoring data. Include a requirement for the Permittee to periodically revisit these outfalls (e.g., once every ten years) to ensure that no new pollutant sources are present.

24. *Comment:* Part 3.3.1. The requirements related to wet-weather monitoring are not provided in sufficient detail. Inspection must be performed during wet weather, defined as sufficient intensity to produce a discharge; however, it is not clear whether a discharge must be observed at every outfall to achieve compliance. Does the Permittee have to return to an outfall repeatedly until a discharge is actually observed, even when substantial rainfall events have occurred? To require the Permittee to mobilize staff, equipment, and laboratory services an unlimited number of times to actually observe each and every outfall flowing places an unreasonable burden upon the Permittee. In addition, a storm of sufficient intensity and duration to allow flow to be observed at every outfall is not likely to occur with sufficient regularity to facilitate compliance, particularly in MS4s with large numbers of outfalls.

Recommendation: Set specific minimum storm parameters, for both time and rainfall amount, so that the Permittee can make a reasonable determination as to whether to mobilize for the wet-weather inspection effort. Set the minimum storm parameters at a level expected to produce discharges at the majority of outfalls. Eliminate the requirement for discharges to be observed at each and every outfall.