

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND - REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

Statement of Basis for

Proposed Modifications

**SECTION 2.1.1, 2.2 (INCLUDING ALL SUBSECTIONS), AND 2.3.6 (INCLUDING ALL SUBSECTIONS),
APPENDIX F (EXCLUDING ATTACHMENTS) AND APPENDIX H (EXCLUDING ATTACHMENTS) OF THE
DRAFT GENERAL PERMITS FOR STORMWATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS IN NEW HAMPSHIRE**

NPDES PERMIT NUMBERS:

NHR041000 – Traditional cities and towns

NHR042000 – Non-traditional state, federal, county and other publicly owned systems

NHR043000 – Non-traditional transportation systems

PUBLIC COMMENT PERIOD: September 1, 2015 through November 2, 2015

HISTORY

EPA revised the 2008 draft New Hampshire small MS4 permit and re-issued a new draft permit (2013 draft permit) for public comment on February 12, 2013. The comment period was set to expire on April 15, 2013. However, the comment period was extended two times in response to multiple requests to extend the public comment period. Following the two extensions, the public comment period was from February 12, 2013 through August 15, 2013. In response to many comments received on the 2013 draft MS4 permit for New Hampshire and changes to NH Water Quality Standards, EPA has significantly revised section 2.1.1, 2.2 (including all subsections), and 2.3.6 (including all subsections), Appendix F (excluding attachments) and Appendix H (excluding attachments).

PROPOSED ACTION

Pursuant to 40 CFR §124.14, EPA is reopening the public comment period only for certain provisions of the Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Small Municipal Separate Storm Sewer Systems (MS4s) in the state of New Hampshire. EPA is re-opening the comment period because of information submitted during the initial public comment period, and changes to New Hampshire water quality standards appear to raise substantial new questions with regard to certain draft permit requirements. *See* 40 CFR §124.14(b). Therefore, EPA is proposing to revise only these particular draft permit requirements and has prepared revised sections to the draft permit so that the public may review and comment on the revisions. *See* 40 CFR §§124.14(a)(2), (b) and (c).

EPA is reopening the comment period for the 2013 draft New Hampshire small MS4 permit to take comments on new language in section 2.1.1, 2.2 (including all subsections), and 2.3.6 (including all subsections), Appendix F (excluding attachments) and Appendix H (excluding attachments) only, comments received pertaining to other sections of the 2013 draft MS4 permit will not be addressed prior to final issuance of the MS4 permit for New Hampshire. The new proposed section 2.1.1, 2.2 (including all subsections), and 2.3.6 (including all subsections), Appendix F (excluding attachments) and Appendix H (excluding attachments) will completely replace the sections in the 2013 draft permit released February 12, 2013.

Consistent with 40 CFR §§ 124.14(a)(2) and (c), and as stated above, EPA is re-noticing only certain provisions of the draft permit and is not seeking additional comment on any of the draft permit's other provisions.

Since this is a re-opening of a public comment period, EPA will follow the procedures in 40 CFR §124.14. EPA will re-open the public comment period for 60 days from the date of publication of this notice in the Federal Register. Upon completion of the 60 day comment period, EPA will provide an additional 20 days from the close of the comment period, during which time any interested person may file a written response to the material filed by another person. *See* 40 CFR §124.14(a)(1).

BASIS FOR MODIFICATION

NPDES permits must be consistent with applicable state water quality standards and regulations. When EPA drafted the 2013 draft New Hampshire small MS4 permit, New Hampshire regulations did not allow for the use of compliance schedules in NPDES permits. On November 22, 2014, Env-Wq 1701.03 "Compliance Schedules in NPDES Permits" was adopted into rule and became effective, allowing compliance schedules to be put into NPDES permits. Accordingly, EPA has amended the language in Sections 2.1.1 and 2.2 and Appendix F and added specified schedules leading to compliance with water quality standards which are consistent with Env-Wq 1701.03 and 40 CFR §122.47.

EPA also received multiple comments on section 2.2 and Appendix H seeking clarity of permit terms and applicability of requirements. Pollution from urban stormwater runoff is well documented as a leading cause of impairment of freshwater lakes, rivers, and estuaries (US EPA, 2009); (National Research Council, 2008). A number of harmful pollutants are contained in urban stormwater runoff, including the following major constituents: Nutrients (nitrogen and phosphorus), Bacteria/Pathogens, Chloride, Solids, Oil & Grease (Hydrocarbons), and Metals (Center For Watershed Protection, 2003); (US EPA, 1999); (Shaver, et al., 2007); (Lin, 2004); (Schueler, 2011); (Pitt, et al., 2004) (Clark & Pitt, 2012); (National Research Council, 2008). Literature review and analysis of National Stormwater Quality Dataset (NSQD) data of urban stormwater constituents indicates that it can be reasonably assumed that stormwater discharges from urban areas in New England contain bacteria/pathogens, nutrients, chloride, sediments, metals, and oil and grease (hydrocarbons). This is not to say that every grab sample of stormwater will always contain each of the aforementioned stormwater constituents, however, if sufficient data is available for any single urban stormwater discharge, the average concentrations of bacteria/pathogens, nutrients, chloride, sediments, zinc (metals), and oil and grease (hydrocarbons) will likely be present. When a waterbody is found to be impaired pursuant to Clean Water Act (CWA) Section 303(d) or 305(b) for a particular pollutant, or the receiving water is experiencing an excursion above water quality standards due to the presence of a particular pollutant, it indicates that the waterbody has no assimilative capacity for the pollutant in question. EPA reasonably assumes that urban stormwater discharges from urbanized areas in New England contain bacteria/pathogens, nutrients, chloride, sediments, metals, and oil and grease (hydrocarbons) and finds that MS4 discharges are likely causing or contributing to the excursion above water quality standards when the receiving waterbody impairment is caused by

bacteria/pathogens, nutrients, chloride, metals, sediments or oil and grease (hydrocarbons). EPA has determined that it is appropriate to require additional controls on such discharges to protect water quality. Accordingly, EPA has revised section 2.2 and Appendix H to provide clarity of permit requirements and certainty on applicability of permit provisions.

EPA also received multiple comments on section 2.3.6 seeking clarity on provisions, closer adherence to state law and a reduced administrative burden. EPA has revised section 2.3.6 accordingly.

A comprehensive summary of the basis for the draft permit conditions including the applicable statutory and regulatory authority and is included in the original Fact Sheet to the 2013 draft MS4 permit for New Hampshire. In addition, the administrative record for this permit can be viewed at the EPA Region 1 office upon request.

ADMINISTRATIVE RECORD, PUBLIC COMMENT PERIOD, HEARING REQUESTS AND PROCEDURES FOR FINAL DECISION

All persons who believe any conditions that are included in this re-notice are inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the comment period to Newton Tedder, U.S. EPA, Office of Ecosystem Protection, Stormwater and Construction Permits Section, 5 Post Office Square, Suite 100 (OEP06-4), Boston, Massachusetts 02109-3912.

Any person, prior to such date, may submit a request in writing for a public hearing to consider only the conditions that are included in this re-notice to EPA. Such requests shall state the nature of the issues proposed to be raised at the hearing. A public hearing maybe held after at least thirty days public notice whenever the Regional Administrator finds that response to this notice indicates significant public interest. Region 1 will provide an additional 20 day comment period extending from the close of the public comment period to November 20, 2015, during which any interested person may file a written response to the material filed by any other person. Public comments will be added to the Administrative Record in a timely manner to allow for review and response during the additional 20-day period. In reaching a final decision on the draft permit, the Regional Administrator will respond to all significant comments and make these responses available to the public.

Following the close of the comment period, and after a public hearing, if such hearing is held, the Regional Administrator will issue a final permit decision and forward a copy of the final decision to each person who has submitted written comments or requested notice.

EPA CONTACT

Additional information concerning the re-noticed conditions of the draft permit may be obtained between the hours of 9:00 am and 5:00 pm, Monday through Friday, excluding holidays, from the EPA contact below:

Newton Tedder
EPA- Region 1
5 Post Office Square, Suite 100 (OEP06-4)
Boston, Massachusetts 02109-3912
(617) 918-1038
Tedder.newton@epa.gov

Works Cited

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US EPA, 2009. *National Water Quality Inventory: Report to Congress 2004 Reporting Cycle*, Washington D.C.: US EPA.