

## **Statement of Basis**

### **NPDES Permit For Stormwater Discharges from the Village of Hobart, Wisconsin's Regulated Municipal Separate Storm Sewer System (MS4) To Waters of the United States**

Permit No.: **WI0073024**

Public Notice No.: **10-04-01-A**

Permit issued on [the date of signature and to be determined]

Permit will expire on [five years from the date of signature]

#### **Statutory and Regulatory Background**

EPA published Phase I of the national stormwater regulations in 1990 and required medium and large municipal separate storm sewer systems (MS4s) to apply for a National Pollutant Discharge Elimination System (NPDES) permit for their stormwater discharges (Federal Register/Vol. 55, No. 222, 11/16/1990, pg.47990). In 1999, EPA published Phase II of the national stormwater regulations. Operators of regulated small MS4 were required to apply for permit coverage by March 2003 (Federal Register/Vol. 64, No. 235, 12/8/1999, pg.68722). NPDES permits issued to Phase II MS4s require small MS4s to develop and implement a stormwater management program which addresses the six minimum control measures described in the rule:

- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Erosion and Sediment Control
- Post-Construction Erosion and Sediment Control
- Pollution Prevention/Good Housekeeping

For each of the minimum control measures, the operator must develop and implement best management practices (BMPs) to reduce pollutants in discharges to the maximum extent practicable, and establish measurable goals for each minimum control measure. See 40 CFR 122.34(b) and (d).

The Village of Hobart MS4 (Permittee) is located within the Green Bay urbanized area and is a regulated small MS4 community. An urbanized area as delineated by the Bureau of Census is defined as a central place or places and the adjacent densely settled surrounding area that together have a residential population of at least 50,000 people and overall population density of at least 500 people per square mile.

A Federal NPDES permit is being issued for Hobart MS4 discharges located within the boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin. See Appendix 1 to the Preamble - Federally - Recognized American Indian Areas Located Fully or Partially in Bureau of The Census Urbanized Areas (Federal Register/Vol. 64, No. 235, 12/8/1999, pg. 68803). NPDES permits for discharges in Indian Country are issued by U.S. EPA. *Indian Country*, as defined in 18 USC 1151, means: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished. This definition includes all land held in trust for a Federally-recognized American Indian Tribe. Pursuant to the definition, the Reservation of the Oneida Tribe of Indians of Wisconsin is part of Indian Country and permits for discharges within the Reservation boundaries are the responsibility of U.S. EPA.

### **Village of Hobart Application History**

The Permittee is a regulated small MS4 community and its population is 5,873 as reported on the Permittee's October 1, 2006 notice of intent (NOI) submitted to the Wisconsin Department of Natural Resources.

On January 24, 2007, the Permittee submitted the NOI to the U.S. Environmental Protection Agency which had previously submitted to the Wisconsin Department of Natural Resources to apply for coverage under the Wisconsin Pollutant Discharge Elimination System MS4 general permit. The Permittee requested coverage under a NPDES MS4 permit for its stormwater discharges which are located within the Oneida Reservation.

On May 23, 2007, EPA sent a follow-up letter to the Village of Hobart requesting any construction approvals and whether discharges from its small MS4 affect Federally-listed endangered or threatened species or critical habitat, or historic properties. On April 14, 2008, EPA also sent letters to the Oneida Tribal Historic Preservation Officer (THPO) and the Green Bay Office of the U.S. Fish and Wildlife Services stating that we were drafting a small MS4 permit for the Village of Hobart and requesting a determination as to whether the stormwater discharges from the affect endangered species or historic properties. (See Requirements of Federal Law, below).

On the basis of preliminary staff review and applicable standards and regulations, the Regional Administrator of the EPA, Region 5, proposes to issue a permit for discharges from the Permittee's MS4.

### **Why EPA regulates MS4s and what kinds of pollutants may discharge to U.S. waters**

Stormwater discharges from MS4s in urbanized areas are a concern because of the presence of pollutants in these discharges. Common pollutants include oil and grease from roadways, pesticides from lawns, sediment from construction sites, and trash such as cigarette butts, paper

wrappers, and plastic bottles. Bacteria is also commonly present in stormwater discharges. Stormwater picks up and transports these pollutants and then discharges them, untreated, to waterways via separate storm sewer systems. When left uncontrolled these discharges may impair receiving waters, thereby discouraging recreational use of the resource, contaminating drinking water supplies, and interfering with habitat of fish, other aquatic organisms, and wildlife.

## **Requirements of Federal Law**

### **Comply with Endangered Species Act**

Section 7 of the Endangered Species Act requires Federal agencies to insure that any action authorized, funded or carried out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat. EPA has contacted the U.S. Fish and Wildlife Service (USFWS), Green Bay Field Office. According to the USFWS, the bald eagle is found on the Oneida Reservation. In an April 30, 2008 letter, the USFWS concurred with EPA's determination that issuance of the permit will not affect endangered or threatened species.

### **Comply with National Historic Preservation Act**

Section 106 of the National Historic Preservation Act (NHPA) requires that Federal agencies having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking or independent agency having authority to license any undertaking shall take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places. Federal agencies shall afford the Advisory Council on Historic Preservation established under Title II of NHPA a reasonable opportunity to comment with regard to such undertaking.

EPA has no evidence/information that historic or archeological sites will be affected by issuance of the permit. In a May 2, 2008 letter, the Oneida Tribal Historic Preservation Office concurred with EPA's findings that issuance of the permit will have no impact on historical or cultural sites within the project area.

## **Summary of Permit Conditions**

### **Permit Coverage**

The proposed permit will cover stormwater discharges from all existing and new outfalls of the Permittee's MS4, located within village boundaries and also within the Green Bay urbanized area. This permit also authorizes the discharge of certain non-stormwater sources provided, as described in Part 1.2.2.2 of the permit, that EPA has not determined these sources to be substantial contributors of pollutants to the MS4.

### **Stormwater Management Plan and Six Minimum Control Measures**

The Permit requires the Permittee to develop and implement a stormwater management program (SWMP) which includes BMPs and measurable goals for the following six minimum control measures:

1. Public Education and Outreach - Informing individuals, businesses and organizations within the MS4 area as to the impact of contaminated stormwater discharges on surface water quality and how they can help reduce stormwater contamination.
2. Public Participation and Involvement - Creating opportunities for individuals and organizations to participate in the development and implementation of activities to reduce the contamination of stormwater.
3. Illicit Discharge Detection and Elimination - A program to detect and eliminate cross-connections, dumping of wastes and other non-stormwater discharges into the storm sewer system.
4. Construction Site Runoff Control - A program to implement erosion and sediment controls for construction sites where one or more acres of land is disturbed.
5. Post-Construction Runoff Control - A program requiring the development, implementation and maintenance of controls on sites after development or redevelopment to address stormwater pollutants and flow issues. The post-construction requirements in the proposed permit include performance standards addressing Total Suspended Solids Control, Peak Discharge Rate, and Infiltration/Hydrology. The Infiltration/Hydrology performance standards are needed to help ensure new development/redevelopment, and the impervious surfaces that are constructed, do not impair the quality of the receiving waters. The requirements are equivalent to State of Wisconsin post-construction requirements.
6. Pollution Prevention/Good Housekeeping - A program to minimize pollutant discharges from municipal operations such as garages, salt piles, landscaping and storage and use pesticides, etc.

The Permittee will submit the minimum control measures required in the storm water management program to EPA Region 5 for review and approval according to the compliance schedule in the permit.

### **Effluent Limits**

Section 2 of the permit contains non-numeric effluent limits. This section of the permit requires the Permittee to reduce the discharge of pollutants to the maximum extent practicable (MEP) in compliance with the management practices, control techniques, systems, design and engineering methods, and other provisions required under this permit. This section of the permit also

prohibits non-stormwater discharges into the storm sewer system (except as allowed pursuant to Section 1.2.2.2 of the permit) and requires that the Permittee shall not discharge the following substances from the MS4:

- Solids that settle to form putrescence or otherwise objectionable sludge deposits.
- Oil, grease, or other floating material that form noticeable accumulations of debris, scum, foam, or sheen.
- Color or odor that is unnatural and to such a degree as to create a nuisance.
- Toxic substances in amounts harmful to aquatic life, wildlife, or humans.
- Nutrients conducive to excessive growth of aquatic plants and algae to the extent that such growth is detrimental to desirable forms of aquatic life, creates conditions that are unsightly, or is a nuisance.
- Any other substances that impair, or threaten to impair, beneficial uses of the receiving waters.

Section 5 of the permit contains discharge observation/assessment requirements to assess compliance with the effluent limits and the minimum control measures enumerated in the permit.

### **Controlling Discharges to the Maximum Extent Practicable**

The Permittee must reduce the discharge of pollutants to the maximum extent practicable (MEP) to protect water quality, and satisfy the applicable water quality requirements of the Clean Water Act. The federal Clean Water Act (CWA) requires that regulated MS4s “reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator [of EPA] or the State determines appropriate for the control of such pollutants.” EPA sees MEP as an iterative process -- MEP should continually adapt to current conditions and new BMPs and technologies. Successive iterations of BMPs and measurable goals will be driven by the objective of ensuring discharges support achievement of water quality standards.

For the purposes of this permit and this permit cycle, EPA Region 5 considers MEP to be implementation of measures to meet Sections 2 (Effluent Limitations), 3 (Special Conditions) and 4 (Stormwater Management Program) of the permit. With regard to the post-construction control measures, if the permittee complies with the requirements in Section 4 of the permit and in Appendix A, EPA Region 5 would consider that to meet MEP for this permit cycle.

### **Compliance Monitoring and Assessment of Program Effectiveness**

EPA regulations require permits to prescribe monitoring as needed to assure compliance with the effluent limits. See 40 CFR 122.44(i). The Permittee must also evaluate program effectiveness, the appropriateness of identified BMPs, and progress toward achieving identified measurable goals. The results of annual program reviews will be reported on in annual reports to EPA.

The proposed permit contains discharge observation and assessment requirements. The objective of these requirements is to assess stormwater management program performance and to determine compliance with the narrative effluent limitations in Section 2 of the permit. The importance of these objectives is weighed against logistical considerations and the burden to the MS4 operator. The proposed permit requires the Permittee to conduct visual observations/assessments of at least 20% of the Permittee's outfalls (discharge locations) each year in the spring, summer, or fall. Visual observations/assessments must be within ½ day after the start of a measurable storm event.

In addition to conducting visual observations/assessments during or soon after wet weather events, the program to detect and eliminate illicit discharges requires field screening in dry weather. Flow in the MS4 in dry weather is a strong indication there may be an illicit connection conveying flows to the stormwater system or illegal dumping.

If the permittee discharges to surface waters for which a total maximum daily load (TMDL) has been approved, the permittee will describe a monitoring program to determine whether the stormwater controls are adequate to meet the waste load allocation or other performance requirements of the TMDL. Currently, EPA has not approved any TMDLs for water bodies to which the County's MS4 discharges. Information on approved TMDLs in Region 5 can be found at: [http://www.epa.gov/region5/water/wshednps/topic\\_tmdls.htm#states](http://www.epa.gov/region5/water/wshednps/topic_tmdls.htm#states).

### **Recordkeeping**

The Permittee must retain records of all information required to be generated under the permit for a period of at least three years. In accordance with 40 CFR 122.34(g)(2), the Permittee must make the records and the description of the stormwater management program available to the public if requested to do so in writing.

### **Annual Report**

In accordance with 40 CFR 122.34(g)(3), the Permittee must submit annual reports to EPA, Region 5 office, as described in Part 4.3 of the permit. The first annual report is due March 31, 2011.

### **Procedures for reaching a final decision on the proposed permit**

**Comment Period:** Interested parties may submit written comments on the draft permit within 30 days of the date of the public notice. Comments should be delivered or mailed to:

Attention: Brian Bell  
U.S. Environmental Protection Agency, Region 5  
NPDES Programs Branch (WN-16J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Interested parties may also send electronic comments via email to: bell.brianc@epa.gov

**Where to find a copy of the proposed permit:** Send your request to the above address or via email to bell.brianc@epa.gov, or an electronic copy of the draft permit can be found at the following internet address: <http://www.epa.gov/region5/water/npdestek/notices.htm>.

**Procedures for requesting a hearing:** Any person may request a public hearing on the issuance of this permit. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. The request must be submitted in writing within 30 days of the date of the Public Notice, and should be mailed or delivered to the above address or via email to: bell.brianc@epa.gov. EPA, Region 5 will hold a public hearing if there is a significant degree of public interest in the draft permit.

**For additional information:** Please contact Brian Bell at the above address, via email to: bell.brianc@epa.gov or by calling (312) 886-0981.