



February 26, 2015

U.S.EPA- Region 1
5 Post Office Square, Suite 100
Mail Code OEP06-4
Boston, MA 02109-3912

Attn: Mr. Newton Tedder

RE: Comments on Draft Stormwater Permit-NPDES Permit

On behalf of the cities and towns of the Commonwealth, the Massachusetts Municipal Association (MMA) is writing to provide testimony on the 2014 draft Massachusetts Small Municipal Separate Storm Sewer System (MS4) General Permit.

Cities and towns understand the need to protect water resources. Our members are committed environmentalists who take their role as stewards of this important natural resource very seriously. Communities throughout Massachusetts began working toward the reduction and elimination of pollutants in municipal stormwater discharges well before the initiation of the NPDES Phase II permit program in 2003. Communities have long understood the need to look holistically at how water resources are managed in the Commonwealth to promote public health, safety and economic growth for our citizens.

In the past, the federal government partnered with communities to the benefit of our health and environment. Today, as evidenced by recent regulatory initiatives and unfunded requirements, that is not the case, and localities are suffering as a result. Strict stormwater standards are placing a financial burden on cities, towns and local taxpayers at a time when local budgets are already stretched to the limit. The MS4 program is certainly one of the most burdensome unfunded mandates imposed on localities by the federal government. The EPA's estimate is that MS4 communities can expect to spend up to \$829,000 each year to implement stormwater programs in their communities. These proposed regulations would double or even quadruple many stormwater budgets.

In 2009, the state created a Special Water Infrastructure Finance Commission as a means of developing a long-range plan for the state and its cities and towns to maintain their waterworks. In its report, the commission conservatively estimated that it would cost communities approximately \$18 billion over the next 20 years to meet federal stormwater requirements. This is on top of the \$10.2 billion gap in the resources needed to adequately maintain drinking water systems, and an \$11.2 billion shortfall for resources needed to maintain wastewater infrastructure. The federal government must provide funding opportunities to assist local governments as they struggle to implement the requirements associated with this program.

The new draft of the Massachusetts Small Municipal Separate Storm Sewer System (MS4) Permit would require communities to institute more advanced stormwater testing, monitoring and management programs, yet is completely silent on funding or mitigation of the additional costs to communities.

The proposed permit is clearly written in a one-size-fits-all format and provides little or no flexibility. It does not reflect the diversity among MS4 communities. Each of these communities has taken various steps to successfully comply with the original 5-year permit. The steps implemented during the original permit period differ from community to community and vary in intensity. The proposed MS4 permit takes none of this into account and leaves no flexibility in its level of compliance. Communities are grappling with these huge financial challenges and must be permitted to target their limited resources on areas that will have the biggest impact and the largest investment return.

One of the provisions in the 2003 general permit was the ability for cities and town to tailor Best Management Practices (BMPs) to achieve the maximum benefit utilizing available financial resources and manpower. In this draft permit, there is considerably less flexibility. For instance, the requirement to manage the first inch of run-off from all impervious surfaces or provide equivalent pollutant removal (when one disturbs more than one acre) would force communities to redesign and reconstruct roadways and related stormwater systems when they had planned to simply do a road maintenance project or repaving on a 1/4 mile of road of average width. This would dramatically increase the cost of keeping roads in a state of good repair or, more likely, eliminate any road remaining maintenance programs. Currently communities do not have adequate resources to maintain their roads, before considering the onerous mandates envisioned in the new draft permits.

The EPA must exempt road maintenance projects from this requirement because the extraordinary burden imposed by the new permit process would eliminate the capacity to perform important routine maintenance on other local roads. If pavement management projects such as crack sealing and resurfacing require stormwater system redesign, the prohibitive cost would actually increase the number of failing roads, create more erosion and pollution because those maintenance projects will simply become unaffordable, and would, in the long-term, cost taxpayers even more money. According to the U.S. Department of Transportation, once a road is in a state of good repair, every \$1 dollar invested to keep it properly maintained saves \$6 to \$10 dollars in avoided repair costs that become necessary to rebuild the road when it fails. Ironically, the mandates in the draft permit process would consume all of the funds needed to maintain other roads in a state of good repair, and weaken our infrastructure.

We appreciate the agency's moderation of the initial catch basin requirements. However, the requirement to document and clean catch basins which are 50% full, and the proposed permit's vulnerability factor criteria would undermine this change, and would require communities to investigate all catch basins rather than just those with a high potential for illicit connections. Further, the proposed permit would require local personnel to document the amount of mass material removed in each catch basin when this limited staff time would be better spent cleaning catch basins. The paperwork and documentation requirements would likely decrease the catch basin cleaning frequency. Again, the new regulatory approach would result in a higher cost to perform this function.

The requirement to put signage on all outfalls is especially burdensome, given that communities have literally thousands of outfalls and the requirement would do nothing to eliminate illicit discharges. The EPA must also streamline requirements of outfall testing to prioritize catchment samplings or substitute end-of-pipe sampling with strategic in-stream sampling, which can be more effective and efficient. The agency must also provide training and test kits to municipalities, so that communities would not be forced to hire expensive consultants. The EPA recently did this for NGOs and should, at a minimum, provide the same opportunity for the regulated community. The cost to monitor and sample all outfalls is extraordinary, and would place a severe financial burden on our cities and towns.

Another concern is the aggressive schedule that the EPA proposes for implementation of the program. It is unrealistic to provide permittees only 90 days to file their Notice of Intent (NOI) after their permit is finalized, and equally unrealistic to dictate that the NOI the formal Stormwater Management Program must be complete within one year. Communities would be forced to hire expensive environmental consultants for assistance to complete numerous elements of the program because of lack of staff and technical expertise from years of both state and federal cutbacks in grant funding and local aid. Hiring these consultants would require compliance with statutory procurement requirements and could be extremely time consuming.

The initial 5-year permit requirements were accomplished in-house. This would not be possible under the draft permits as proposed, and communities would be forced to cut other services or raise taxes to pay for these new requirements.

These are just a few examples of the significant problems with the proposed MS4 permits.

The draft permit also requires each municipality to distribute educational materials to multiple audiences and to document the method of distribution, the evaluation methodology and the effectiveness of the education program. We all believe education is important, however the draft permit does not provide any guidance on effective messaging or how to measure it. Putting the burden on communities to develop, write, test, and assess educational material is ineffective and wasteful, and is another ill-advised cost-shift. The educational campaign should be the EPA's responsibility, not individual communities – they do not have the in-house capacity or expertise. The EPA should be responsible for messaging and should create assessment tools and downloadable EPA-approved materials that can be individualized to communities. These EPA-approved materials could then be made available in the guidance documents. These materials should also include educational videos from the EPA for delivery to a municipal audience through municipal cable stations.

In the absence of EPA leadership on this issue, a number of Massachusetts communities are already combining messaging by forming stormwater coalitions. There are at least 5 such coalitions in eastern Massachusetts, serving over 85 communities, combining resources and expertise, reducing the individual burden to communities. The EPA should work with the coalitions to provide material, resources and support.

The agency has also increased the number of communities that would be regulated under the proposed permit, while limiting community access to certain federal grants. For example, in the past Water Quality Act, Section 319 has provided stormwater improvement grants. Now those

grants can no longer be used in MS4-regulated communities. This is at least one source of funding that could help communities meet stormwater requirements, yet the funding is unavailable. The agency should change the language in the 319 programs to allow MS4 communities access to those funds.

Preliminary projections indicate that the proposed permit requirements would collectively cost the impacted communities and local taxpayers tens of millions of dollars per year to comply. As noted above, the requirements under the proposed permit are well beyond the normal operating budgets of our cities and towns. Because of Proposition 2½, many communities would be forced seek overrides to increase the local property tax burden, or would be compelled to dramatically reduce funding for existing programs and services – education, public safety, public works. That is the simple reality caused by unfunded mandates in a tax-limited environment.

In short, we express our deep and serious concerns regarding these costly new permit requirements. These requirements would certainly divert scarce resources away from core essential services necessary for the protection of public health, safety and education. The costs of the operational, structural and staffing changes necessary to monitor and meet the requirements of these permit mandates would have a severely negative financial impact on communities across the Commonwealth.

For these reasons, we ask you to defer action on the submission of NOIs until municipalities have had the opportunity to engage the regulatory agencies in an open dialogue regarding these onerous and unaffordable permit requirements. We urge the EPA to amend its approach, and incorporate goals that are more realistically attainable and within the financial constraints of the current economic climate, or wait until adequate federal funding is available to ensure that these requirements do not translate into a harmful unfunded mandate on cities, towns and taxpayers.

If you have additional questions, please do not hesitate to contact MMA Senior Legislative Analyst Thomas Philbin at 617-426-7272 at any time. Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Beckwith", written in a cursive style.

Geoffrey C. Beckwith
Executive Director & CEO