



December 23, 2014

Timothy W. Brennan, Executive Director

Mr. Newton Tedder
US EPA – Region 1
5 Post Office Square, Suite 100
OEP06-4
Boston, MA 02109-3912

Re: Comments on Draft NPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts

Dear Mr. Tedder:

I write to you about the Draft Massachusetts Small MS4 permit on behalf of the Connecticut River Stormwater Committee, a coalition of 13 stormwater-regulated cities and towns here in the Pioneer Valley. Stormwater Committee member cities and towns in the region have met or exceeded requirements under the 2003 permit and have expended significant municipal resources in doing so. Committee members appreciate EPA's efforts to further advance water quality improvements through the forthcoming MS4 permit, but have several important recommendations. These are listed here in priority order:

- 1. Reduce costs of compliance for this proposed permit by delaying certain requirements until the next permit or provide a more realistic plan for municipal investment by extending the timeline for meeting proposed permit requirements to 10 years, rather than 5 years.** The current requirements as drafted represent a huge and very sudden leap in investment of municipal resources. EPA's reported estimate to meet the 6 minimum control measures, not including water quality-based requirements, ranges from \$78,000 to \$829,000 per year. For many local municipalities, this represents a doubling or quadrupling of current budgets at a time when they are seeing significant increases in other costs and income from all sources is shrinking. Years 1 through 3 of the permit in particular present an extreme jump in expectations of existing stormwater programs. There are important ways that EPA could help to make sure that municipalities have requirements that are more achievable. These include:

Delay certain requirements to a subsequent permit. Within the current draft permit, there are certain requirements--such as impervious cover tracking, and many of the water quality requirements, including Lake Phosphorous Control Plans, nitrogen and phosphorous source reduction reports, BMP nitrogen and phosphorous tracking--that would be far more effective if delayed to a next permit when there are better methodologies and tools available to municipalities. (See comment #3 below on impervious cover tracking.)

or

Extend the timeline for meeting permit requirements to 10 years rather than 5 years. EPA already has a 10-year time frame built into the 5 year permit for catchment investigation procedure, etc. Why not extend this same timeline to other activities within the permit to provide a more reasonable rate of increased investment? The Connecticut River is in far better ecological condition today, but it took more than 20 years to reach this point.

- 2. Provide flexibility for management of the first one inch of runoff on redeveloped sites (Section 2.3.6.a.ii).** While management of the first one inch of runoff from all impervious surfaces or providing equivalent pollutant removal is an important objective, we are concerned that there will be unintended consequences if there is not some flexibility. Unintended consequences could include increased development of “green fields” and an inability to properly maintain roadways. The following two ideas would help provide flexibility and help avoid these consequences:

Allow permittees to provide for off-site stormwater compliance, including off-site mitigation in the same watershed or “payment in lieu of” to help cover the cost of implementing runoff reduction projects elsewhere in the watershed. Smart growth practices generally encourage infill redevelopment, but the permit requirement as written could produce disincentives to this. Where sites are already highly impervious and existing site conditions--including the need to work around existing infrastructure--translate to greater complexity, the costs can be far greater to retrofit than to build new development elsewhere. Tom Schueler, Director of the Chesapeake Stormwater Network, notes in a 2011 study, “The cost to construct LID practices at high intensity redevelopment projects (85% or more of impervious cover) can be 4 times more expensive than installing them at low density new development projects (25% of impervious cover or less).” This translates to around \$191,000 per impervious acre for the high-intensity scenario as compared to \$46,600 per impervious acre for the suburban greenfield site. (*Technical Bulletin No. 5: Stormwater Design for High Intensity Redevelopment Projects in the Chesapeake Bay Watershed*, Chesapeake Stormwater Network, May 2011, p. 12.)

The Center for Watershed Protection recently developed a guidance document for West Virginia on off-site stormwater compliance that could provide a useful framework for Massachusetts permittees. See: <http://www.cwp.org/guidance-for-developing-an-off-site-stormwater-compliance-program-in-west-virginia>

Articulate that the one-inch control standard applies only to roadway projects where there is full-depth reconstruction. The requirement as written implies that to proceed with a roadway maintenance project, permittees would need to redesign and reconstruct roadways and related stormwater management systems. We are concerned that this would cripple municipalities in the ability to maintain roads. Rather than

disincentivize roadway maintenance, this section ought to exempt all maintenance activities, including overlays, mill and overlays, and full-depth reclamation, and apply only to full-depth reconstruction projects. Where appropriate, municipalities could have the option to eliminate curbing so as to allow roadway drainage to flow into right of way areas for infiltration.

3. **Rethink the impervious cover tracking requirement and provide an initial baseline of impervious cover that is connected to water quality objectives in the next permit (Section 2.3.6.d).** Given the permit's current framework, impervious cover tracking does not seem to provide meaningful connection to water quality. As you may know, the concept of percentage imperviousness and its relationship to water quality arose from studies specific to 1st and 3rd order systems. (*Impacts of Impervious Cover on Aquatic Systems*, Center for Watershed Protection, March 2003, p. 2.) Most of the urbanized areas in the Pioneer Valley lie within 4th, 5th, and 6th order systems. (*Gazetteer of Hydrologic Characteristics of Streams in Massachusetts: Connecticut River Basin*, USGS, 1984.) Furthermore, it appears that the subwatershed delineations and calculations of impervious cover developed by EPA for use as a baseline by municipalities are drawn from elevation data and not actual drainage infrastructure catchments. As such, impervious cover changes recorded by a permittee will not provide a true understanding of water quality improvements due to impervious reductions. If impervious cover is to remain a measure for larger stream systems within the MS4 regulatory framework, it ought to be put to more effective use and delayed to when EPA can provide baseline information that integrates topographic information with actual drainage infrastructure catchments (to be developed by MS4s under Section 2.3.4.6 of the draft permit).
4. **Allow municipalities to combine education and outreach messaging under water quality standards requirements (Section 2.1.1, and Appendixes F and H).** Where a municipality is responding to requirements for multiple impairments or TMDLs within its jurisdiction, a municipality should have the option to combine messaging for maximum effectiveness provided they address the topics related to the impairment or TMDL. For example, a few municipalities within the Pioneer Valley region must meet requirements under the Nitrogen TMDL for Long Island Sound, a local Phosphorous TMDL, and water bodies impaired for bacteria. Rather than generate an avalanche of messages related to each of these pollutants, a municipality should be able to disseminate seasonally appropriate messaging to address nutrients in spring and fall and bacteria in summer. Combined with the basic education and outreach requirements required under 2.3.2, that would mean the total minimum required education and outreach messages would be 23 during the 5-year permit term. This seems more than adequate.
5. **Ensure that TMDL or impaired water quality requirements are tied to stormflows from MS4 areas (Sections 2.2.1 and 2.2.2).** In at least 2 locations in the Pioneer Valley, the draft permit ties regulated MS4 areas to upstream TMDL waters or impaired waters. If the urbanized areas are not contributing to water quality issues in a particular location, municipalities should be able to flag these locations for EPA and be removed from lists that

appear under Sections 2.2.1 and 2.2.2. Additional language in this section regarding location of the MS4 area relative to impacted waters would also be helpful.

6. **Remove the requirement to label all MS4 outfall pipes (Section 2.3.4.5).** If the purpose of the MS4 outfall signs is to be able to find the outfall for sampling, municipalities can better do this through the use of GPS information. We are concerned that the cost of installing signs and then making replacements when they are vandalized is not the best use of municipal resources in serving water quality objectives.

Thank you very much for your consideration of our comments. If you have any questions, please do not hesitate to contact Patty Gambarini, who facilitates the Connecticut River Stormwater Committee for PVPC.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy W. Brennan".

Timothy W. Brennan
Executive Director

cc Fred Civian and Kurt Boisjolie, MassDEP
Tracy DeMaio and Michelle Chase, Town of Agawam
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