CMRSWC Members

Auburn
Boylston
Charlton
Dudley
Grafton
Hardwick
Holden
Hopkinton
Leicester
Millbury
Northbridge
Northborough
Oxford
Palmer
Paxton
Rutland
Shrewsbury
Southbridge
Spencer
Sterling
Sturbridge
Upton
Uxbridge
Ware
Webster
West Boylston
Westborough
Wilbraham

Central Massachusetts Regional Stormwater Coalition
c/o Town of Spencer, MA • 157 Main Street • Spencer, MA 01562
Phone (508) 885-7500 • Fax (508) 885-7528
www.CentralMAStormwater.org

August 5, 2015

Curt Spalding, Administrator
United States Environmental Protection Agency (USEPA) Region 1
5 Post Office Square, Suite 100
Mail Code OEP06-4
Boston, MA 02109-3912

Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection (MassDEP)
1 Winter Street
Boston, Massachusetts 02108

**Attention: Building a Partnership for Stormwater Education**

Dear Administrator Spalding and Commissioner Suuberg;

As a representative of the Central Massachusetts Regional Stormwater Coalition (CMRSWC), I was pleased for the opportunity to meet with you and your respective staff at MassDEP's office in Boston on June 30, 2015. This letter serves to summarize the items we discussed at that meeting, several of which form a pathway for building on the partnership established between the CMRSWC and MassDEP in recent years with respect to linking stormwater resources with municipalities that can benefit from them.

The CMRSWC is a group of 28 towns, most of which are regulated under the United States Environmental Protection Agency's (the Agency's) 2003 NPDES Phase II Massachusetts Small Municipal Separate Storm Sewer System (MS4) Permit. The CMRSWC was formed in 2011 as a regional partnership to manage stormwater programs and ensure the long-term protection of water resources. Working as a group has allowed the CMRSWC to develop tools to expand our stormwater management practices, collectively protect shared resources, and meet the requirements of the 2003 Massachusetts MS4 Permit in an efficient and cost-effective manner.

The CMRSWC has created an effective forum for collaboration, communication, and discussion among the municipal representatives that attend the regular meetings of its Steering Committee, and was honored for our work in April 2015 with a STORMY Award for "Best Stormwater Idea in New England", presented by the New England Stormwater Collaborative. Several other regional stormwater collaborative groups formed across the Commonwealth, using our structure as a template, building on the tools we created, reducing duplicative effort, and creating more value for the municipalities we represent. A four-page summary of several of these regional stormwater coalitions and the work they have accomplished is attached to this letter.

The CMRSWC's relationship with MassDEP began with the opportunity to support− and benefit from− several stormwater-related projects since 2012 through Worcester Polytechnic Institute's Interactive Qualifying Project (IQP) program, but has expanded to include frequent communication on how to share resources developed by the CMRSWC (and the other stormwater coalitions in Massachusetts) with other communities that need them.

We are pleased to report that our regional forum expanded on June 23, 2015: at a meeting coordinated by MassDEP's Andrea Briggs and hosted at the Department's office in Worcester, the CMRSWC and several other stormwater collaborative groups unanimously agreed to create an informal (for now at least) Massachusetts Statewide Stormwater Coalition to further share tools, manage costs, and improve inter-community and inter-watershed collaboration. Also attending the June 23 meeting were USEPA Region 1's Newton Tedder, MassDEP Deputy Commissioner Beth Card, and a number of other staff from both agencies. The next meeting of this statewide stormwater coalition will be on September 17, 2015, also at the MassDEP office in Worcester.

Discussions from the June 23 and June 30 meetings highlighted five key ways in which the Massachusetts Statewide Stormwater Coalition (and its individual groups), MassDEP, and USEPA can strengthen our relationships and improve the understanding of residents across the Commonwealth, regardless of whether or not they live in a regulated community. These five opportunities are:

1. The Massachusetts Statewide Stormwater Coalition working with MassDEP and USEPA to strengthen pages on their respective websites to highlight tools and resources developed by the groups of the Massachusetts Statewide Stormwater Coalition, and share these with regulated communities. We understand that the agencies cannot endorse any tool; instead, we envision this as being similar to how the USEPA's own website presently references the Center for Watershed Protection's "*Illicit Discharge Detection and Elimination (IDDE) Guidance Manual for Program Development and Technical Assessments*" as a resource on this topic. Each of the regional groups would continue to maintain its own page, so that existing materials can be kept current and new materials can be added.

2. MassDEP and USEPA strengthening and expanding technical assistance to regulated communities.

    - An example of technical assistance provided by MassDEP includes Stormwater Coordinator Fred Civian, who has been directing regulated communities outside the boundaries of the existing regional groups to one or more groups' websites when he feels that they may benefit from a tool that's been created. Strengthening this technical assistance could be sharing this information in official communications to regulated communities. MassDEP regional directors such as Ms. Briggs can update each other during regular meetings on the efforts and resources available from the regional stormwater groups. Mr. Civian and Ms. Briggs regularly attend meetings of the CMRSWC and other regional groups.

    - Examples of technical assistance provided by USEPA includes roles recently served by Region 1's Deborah Cohen, who has provided training to many communities in New Hampshire on using handheld GPS devices to perform stormwater system mapping tasks. Ms. Cohen has attended some CMRSWC training events and is familiar with the work we've completed. The agency may also have an inventory of GPS devices that could be made available to municipalities at low or no cost. In a similar way, Region 1's Gina Snyder connected the CMRSWC with a recently-approved test kit for detecting ammonia for stormwater in the field that we hadn't been aware of (which we purchased for our members), and has served as a resource to our group in other ways. Mr. Tedder has extended an offer to attend regular meetings of the Massachusetts Statewide Stormwater Coalition.

    We welcome the support of the agency to allow these individuals, and others, to attend meetings of the Massachusetts Statewide Stormwater Coalition. The relationships that are built or strengthened should lead to a clean, supportive implementation process once the pending Massachusetts MS4 is finalized.

3. MassDEP and USEPA providing initial funding for a position to coordinate the Massachusetts Statewide Stormwater Coalition until the participating communities develop a way to financially sustain the position. Each of the regional groups presently has its own structure and leadership, but this role would be different in that it is connecting these regional leaders with each other, with regulators, and with other regional partners such as the American Public Works Association (APWA), the New England Water Environment Association (NEWEA), the Massachusetts Water Works Association (MWWA), and the New England Interstate Water Pollution Control Commission (NEIWPCC), for example.

4. The Massachusetts Statewide Stormwater Coalition communities providing feedback to MassDEP and USEPA on their existing stormwater Best Management Practice fact sheet libraries, "Soak up the Rain" initiative, and other outreach and

education programs. We represent municipalities, and can provide the "boots on the ground" context that will maximize how beneficial these programs are to communities, making the most of the resources the agencies have invested in them. We can also make sure that our member communities know that these resources are available to them.

5. Last but not least, MassDEP and USEPA will be critical in helping develop, fund, and execute a new statewide stormwater campaign, to reach not just residents of regulated communities, but all residents, visitors, businesses, and groups within the Commonwealth.

   ThinkBlue is a powerful, successful example of a campaign that could serve as a foundation for such a statewide action. Developed in San Diego, California, it was revised for use in Maine (resulting in effective "Stormwater is not rubber duckies!" visuals). More recently, a new video under the ThinkBlue banner was created in Maine specifically to touch on a message central to Maine's own MS4 Permit- the impacts of fertilizer misuse on water quality- and was broadcast across the entire state in a number of media formats. The ThinkBlue campaign comes with ample market research data, demonstrating that the message of the campaign reached its target audience, was understood by the audience, and could be recalled by that audience without prompting- ThinkBlue's effectiveness has already been measured and documented. The CMRSWC would be pleased to share this market research and the costs of the Maine updates to the ThinkBlue campaign.

   We believe that the Massachusetts Statewide Stormwater Coalition and its regional groups could lead another statewide update to the ThinkBlue campaign (or similar effort), targeting requiring messages we expect to be central in the pending Massachusetts MS4 Permit such as the impacts of poor septic system maintenance and/or alternatives to traditional detergents. We foresee developing the ThinkBlue update message in partnership with NEIWPCC and other groups that are already regional experts on these topics, to hit the ground running.

   If a Massachusetts Statewide Stormwater Coalition coordinator position could be funded, we envision seeking additional financial assistance from organizations such as the Water Environment Federation (WEF) and the National Association of Clean Water Agencies (NACWA), which have contributed funding and staff assistance to other outreach programs such as the "Liquid Assets" documentary developed by Penn State University, and its updates. One of the facilitators of the CMRSWC has experience enlisting financial assistance from private partners, which could bolster the unique arrangement of this campaign.

   We would benefit from MassDEP and USEPA's financial and technical assistance, as well as from support of agency marketing professionals to coordinate with the media markets on which the campaign would be broadcast.

In summary, on behalf of the regional stormwater coalitions, I thank you for taking the time to meet with us in order to review areas of collaboration that would further a concentrated effort on managing the Commonwealth's stormwater. We look forward to discussing these five opportunities with you in more detail. Please contact me at 508-243-3905 to share your thoughts and to formulate how to move forward to grow this unique partnership.

Sincerely,

Robin Leal Craver
Town Administrator; Charlton, MA

cc: Adam Gaudette, Town Administrator (Spencer, MA)
Fred Civian (MassDEP Stormwater Coordinator)
Tom Philbin, Massachusetts Municipal Association

Attachment: Activities of Regional Stormwater Groups in Massachusetts

**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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NACWA
A Clear Commitment to America's Waters

# National Stormwater Network Conference Call Minutes

June 30, 2015
2:00 pm – 3:00 pm EST
1-877-394-0659; Conf. ID 8153732026

## Participants:

| Name | Org Name |
|---|---|
| Aubrey Strause | Central Mass. Stormwater Coalition |
| Robin Craver | Central Mass. Stormwater Coalition |
| Kyle Dreyfuss-Wells | Chair, NACWA Stormwater Management Committee (SMC) |
| Jill Piatt-Kemper | Colorado Stormwater Council, Vice Chair, NACWA SMC |
| Mary Doston | Colorado Stormwater Council |
| Christopher Pettit | Florida Stormwater Association (FSA) |
| Vicki Meredith | Kentucky Stormwater Association |
| Tim Whittie | Maryland Municipal Stormwater Association (MAMSA) |
| Monica Kacprzyk | NEIWPCC |
| Harry Stark | Ohio Stormwater Association |
| Therese Walch | Oregon Association of Clean Water Agencies (ORACWA) |
| Janet Gillaspie | ORACWA |
| Kurt Spitzer | Southeast Stormwater Association (SESWA) & FSA |
| Barbara Seal | SESWA/Gwinnett County |
| Jennifer Watson | Tennessee Stormwater Association (TSA) |
| Don Green | TSA |
| Randy Bartlett | Virginia Municipal Stormwater Association (VAMSA) |
| Chris Pomeroy | VAMSA/MAMSA |
| Kaitlyn Bendik | EPA |
| Debora Clovis | EPA |
| Sharon Cooperstein | EPA |
| Rachel Herbert | EPA |
| Sylvia Horwitz | EPA |
| Greg Schaner | EPA |
| Katherine Telleen | EPA |
| Amanda Waters | NACWA |
| Brenna Mannion | NACWA |
| Chris Hornback | NACWA |
| Nathan Gardner-Andrews | NACWA |
| Robin Davis | NACWA |

## I. Welcome, Introductions & Network Overview

Kyle Dreyfuss-Wells, Deputy Director of Watershed Programs at the Northeast Ohio Regional Sewer District and Chair of NACWA's Stormwater Management Committee welcomes call attendees. Brenna Mannion, Director of Regulatory Affairs and Outreach at NACWA provides overview of NACWA's stormwater advocacy in Washington and the organization of the National Stormwater Network (NSN) and offerings moving forward.

- Stormwater management and more specifically MS4 issues are significant and will be increasing over the coming years.
- NACWA is well positioned to act as a convener for this type of group based on over 45 years of advocacy around the Clean Water Act.
- NSN is a no-cost network providing ability to share information, to provide feedback to EPA, Congress, & the administration on key issues like this Phase II remand, and to use NACWA as a resource on legal, legislative and regulatory challenges faced by you and your members.
- NSN Offerings:
    - Regular publication providing national MS4 policy analysis.
    - Scheduled calls amongst Network members
    - Occasional briefings/webinars for Network organizations' member utilities
    - Targeted stormwater policy resources
    - Ultimate goal is to further unify and clarify the stormwater message as we work with our federal partners to address stormwater management.
- The NSN as a complimentary effort to WEF's recently announced SW Institute which will be a more technical resource – which is also much needed, and we will continue to collaborate with them as it develops over the next couple months.

## II. Potential Phase II Rule Remand, Greg Schaner, Attorney Advisor, U.S. EPA Office of Water

Greg notes that the NSN fills a gap because EPA has been trying to find a group of state and local MS4 organizations to work with. He presents on two potential regulatory options to address the Phase II Rule remand using presentation slides attached to these minutes.

- EPA views the 9th circuit decision as a legal basis for their regulation even though it's not, say, a Supreme Court decision.
- If you are operating under a state permit that has not been challenged then there's no reason to think your coverage would no longer be valid with these changes.
- EPA is NOT looking to change the MEP standard.

Comments from participants:

- It is unlikely our state has the ability to slow down enough to publically notice NOI's, so option 1 may be preferable.
- Minimum control measures 1 & 2 already allow for public feedback.
- Publishing each notice in something like the newspaper for public comment would be overly onerous.
- Whatever EPA does, they should be as minimal as possible because there is a significant chance that Congress will attempt to override more than just the Clean Water Rule. It might avoid the

paradoxical result where changes to the rule/new rules like CWR ultimately reduce water quality, not improving it. Taking on Phase 2 MS4s will probably add fuel to the fire, as if the fire could get any bigger anyway!

- Group seemed to lean towards option #1 as it puts less burden on the MS4's than option #2, but remain undecided.

Brenna will draft a NSN comment letter summarizing these and other feedback and circulate it with Network participants for review.

## III. Adjourn

**We welcome any feedback on our first official action of the National Stormwater Network.**

# MS4 Remand Rule

Greg Schaner

Water Permits Division

U.S. EPA

# Agenda

- Provide background on the MS4 remand
- Discussion:  rule scenarios to address MS4 remand
- Other topics/next steps

# Background on the MS4 Remand

# *EDC v. EPA* decision (Ninth Circuit, 2003)

- Focus of the ruling: Ninth Circuit found deficiencies in the Phase II stormwater regulations regarding the procedures to be used for providing coverage to small MS4s under general permits

- The court vacated the relevant portions of the Phase II regulations, and remanded to EPA to fix the deficiencies:
  1. Lack of permitting authority review
  2. Failure to make NOIs available to the public
  3. Failure to provide the public with the opportunity to request a public hearing on individual NOIs

# EPA Guidance

- 2004 Jim Hanlon Memorandum
  - Public Availability of NOIs:
    - Permits should include language how NOIs will be made available to the public with sufficient time to allow for a meaningful public comment
  - Opportunity for Public Hearing:
    - EPA recommendation: include permit language explaining the process for requesting a public hearing on an NOI, the standard by which such requests will be judged, the procedures for conducting public hearing requests that are granted, and the procedures for permitting authority consideration of the information submitted at the hearing
  - Permitting Authority Review of NOIs:
    - Permitting authority needs to conduct an appropriate review of the NOIs to ensure consistency with the permit
- MS4 Permit Improvement Guide (2010)
- Revisions to 2002 Memorandum on TMDLs and Stormwater Permits
  - Recommendation that NPDES permitting authorities establish clear, specific, and measurable permit requirements to implement the minimum control measures in MS4 permits

# NRDC/EDC petition to Ninth Circuit (2014)

- Petitioners asked the Ninth Circuit to require EPA to take action to address the 2003 *EDC v. EPA* ruling
- Petition requests the Court to order EPA to take the following actions:
  - Immediately revise its Phase II small MS4 regulations include a statement that directs permitting authorities to comply with the 2003 *EDC* order pending further rulemaking. "This action is needed to ensure that state permitting agencies do not continue to mistakenly rely on the vacated rules."
  - Propose within 6 months (and finalize within 6 months after that date) a rule revising the Phase II small MS4 regulations to address the "procedural deficiencies" found in the Court's 2003 order.
- Ninth Circuit has given EPA until July 10 to respond

# Status of Rulemaking Effort

- Preparation of a proposal to address the Ninth Circuit remand is underway
- Timing of the rule is to be determined by the outcome of the NRDC/EDC petition
- Conducting outreach to MS4s, states, and other stakeholders to inform the proposed rule

# Discussion: Rule Scenarios to Address MS4 Remand

# Scenario 1: Traditional General Permit

Concept Description (in development)

- NPDES authority defines permit requirements that establish what actions are necessary (including associated deadlines and frequencies) to meet the standard of "reducing the discharge of pollutants from [the] MS4 maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act"
  - During each permit reissuance, the NPDES authority reevaluates the permit requirements to determine whether they continue to be adequate to meet the standard – consistent with the Iterative BMP Approach
  - Each permit will include enforceable requirements that address each of the 6 minimum measures and any more stringent effluent limits necessary to protect water quality
- MS4 permittee still required to develop SWMP that describes what BMPs will implemented to meet the requirements of the permit
- Process to obtain permit coverage would be the same as for traditional general permits
  - Information requirements for NOI can be streamlined
  - NOI reviewed by NPDES authority for completeness
  - Public notice of individual NOIs not required
  - Coverage can be granted immediately, after a waiting period, or upon notification

# Scenario 1: Traditional General Permit

Some State Examples

- Western Washington small MS4 general permit
  - Public education: each permittee must select from a menu of target audiences and behavior changes, and then measure the understanding and effectiveness of the strategy.
  - IDDE: All Permittees … shall complete field screening for at least 40% of the MS4 no later than December 31, 2017, 10 and on average 12% each year thereafter.
  - Construction and post-construction: requirement to comply with minimum technical standards (based on statewide stormwater design manual)

- Minnesota small MS4 general permit
  - Public participation: Provide a minimum of one (1) opportunity annually for the public to provide input on the adequacy of the SWPPP.
  - Post-construction: "The permittee shall develop and implement a Post-Construction Stormwater Management program that requires the use of any combination of BMPs, with highest preference given to Green Infrastructure techniques and practices … necessary to meet the following conditions on the site of a construction activity to the MEP: (a) For new development projects – no net increase from pre-project conditions (on an annual average basis) of: 1) Stormwater discharge Volume … , 2) Stormwater discharges of Total Suspended Solids (TSS), 3) Stormwater discharges of Total Phosphorus (TP)"

# Scenario 1: Traditional General Permit

Some State Examples

- New York small MS4 general permit
  - IDDE: "Conduct an outfall reconnaissance inventory … addressing every outfall within the urbanized area and additionally designated area within the covered entity's jurisdiction at least once every five years, with reasonable progress each year."
  - For all small MS4s located East of the Hudson River: implement additional MCMs to target phosphorus reduction consistent with the WLA for the TMDL
    - Ex: Develop, implement and enforce a program that ensures that on-site sanitary systems designed for less than 1000 gallons per day (septic systems, cesspools, including any installed absorption fields) are inspected at a minimum frequency of once every five years and, where necessary, maintained or rehabilitated.

# Scenario 2: Procedural Requirements

Concept Description (in development)

- Include requirements for permitting authority review, public notice of NOIs, and providing the opportunity for the public to request a hearing (if necessary) on individual NOIs
- Permitting authority review – NPDES authority required to determine if the NOI is complete and whether the identified BMPs will meet the requirement to reduce pollutant discharges to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA
  - Include a mechanism for requiring modifications to the NOI where appropriate
- Public notice – NPDES authority required to provide a public comment period (e.g., 30 days) for each NOI
  - Must describe process for receiving public comment and considering any comments received
  - Public hearing – NPDES authority also required to provide the opportunity for a public hearing on any specific NOI, and to describe in the permit how requests for a hearing should be made and considered

# Scenario 3: Choose Between Scenario 1 or 2

Description

- Provide NPDES authorities with the option of selecting which approach works best for them

# Suit over Charles River's pollution dropped — for now

**By Jon Chesto** | GLOBE STAFF AUGUST 27, 2015

Two environmental groups have dropped a lawsuit aimed at requiring many major property owners in Greater Boston to install new pollution control systems for protecting the Charles River.

The Conservation Law Foundation and the Charles River Watershed Association sued the Environmental Protection Agency in April, seeking to force owners of big commercial properties to use stormwater filtration systems to prevent pollutants such as phosphorus, a major contributor to algae blooms, from flowing into the river. The lawsuit would have affected many properties on the Charles River watershed, which extends from Boston west to Lincoln and Lexington and south to Bellingham and Franklin and includes 35 municipalities.

The groups withdrew their suit, filed in US District Court in Boston, after the judge declined to extend a deadline in the case.

Christopher Kilian, a senior attorney with the Conservation Law Foundation, said the plaintiffs withdrew the suit in part to allow them to pursue it at a later date, if necessary.

Algae blooms, which make waterways inhospitable for fishing and swimming, continue to plague the Charles. Kilian said he is hopeful that the federal agency will address the problem.

"It continues to be our position," he said, "that EPA has to recognize that commercial, industrial, and institutional stormwater sources are contributing to major water quality standard violations."

The EPA's New England office pledged in a statement that it will "investigate any additional programs that might be necessary to achieve a fishable/swimmable Charles."

Recently, a real estate trade group, NAIOP Massachusetts, warned that new environmental mandates could cost businesses more than $1 billion to implement.

NAIOP Massachusetts applauded the withdrawal of the lawsuit. Tamara Small, senior vice president of governmental affairs, said future stormwater regulations for the watershed will be created in an open process, not in secretive talks between the EPA and environmental groups.

"This would have had a dramatic impact on so many property owners in 35 communities," Small said. "Now that the lawsuit has been dropped, we know there aren't going to be any 'behind closed door' negotiations."

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