



**Northern
Westchester
Watershed
Committee**

February 2, 2017

Steven McCague, NYS DEC - Division of Water
Bureau of Water Permits
625 Broadway, 4th Floor
Albany, NY 12233-3505
Via E-mail: Stormwater_info@dec.ny.gov

Dear Mr. McCague:

On behalf of the Northern Westchester Watershed Committee, I would like to thank you for the opportunity to comment on the draft of the New York State Department of Environmental Conservation's SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s) GP-0-17-002. This permit is intended to replace the current permit, GP-0-15-003.

The Northern Westchester Watershed Committee (NWWC) is comprised of the twelve Westchester County municipalities having land area in whole or partly within the NYC drinking water supply system watershed. The NWWC is Westchester's forum to oversee implementation of the historic New York City Watershed Memorandum of Agreement (MOA) in Westchester County. The NWWC is an avenue within which communities can regionally discuss issues related to the NYC Watershed and the programs designed to protect the City's drinking water. The voting members of NWWC are composed of the chief elected official of each of these twelve municipalities and Westchester County.

The NWWC municipalities were provided a notice of the proposed permit modifications on October 28, 2016 with an initial deadline for comments of December 2, 2016. The draft MS4 permit is 130 pages long and references multiple other documents to be followed as guidance or to serve as models. Given the voluminous documents requiring review to assess the impacts of implementing the draft permits, lack of supporting documentation outlining the resources necessary to implement the draft permits, it is not possible to fully evaluate the impact of the draft permits on municipal staff, operations, budgets or the community at large. The NWWC provides the following comments primarily focused on the draft permits heightened requirements for the New York City Drinking Water Supply System area of the Croton Watershed – Water Improvement Strategy Requirements.

Impact to Local Budgets.

The draft permits contain a tremendous number of activities to be undertaken by each regulated MS4 and particularly a greater number for the municipalities in the EOH watershed. The time period for review and comment on the proposed modifications has not been sufficient to fully evaluate the impact on municipal staff, budgets and ability to meet permit requirements. Local budgetary processes for the 2017 operating and capital budgets are set. It will not be possible for regulated MS4s to implement significant components of the program in when it is scheduled to commence since cost estimates for implementation were not provided by NYSDEC and the municipalities have not been provided with sufficient time to prepare cost estimates for implementation, adjust or add to budgets, reallocate or create new staff resources, provide adequate staff training, modify policies, procedures and enforcement mechanisms and change housekeeping practices. Therefore, the NWWC requests that implementation of the new permit requirements be held until an in depth analysis and development of an implementation strategy, including budgets, to meet the new permit requirements is completed.

MS4 Status.

The NWWC has a long history of commitment to promoting and implementing programs to protect water quality and natural resources. It should be noted that some municipalities of the NWWC would not be an MS4 if they weren't located in the NYC drinking water supply system watershed. Towns in the NWWC are small municipalities with limited resources and budgets. Even a small modest budget increase can break a municipality's tax cap. By the very definition, MS4s are "Urbanized Areas" that have more resources – staff, equipment, tax base -- than the small towns in the EOH watershed – our EOH watershed municipalities do not have the resources to support this robust MS4 permit program.

The East of Hudson Watershed – also referred to as the Croton Watershed – is part of the NYC drinking water supply system that supplies drinking water to millions of people. The conditions that apply to the EOH watershed are the most rigorous to be included in the permit. Given the extent of the additional minimum control measures for MS4s in the EOH watershed and their intent to protect drinking water, it seems that the burden of implementing those measures should be shared by the benefited community, namely New York City. This could be accomplished by either including NYC as a partner in the regional approach noted above or by requiring NYC to provide funds and technical support for MS4 program implementation.

Development of Draft Permit without Croton Watershed Municipal Input.

It appears that the draft permit did not involve municipalities subject to the heightened requirements in the Croton Watershed. The "draft fact sheet" (which is written more like a response to a lawsuit than a document aimed at helping the MS4s understand the permit) mentions a "MS4 GP Subcommittee" that "representatives of MS4 coalitions, non-traditional MS4s, watershed protection committees, and environmental groups." The list does not specifically include a Croton Watershed municipality.

The permit development appears to be largely influenced by committees and groups (such as the General Permit Subcommittee referenced in the Fact Sheet and the Water Management Advisory Committee) for which the membership, meeting schedules and minutes are not readily accessible by the public and the makeup of which can only be presumed to be primarily outside academic and research organizations rather than by New York State local municipalities or professional organizations with experience and expertise in how the various levels of New York State municipal government operate. Now the NWWC has been able to comment on the draft permit, we hope our insight on the regulations that impact Croton Watershed municipalities are considered.

Deviation from the “Maximum Extent Practicable” Standard.

The EPA MS4 rules and regulations, documented in the December 8, 1999 Federal Register, promulgated the MS4 permit program. These regulations rely largely on the standard of “Maximum Extent Practicable” with the word “practicable” intentionally included in the term is an extremely important qualifier of the first part of the term. Practicable means to be able to be done or put into practice in a pragmatic context and includes synonyms such as realistic, feasible, viable, reasonable, sensible, workable, and achievable. The use of “practicable” is intended to provide regulated entities with flexibility to develop the most effective stormwater management program in the context of their own environment, including the physical characteristics of their municipality and their capabilities as a municipal government, including budgets, staffing and other available resources.

Rather than providing for such flexibility, which the current NYSDEC permit does, the draft permit becomes increasingly prescriptive, including requirements and specifying practices and tasks that municipalities must adopt regardless of their capabilities to undertake such practices or administer such tasks. As discussed in more detail below, those requirements are now made without any apparent basis in proven effectiveness of such requirements, let alone the cost effectiveness of those requirements.

Science Based Requirements.

The EPA rules and regulations require that BMPs be used that have been studied and proven to be effective in reducing stormwater pollutants of concern and influencing positive behavioral changes to reduce stormwater pollution. The focus has been on the practices themselves. The draft permit includes additional requirements, the effectiveness and, in particular, cost effectiveness of which are questionable. In some instances it is hard to imagine how the requirements will directly improve water quality as they seem to consist primarily of additional data collection, tracking and documentation. We believe that efforts are better spent providing tools and resources to assist municipalities in improving water quality than imposing additional data collection and record keeping requirements. Requirements included in the MS4 permit should be focused exclusively on reducing the introduction of pollutants in stormwater runoff and should be based on accepted practices that have been demonstrated to have verifiable results. Municipalities should be given the opportunity to review from among a menu of accepted practices for each MCM and choose which ones it determines to be most appropriate and cost effective for its municipality.

Additional Mapping Requirements.

The draft permit requires significant increases in mapping as part of the Watershed Improvement Strategy Requirements. The text is not clear as to format, but we presume that mapping would have to be part of a GIS system. Not all NWWC municipalities have GIS or staff that can use GIS. For this to be a useful tool, staff would need to be trained in GIS. Above and beyond the expensive data collection, the hardware, software and training could easily cost \$20,000.

Much of the new GIS data required to be mapped appears to be more for collecting data for data’s sake. Data collection can be a labor intensive and costs can easily rise into the 100s of 1,000s of dollars. Beyond the cost, the significant quantity of new information to be mapped is way too much to be legible on a map at a scale that would show the entire watershed. It possibly would even be too much zoomed into single parcel level. The NYSDEC should provide an example map to illustrate the purpose, usefulness and relevance of the new required mapping before requiring the municipalities to undertake such robust mapping and data collection initiatives.

Heightened Requirements for Impaired Water Bodies without an Approved TMDL.

The draft permit includes a new Part VIII detailing a number of heightened requirements for municipalities which discharge to waters listed on the Priority Waterbody List. It does not identify which data source to use and what is meant by terms used in the section, such as “discharge to.” Additionally, it is presumed that the municipality must adopt the heightened requirements throughout the entire municipality regardless of what portion of it actually discharges to the impaired water. This makes sense for activities such as education and outreach, which is more efficient and effective when applied throughout the entire municipality. However, for requirements involving additional data collection, inspections and reporting, this creates an unjustified burden. Some of these newly listed impaired waterbodies are located within the Croton Watershed that is already subject to the highest requirements of the MS4 permit.

Additional Data Collection and Reporting.

The draft permit includes a wide variety of additional detailed data collection and reporting, much of which will require additional training at a minimum and additional hardware and software. It is unclear how the additional data will increase the effectiveness of a stormwater management program, particularly since resources will likely need to be diverted from other, more practical and effective, stormwater best management practices and activities.

For example, there is a new requirement for mapping ‘hot spots.’ The mapping system must be in place prior to being able to identify ‘hot spots’ and a plan must be created to identify and track the ‘hot spot inspections.’ If a municipality doesn’t have staff to do this internally, a consultant could easily cost \$15,000-20,000 to prepare a report identifying the hot spots.

Municipalities are faced with many priorities all competing for increasingly limited resources, and demonstrating cost effectiveness for these and other requirements included in the draft permit is paramount. Again, we point out the tremendous burden this unfunded mandate places on the regulated community.

Financial Impact Analysis.

Prior permits were to be implemented to the Maximum Extent Practicable -- defined as is a technology-based standard established by Congress in the Clean Water Act '402(p)(3)(B)(iii) where the cost is wholly disproportionate to the benefit. The draft SPDES General Permit now requires certain actions be performed by the MS4. The DEC should provide the cost/benefit analysis that illustrates that these measures comply with the MEP.

On-site wastewater systems.

The new permit states MS4s must update, implement and enforce a program that ensures residential on-site waste water systems are properly operated. The term ‘properly operated’ puts a potentially huge burden on the MS4. The owner of the system should be ultimately responsible for the system to be properly operated. The language of the permit appears to place the ultimate responsibility on the MS4 to ensure septic systems are properly operated.

Under Westchester County health regulations, system failure currently is defined as ‘septage on the ground.’ The draft permit requires documentation of ‘evidence of failure’ that includes a list of 10 items. The new indicators are also to be included in data collection during the septic inspection. Some of the new indicators are really just best practices to maintain a healthy system, like not parking cars, boats or other heavy objects over the drain field, and not evidence of failure. The septic hauler who does the inspection may not even know the location of the drain field to determine if something is parking on the drainage fields. The draft permit also includes ‘excessive weed growth in adjacent ditches, ponds and streams.’ The term adjacent is not a measurable distance of proximity and a septic hauler may not have the expertise to determine what ‘excessive weed growth’ is.

Additionally, the added items to be reported on during the septic inspection will require amendments to the septic hauler intact form. New training will be required to make sure the septic hauler reports correctly. The new amount of data required to be documented as part of the septic inspection will require Westchester County to modify the septic haulers law. Any amendments of the law will likely require months of working with the septic haulers and the municipalities to come up with a program that everyone agrees upon. The NWWC worked with Westchester County to create the existing septic inspection program that is working. The NYSDEC has told us that the program is a model for the state. We see no justification for amending this section of the permit.

Retrofit Program

The municipalities of the NWWC have spent millions on stormwater retrofits through the East of Hudson Watershed Coalition (EOHWC). To date there is no hard data that this is money well spent on improving water quality. The NWWC questions the retrofit program being a worthwhile task that falls within the parameters of Maximum Extent Practicable.

Additionally, the draft permit states that MS4 operators shall submit “approvable bid-ready plans” and associated phosphorus reductions calculations for projects to be constructed in the next construction season. The preparation of “approvable bid-ready plans” is not a realistic approach to the design and construction process. The EOHWC staggers projects to make best use of the staff. It is not feasible or even practicable to have bid-ready plans at the beginning of the year. The deadline puts an unjustified cost burden upon the municipalities and their operations.

Catch Basin Data Collection.

The draft permit requires increased data collection that includes the inspection of catch basin and manhole sumps twice a year. During the inspection, data must be logged on each catch basin. The data must be evaluated for ‘trends or patterns to optimize the catch basin inspection and maintenance program and make adjustments to the overall stormwater program. This will require significant time of staff trained to evaluate data and determine programming needs.

This one section of the draft permit alone could have a huge financial impact upon the municipalities in the Croton Watershed. The Village of Mount Kisco, for example, has 1,148 catch basins. To go out in the field and inspect and log data for each catch basin would reasonably take 30 minutes per catch basin. With 1,148 catch basins, this would take Mount Kisco 574 work hours or over 16 work weeks.

The draft permit requires that the catch basins be inspected twice. The inspection alone of the catch basins in Mount Kisco would require the staff time of one person for over 8 months of the year. For the inspections to be completed in the fall and spring, two inspection teams would have to complete the work.

The inspections will also require each staff person to have a vehicle with lights and safety visibility clothing to do the inspections. The catch basins are primarily located in street right of ways and could possibly require additional staff to direct traffic while the catch basins are being inspected. This would be an added cost. The employees would also be required to have safety training for working in road right-of-ways.

After the data is collected, it must be evaluated, which will require someone to input the data into a database. Data input could easily take 5 minutes per catch basin. With 1,148 catch basins being reported on twice per year would take an additional 6 weeks of staff time. A report is required evaluating for trends or patterns to optimize the catch basin inspection and maintenance program. This plan requires someone skilled in report writing and possibly might not be the same staff person who does the inspections or data input. For Mount Kisco, this section of the draft permit would easily exceed \$150,000 when adding up staff time and equipment costs.

Regional Approach to Stormwater Management.

The NWWC continues to support the concept of a regional approach to stormwater management as the most cost effective way to provide uniform protection of the NYC EOH watershed. The NWWC passed a resolution in January of 2007 calling upon the New York State Department of State, the Watershed Protection and Partnership Council and to the New York State Attorney General's Office State to explore the creation of a regional approach to stormwater management and provide details regarding appropriate structures that would allow such an approach to be implemented that would provide an expeditious solution to the ongoing stormwater management issues facing the region. The draft *Comprehensive Croton Watershed Water Quality Protection Plan*, prepared in partnership with the NWWC communities, includes a recommendation to explore the creation of a regional stormwater authority that would be responsible for implementation of the Phase II Stormwater Regulations and other aspects of stormwater management across the watershed. This issue has been under discussion by all of the watershed agencies and municipalities for many years. While the current permit and the draft permit allow for regulated municipalities to work together, currently there is no NYS enabling legislation that would allow for the creation of an intermunicipal stormwater district with the ability to raise funds for capital or operating expenses by user fees, nor has any funding been provided to explore such an option.

Summary.

NWWC municipalities are faced with a variety of priorities all competing continually for our limited resources, and we are constantly faced with balancing between providing for the health, safety and welfare of their residents and businesses while attempting to keep budgets balanced and taxes low. The NWWC has a long record of commitment to promoting and implementing programs to protect water quality and protect of natural resources. This draft permit greatly expands the burden of a stormwater management program without any cost benefit analysis. The draft permit imposes significant additional requirements, reporting and documentation without regard to the costs involved. Rather than providing for flexibility for the MS4 to create a program, which the current NYSDEC permit does, the draft permit becomes increasingly prescriptive, including requirements and specifying practices and tasks that municipalities must adopt regardless of their capabilities to undertake such practices or administer such tasks. The requirements are now made without any apparent basis in proven effectiveness of such requirements, let alone the cost effectiveness of those requirements. The NWWC supports the need to protect water quality and provide for improved stormwater management. As individual communities and as a Committee we have worked for many years and participated in many efforts to protect water quality. However, we find the draft permits to be an immense burden on already overtaxed communities. Without additional support from our New York City, state and federal partners, it will be impossible to meet the requirements of the proposed permits within the 5-year permit time frame.

The NWWC looks forward to seeing considerations of its comments in the future drafts of the New York State Department of Environmental Conservation's SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s) GP-0-17-002. The above stated comments reflect the consensus of the NWWC and do not in any way prevent individual municipalities from submitting individual municipal comments regarding the draft MS4 and Construction Activity Permits.

Sincerely,



Rick Morrissey

Chair

Northern Westchester Watershed Committee

Town of Cortlandt

Town of Bedford

Town of Harrison

Town of Lewisboro

Town of Mount Pleasant

Town/Village of Mount Kisco

Town of New Castle

Town of North Castle

Town of North Salem

Town of Pound Ridge

Town of Somers

Town of Yorktown

County of Westchester

cc: Hon. George S. Latimer, Senate District 37
Hon. Terrence P. Murphy, Senate District 40
Hon. David Buchwald, Assembly District 93
Hon. Kevin M. Byrne, Assembly District 94
Hon. Sandra R. Galef, Assembly District 95
Michael Kaplowitz, Chair, Westchester County Board of Legislators
John Testa, Westchester County Board of Legislators
Francis Corcoran, Westchester County Board of Legislators
David Gelfarb, Westchester County Board of Legislators
Catherine Borgia, Westchester County Board of Legislators
Lisa Melville, NYSDOS, Watershed Partnership Protection Council
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