



ENVIRONMENTAL PROTECTION AGENCY

[FRL- 13-006 and 9779-7]

Notice of Availability of the Draft Issuance of the Small Municipal Separate Storm Sewer System NPDES General Permit – New Hampshire

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Availability of Draft NPDES General Permits

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-Region 1 (EPA), is issuing this Notice of Availability of a draft National Pollutant Discharge Elimination System (NPDES) general permit for discharges from small Municipal Separate Storm Sewer Systems (MS4s) to certain waters of the State of New Hampshire. The draft NPDES general permit establishes Notice of Intent (NOI) requirements, prohibitions, and management practices for stormwater discharges from small MS4s. A prior Notice of Availability of a draft general permit was issued by EPA in December 2008. EPA has substantially modified the draft general permit and is issuing a new draft general permit pursuant to 40 CFR 124.6.

DATES: Comments must be received on or before **[insert date 60 days after publication date]**. The general permit shall be effective on the date specified in the Federal Register publication of the Notice of Availability of the final general permit. The final general permit will expire five years from the effective date.

Public Hearing Information: EPA will hold a public hearing in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments for the official draft permit record. The public hearing will be held March 14, 2013 from 2:00pm to 5:00pm at the following location: NH Department of Environmental Services Pease Field Office – Pease International Tradeport – 222 International Drive, Suite 175 – Portsmouth, New Hampshire 03801.

ADDRESSES: Submit comments by one of the following methods:

- Email: Tedder.Newton@epa.gov
- Mail: Newton Tedder, US EPA – Region 1, 5 Post Office Square – Suite 100, Mail Code – OEP06-4, Boston, MA 02109-3912.

No facsimiles (faxes) will be accepted.

The draft permit is based on an administrative record available for public review at EPA-Region 1, Office of Ecosystem Protection, 5 Post Office Square – Suite 100, Boston, Massachusetts 02109-3912. A reasonable fee may be charged for copying requests. The fact sheet for the draft permit sets forth principal facts and the significant factual, legal, methodological and policy questions considered in the development of the draft permit and is available upon request. A brief summary is provided as SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday excluding legal holidays from: Newton Tedder, Office of Ecosystem Protection, Environmental

Protection Agency, 5 Post Office Square – Suite 100, Boston, MA 02109-3912; telephone: 617-918-1038; email: Tedder.Newton@epa.gov

SUPPLEMENTARY INFORMATION:

Background of Proposed Permit

EPA is proposing to reissue three draft NPDES general permits for the discharge of stormwater from small MS4s to certain waters within the State of New Hampshire. The three permits are:

NHR041000 – Traditional cities and towns

NHR042000 – Non-traditional state, federal, county and other publicly owned systems

NHR043000 – Non-traditional transportation systems

While these are technically distinct permits, for convenience we have grouped them together in a single document and have provided a single fact sheet for all three of them, and this document refers to the draft general “permit” in the singular. The draft general permit, appendices, and fact sheet are available at: <http://www.epa.gov/region1/npdes/stormwater>.

The conditions in the draft permit are established pursuant to Clean Water Act (CWA) section 402(p)(3)(iii) to ensure that pollutant discharges from small MS4s are reduced to the Maximum Extent Practicable (MEP), protect water quality, and satisfy the appropriate requirements of the CWA. The regulations at 40 CFR 122.26(b)(16) define a small municipal separate storm sewer system as “all separate storm sewers that are:

- (1) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.
- (2) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems pursuant to paragraphs (b)(4) or (b)(7) or designated under paragraph (a)(1)(v) of this section [40 CFR 122.26].
- (3) This term includes systems similar to separate storm sewer systems in municipalities such as systems at military bases, large hospital or prison complexes, and highways or other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.”

The draft general permit sets forth the requirements for the small MS4 to “reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods” (See section 402(p)(3)(B)(iii) of the CWA). MEP is the statutory standard that establishes the level of pollutant reductions that MS4 operators must achieve. EPA believes that implementation of best management practices (BMPs) designed to control storm water runoff from the MS4 is generally the most appropriate approach for reducing pollutants to satisfy the MEP standard. Pursuant to 40 CFR 122.44(k), the draft permit contains BMPs, including development and implementation of a

comprehensive stormwater management program (SWMP) as the mechanism to achieve the required pollutant reductions.

Section 402(p)(3)(B)(iii) of CWA also authorizes EPA to include in an MS4 permit “such other provisions as [EPA] determine[s] appropriate for control of ... pollutants.” This provision forms a basis for imposing water quality-based effluent limitations (WQBELs), consistent with the authority in Section 301(b)(1)(C) of the CWA. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999); 64 FR 68722, 68753, 68788 (Dec. 8, 1999). Accordingly, the draft permit contains the water quality-based effluent limitations, expressed in terms of BMPs, which EPA has determined are necessary and appropriate under the CWA.

EPA issued a final general permit to address stormwater discharges from small MS4s on May 1, 2003. The 2003 general permit required small MS4s to develop and implement a SWMP designed to control pollutants to the maximum extent practicable and protect water quality. This draft permit builds on the requirements of the previous general permit.

EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness. Compliance with the requirements of this general permit will meet the MEP standard. The iterative process of MEP consists of a municipality developing a program consistent with specific permit requirements, implementing the program, evaluating the effectiveness of the BMPs included as part of the program, then revising those parts of the program that are not effective at controlling pollutants, then implementing the revisions, and evaluating again. The changes contained in the draft general permit reflect the iterative process of MEP. Accordingly, the draft general permit contains more specific tasks and details than the 2003 general permit.

EPA initially proposed a draft permit in December 2008. Based on comments and information gathered while developing responses, EPA has modified the initial draft general permit and is issuing a new draft permit pursuant to 40 CFR 124.6. The changes to the draft general permit include, but are not limited to: provisions addressing discharges to impaired waters without a Total Maximum Daily Load, including requirements related to discharges to the Great Bay watershed and chlorides-impaired waters; provisions related to Total Maximum Daily Loads that have been approved since December 2008; illicit discharge detection elimination and monitoring provisions. The draft general permit has also been revised to provide for coverage to MS4s that became subject to NPDES permit requirements with the issuance of updated urbanized area delineations based on the results of the 2010 Census. The 2008 draft general permit also addressed certain areas outside of New Hampshire. This revised draft general permit applies only to New Hampshire

EPA is specifically seeking public comment on the specific permit Parts listed above, but will accept comment on all permit provisions. Please note that the new Draft Permit completely supersedes the 2008 draft permit, and EPA is providing an entirely new comment period under 40 CFR 124.10. Consequently, all persons who believe any condition of the new Draft Permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position during this public comment period, which includes the public hearing.

Summary of Permit Conditions

Obtaining Authorization

In order for a small MS4 to obtain authorization to discharge, it must submit a complete and accurate NOI containing the information in Appendix E of the draft general permit. The NOI must be submitted within 90 days of the effective date of the final permit. The effective date of the final permit will be specified in the Federal Register publication of the Notice of Availability of the final permit. A small MS4 must meet the eligibility requirements of the general permit found in Part 1.2 and Part 1.9 prior to submission of its NOI. A small MS4 will be authorized to discharge under the permit upon receipt of written notice from EPA following a public notice of the submitted NOI. EPA will authorize the discharge, request additional information, or require the small MS4 to apply for an alternative permit or an individual permit.

Water Quality Based Effluent Limitations

The draft permit includes provisions to ensure that discharges do not cause or contribute to exceedances of water quality standards. The provisions in Parts 2.1 and 2.2 of the general permit constitute the water quality-based effluent limitations of the permit. The purpose of these parts of the permit is to establish the board inclusion of water quality-based effluent limitations for those discharges requiring additional controls in order to achieve water quality standards and other water quality related objectives, consistent with 40 CFR 122.44(d). The non-numeric effluent limitation requirements of this permit are expressed in the form of control measures and BMPs (see Part 2.3 of the general permit).

Non-Numeric Effluent Limitations

When EPA has not promulgated effluent limitations for a category of discharges, or if an operator is discharging a pollutant not covered by an effluent limitation guideline, effluent

limitations may be based on the best professional judgment (BPJ) of the agency or permit writer. The BPJ limits in the general permit are in the form of non-numeric control measures, commonly referred to as best management practices (BMPs). EPA has interpreted the CWA to allow BMPs to take the place of numeric effluent limitations under certain circumstances. 40 CFR 122.44(k) provides that permits may include BMPs to control or abate the discharge of pollutants when: “(1) [a]uthorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) [a]uthorized under section 402(p) of the CWA for the control of stormwater discharges; (3) [n]umeric effluent limitations are infeasible; or (4) [t]he practices are reasonable to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.” The permit regulates stormwater discharges using BMPs. Due to the variability associated with stormwater, EPA believes the use of BMPs is the most appropriate method to regulate discharges of stormwater from municipal systems in accordance with the above referenced regulation.

The small MS4s are required to implement a SWMP that includes the following control measures: public education and outreach; public participation; illicit discharge detection and elimination; construction stormwater management; stormwater management in new development and redevelopment; and good housekeeping in municipal operations. Implementation of the SWMP involves the identification of BMPs and measurable goals for BMPs. The draft permit identifies an objective for each control measure.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. The public comment process and the public hearing will be conducted in accordance with 40 CFR 124, EPA’s Procedures for Decisionmaking. EPA will consider and

respond to all significant comments before taking final action. All persons, including applicants, who believe any condition of the draft permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period, either by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this Federal Register, or by submitting written or oral comments at the public hearing. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in this proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials.

Other Legal Requirements

A. Endangered Species Act

The provisions related to the ESA have not been changed from those in the 2008 draft permit. However, the Atlantic Sturgeon (*Acipenser oxyrinchus*) has been added to the list of species of concern for this draft permit. EPA requested concurrence from the appropriate Federal services (U.S. Fish and Wildlife Service and National Marine Fisheries Service) in connection with the 2008 draft and has renewed this request for the new Draft Permit.

B. Executive Order 12866

EPA has determined that this general permit is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and assigned OMB control number 2040-0004.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not “rules” subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA.

E. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their “regulatory actions” (defined to be the same as “rules” subject to the RFA) on tribal, state, and local governments and the private sector. However, general NPDES permits are not “rules” subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA or the UMRA.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: February 5, 2013

H. Curtis Spalding,

Regional Administrator, Region 1

[FR Doc. 2013-03055 Filed 02/11/2013 at
8:45 am; Publication Date: 02/12/2013]