



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R01-OW-2020-0216; FRL-10008-65-Region 1]

### Notice of Availability of Proposed Modifications to NPDES General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts and New Hampshire

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Availability of Proposed Permit Modifications; Request for Public Comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is providing this notice of availability (NOA) for proposed limited modifications to the final National Pollutant Discharge Elimination System (NPDES) general permits for discharges of stormwater from small Municipal Separate Storm Sewer Systems (MS4s) in Massachusetts and New Hampshire under the Clean Water Act (CWA). The proposed modifications represent the results of mediation supervised by the U.S. Court of Appeals for the District of Columbia Circuit Mediation Program between EPA and petitioners the National Association of Homebuilders (NAHB), the Home Builders and Remodelers Association of Massachusetts, Inc. (HBRAMA), the New Hampshire Home Builders Association (NHHBA), the Center for Regulatory Reasonableness (CRR), the Massachusetts Coalition for Water Resources Stewardship (MCWRS), the Town of Franklin, Massachusetts (Franklin), the City of Lowell, Massachusetts (Lowell), the Conservation Law Foundation (CLF), and the Charles River Watershed Association (CRWA). EPA and the petitioners have entered into settlement agreements that include commitments for EPA to propose certain modifications to the 2016 Massachusetts Small MS4 General Permit and the 2017 New Hampshire Small MS4 General Permit, and then to take final action on each proposal.

**DATES:** Written comments on the proposed permit modifications must be received by **[insert date 45 days after date of publication in the Federal Register date]**.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R01-OW-2020-0216, online at [www.regulations.gov](http://www.regulations.gov) (EPA's preferred method). For comments submitted at [www.regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the persons identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Newton Tedder, Water Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, MC 06-4 Boston, MA 02109; telephone number: 617-918-1038; email address: [tedder.newton@epa.gov](mailto:tedder.newton@epa.gov); or Suzanne Warner, Water Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, MC 06-4, Boston, MA 02109; telephone number: 617-918-1383; email address: [warner.suzanne@epa.gov](mailto:warner.suzanne@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Additional Information About the Proposed Permit Modifications**

On April 4, 2016, EPA issued a final NPDES general permit for discharges of stormwater from small MS4s in Massachusetts (the MA MS4 Permit) under CWA section 402(p). 33 U.S.C. § 1342(p). On July 18, 2016, CRR filed a petition for review of the permit in the U.S. Court of Appeals for the D.C. Circuit. CLF, CRWA, MCWRS, Franklin, NAHB, HBRAMA, and the City of Lowell also filed petitions for review of the permit, all of which were consolidated with CRR's petition in the D.C. Circuit. *Center for Regulatory Reasonableness, et al. v. EPA*, No. 16-1246 (D.C. Cir.) (2016 Massachusetts Small MS4 General Permit consolidated cases). On January 18, 2017, EPA issued a final NPDES general permit for discharges of stormwater from small MS4s in New Hampshire (the NH MS4 Permit). On February 1, 2017, CLF filed a petition for review of the permit in the U.S. Court of Appeals for the First Circuit. CRR, NAHB, and NHHBA later filed petitions for review in the D.C. Circuit. The First Circuit then transferred the CLF petition to the D.C. Circuit, where the D.C. Circuit consolidated it with the CRR, NAHB, and NHHBA petitions. *Center for Regulatory Reasonableness et. al v. EPA, Conservation Law Foundation, Intervenor* No. 17-1060 (D.C. Cir.) (2017 New Hampshire Small MS4 General Permit consolidated cases). The parties to both cases entered into mediation in 2017, and the D.C. Circuit has held the cases in abeyance. On December 27, 2019, EPA published three proposed settlement agreements in the Federal Register for a 30-day public comment period. *See* "Proposed Settlement Agreements, Clean Water Act Claims," 84 FR 71407 (Dec. 27, 2019). EPA's planned proposed permit modifications to the Massachusetts and New Hampshire permits and statements of basis describing those proposed modifications were attached as Exhibits A and B to the Massachusetts and New Hampshire proposed settlement agreements. EPA and the

petitioners executed the settlement agreements on April 15, 2020. The first two settlement agreements describe the modifications that EPA is proposing to the MA MS4 Permit and NH MS4 Permit. Pursuant to the settlement agreements, the proposed permit modifications reflect the substantive agreements that parties reached during mediation. In the settlement agreements, the petitioners agree not to submit adverse public comments on the Draft Permit Modifications, except that the Petitioners reserve their rights to submit any form of comment on EPA's proposed modification to the NH MS4 permit Part 2.3.6.a, and the definitions of "new development" and "redevelopment" in NH MS4 permit Appendix A. The agreements specify that EPA will take final action on each proposed modification within nine months of posting this NOA of the Draft Permit Modifications; that petitioners will then dismiss their current petitions for review with prejudice; and that petitioners agree not to challenge EPA's respective final actions if they modify the permits in a manner substantially similar to the proposed modifications (with one exception, discussed in the New Hampshire settlement agreement). The third settlement agreement commits Lowell, Massachusetts to voluntarily dismiss its petition without prejudice and commits EPA to process Lowell's individual permit application and then to take final action on Lowell's individual permit application. Today's notice includes only the proposed MA MS4 and NH MS4 proposed permit modifications. EPA will propose an individual permit for Lowell at a later date.

EPA is reopening, reexamining, and accepting comments on only the parts of the MA MS4 and NH MS4 permits that the proposed modifications specify. In the MA MS4 permit, only the following permit parts are open for modification and comment: parts 2.0; 2.1; 2.1.1; 2.1.2.a; 2.2.; 2.2.2; 2.3.3; 2.3.5; 2.3.6; 2.3.7.a; 2.3.7.b; 4.1; 4.4; Appendix F part A.I; Appendix F part A.II; Appendix F Attachments 2 and 3; and Appendix H. In the NH MS4 permit, only the

following permit parts are open for modification and comment: 2.0; 2.1; 2.1.1; 2.1.2.a; 2.2.; 2.2.2 (paragraphs 2 and 3); 2.3.3.1; 2.3.5; 2.3.5.3; 2.3.6.a; 2.3.7.2.b.iii; 3.1.3; 4.1.4; 4.4.2.3; Appendix A; Appendix F part III and Attachment 3; and Appendix H.

EPA has emailed notifications of the Draft Permit Modifications to regulated parties, parties to this mediation, and other interested parties on EPA Region 1's NPDES permit mailing list. For a period of forty-five (45) days following the date of publication of this notice, the Agency will accept written comments on the proposed permit modifications. Pursuant to 40 CFR § 124.12(a), EPA may hold a public hearing during the comment period for any interested persons to submit oral comments. If EPA determines there is sufficient interest in a public hearing, EPA will post the details of the public hearing at EPA Region 1's website and will notify via email the petitioners, eligible permittees, and any other party who requests to be notified. EPA has requested that Massachusetts and New Hampshire provide a water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341. After considering any significant public comments on the permit sections that are open for proposed modification, EPA will take final action on the Draft Permit Modifications within nine months of the Agency's posting of the NOAs of the Draft Permit Modifications on its website.

Commenters must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period. Any supporting material which is 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.

## **II. Additional Information About Commenting on the Proposed Permit Modifications**

A. *How can I get a copy of the proposed permit modifications?* The official public docket for this action, EPA-R01-2020-0216, contains copies of the proposed permit modifications and statements of basis. These documents are also posted on EPA Region 1's website at <https://www.epa.gov/npdes-permits/npdes-stormwater-permit-program-new-england#smallms4program>. The official public docket is available for public viewing at U.S. EPA Region 1, John W. McCormack Building, 5 Post Office Square, Boston, MA 02109. Please contact the persons listed in **FOR FURTHER INFORMATION CONTACT**.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search." It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. *How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Dated: April 17, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

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