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Comments on 2023 Draft Tier A Municipal Separate Storm Sewer System (MS4) General Permit

By Email to: Bureau of NJPDES Stormwater Permitting and
Water Quality Management

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Introduction

New Jersey Future (NJF) submits the following recommendations on the New Jersey Department of Environmental Protection's ("NJDEP" or "Department") Draft Tier A Municipal Separate Storm Sewer System (MS4) General Permit in anticipation of its 2023 renewal. These recommendations have been vetted by many partner organizations but do not explicitly represent the opinions of said partners.

Background

Founded in 1987, NJF is a nonprofit, nonpartisan organization that promotes sensible growth, redevelopment, and infrastructure investments to foster vibrant cities and towns; protect natural lands and waterways; enhance transportation choices; provide access to safe, affordable, and aging-friendly neighborhoods; and fuel a strong economy. NJF does this through original research, innovative policy development, coalition-building, advocacy, and hands-on strategic assistance. Embracing differences and advancing fairness is central to NJF's mission and operations. NJF is firmly committed to pursuing greater justice, equity, diversity, and inclusion through its programs, internal operations, and external communications.

The MS4 Permit is a potentially powerful tool to address New Jersey's water quality challenges. New Jersey already has a high number of impaired water bodies and experiences frequent flooding. The problem is predicted to get worse: according to the New Jersey Scientific Report on Climate Change published in 2020, "surface and groundwater quality will be impaired as increased nutrients and contaminants enter waters due to runoff from more intense rain events." The MS4 Permit renewal in 2023 is an opportunity to develop improved standards that will protect New Jersey's waterways in the face of climate change. NJF thanks NJDEP for the opportunity to comment on the draft of the Tier A General MS4 Permit.

In general, NJF is supportive of many of the changes in the Draft 2023 MS4 Tier A General Permit. We appreciate the Department addressing specific comments we shared in October 2021 and March 2022, including more detailed MS4 infrastructure mapping, enhanced

inspection and maintenance requirements, and linking watershed planning to the impaired waters and Total Maximum Daily Loads (TMDL) program. We strongly support the Watershed Improvement Plan requirement for permittees. The inclusion of the Fact Sheet with this Draft was extremely helpful. The introductory document aided NJF when conducting stakeholder engagement and provided additional clarification of various permit requirements. We appreciate the time the NJDEP has invested in providing information and soliciting input on this Draft Tier A MS4 General Permit.

Recommendations

NJF understands the balance that the Department is seeking between requiring municipalities to do more and recognizing the capacity needs of municipalities to do this work effectively. While the permit requirements seem to be moving in the right direction, there will not be any progress unless municipalities have the resources to implement them. In discussion with various stakeholders, including developers and municipalities, we are concerned that many municipalities do not have the funding or the staffing capacity to reach full compliance. While we are extremely supportive of the Watershed Improvement Plan requirement, the Department needs to address these compliance obstacles. For instance, stormwater utilities should continue to be promoted as a source of funding to help municipalities achieve their requirements. In addition, NJDEP should provide technical resources and training for municipalities, perhaps through a circuit rider program, as well as robust enforcement to encourage implementation and ensure compliance. NJF believes that the Department should be intentional about using its staff and resources to both support municipalities and provide accountability. Below are specific recommendations:

1. Strengthen the Watershed Improvement Plan Requirements

NJF strongly supports the new requirement for municipalities to create a Watershed Improvement Plan (WIP). We understand the need to give municipalities the flexibility to determine the stormwater solutions that are feasible for them, given their unique constraints and water quality issues. However, we are concerned about the timelines and potential lack of implementation over the course of the 5-year permit as outlined in the draft permit. There are several areas where NJDEP could improve the WIP requirements:

- Require a faster timeline for the development and implementation of the WIP for existing Tier A municipalities (section H.1.), such as:
 - Prepare the Watershed Inventory Report on or before Effective Date of Permit Authorization (EDPA) + 18 months;
 - Prepare the Watershed Assessment Report on or before EDPA + 24 months;
 - Prepare the final Watershed Improvement Plan Report on or before EDPA + 36 months; and
 - Construct initial implementation projects to reduce pollution loads by EDPA + 59 months.
- Specify a planning period for the WIP. An implementation plan is included as a requirement for the Watershed Assessment Report (WAR) however a planning period of no less than 20 years should be specified. To incentivize the implementation of projects

within the 5-year permit cycle, the Department should give projects identified in the WAR funding priority.

- Provide guidance about what to include in these plans. The plans should require municipalities to achieve percent reductions in pollution levels by the end of the end of the planning period. For example, [Pennsylvania](#) requires pollution reduction by small percentages in each MS4 Permit cycle.
- Include guidance on how municipalities should craft the WIP to take into account increasing water quality and flood risk due to climate change, including linking these plans with the New Jersey Protect Against Climate Threats (NJPACT) initiative. WIPs should acknowledge that the models used to design projects will change over time as NJPACT initiatives go into effect.
- Include guidance on how Stormwater Control Ordinances (SCOs) and WIPs should fit together. More stringent SCOs can help meet the water quality improvements identified in a WIP.
- The permit's Fact Sheet states that the "Department will prioritize regional WIPs in terms of Department assistance, funding opportunities, and review and approval" (H.3.). The NJDEP should provide additional guidance on a regional approach, and should provide additional assistance to facilitate the formation of regions. For example, the Department could outline parameters for selecting a region in terms of municipal/county boundaries, shared infrastructure, and/or hydrology.
- Include Departmental review of the three phases of the WIP and the planning period identified in the Watershed Assessment Report (WAR). If the Department provides comments, the permittee should have a specified amount of time to address comments and resubmit for final approval.

2. Emphasize Green Infrastructure as an Integral Stormwater Practice

NJF regards green infrastructure as an integral stormwater management practice and an essential climate-resilient solution. Overall, we would like NJDEP to encourage green infrastructure and the maintenance of these projects throughout the permit. NJDEP should:

- Emphasize that permittees are responsible for:
 - Long-term maintenance of municipally owned or managed green infrastructure as outlined in the section on Inspection Maintenance of Permittee Owned or Operated Stormwater Facilities (Part IV.F.3)
 - Enforcement of maintenance requirements for green infrastructure not owned or operated by the permittee as outlined in the section on Inspection and Maintenance of Stormwater Facilities Not Owned or Operated by the Permittee (Part IV.F.4)).

The Department should provide guidance, including templates, for the type of documentation required as part of the maintenance log of private facilities.

Documentation of maintenance could include protection by easement, deed restriction, ordinance, or other legal measures. Routine maintenance and NJDEP's enforcement of maintenance will ensure the long term environmental, economic, and social benefits of green infrastructure.

- To ensure the successful implementation of Best Management Practices (BMPs), the permittee’s municipal engineer should be required to observe the construction of the BMPs and certify the construction meets the approved design. As an alternative, the MS4 permit condition could allow for the municipal engineer to defer to the applicant’s engineer or a third-party engineer to perform the observation and testing. Checklists for the review and testing of each type of BMP and language outlining responsibilities of the municipal engineer and design engineer would help ensure effective implementation of this requirement.
- Clarify that the NJDEP Stormwater Management Rules establish the minimum standard for controlling stormwater runoff for major and minor development. Section 7.E of the Fact Sheet notes that, “this permit requires municipalities to implement these rules, or a more stringent standard, at the local level”. However, other sections of the Fact Sheet and the Draft Permit that reference Residential Site Improvement Standards (RSIS) preemption contradict this statement. The permit should provide clear authority for permittees to adopt an enhanced Stormwater Control Ordinance to meet water quality goals and reduce flooding, such as New Jersey Future’s [Enhanced Model Stormwater Ordinance for Municipalities](#), which applies to major and minor developments not preempted by RSIS requirements.

3. Provide Robust Assistance and Training

Many Tier A municipalities will need to develop the capacity, expertise, and funding necessary to comply with the permit requirements, whether they rely on in-house stormwater staff or outside stormwater consultants. NJF recommends that NJDEP develop its ability to provide high-quality technical assistance and more robust training or explore the potential to work with a third-party to provide these resources to municipalities and their stormwater experts. Below are some specific ideas and examples about areas where many municipalities will need support.

NJDEP should:

- Develop municipal mapping capacity. Providing ArcGIS licenses and data layers is a good starting point, but many municipalities do not necessarily have the capacity to use these resources. Therefore, NJDEP should provide ArcGIS training as well as funding to hire consultants to provide technical assistance.
 - For the WIP mapping requirements, NJDEP could complete a preliminary analysis and provide the results, so that every municipality is not required to complete the same mapping work independently. Or NJDEP could contract with a consultant or university to complete the GIS work.
- Continue to support stormwater utility feasibility studies. Many permittees will need to establish a stormwater utility in order to have the resources to complete the activities outlined in the permit. NJDEP should provide annual funding for localities to conduct a stormwater utility feasibility assessment, which is necessary to launch a stormwater utility.
- Provide updated and improved training. The draft permit requires a lot of training for municipal staff. Many municipal engineers are not necessarily stormwater professionals and will need to improve their skills in order to realize successful stormwater practices, including green infrastructure, at the local level. In particular, permit review engineers will

need to have a better understanding of the latest innovations in green infrastructure design, implementation, and maintenance given the new requirements outlined in the permit. NJDEP should expand their existing training for municipal engineers or identify quality training opportunities and robust resources to help municipal staff and/or their contractors comply. Video training is not adequate to develop the expertise required.

- Provide Technical Assistance. During our stakeholder engagement process it was noted that there is a disconnect between the resources provided by NJDEP and the needs of permittees. NJDEP should provide robust technical assistance to aid permittees in developing the capacity to implement the permit. This could be accomplished in several ways:
 - A circuit rider program, in which NJDEP staff spend a short amount of time in each municipality, or other assistance efforts provided by the Department or a third party contractor.
 - A streamlined online system where permittees can find templates for inspections, maintenance plans, and other documentation required for compliance and a portal to submit deliverables will help ensure compliance and consistency with deliverables. An online system where the Department can provide comments on deliverables and set deadlines can help with enforcement. Consistency in the format of deliverables will also aid the Department in their review of the submissions and will be useful for future statewide mapping of MS4 infrastructure and tracking of overall program success.

4. Step Up Permit Enforcement

While not specifically outlined in the permit, NJDEP will need to be proactive and consistent in its enforcement of permittees in order to ensure compliance. NJF advises NJDEP to increase the staff capacity of the compliance and enforcement unit in the Division of Water Resource Management in order to do an effective job. Compliance audits should include an initial education and support component where municipalities that are found lacking are then required to complete hands-on training that would help them come into compliance.

5. Establish Monitoring Requirements to Verify Compliance with Water Quality Standards

The draft permit does not seem to have any monitoring requirements; however, all NJPDES permits are required to include monitoring strategies that ensure compliance with the permit. The draft permit states that BMPs provide treatment pursuant to the Department's authority under the Clean Water Act with the goal of meeting water quality standards. However, if BMPs are not functioning as designed there is no way to ensure that discharges are not contributing to water quality impairments. The MS4 Tier A permit should include a general monitoring requirement to establish baseline information and to track pollution loads over time. As we stated in our October 2021 and March 2022 comments, we recognize that assuming responsibility for water quality monitoring is burdensome for both municipalities and NJDEP. NJF recommends that NJDEP provide the following options:

- The municipality chooses to conduct monitoring itself. This would require additional training from NJDEP to ensure monitoring programs are successful.

- The municipality chooses to forgo its own monitoring and instead pays a fee to a NJDEP-approved third-party monitor.
- NJDEP conducts the monitoring itself. NJDEP is responsible for numerous multi-year monitoring programs mandated by the Clean Water Act. NJDEP should provide their monitoring data to permittees. In addition, the Department should strategically increase its monitoring based on locations with high concentrations of impaired waterways and overburdened communities. In an ideal world, permittees would review monitoring data to understand their municipality's contribution to pollutant loading for impaired streams as it develops the WIP.

7. Other

- NJF supports the identification of Stormwater Utilities as one of the potential funding mechanisms for WIPs and other MS4 permit obligations.
- NJF supports requiring the development of a municipal stormwater webpage.
- NJF supports requiring new tree and salt management ordinances.
- NJF supports improvements to the Illicit Discharge Detection and Elimination program, including inspection requirements.
- NJF supports the requirement for permittees to develop maintenance plans.