

EXHIBIT #2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

**5 Post Office Square – Suite 100
BOSTON, MA 02109-3912**

VIA EMAIL – READ RECEIPT REQUESTED

November 18, 2020

Ms. Rhonda Poirier
MS4 Program Manager
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

RE: 2020 Municipal Separate Storm Sewer Systems (MS4) Final Permit October 15, 2020.
Permit Number MER041000

Dear Ms. Poirier:

EPA Region 1 has reviewed Maine's 2020 Municipal Separate Storm Sewer Systems (MS4) Final Permit dated October 15, 2020 (Final MS4 General Permit) to assess compliance with the Clean Water Act and implementing regulations. During the reissuance process, EPA Region 1 provided comments to Maine Department of Environmental Protection (MDEP) on the Draft MS4 General Permit on March 6, 2020 and had subsequent conversations and correspondence with you and your staff regarding EPA's comments. On June 23, 2020, MDEP issued a revised Draft MS4 General Permit for formal 17-day public comment, in part to address EPA's comments. EPA Region 1 did not provide comments on this revised draft permit as it addressed EPA's original comments. The Final MS4 General Permit has retained many of the changes proposed in the revised Draft MS4 General Permit and EPA commends MDEP on the changes made to comply with the two-step permitting approach outlined 40 C.F.R. §122.28(d)(2). However, the Final MS4 General Permit contains modifications from the original Draft MS4 General Permit and the revised Draft MS4 General Permit that do not adequately address EPA's original comments and/or result in the Final MS4 General Permit being inconsistent with the Clean Water Act and implementing regulations, as outlined below:

- 1. Part I.B.1 Effective Date of this General Permit.** This section was modified to change the effective date of the Final MS4 General Permit from September 1, 2020 to July 1, 2021. However, the revised Fact Sheet and Response to Comments Document that accompanied the Final MS4 General Permit do not address or justify this change in effective date as required by 40 C.F.R. §124.17(a)(1). In addition, this change does not appear to be a logical outgrowth from the draft permit language based on comments received.
- 2. Part IV.B.5. MCM5 – Post-Construction Stormwater Management in New Development and Redevelopment.** EPA Region 1's comment letter on the Draft MS4

General Permit EPA stated:

This Part does not contain clear, specific and measurable requirements as required by 40 C.F.R. §122.28 and 40 C.F.R. §122.34 and must be revised in the Final Permit. This Part could reference Stormwater Management Law, Chapter 500 that regulates disturbances of over 1 acre of land and require compliance with that law unless MDEP has determined that Chapter 500 is not adequate to minimize water quality impacts. Alternatively, the two-step permitting process could be used to require each permittee to submit how they plan to regulate new development and redevelopment in the urbanized area and create clear, specific and measurable requirements in the two-step permitting process.

The June 23, 2020 revised Draft MS4 General Permit for public comment included language addressing EPA's comments above. However, the Final MS4 General Permit removed all proposed changes in the revised Draft MS4 General Permit. Part IV.B.5 of the Final MS4 General Permit is inconsistent with 40 C.F.R. §122.28 and 40 C.F.R. §122.34. In addition, the removal of the language included in the June 23, 2020 revised Draft MS4 General Permit was not discussed or justified in the revised Fact Sheet and Response to Comments Document that accompanied the Final MS4 General Permit, as required by 40 C.F.R. §124.17(a)(1). This change also does not appear to be a logical outgrowth from draft permit language based on comments received.

One option for MDEP to remedy this situation is to modify the Final MS4 General Permit consistent with 40 C.F.R. §122.62 to reinstate language from the June 23, 2020 revised Draft MS4 General Permit or other language consistent with 40 C.F.R. §122.28 and 40 C.F.R. §122.34. EPA also notes that MDEP must include a rationale for all changes made from proposed draft National Pollutant Discharge Elimination System (NPDES) permit language to final NPDES permit language in a complete response to comments document or revised Fact Sheet.

We would be happy to continue to work with you to resolve these issues. If you have any questions or require additional information please contact Newton Tedder of my staff at tedder.newton@epa.gov or (617) 918-1038.

Sincerely,

THELMA
MURPHY

Digitally signed by
THELMA MURPHY
Date: 2020.11.19
14:12:13 -05'00'

Thelma Murphy
Chief, Water Permits Branch
Water Division

cc: Gregg Wood. Maine Department of Environmental Protection – Via Email

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