

EXHIBIT #4



January 22, 2021

Mr. James W. Parker, Presiding Officer
Board of Environmental Protection
c/o Ruth Ann Burke ruth.a.burke@maine.gov
17 State House Station
Augusta, ME 04333-0017

Re: Written Response to Merits of November 13, 2020 Friends of Casco Bay (FOCB) Appeal of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4 General Permit)

Dear Mr. Parker and Members of the Board:

The municipalities that make up the Interlocal Stormwater Working Group (ISWG) and the Southern Maine Stormwater Working Group (SMSWG), as well as the Maine Department of Transportation and the Maine Turnpike Authority, provided comments on both the December 6, 2019 Preliminary and the June 23, 2020 Final Public Comment drafts of the MS4 General Permit (see Attachment 1 for listing of ISWG and SMSWG municipalities). On behalf of the ISWG and SMSWG communities (also hereafter referred to as "ISWG/SMSWG Respondents"), we are providing this written response to the merits of the FOCB appeal of the MS4 General Permit.

We believe all items in the appeal filed by FOCB are without merit, as evidenced by the comments we provided on the June 23, 2020 Public Comment Draft of the MS4 General Permit and described in more detail below. We respectfully ask the Board to reject the FOCB appeal and affirm the DEP's decision to issue the MS4 General Permit.

Appeal Item 1: To set an effective date of September 1, 2021 FOCB's first argument on appeal is that the Maine Department of Environmental Protection (DEP) erred by having the new MS4 General Permit take effect on July 1, 2022. The apparent basis for this claim is that it is somehow inconsistent with the Remand Rule, 81 Fed. Reg. 237,320 (Dec. 9, 2016).

On the contrary, the Remand Rule does not specify when an update to the MS4 General Permit must take effect. In fact, the Remand Rule does not even address this issue, and thus it is left to DEP to decide when the new MS4 General Permit should take effect based on its best professional judgment.

FOCB's argument therefore boils down to a disagreement with DEP over the effective date, arguing in essence that the renewal of the MS4 General Permit is overdue and the effective date should therefore be accelerated. FOCB prefers the date of September 1, 2021 that was in the draft version of the MS4 General Permit rather than July 1, 2022. This is not a legal claim for failing to meet federal law, but rather a policy argument.

ISWG/SMSWG Respondents disagree and believe that the DEP simply failed to note in the Fact Sheet that it was adopting the suggestion we offered in our July 10, 2020 comments on the draft. That comment is reproduced below for your convenience:

1. Page 5 of 54 (Part I(B)(1) Effective date of this General Permit): As stated in our comments on the 7th preliminary draft submitted via email on 7/19/2019, changing the Permit Year to be from September to August will significantly complicate the municipalities' budgeting processes for MS4 services because they will need to split the requirements for a single permit year across multiple fiscal years. All of the ISWG and SMSWG communities run on a fiscal year that begins on July 1, and most of the other regulated communities do also. We are asking that the Department consider the following alternative options:

- a. Change the effective date to July 1, 2022 to maintain the July 1 to June 30 permit year. Although this would add Permit Year 9 to the current permit cycle, we believe this extension is justified given the extraordinary measures we have all had to take to address the health and safety issues associated with the COVID-19 pandemic (such as adjustments to work processes, budget constraints, and reduced staffing to ensure social distancing). This is our preferred alternative.*
- b. Keep the September 1, 2021 effective date by extending Permit Year 8 of this cycle to August 31, 2021 and shorten the first Permit Year of the next cycle to 10 months (running from September 1, 2021 to June 30, 2022). We have concerns about completing all required tasks within a shortened Permit Year 1, which would be exacerbated if the effective date extends out beyond September 1, 2021, but could organize our tasks to meet the shortened year if the Department would accommodate this during SWMP approvals.*

It is important to understand that the delay in the effective date *does not* mean that the MS4s are unregulated in the meanwhile. The prior version of the MS4 General Permit remains effective and enforceable until the new version takes effect on July 1, 2022. Given that the new permit will require significant time, effort, and funding from the ISWG and SMSWG municipalities to implement, we believe that a delay of less than a year in the effective date to match the budget cycles for the affected communities is judicious.

Most municipalities have already budgeted for existing MS4 compliance in their current budgets and do not have the funds, particularly in this year with all of the unanticipated costs of the Covid-19 pandemic, to implement the new requirements. Allowing the new General Permit to take effect with the new budget cycle starting on July 1, 2022, will ensure the municipalities have the funding they need to implement the permit as required.

Appeal Item 2: To require that the municipal post construction ordinance or other regulatory mechanism under Minimum Control Measure (MCM) 5 mandate the use of Low Impact Development (LID) site planning and design strategies to the maximum extent feasible. FOCB's second argument has



a flaw that is similar to the first. FOCB insists that the new MS4 General Permit must require municipalities to adopt Low Impact Development (LID) mandates to comply with the Remand Rule.¹ As with the effective date issue, however, the Remand Rule does not even refer to LID, let alone mandate it. As a result, there is no basis to say that DEP absolutely must require each municipality to adopt LID standards, whether in ordinance or in some other way, in the new MS4 General Permit.

The ISWG/SMSWG Respondents provided comments with a different approach, which we believe DEP has adopted in the final draft of the MS4 General Permit. The EPA acknowledged in its November 18, 2020 letter that MCM 5 could simply reference Chapter 500 unless the DEP has determined that Chapter 500 is not adequate to minimize water quality impacts. MS4s intend to rely on Chapter 500 as an “other regulatory mechanism” for MCM 5 as suggested by EPA, rather than trying to develop their own programs.

Developments in Maine that disturb one acre or more of land are already subject to Chapter 500, which is the same threshold for disturbance as specified in the MS4 General Permit. The DEP Chapter 500 requirements already incorporate LID stormwater treatment incentives, require treatment using best management practices (BMPs) that are considered to be LID treatment strategies by most other states, have more stringent development requirements for Urban Impaired Streams, and have special standards for redevelopment sites.

ISWG/SMSWG Respondents do not agree that implementing LID is the only way to improve water quality to the maximum extent practicable, but we do agree that in many instances promoting LID strategies can have a positive impact on water quality.

Rather than requiring each municipality to develop its own LID ordinances, which could result in inconsistent development requirements throughout the state, ISWG and SMSWG believe that LID should be developed statewide by DEP through the stormwater regulations in Chapter 500. In fact, DEP has told the parties to this appeal that it intends to initiate rulemaking in the near future on Ch. 500 and that it expects to propose new LID incentives, incorporate recommendations that came out of Gov. Mills’ Maine Climate Council, and to review and assess whether the redevelopment and linear exceptions sections need updating. FOCB apparently is unwilling to wait for that process to occur, instead preferring to push this as an unfunded mandate on to the municipalities. DEP has the resources and expertise to develop these rules. Municipalities do not. (See e-mail threads with DEP on this issue in Attachment 2.)

¹ There is no universally accepted definition of LID and thus no ready set of rules for municipalities to adopt. That is, of course, part of the problem here, because each municipality will have to determine what LID means for itself, which is likely to take significant effort and result in a wide variety of approaches. Generally speaking, however, LID is a set of land use practices that begin in the design phase of a project (some definitions say it begins with site selection), focused on minimizing the impact of development on the natural environment. It is applied differently in urban areas than it is in suburban and rural areas. To be sure, LID techniques are a useful tool for achieving compliance with stormwater standards, but they are not the only (in the words of the Remand Rule) “clear, specific and measurable” means of regulating stormwater discharges. Thus, FOCB overstates the importance of LID when it argues that DEP cannot meet the objectives of the general permit without the use of LID.



Once again, the ISWG/SMSWG Respondents acknowledge that DEP failed to note in the Fact Sheet that it agreed with our comment on the 6/23/2020 Final Draft version of the rule, which is provided again here for convenience:

Comment 11. Page 34 of 54 (Part IV(C)(5)(b) Low Impact Development): The proposed language under Part IV(C)(5)(b) would require MS4s to create an ordinance or other regulatory mechanism requiring Low Impact Development (LID) to the maximum extent feasible, which will be very time consuming and costly for communities to develop and implement. If the Department feels it is appropriate to require LID for development projects, it should modify the state stormwater regulations [in Chapter 500] to do so, not impose this requirement on MS4s to develop and implement on behalf of the State. In addition, the reference to LID seems misplaced in this section, which is about ensuring "adequate long-term operation and maintenance of post construction BMPs." A requirement related to LID would make more sense under the Part IV(C)(5)(a) requirement to "promote strategies which include a combination of structural and/or non-structural BMPs appropriate to prevent or minimize water quality impacts." The 2013-2018 MS4 permit requirement to develop and implement a procedure for notifying site developers to consider incorporating LID techniques was fairly effective for many communities. Some implemented ordinance requirements stating that developers either incorporate LID or provide a rationale with their Planning Board submittals as to why LID was not feasible at their site. If the Department must add LID language, please re-institute the 2013-2018 MS4 permit language.

The DEP's approach of relying on the existing Chapter 500 provisions is reasonable, and supported by EPA, and therefore FOCB's appeal on this point should be rejected.

Appeal Item 3: To require that if the water body to which a point source discharge drains is impaired and has an EPA approved TMDL, then the stormwater management plan (SWMP) must propose clear, specific and measurable actions to comply with the TMDL Waste Load Allocation and any implementation plan. FOCB's final argument on appeal is that the MS4 General Permit must obligate the municipalities that discharge to impaired waters subject to Total Maximum Daily Loads (TMDLs) to develop specific plans to comply with those TMDLs in every case.² This argument again mischaracterizes the Remand Rule, in that nothing in that rule mandates this specific result.

The ISWG/SMSWG Respondents believe that DEP simply agreed with their comments that a different approach is warranted. As ISWG and SMSWG explained in comments on the draft rules, which can be seen in full in Attachments 3a and 3b, the MS4s reviewed and summarized TMDLs that have been issued

² A TMDL is a plan for restoring impaired waters that identifies the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards.



in the state and approved by EPA. Most MS4 discharges are to TMDL waters that are also Urban Impaired Streams, a separate state designation under Chapter 502 for streams that have been impaired by stormwater. The new MS4 General Permit will require the MS4s to develop and implement three BMPs to address each of these Urban Impaired Streams. The few MS4 discharges to TMDL waters that are not Urban Impaired Streams are for TMDL waters that either do not have requirements applicable to MS4s or are to bacteria impaired TMDL waters where permittees will conduct illicit discharge detection and elimination in accordance with the MS4 General Permit. Note that MS4s are summarizing this information in their Stormwater Management Plans, which will be reviewed by DEP prior to authorization under the Permit.

We believe that DEP reasonably concluded that these steps – (a) developing three specific BMPs for Urban Impaired Streams, (b) implementing illicit discharge detection and elimination plans, and (c) review and approval of Stormwater Management Plans; -- are sufficient for impaired waters at this time. In addition, the MS4 General Permit also clearly states that nothing in the permit authorizes direct discharges that are inconsistent with a waste load allocation of a TMDL. It also provides that it does not authorize a new or increased discharge of stormwater to an impaired waterbody that causes or contributes to the impairment.

All of these steps are "clear, specific and measurable," as required by the Remand Rule, and will have significant benefits for the water quality of impaired waters. Nothing more is required.

In closing, we appreciate the opportunity to provide this letter. We respectfully ask the Board to reject the FOCB appeal and affirm the DEP's decision to issue the MS4 General Permit.

Respectfully submitted,



Integrated Environmental Engineering, Inc.,

Kristie L. Rabasca on behalf of ISWG and SMSWG Respondents

Cc via email:

ISWG and SMSWG Respondents

Brian Rayback, Pierce Atwood LLC (for ISWG Respondents)

Aimee Mountain, GZA GeoEnvironmental, Inc



Attachment 1 – List of ISWG and SMSWG Communities

SMSWG: Berwick, Eliot, Kittery, South Berwick, and York

ISWG: Biddeford, Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, Old Orchard Beach, Portland, Saco, Scarborough, South Portland, Westbrook, Windham, and Yarmouth

Maine DOT and Maine Turnpike Authority were included in the comment letter on the 6/23/2020 Final Draft of the MS4 General Permit

Cumberland County Soil and Water Conservation District, Southern Maine Community College, and University of Southern Maine are also members of the ISWG.



Attachment 2 – DEP emails regarding Chapter 500 Updates

Kristie Rabasca

From: Strause, Aubrey <Aubrey.Strause@maine.gov>
Sent: Tuesday, November 24, 2020 8:03 AM
To: Kristie Rabasca; Livesay, Nick
Cc: Wood, Gregg; Stebbins, Mark N; Robbins, Nathan P
Subject: RE: What is the schedule to update Chapter 500?

Follow Up Flag: Follow up
Flag Status: Flagged

Kristie-
 Nick is out this week, but I can share the little information I have.

Mark Stebbins will lead the Rulemaking process for the Land Bureau so I've copied him on this.

- Updates to Ch 500 will need to do the following:
 - Identify new LID incentives (not only because of the MS4 Permit, but also to make them stand apart from *what's already required*);
 - Incorporate recommendations that came out of Gov. Mills' Maine Climate Council (Flooding standards, waivers),
 - Fix general errors that we've marked up over time; and
 - Review sections like Redevelopment and the Linear exception to see if they are serving the intended purpose.
- On our October 13 internal call, we did not identify a timeline for the Rulemaking, did not decide how it would be structure, and did not determine what staff members would be involved.
- The MCC elements are the ones that have a timeline associated.

The best person to weigh in on the timeline may be Nathan Robbins, who organized the sharing and assessment of information during the MCC, who I've also copied. He likely has the best vision of the process at this point.

I realize this doesn't answer all of your questions, but I hope it's still useful.

Stay well!

-als

From: Kristie Rabasca <krabasca@integratedenv.com>
Sent: Tuesday, November 24, 2020 7:41 AM
To: Livesay, Nick <Nick.Livesay@maine.gov>
Cc: Wood, Gregg <Gregg.Wood@maine.gov>; Strause, Aubrey <Aubrey.Strause@maine.gov>
Subject: RE: What is the schedule to update Chapter 500?

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Morning Nick,
 Could you respond to the questions below. Feel free to give me a call if it is easier. I have cc' Aubrey Strause in case she knows the answer.

Kristie L. Rabasca, P.E
Integrated Environmental Engineering, Inc.
12 Farms Edge Road
Cape Elizabeth, ME 04170
207-415-5830

From: Kristie Rabasca
Sent: Friday, November 20, 2020 3:42 PM
To: nick.livesay@maine.gov
Cc: Wood, Gregg <Gregg.Wood@maine.gov>
Subject: What is the schedule to update Chapter 500?

Good Afternoon Nick,
As I said on my email, I work with many of the municipalities that are regulated for the separated stormwater discharges through a MEPDES Permit that Mr. Wood has just finalized. Friends of Casco Bay has just appeal that permit, and our one sticking point is that FOCB wants to see the municipalities update their ordinances to incorporate Low Impact Development.

Can you tell me what the schedule is (if any) to update Chapter 500? Or when there might be a schedule?



Kristie L. Rabasca, P.E
Integrated Environmental Engineering, Inc.
12 Farms Edge Road
Cape Elizabeth, ME 04170
207-415-5830

**Attachment 3a – ISWG/SMSWG Comments on 8th Preliminary
Draft**

Kristie Rabasca

From: Kristie Rabasca
Sent: Monday, November 18, 2019 5:59 PM
To: 'Wood, Gregg'; Kavanah, Brian W; Zachary Henderson; Andrea Dickinson; Brenda Zollitsch; 'Philip Ruck'; Poirier, Rhonda; Aimee Mountain; jbranscom@maineturnpike.com; kristin.schock@navy.mil; 'carol.potter@maine.edu'; 'cwojtysiak@smccme.edu'; Ivy Frignoca; gherman@memun.org; smahoney@clf.org; 'abeaulieu@auburnmaine.gov'; 'andy.rudzinski@bangormaine.gov'; townmanger@berwickmaine.org; tmilligan@biddefordmaine.org; klocke@brweremaine.gov; robert.malley@capeelizabeth.org; egreen@clf.org; dbelyea@emcc.edu; harold.flagg@navy.mil; mgallup@smccme.edu; stmichel@maine.edu; 'dearly@usm.maine.edu'; ineleski@cumberland.com; kpelletier@eliotme.org; jreynolds@town.falmouth.me.us; apresgra@freeportmaine.com; rburns@gorham.me.us; gisit@hampdenmaine.gov; jkellog@kitteryme.org; jearl2@lewistonmaine.gov; rleighton@lisbonme.org; mananger@milfordmaine.org; glamb@oobmaine.com; jrouleau@old-town.org; ryerxa@orono.org; NEG@portlandmaine.gov; award@sabattus.org; jlaverriere@sacomaine.gov; mshaw@ci.scarborough.me.us; jstpierre@sbmaine.us; dthomas@southportland.org; mleonard@vezie.net; edudle@westbrook.me.us; dfortier@windhammaine.us; sjohnson@yarmouth.maine.us; lhinz@yorkmaine.gov; lleavitt@westbrook.me.us; ganderson@gorham.me.us; 'Christine Rinehart'; 'ablanchette@ci.scarborough.me.us'; mmclaughlin@oobmaine.com; jcooper@oobmaine.com; sbuckley@ci.scarborough.me.us; dar@portlandmaine.gov; dhediger@lewistonmaine.gov; dlessard@yorkmaine.gov; jmoulton@eliotme.org; dthomes@southportland.org; fdillon@southportland.org; bryder@orono.org; planner@hamdenmaine.gov; richard.may@bangormaine.gov; ecousens@auburnmaine.gov; tom.palmer@bangormaine.gov; jpond@ces-maine.com; brian.a.bernosky.naf@mail.mil; patrick.f.decker@maine.edu; abliss@freeportmaine.com; William Taylor; Witherill, Donald T; tedder.newton@epa.gov; Hoppe, Kathy M; Senechal, Marianne; Moody, Alison R; Joseph A. Laverriere; pfox@sacomaine.org; john.souther@maine.edu; robert.g.adam@maine.edu; snewan@preti.com; LaBrecque, Taylor S; sdonohue@maineturnpike.com; Brenda Zollitsch; Gretchen A. Anderson; Damon Yakovleff; Brian Rayback (brayback@PierceAtwood.com)
Subject: RE: MS4 - 8th Preliminary Draft MEPDES permit

Good Evening Gregg,

Thanks for issuing the 8th preliminary draft. We see that you addressed most of the ISWG comments dated 7/19/2019 and the action items from the 10/9/2019 stakeholder meeting. We had just submitted a revision to the changes that FOCB and CLF had proposed when you issued this draft, because we did not agree with all of their proposed changes. We were not able to conference with them to finalize any language, but I was able to speak with Ivy Frignoca, FOCB, today regarding some of the comments that ISWG and SMSWG are providing today: four comments and two questions on the 8th preliminary draft.

Comments:

1. Page 27 of 45: please change the minimum reporting concentration for enterococcus to 10 cfu/100ml to accommodate use of the IDEXX Enterolert E-Test. (Meagan Sims of Maine Healthy Beaches noted this error during our 10/17/2019 Dry weather workshop). 1. was addressed in 12/6/2019 Public Comment Draft

2. Page 29 of 45 regarding wet weather assessments:

The 8th draft language reads: *"The outcome of the assessment will be a list of outfalls identified for wet weather monitoring and testing by the permittee in the next permit cycle during wet weather conditions and the rationale for including these outfalls."*

On or before the expiration date of this permit, the permittee must draft a proposed IDDE plan for the next permit cycle that identifies the wet weather outfalls it has identified for wet weather monitoring based on the EPA New England

2. was NOT addressed in 12/6/2019 Public Comment Draft, but Fact Sheet explains that the modification to the IDDE Plan is just the list of outfalls and a prioritized schedule for assessing them. Looks okay to KLR, except for reference to Bacteria Source Tracking Protocol, which is a DRAFT document. Comment on this.

bacterial source tracking protocol or other acceptable protocol for the timing and frequency of wet weather monitoring to be completed during the term of the next permit cycle”.

We object to this requirement to draft a second proposed IDDE plan with wet weather monitoring incorporated. We do not believe it is appropriate to require us to do something in this permit cycle when the language for the next permit cycle (2026-2031) has not even been proposed. We agree with other clusters that are commenting that this section should revert to the language contained in the 7th draft. But if the DEP feels that additional detail needs to be provided to clarify the outcome of the assessment, we are offering the following language which should replace both paragraphs cited above:

“On or before the expiration date of this permit, the permittee must provide to the DEP the list of outfalls that are appropriate for wet weather monitoring, the rationale for including the outfalls on the list, the type of monitoring that will be completed for each outfall, the type of wet weather event to target, and a prioritized schedule for conducting the monitoring.”

We understand that wet weather monitoring will probably be required in the next permit cycle. We plan to develop this type of technical information during our wet weather assessments, and will provide it in a document for DEP review. But we believe that a full revision of a new IDDE Plan with wet weather monitoring should not be required in the current permit cycle until the permit language for the 2026-2031 permit is finalized.

3. Page 43 of 45 regarding UISs and TMDLs: 3. Paragraph 1 was changed as we requested.

Paragraph 1 should be changed to reflect the language that is in the current (2013) MS4 General Permit. This has always been an introductory paragraph, designed to be a general statement about how the General Permit relates to discharges to TMDL waters. Somehow the paragraph was changed in prior versions to reflect UISs, and it confuses the actual requirements related to TMDLs.

The wording the 8th draft also implies that additional activities will be required beyond those identified in paragraph 3 of this section. Under paragraph 3, MS4s will be proposing and fully implementing at least 3 BMPs for each UIS to assist in correcting water quality impairments. But we do not believe MS4s should be required to complete any other activities regarding TMDL waters that are not UISs.

MS4s should not become the primary entities responsible for correcting water quality impairments for other TMDL waters. The full weight of correcting these water quality impairments should not rest on our shoulders.

The following is current 2013 MS4 GP TMDL language that should replace paragraph 1 in the 8th draft:

If the waterbody to which a discharge drains is impaired and has an EPA approved TMDL, then the discharge must be consistent with the TMDL waste load allocation (“WLA”) and any implementation plan. This general permit does not authorize a direct discharge that is inconsistent with the WLA of any EPA approved TMDL.

In addition, Paragraph 3 should be revised to require that the additional BMPs for each UIS be included in the permit modification, unless the Department determines that the MS4 discharge is not causing or contributing to the impairment. By requiring that these BMPs are included in the permit modification, the language will require DEP to review and approve them. We agree with the 8th draft’s language requiring that the BMPs address a specific impairment from the MS4 discharge, and which allows permittees the latitude to develop their own BMP that is not one of the three other listed options. . In combination, these provisions will ensure adequate review of targeted BMPs that address the specific impairments of each UIS, and will maximize the protections of the Clean Water Act permit shield. Specifically, we suggest paragraph 3 be changed to the following language:

If the waterbody to which a point source covered by this GP discharges is an UIS (Appendix B), the permittee must propose in its SWMP at least three structural or non-structural BMPs that will be included, after review and approval, in the permit modification, unless the Department has determined the MS4 discharge is not causing or contributing to the impairment. The BMPs shall address a specific impairment from the MS4 discharge within the UA. Permittees may select BMPs from the following list: enhancing the BMPs found in MCMs 1-6, BMPs from an existing Department approved Watershed Management Plan, the additional BMPs found in Appendix D, BMPs for Discharges to Impaired Streams, of this GP; or another appropriate BMP proposed by the permittee. For receiving waters impaired in whole or in part by nutrient loading, including UISs covered by the Impervious Cover TMDL, permittees may propose measures designed to reduce nutrient loads into the MS4 system.

4. SWPPPs – pages 35 to 41: ISWG had provided a detailed re-write of these pages, taking language from the 2016 MSGP and modifying it to be applicable to MS4 facilities rather than industrial facilities. We attempted to clarify in our edits that BMPs should be applied to facilities to address the non-numeric technology-based effluent limitations listed in

3. Paragraph 3 was modified to increase the potential² for a permit shield, but there are a couple typos in the numbering/lettering. Words are not identical to what we proposed - but very close.

the MSGP (and added these to a new appendix E) removing references to "Control Measures" which are not defined in this GP. The Department did not incorporate these changes. We encourage the Department to review these comments again.

If the Department prefers to maintain the text in the 8th draft, we ask that you address the following comments:

a. page 38 of 45, Item 4 Procedures for Conducting Monitoring. This section is redundant with other sections of the SWPPP requirements, and also conflicts with the other sections in at least two ways. We suggest consolidating the information in Items 4 and 6. 4 a.1 was addressed (removed) in 12/6/2019 Public Comment Draft

4 a.2 (storm size) was not addressed

1. Item 4 states: *"The permittee must conduct sampling and analysis in accordance with a) methods approved by 40 CFR Part 136; b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136; or c) as otherwise specified by the Department. If the permittee monitors any pollutant more frequently than required by this General Permit using test procedures approved under 40 CFR Part 136 or as specified in this General Permit, the results of this monitoring must be maintained with the SWPPP."* But: Item 5 on Page 40 of 45 identifies that visual monitoring samples do not need to be collected in accordance with 40 CFR Part 136.

2. The storm event required here (0.1 inches of rain in 24 hours) conflicts with the storm event required for Item 5 Visual Monitoring on page 40 (1/4 inch of precipitation, with no duration specified).

b. Page 41 of 45 was not changed, but still references "Control Measures" that must be reviewed quarterly, but there are no requirements to apply control measures to potential pollutants. Instead, BMPs must be applied to all areas described in the summary of potential pollutant sources. But BMPs are not required to be reviewed quarterly. Please clarify the language and terminology here.

4 b. was mostly addressed - they rewrote this section and it is a little more clear. Removed most references to control measures, and Fact Sheet clarifies that BMPs and Control Measures can be considered the same.

Questions:

1. Page 32 of 45, Post Construction Runoff Control has a new sentence which states: *"See Appendix C of this GP for erosion and sediment control measures."* This sentence seems out of place because this MCM is about Post Construction maintenance and inspections, not the construction-based sediment and erosion control measures listed in Appendix C. Why did you add this here? This question was not answered, and the text is the same. We can repeat this question.

2. Page 37 of 45, Secondary Containment: We are requesting clarification regarding the requirement for secondary containment for containers with process or wastewater. What size and type of containers require secondary containment? Do the requirements apply only to exterior containers or also to containers that are indoors? And would the requirement apply to containers that hold liquids such as magnesium chloride? MS4s that exceed the Oil Pollution Prevention Regulations at 40 CFR Part 112 would already have SPCC plans and secondary containment for oil containers greater than or equal to 55 gallons (whether they are indoors or outdoors). MS4s that are Large Quantity Generators would also already provide secondary containment for their hazardous waste. But there are no other "Federal and State rules for primary and secondary containment" that we are aware of. Therefore this requirement will be difficult to comply with without additional information. Installing containment or level sensors and alarms may be capital projects requiring budget line items, so MS4s need to plan for this. This question was not answered and the text is the same.

We can repeat this question.

Thanks for the opportunity to comment on this language. Please contact us if you would like to discuss any of these comments or questions.

Integrated Environmental Engineering, Inc.
Kristie L. Rabasca, P.E.
207-415-5830 (cell)

From: Wood, Gregg <Gregg.Wood@maine.gov>

Sent: Monday, November 4, 2019 12:50 PM

To: Kristie Rabasca <krabasca@integratedenv.com>; Kavanah, Brian W <Brian.W.Kavanah@maine.gov>; Zachary Henderson <zhenderson@woodardcurran.com>; Andrea Dickinson <adickinson@cesincusa.com>; Brenda Zollitsch <bmzconsulting@aol.com>; 'Philip Ruck' <pruck@stillwaterenv.com>; Poirier, Rhonda <Rhonda.Poirier@maine.gov>; Aimee Mountain <Aimee.Mountain@gza.com>; jbranscom@maineturnpike.com; kristin.schock@navy.mil;

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Subject: RE: MS4 - 8th Preliminary Draft MEPDES permit

Good afternoon all:

I think we are almost to the finish line. Attached is the 8th preliminary draft of the MS4 permit. I will be out of town for the next two weeks so I want to keep this moving. In addition, I am aware that Sean Mahoney and Brian Rayback may have another sentence or two to throw into the mix. New language added or deleted from the 7th draft permit has been highlighted in **light blue**. The uncontested yellow highlighted text in the 7th draft has been accepted and is no longer highlighted. Please submit any comments you may have on the 8th draft permit by the close of business on **Tuesday, November 19, 2019**. I would really like to get this draft permit on the street for a formal 30-day comment period just before Thanksgiving. Thank you for your attention to this matter and appreciate your patience during this marathon.

From: Wood, Gregg

Sent: Thursday, June 27, 2019 9:41 AM

To: 'Kristie Rabasca' (krabasca@integratedenv.com) <krabasca@integratedenv.com>; Kavanah, Brian W <Brian.W.Kavanah@maine.gov>; 'Zachary Henderson' <zhenderson@woodardcurran.com>; 'Andrea Dickinson' <adickinson@cesincusa.com>; Brenda Zollitsch (bmzconsulting@aol.com) <bmzconsulting@aol.com>; 'Philip Ruck' <pruck@stillwaterenv.com>; Poirier, Rhonda <Rhonda.Poirier@maine.gov>; Aimee Mountain (Aimee.Mountain@gza.com) <Aimee.Mountain@gza.com>; 'jbranscom@maineturnpike.com' <jbranscom@maineturnpike.com>; 'kristin.schock@navy.mil' <kristin.schock@navy.mil>; 'carol.potter@maine.edu' <carol.potter@maine.edu>; 'cwojtyasiak@smccme.edu' <cwojtyasiak@smccme.edu>; Ivy Frignoca

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 Subject: MS4 - 7th Preliminary Draft MEPDES permit

Good morning everyone:

Attached is a 7th preliminary draft of the MS4 permit. I know a number of you will be going on vacation in the near future so we are putting this out for review comment with a closing date of **Friday, July 19th** by which to submit comments. Revisions from the 6th draft permit are highlighted in **yellow**. Thank you in advance for your attention to this matter.

Attachment 3b – ISWG/SMSWG Comments on 6/23/2020
Final Public Comment Draft

From: Kristie Rabasca
To: Wood, Gregg; Rhonda Poirier (Rhonda.Poirier@maine.gov)
Cc: Peter Newkirk; Zuzu Taytslin; John Kuchinski; Newkirk, Peter; Hebson, Charles; Damon Yakovleff; robert.malley@capeelizabeth.org; CCSWCD Staff; Ineleski@cumberlandmaine.com; jreynolds@town.falmouth.me.us; Justin Early; abliss@freeportmaine.com; pjoseph@freeportmaine.com; rburns@gorham.me.us; mlacroix@gorham.me.us; jcooper@oobmaine.com; mfoster@oobmaine.com; bnp@portlandmaine.gov; dar@portlandmaine.gov; jlaverriere@sacomaine.org; pfox@sacomaine.org; ablanchette@scarboroughmaine.org; MShaw@scarboroughmaine.org; SBuckley@scarboroughmaine.org; jfitch@scarboroughmaine.org; jotenti@smccme.edu; dthomes@southportland.org; Fred Dillon; pruck@stillwaterenv.com; robert.g.adams@maine.edu; john.souther@maine.edu; edudley@westbrook.me.us; KKelley@westbrook.me.us; lleavitt@westbrook.me.us; drfortier@town.windham.me.us; Gretchen A. Anderson; christine.rinehart@wright-pierce.com; rgraham@memun.org; sdonohue@maineturnpike.com; Taylor.S.LaBrecque@maine.gov; kerem.gungor@maine.gov; rkelton@portlandmaine.gov; James Bellissimo; Jon St. Pierre (jst pierre@sbmaine.us); Amy Aiguer; Town Manager; Steve Eldridge (townmanager@berwickmaine.org); Steve Robinson; scastellez@eliotme.org; Jessa Kellogg (jkellogg@kitterymeyme.org); Leslie Hinz (lhinz@yorkmaine.org); Dean Lessard; Zachary Henderson; richard.may@bangormaine.gov; Brenda Zollitsch; Andrea Dickinson; Aimee Mountain; Brian Rayback; jspaulding@stillwaterenv.com; cbelanger@stillwaterenv.com; Ali Clift; Chris Brewer; Jay Reynolds; Milligan, Tom; Donald T. Witherill (donald.t.witherill@maine.gov)
Subject: Comments from AVSWG, BASWG, ISWG, SMSWG, MEWEA, MMA, DOT, and MTA on 6/23/2020 MS4 Final Draft GP
Date: Friday, July 10, 2020 10:59:51 AM
Attachments: image001.png
 01 Table Statewide TMDLs MS4s 2020 07 08.xlsx
 02 Attachment E from CAMSGP amend 2019.pdf

Good Morning Gregg and Rhonda,

Thanks for providing the opportunity to comment on the Maine MS4 General Permit (GP) issued as Final Draft on 6/23/2020. Thank you also for incorporating so many of our comments over the course of the stakeholder process.

On behalf of ISWG, BASWG, SMSWG, AVSWG, Maine DOT, MTA, MEWEA, and MMA we are providing the following comments. We also incorporate by reference all of the comments we provided during the stakeholder process.

1. Page 5 of 54 (Part I(B)(1) Effective date of this General Permit): As stated in our comments on the 7th preliminary draft submitted via email on 7/19/2019, changing the Permit Year to be from September to August will significantly complicate the municipalities' budgeting processes for MS4 services because they will need to split the requirements for a single permit year across multiple fiscal years. All of the ISWG and SMSWG communities run on a fiscal year that begins on July 1, and most of the other regulated communities do also. We are asking that the Department consider the following alternative options:
 - a. Change the effective date to July 1, 2022 to maintain the July 1 to June 30 permit year. Although this would add Permit Year 9 to the current permit cycle, we believe this extension is justified given the extraordinary measures we have all had to take to address the health and safety issues associated with the COVID-19 pandemic (such as adjustments to work processes, budget constraints, and reduced staffing to ensure social distancing). This is our preferred alternative.
 - b. Keep the September 1, 2021 effective date by extending Permit Year 8 of this cycle to August 31, 2021 and shorten the first Permit Year of the next cycle to 10 months (running from September 1, 2021 to June 30, 2022). We have concerns about completing all required tasks within a shortened Permit Year 1, which would be exacerbated if the effective date extends out beyond September 1, 2021, but could organize our tasks to meet the shortened year if the Department would accommodate

this during SWMP approvals.

2. Page 11 of 54 (Part II(L) Dry Weather Flow): Please maintain the 72-hour dry period in the definition of Dry Weather Flow. Some outfalls have very large drainage areas that can take up to 72 hours to drain. Additionally, the 72-hour timeframe is referenced in the Dry Weather Inspection definition and this should be consistent with the definition of Dry Weather Flow (which now references 48-hours).
3. Page 15 of 54 (Part II(RR) Waters of the State): Remove the recent addition of *“(including wetlands)”* in the definition of Waters of the State. The definition of “Waters of the State” is set out in statute at 38 M.R.S. § 361. The Department does not have the authority to revise it pursuant to a general permit and having more than one definition in law is likely to create confusion.
4. Page 19 of 54 (Part III(A)(8) Permittee Specific DEP Order): We request that within 60 days of the end of the public comment period the Department issue a permittee specific DEP Order.
5. Page 21 of 54 (Part IV(B) Modified SWMP): We request 60 days to update the initial SWMP to include how the permittee will meet all requirements of the DEP Order and summarize comments received and addressed in the SWMP. Additionally, the last sentence of this paragraph states that to modify the schedule established in the DEP Order the *“permittee must file a permit application with the Department that includes a justification to formally modify the original permittee specific DEP Order.”* Please define what a *“permit application”* is in this instance, given that the program operates based on a notice of intent (NOI).
6. Page 21 of 54 (Part IV(B)(2) Keeping Plans Current): The requirement to allow the public to comment on changes made to the SWMP at least once per year is confusing. If a SWMP is not changed over the course of a year is the permittee still required to allow the public the opportunity to comment on the SWMP? Alternatively, if a permittee makes changes to their SWMP in the first month of the permit year can they wait until the end of the permit year before allowing the public to comment?
7. Page 22 of 54 (Part IV(B)(2) Keeping Plans Current, last paragraph): For best management practices (BMPs) that are not required for compliance with the GP, we suggest that the BMPs and/or implementation schedule should be amended ***“as appropriate without the need for public comment,”*** rather than *“as needed”* to avoid any confusion that such changes require public comment.
8. Page 28 of 54 (Part IV(c)(3)(e)(iv) Sampling dry weather flow): The Department has re-worded this section, but the typographic errors and omission of some words and concepts make it difficult to interpret. We are providing the following suggested revision: *“Where dry weather flow is present, the permittee must sample the discharge to determine if the discharge is an illicit discharge **and then must investigate** until either a source is identified, or it has been determined that the evidence of the illicit discharge is due to naturally occurring source(s).”* Also, the section has two subparts to it, with no “and” or “or” to clarify whether the permittee may choose between the subparts or must do both. Subpart 1 (Part IV(c)(3)(e)(iv)(1) Sampling

and analysis) has several typos which we have addressed at the end of this email, and subpart 2 (Part IV(c)(3)(e)(iv)(2) network investigation) is not needed considering Part IV(c)(3)(e)(iv) requires investigation *“until either a source is identified, or it has been determined that the evidence of the illicit discharge is due to naturally occurring source(s).”* Thus, we recommend clarifying the language in Part IV(c)(3)(e)(iv) about investigating an illicit discharge and then deleting Part IV(c)(3)(e)(iv)(2).

9. Page 31 of 54 (Part IV(C)(3)(g) SSO reporting): We have commented multiple times that the requirement to report Sanitary Sewer Overflows (SSOs) to the Department is already part of Wastewater Discharge Licenses for Sanitary Sewer Districts and Departments. The Department will be receiving duplicate reports of the same SSOs (one from a Sanitary Sewer operator, and one from an MS4 operator). We request again that you delete this requirement from the permit, or at a minimum adjust the language so that permittees are required to summarize ***“only”*** the SSO events ***“that discharge to the MS4”*** in their annual reports.
10. Page 30 of 54 (Part IV(C)(3)(f) Wet weather assessment, last paragraph): We would like to re-iterate our comment that we should not be required to conduct wet weather monitoring until the next (2026) MS4 General Permit becomes effective.
11. Page 34 of 54 (Part IV(C)(5)(b) Low Impact Development): The proposed language under Part IV(C)(5)(b) would require MS4s to create an ordinance or other regulatory mechanism requiring Low Impact Development (LID) to the maximum extent feasible, which will be very time consuming and costly for communities to develop and implement. If the Department feels it is appropriate to require LID for development projects, it should modify the state stormwater regulations to do so, not impose this requirement on MS4s to develop and implement on behalf of the State. In addition, the reference to LID seems misplaced in this section, which is about ensuring *“adequate long-term operation and maintenance of post construction BMPs.”* A requirement related to LID would make more sense under the Part IV(C)(5)(a) requirement to *“promote strategies which include a combination of structural and/or non-structural BMPs appropriate to prevent or minimize water quality impacts.”* The 2013-2018 MS4 permit requirement to develop and implement a procedure for notifying site developers to consider incorporating LID techniques was fairly effective for many communities. Some implemented ordinance requirements stating that developers either incorporate LID or provide a rationale with their Planning Board submittals as to why LID was not feasible at their site. If the Department must add LID language, please re-institute the 2013-2018 MS4 permit language.
12. Page 35 of 54 (Part IV(C)(6)(d)(1) Control measures): Please remove the total maximum daily load (TMDL) reference in this section. The GP already includes a section with requirements for TMDL waters and any TMDL requirements should be specified therein.
13. Page 36 of 54 (Part IV(C)(6)(d)(1)(d) Minimizing impervious areas) and page 44 of 54 (Part IV(C)(6)(d)(4)(a)(v) Minimizing impervious areas): These sections include requirements to consider *“infiltrating runoff onsite”* with costly green infrastructure options at bus garages,

public works facilities, and recycling centers. We understand these requirements are just copied over from the Maine 2016 Multi-Sector General Permit (2016 MSGP), but they have potentially large costly implications for MS4s, and are better suited for inclusion in statewide development regulations than in this GP.

14. Page 37 of 54 (Part IV(C)(6)(d)(2)(b)(iii) Dumpster Lids): Please remove the requirement to provide secondary containment for dumpsters, waste bins and roll-off containers that do not have lids. It is not consistent to require secondary containment or cover for roll-offs when storage piles can remain on-site uncovered and Solid Waste Rules do not require coverings for roll-off containers or dumpsters. In addition, it is extremely difficult and costly in terms of time and expense to comply with this requirement, especially for inert item residential drop off at recycling centers and transfer stations such as bulky roll-offs and wood waste roll-offs.
15. Page 37 of 54 (Part IV(C)(6)(d)(2)(b)(v) Pre-production plastic): Please remove the requirement to implement best management practices for pre-production plastic. Municipal transfer stations, bus garages, and public works facilities do not handle pre-production plastic.
16. Page 40 of 54 (Part IV(C)(6)(d)(3)(a) Availability of SWPPP): Previously the Department had indicated that SWPPPs must be updated prior to the effective date of the GP, not the date of the NOI submission. Additionally, the requirement to update SWPPPs prior to submission of a NOI is inconsistent with the next paragraph (Part IV(C)(6)(d)(3)(b) SWPPP preparation) that indicates the SWPPP must be up-to-date prior to the effective date of this GP. Please revise Part IV(C)(6)(d)(3)(a) Availability of SWPPP to be consistent with Part IV(C)(6)(d)(3)(b) SWPPP preparation, which requires permittees to update SWPPPs by the effective date of this GP.
17. Page 41 of 54 (Part IV(C)(6)(d)(3)(d) SWPPP Contents): This section has been modified to refer to a municipality rather than a facility; however, a SWPPP is required for each public works facility, transfer station, and/or school bus maintenance facility that the municipality operates in the MS4 urbanized area. Therefore, we see no reason to replace the term 'facility' with 'municipality' or to add the term "municipal operations". Is it DEP's intent to have municipalities maintain a single SWPPP that covers each public works facility, transfer station, and/or school bus maintenance facility operated by the municipality?
18. Page 41 of 54 (Part IV(C)(6)(d)(3)(d)(iii)(8) Aboveground Tanks): The reference to aboveground wastewater or process water containment tanks is more suited to industrial facilities. Please update this item to include the location of all 'aboveground tanks' on the map.
19. Page 42 of 54 (Part IV(C)(6)(d)(3)(d)(iii)(11) Locations of stormwater features): This GP defines the term 'outfall' differently than the 2016 MSGP. The Department should consider using the term 'discharge point' when referring to 'outfalls' in the SWPPP Contents. This will help to clarify that a discharge point from a public works facility should be monitored even if it is not an outfall to "waters of the State" or another MS4.
20. Page 43 of 54 (Part IV(C)(6)(d)(3)(e)(iv) Wastewater or process water containment): In previous comments on preliminary drafts, we asked if the secondary containment requirements are applicable to storage tanks for deicing fluids, such as magnesium chloride,

since these tanks do not have any federal or state requirements for secondary containment. Please clarify the types of containers that require secondary containment. And if the Department believes that deicing fluids require secondary containment, they should modify their rules so this requirement is statewide, not MS4 specific.

21. Page 45 of 54 (Part IV(C)(6)(d)(5)(a) Procedures for conducting monitoring): Please remove the requirement to conduct sampling and analysis in accordance with methods approved by 40 CFR Part 136 (three references). No sampling or analyses are required for MS4 facilities with SWPPPs, only visual monitoring and good housekeeping inspections are required. We believe these references are held over from the 2016 MSGP for Stormwater Discharges from Industrial Activities, which do have sampling and analysis requirements.
22. Page 47 of 54 (Part IV(C)(6)(d)(6)(c) Visual Monitoring): This section references the correct document number (DEPLW0768) for the Visual Monitoring of Stormwater Discharges Associated with Industrial Activity; however, the version of the document in Attachment E of the 6/23/2020 Final Draft GP has been superseded by the revised version dated June 12, 2017. Also, the 2016 MSGP includes the following waiver for visual monitoring: *"If a stormwater discharge event associated with a qualifying storm event does not occur during normal operating business hours an entire calendar quarter, the permittee must document in the SWPPP that there was no discharge to sample. Monitoring requirements under these circumstances are waived."* Please update the attachment with the 2017 version of document DEPLW0768 and include the 2016 MSGP visual monitoring waiver language in this GP.
23. Page 49 of 54 (Part IV(C)(6)(d)(8)(c) Corrective Action Report): There is no Part IV(6)(d)(18)(a-e) of the GP. Please clarify the conditions under which corrective action review is required.
24. Page 50 of 54 (Part IV(C)(6)(d)(9) Record Keeping): Remove this section because there is a section on Page 52 that describes record keeping requirements for this GP. In addition, there is no reason to require these records be maintained with the SWPPP. The Clean Water Act requirements allow "normal business records" to be used (accounting files, Purchase orders, etc.) and accessed rather than having to duplicate these records to keep them with the SWPPP. Also, the SWPPP does not require sampling and analysis of outfalls, so the statement requiring "outfall monitoring results" does not apply.
25. Page 51 of 54 (Part IV(E) Discharges to Impaired Waters): We are again requesting that Part IV(E)(1) be changed to reflect the language that is in the 2013-2018 MS4 permit. The 6/23/2020 Final Draft GP language in Part IV(E)(1) requires permittees to *"propose clear, specific and measurable actions to comply with the TMDL waste load allocations (WLA)"* in their SWMPs, which is redundant with the urban impaired stream (UIS) requirements identified in Part IV(E)(3). Under Part IV(E)(3), MS4s must *"propose and fully implement at least three structural or non-structural BMPs"* for each UIS to assist in correcting water quality impairments. The Department has spent much time and energy identifying the stressors for the UISs and has identified that Urban Stormwater Runoff has affected them. The MS4s have been working hard to address the impairments associated with UISs over the past 10 years and will continue to do so under this MS4 permit. But we do not believe MS4s should be

required to complete any other activities regarding non-UIS TMDL waters.

To further explain our rationale on this subject, we have attached a table (01_Table_Statewide_TMDLs_MS4s_2020_07_08.xlsx) showing the listing of statewide TMDLs that have been approved by the USEPA as of June 2020 and compared them to the UIS list. Most importantly, this table shows that every water that is listed in the Impervious Cover TMDL is also an Urban Impaired Stream. The table also shows that the other non-UIS TMDL waterbodies are either listed on the Bacteria TMDL or have their own TMDL. Though we have not done an exhaustive review, we have spent considerable time reviewing and summarizing this, even though we believe it is the Department's job to conduct such a review. Our cursory evaluation of the non-UIS TMDL waterbodies shows they fall into one of the following categories:

- a. Shellfishing areas subject to investigation and regulation by the Department of Marine Resources (DMR). MS4s already cooperate with DMR to conduct sampling and analysis and shoreline surveys under the DMR program and conduct investigations and remove illicit discharges under the MS4 program. If further work needs to be completed to correct impairments, it should be done by DMR under that program, and additional actions by MS4s are not appropriate. The challenges faced by shellfishing areas are not unique to MS4 municipalities; they are common throughout the Maine coast. Plans and implementation measures should be done on a statewide level to ensure consistency of regulations. A statewide approach will also ensure proper application of requirements of federal and state agencies with appropriate regulatory authority over shellfishing activities.
- b. Decades old TMDL documents that were prepared in 1998, 1999, and 2010 which have no specific actions or WLA related to stormwater issues. (e.g., Androscoggin River, Presumpscot River, Salmon Falls River, Penobscot River, and Piscataqua River Estuary). In fact, the 1998 Presumpscot River TMDL identifies a paper mill and various impoundments as sources of the impairment and has only the following discussion of stormwater as a source, (page 11 of the TMDL) "...upper Presumpscot should be closely watched in the future, since existing data may indicate the beginning of water quality problems from NPS pollution... if nonattainment continues to occur, a TMDL should be implemented for NPS Pollution". Clearly, there are not any actions required by the MS4s to address this TMDL, and the other older TMDLs have similar content. Similarly, the Androscoggin River/Gulf Island Pond TMDL does not contain any actions for MS4s and although there are Load Allocations for Non-Point Source Discharges, page 28 of this TMDL states that control on the non-point sources is not likely feasible.
- c. Freshwater listed in the bacteria TMDL, which states that MS4s must meet WLAs equivalent to the water quality standard for their freshwater classification. Under the MS4 IDDE program, MS4s will be sampling any dry weather flows for bacteria and investigating any potential illicit discharges. The IDDE work already required under the MS4 GP should be sufficient to address the TMDL requirement for these waters.
- d. Limited value waters, such as Mosher Brook where the MS4 applied for 604(b) funding to create a Watershed Management Plan to address the Bacteria TMDL impairment in 2018 and 2019. This application was denied by the Department in part

because “this small stream has very limited current and potential value” and because there is “Some good baseline data known, but many open questions would need to be answered” regarding the understanding of the water quality problems. Part IV(E)(1) of the 6/23/2020 Final Draft GP would require the municipality to do the work to identify the stressors and address the impairment(s) using their own general funds, even though the Department believes the small stream has limited current and potential value.

- e. De-listed Bacteria TMDL waters, such as the Piscataqua River (Falmouth and Cumberland) which is listed in the 2009 Bacteria TMDL; however, the 2016 303(d) list returned this waterbody to attainment status, so no MS4 actions should be required for this waterbody.
- f. De-listed individual TMDL waters, such as Highland Lake which had a TMDL issued in 2003 but was removed from the 303(d) list in 2010. The Highland Lake Association has been working for many years to correct impairments to this waterbody. In recent years, despite the 2010 delisting, the Highland Lake Leadership Team (HLLT) was established to ‘improve the water quality of Highland Lake’, primarily in response to a rare bacteria bloom that had been occurring. The HLLT is a partnership between the Town of Windham, Town of Falmouth, Highland Lake Association, DEP and CCSWCD. Although the cause of the bloom is still unknown, scientists and academia believe that reducing phosphorus to the lake is beneficial regardless. Therefore, the HLLT conducted a watershed survey, applied for and received 604(b) funds to update the watershed management plan, applied for and received 319 funds to implement a Phase IV NPS reduction project. Additionally, there were HLLT subcommittees that have reviewed, created and/or implemented ordinances and education & outreach to further this goal. The Town of Windham has budgeted approximately \$82,000, not including the Environmental and Sustainability Coordinator’s time, since 2018 to help accomplish these goals.

The following is the 2013-2018 MS4 permit TMDL language that should replace Part IV(E)(1) in the 6/23/2020 Final Draft GP:

If the waterbody to which a discharge drains is impaired and has an EPA approved TMDL, then the discharge must be consistent with the TMDL waste load allocation (“WLA”) and any implementation plan. This general permit does not authorize a direct discharge that is inconsistent with the WLA of any EPA approved TMDL.

As we stated in our comments on previous drafts: MS4s should not be the primary entities responsible for correcting water quality impairments for TMDL waters or for waters that have not yet received sufficient evaluation by the Department to have a TMDL document prepared. The full weight of correcting these water quality impairments should not rest on our shoulders.

Note that we have cc’d Don Witherill on this email and we encourage you to consult him and his Environmental Assessment staff who develop TMDL documents as you consider our comments. If after reviewing this, the Department still believes that MS4s need to take additional action for discharges to non-UIS TMDL waters they should either:

- Update the TMDLs to better describe what action should be taken, or
 - Provide guidance similar to Attachment E from the California MSGP that summarizes what TMDLs apply to stormwater discharges, and what additional actions are required for each impaired waterbody. Note that for many of the impaired waters, the California MSGP summary table states that the permittee must only comply with the General Permit requirements – no additional actions are required (see attachment named 02_Attachment_E_from_CAMSGP_amend_2019.pdf).
26. Page 52 of 54 (Part IV(E)(3) Urban Impaired Stream BMPs): Remove the sentence re-defining measurable in this paragraph, which insinuates it is the Permittee's responsibility to assess the water quality status during the term of the permit. The previous sentence already requires that the BMPs be clear, specific and measurable, as does the Remand Rule for this permit. The additional notations on assessment of water quality are not appropriate.
27. Page 52 of 54 (Part IV(G) Annual Compliance Report): No change needed to this section if the permit years continue to be July 1 to June 30. Otherwise, please adjust the Annual Report due date to provide adequate time to prepare the Annual Report.
28. Below is a list of typographic errors that we identified in the 6/23/2020 Final Draft GP:
- a. Page 3 of 54, first paragraph: 'foe' should be changed to 'for'
 - b. Page 28 of 54, Part IV(C)(3)(e)(iv)(1): please add the word 'is' to the phrase, "*Sampling and analysis must include, but is not limited to:*".
 - i. We believe you meant item (b) to read: "*ammonia, total residual chlorine, temperature, and conductivity; and*"
 - ii. For item (c), remove the comma after optical enhancers
 - c. Page 29 of 54, Part IV(C)(3)(e)(vii): please add the word 'and' to the phrase, "*The permittee may rely on screening conducted under previous permits to the extent it meets the requirements in Part IV(C)(3)(e)(iv) and no new construction or redevelopment has occurred in the outfall drainage area since the screening.*"
 - d. Page 30 of 54, Part IV(C)(3)(f), last paragraph: 'it' should be changed to 'in,' "*...the permittee must identify these wet weather outfalls in its written IDDE Plan...*"
 - e. Page 47 of 54, Part IV(C)(6)(d)(6)(c) Visual Monitoring: Remove the repetitive words "must be conducted" in second line.
 - f. Page 49 of 54, Part IV(C)(6)(d)(8)(c) Corrective Action Report, first paragraph, last sentence: delete period after "*...GP. triggers....*"

29. Will there be an opportunity to comment on the Fact sheet when it is issued?

Thank you again for the opportunity to comment on this draft of the MS4 General Permit.

Warm Regards,
Integrated Environmental Engineering, Inc.
Kristie Rabasca on behalf of:

- Interlocal Stormwater Working Group (ISWG)

- Southern Maine Stormwater Working Group (SMSWG)
- Bangor Area Stormwater Working Group (BASWG)
- Androscoggin Valley Stormwater Working Group (AVSWG)
- Maine Department of Transportation (Maine DOT)
- Maine Turnpike Authority (MTA)
- Maine Water Environment Association (MEWEA)
- Maine Municipal Association (MMA)



ENGINEERING

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EXHIBIT #5



For a thriving New England

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Submitted electronically

January 22, 2021

Mr. James W. Parker, Presiding Officer
Board of Environmental Protection
c/o Ruth Ann Burke ruth.a.burke@maine.gov
17 State House Station
Augusta, ME 04333-0017

Re: Friends of Casco Bay (FOCB) Appeal of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems

Dear Mr. Parker and Members of the Board:

As I noted to Mr. Wood of the Department of Environmental Protection little more than a year ago, Conservation Law Foundation appreciated the amount of effort and time that the Department and many stakeholders invested in reviewing, commenting on and working to improve the Department's General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems ("MS4s"). The final draft MS4 General Permit dated June 24, 2020 ("Draft MS4 Permit") reflected comments from a number of parties, including Friends of Casco Bay and the US EPA Region 1 and as such garnered CLF's support. However, the final MS4 General Permit dated October 15, 2020 ("Final MS4 Permit") omitted certain key language that had been part of the Draft MS4 Permit, leading, in part, to this appeal by FOCB and to a letter from EPA Region 1 dated November 18, 2020.

Both the FOCB appeal and the letter from EPA Region 1 raise strong factual and legal grounds for remanding the final MS4 General Permit to the Department in order to modify it consistent with the suggestions made by EPA Region 1 as to the effective date of the MS4 General Permit and the conditions governing post-construction stormwater management in new development and redevelopment.

Founded in 1966, CLF is a member-supported environmental advocacy organization that works to solve the problems threatening our natural resources and communities in Maine and throughout New England. Among those issues, CLF advocates to promote effective regulations, permits and strategies to reduce and minimize the significant impacts of stormwater pollution. These efforts are increasingly urgent in light of sea level rise and the growing severity of coastal storms exacerbated by climate change.

CLF respectfully urges the Board to remand the MS4 General Permit to the Department to make the changes required by the Clean Water Act and its implementing regulations.

Sincerely,

Sean Mahoney
Executive Vice President and Director, CLF Maine