

February 19, 2003

David Van Wie, Director
Land and Water Bureau
Maine Department of Environmental Protection
State House, Station 17
August, ME 04333

Dear Mr. Van Wie:

This letter is in response to David Ladd's request to Thelma Murphy of my staff for assistance in responding to an issue raised by the Maine Department of Transportation (ME DOT).

Mr. Ladd attached to his request a letter dated November 6, 2002 from Commissioner of ME DOT John G. Melrose to The Honorable G. Steven Rowe. The specific question raised by ME DOT is "Do highway maintenance garages conduct 'industrial activities' that require a storm water permit pursuant to federal National Pollutant Discharge Elimination storm water regulations?" Appended to Commissioner Melrose's letter is a memorandum dated October 22, 2002 by Sharon G. Newman, Esq., counsel for the Maine Turnpike Authority (MTA). Ms. Newman's memorandum evaluates the applicability of federal and state storm water regulations to MTA's vehicle maintenance operations.

Upon review, EPA concurs that storm water discharges from highway maintenance garages do not fall within the definition of storm water associated with industrial activity under EPA's storm water regulations. The federal definition of storm water discharges associated with industrial activity is found at 40 CFR 122.26(b)(14). The definition focuses on specified standard industrial classification (SIC) codes and narrative descriptions of certain activities. A facility included in one of the SIC codes or that meets one of the narrative descriptions may require a NPDES storm water permit. Highway maintenance garages are categorized by SIC code 16. This code is not included in those listed in the definition of storm water associated with industrial activity. Nor are highway maintenance garages included in any of the narrative descriptions in the definition. Storm water discharges from these facilities, accordingly, are not storm water discharges associated with industrial activity within the meaning of 40 CFR 122.26(b)(14).

EPA has the authority under 40 CFR 122.26(a)(9)(i)(D) to designate storm water discharges from certain facilities as requiring permit coverage even if those facilities do not discharge storm water associated with industrial activity. The regulation provides that the Director of the NPDES program may determine that a discharge or a category of discharges within a geographic area contributes to a violation of water quality or is a significant contributor of pollutants to waters of the United States. Based on inspections and other involvement with highway and public works garages, EPA New

England is concerned with the potential for discharges of various pollutants from these facilities and the resultant impacts such discharges may have on the environment. EPA is considering the possibility of designating storm water discharges from this category of facilities as a significant contributor of pollutants to waters of the United States in those geographic areas where EPA's Multi-Sector Industrial General Permit is in effect. Such an evaluation would include consideration of whether designation of such a category would be appropriate under Sector AD of the Multi-Sector Permit (Storm Water Discharges Designated by the Director as Requiring Permits). EPA would consult with Maine prior to proposing any such designation and would provide public notice and an opportunity for comment on the designation.

In addition to the main question raised by ME DOT Commissioner Melrose, the memorandum by MTA's attorney presents three conclusions regarding MTA's involvement in the storm water program. The conclusions are summarized in bold below, followed by EPA's response.

A. Storm water discharges from highway maintenance facilities do not meet the definition of storm water associated with industrial activity at 40 CFR 122.26(b)(14). As noted above, highway maintenance facilities are not included within the SIC codes or narrative descriptions set forth at 40 CFR 122.26(b)(14). Accordingly, MTA and ME DOT are not required at present to apply for coverage under §122.26(c) for highway maintenance facilities. However, permit coverage may be required in the event of designation of this type of facility as a significant contributor of pollutants pursuant to 40 CFR 122.26(a)(9)(i)(D). Notice would be given to the category of facilities affected in the event any designation proceeds.

B. MTA is a small MS4 as defined at 40 CAR 122.26(b)(16). EPA agrees. If MTA's separate storm sewer system is located within an urbanized area as defined by the latest Decennial Census by the Bureau of the Census, it is subject to an NPDES permit and must apply for a permit by March 10, 2003. In addition, it must have fully implemented a storm water management program no later than five years after permit issuance. As part of the program, it must develop a plan to address pollution prevention and good house keeping in municipal operations. Any operation/facility owned by MTA and located in a defined urbanized area must be addressed as part of an overall storm water management program.

C. The minimum control measures requirements of the small MS4 program, do not require development of a Storm Water Pollution Prevention Plan as described in the NPDES Storm Water Multi-Sector General Permit for Industrial Activities. EPA agrees. However, as stated previously, operations/facilities located within an urbanized area (including, where appropriate, vehicle maintenance and washing) must be accounted for in the overall program and specifically in minimum control measure 6 (Pollution Prevention/Good Housekeeping). Also, if highway maintenance facilities are designated as a significant contributor of pollutants to waters of the United States, operators of these facilities will be required to obtain NPDES coverage and to develop a storm water pollution prevention plan.

Finally, in addition to being subject to Phase II as a small MS4, MTA will be subject to Phase II under

the small construction program. Any construction project resulting in one or more acres of land disturbance, regardless of location, is subject to NPDES permit requirements.

I hope this letter is helpful. If you have any questions, please call Thelma Murphy of my staff at (617)918-1615.

Sincerely,

Linda M. Murphy, Director
Office of Ecosystem Protection

cc: Don Witherill, MEDEP
David Ladd, MEDEP