

MEMORANDUM

TO: Diana, Melissa, Jodi, Lynn and Cheryl

FROM: Gayle

DATE: 22 December 2004

**SUBJECT: COMMENTS ON WISCONSIN MUNICIPAL STORMWATER
GENERAL PERMIT (WI-S050075-1)**

General thoughts

Start with things that are good about each or all permits:

- Several elements are pointed out below

No one stormwater management plan due - several required components to meet 6 min measures, due at different times (see compliance schedule chart on page 15)

Be sure to include anything that you might later want to bring in a lawsuit

- No signs of how/whether antidegradation is applied (I need to review Wisconsin's policy and water quality standards)
- No signs of evaluation of 303(d) or TMDL status
- No signs of reasonable potential analysis

Notes from fact sheet:

- DNR retains authority to revoke general permit coverage and issue and individual permit, yet there are no criteria and no process described for that determination
- How will the DNR review and judge the standard of Maximum Extent Practicable (MEP) for each permittee?

Thoughts on the permit:

Applicability criteria

Permitted are (1.1)

- Good that it is required for areas that are adjacent to urbanized areas and are planned to have density of 500 people/square mile (more than federal requirements)
- Good that it is required for areas with 10K population or more and population density of 1000 people/square mile (federal regulations require that category to be evaluated, many states blowing it off)
- Good that it is required for areas adjacent to 10K/1000 people per sq mi density that are planned for density of 1000 people/square mile (more than federal requirements)

See <http://www.epa.gov/npdes/pubs/fact2-1.pdf> for EPA fact sheet on applicability.

Water Quality Standards (1.3)

- There is no process for determination of contribution to an exceedance of water quality standards. How will the municipality be expected to evaluate this? How will

the department determine it? The permit reads that “if the dept determines that the discharge of storm water contributes to an exceedance of any applicable water quality standard” it may require the permittee to develop and implement an action plan or submit data that demonstrate the water is attaining standards. However, the department cannot issue coverage that will allow exceedances of water quality standards, nor can they issue coverage when it will allow contribution to existing impairments (without TMDLs or if TMDLs have not adequately addressed the additional stormwater pollution contribution). There is no description of how these scenarios will be identified and addressed. (1.3)

- It is very good to have the narrative prohibitions on discharges. They are the equivalent of general water quality criteria called “free froms” often found in water quality standards. (1.4) The last condition, referencing “beneficial uses” may stand for a tier 1 antidegradation review.

Notice of Intent

- It is good that the coverage is not effective until the department sends a letter authorizing coverage. (1.6.2)
- Good that the NOIs are going to be available on the DNR website. (1.7)

Exclusions (1.9)

- Agricultural facilities are excluded because of statutory exemption from needing storm water permit coverage. Perhaps this should be scrutinized carefully (s. 281.16(1), Wis. Stats.)
- Storm water discharges into wetlands, endangered and threatened resources and historic properties are excluded because discharges need to conform with other Wisconsin regulations and statutes.

Permit conditions (2)

- What is the basis on which the department will determine that a permit condition is not appropriate?
- Illicit discharges – to the “maximum extent practicable” eliminating leakage from sanitary conveyance systems into the MS4 (2.3.4.5)

Construction Site Pollutant Control (2.4)

- Applying beyond the federal requirements for municipalities or construction sites – adding adjacent developing areas that are planned to have a minimum density of 500 people per square mile and developing areas whose runoff will connect to the MS4 (more likely to be addressed) (2.4.1.1.1) – good
- Municipalities are instructed to get authority from Dept of Commerce for the regulation of public buildings and places of employment (2.4.1.1.3) – seems good, seems like DNR isn’t thrilled with the Commerce Dept authority over public building construction
- Doesn’t say anything about requiring assessment of current uses and condition of water quality (303(d), TMDL, high quality, ORW, ERW)

Post-construction Storm Water Management (2.5)

- Applying beyond the federal requirements for municipalities or construction sites – adding adjacent developing areas that are planned to have a minimum density of 500 people per square mile and developing areas whose runoff will connect to the MS4 (more likely to be addressed) – good
- Requiring municipalities to have long term maintenance requirements as part of their ordinance (won't just be part of the state permit) – good
- Doesn't say anything about requiring assessment of current uses and condition of water quality (303(d), TMDL, high quality, ORW, ERW)

Storm Water Quality Management (2.7)

- Specifically for urban areas, not including areas regulated by construction or post-construction ordinances
- Modeling of TSS and phosphorus loads to determine baseline and current controls in place to identify appropriate credits toward 20% reduction goal

Storm Sewer System Map (2.8)

Should also include overlays for designated uses, impaired waters, TMDLs, ORWs, ERWs, wetlands, presence of endangered or threatened species and historic property.

Annual Report (2.9)

Identification of water quality improvements or degradation – very good! But also needs to be built into initial plan and revisions to plan after being included in each annual report.

Compliance Schedule (3)

See the chart. It describes the timing of each requirement and shows how the municipality is required to submit and implement ordinances and programs on different schedules within the three years leading to March 10, 2008 when it all must be in place.

Standard conditions

- Compliance schedules – reports of noncompliance submitted in writing within 14 days after the scheduled due date, no explanation of enforcement or penalty for non compliance
- Noncompliance – written report within 24 hours if it endangers public health or environment, or included with annual report (needs to be watched closely, noncompliance reported annually could have great impacts over time even if not immediate ones); no explanation of enforcement or penalty for noncompliance
- Bypass – no discussion about how many bypasses necessitate revisions to the design capacity (4.7)
- Records Retention – no discussion of how the public can get a hold of this information

Definitions to note:

- Maximum extent practicable
- No controls condition

Bullets on the regulations

-will review

Notice of Intent form

-will review