UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19103-2029

Mr. Ron Furlan, P.E.
Division Manager
Planning and Permits Division
Bureau of Point and Non-Point Source Management
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

JUL 22 2015

Re: Draft NPDES General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s)

Dear Mr. Furlan:

Thank you for the opportunity to review the above-referenced draft permit, which was received June 8, 2015 from the Pennsylvania Department of Environmental Protection (PADEP) via email from Andrew Gaul. Based on EPA's review to date, we are providing the following preliminary comments, which serve to clarify and refine the draft permit in order to ensure compliance with 40 CFR 122 and to meet EPA's expectations for effective municipal stormwater permitting within the Region. Furthermore, EPA understands that this permit has been published for public review and comment concurrent with EPA's review. If any substantive changes to the permit result from EPA's review, PADEP is reminded that additional public comment may be warranted.

Areas of greatest concern to EPA include, but are not limited to:

- The draft permit provides numeric reductions for sediment and phosphorus but not nitrogen. Pollutants of concern listed in the Chesapeake Bay Total Maximum Daily Load (TMDL) as well as a number of local TMDLs includes sediment and nutrients. By PADEP's own definition in the Pollutant Reduction Plan (PRP) Instructions document submitted as part of the draft permit package, the term nutrients includes both total phosphorus and total nitrogen. For the permit to be silent on a numeric reduction requirement for nitrogen is not acceptable. Federal regulations at 40 CFR 122.44(d) require that NPDES permits contain limitations to control pollutants which will cause an excursion above water quality standards and be consistent with the assumptions and requirements of allocations developed under an approved TMDL. If no reduction for nitrogen is provided in the permit, it can be considered in direct non-compliance with regulations. This would constitute grounds for EPA's objection to the permit.

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- In a similar vein, the fact sheet that accompanied the draft permit states on page 7 that PADEP chose to not establish a reduction requirement for total nitrogen because most BMP reductions for sediment will also achieve reductions for total phosphorus, since phosphorus is typically bound to sediment, but total nitrogen reductions are generally more difficult to achieve. While this may be true, it is not an adequate discussion of the decision whether or not to include a numeric nitrogen reduction in the permit. The fact sheet must be revised to include a discussion of the Department's determination of what a realistic reduction for total nitrogen is for permittees to meet the Maximum Extent Practicable standard in achieving reductions required by nutrient TMDLs.

- Additionally, the fact sheet must also include an explanation of how this permit will achieve the allocations assigned to the MS4 urban sector in the Chesapeake Bay TMDL by 2025. The fact sheet shall outline PADEP's strategy and describe how the Phase III Watershed Implementation Plan (WIP) will be modified to reflect Pennsylvania's change in its approach from previous WIP iterations.

- The draft permit states that moving forward, PADEP intends to use the annual report as a substitute for the Notice of Intent (NOI) for continuing coverage under the general permit. PADEP is reminded that in order for the Annual Report form to also be used as an NOI, the Annual Report form must include all of the regulatory requirements for small MS4 permit coverage which can be found in 40 CFR 122.33(b) and 122.34(d). EPA would also require a copy of the Annual Report form to review as part of the permit package to ensure that it is consistent with the federal requirements prior to allowing PADEP to partake in this practice.

- EPA is pleased that the PRP Instructions document requires all applicants within the Chesapeake Bay watershed to use effectiveness values identified by the Chesapeake Bay Program, available through the Chesapeake Assessment Scenario Tool (CAST) to calculate reductions from selected Best Management Practices (BMPs). However, the instructions also allow for discharges outside of the watershed to use the PA Stormwater Best Practices Manual, which is an outdated document that contains distinctly different values than CAST. For example, street sweeping effectiveness values from CAST are 3%, 3% and 9% for nitrogen, phosphorus and sediment, respectively. Conversely, the PA BMP Manual lists effectiveness values of 50%, 85% and 85%. The permit cannot adequately address water quality impairments if it allows permittees to use such diverse values to determine the level of effort that permittees are required to implement to achieve allocated reductions.

- On page 2 of the draft permit under the heading "SCOPE", it states that the "PAG-13 General Permit is intended to provide NPDES permit coverage to existing or proposed regulated small MS4s…" MS4s are automatically regulated by US Census data or designated by PADEP in accordance with their policy. The permit cannot grant coverage to a "proposed" entity. It is unclear what is meant by this term.

- 40 CFR 122.34(b)(4)(iii) and EPA encourage PADEP to include a requirement in the permit as a BMP under Part C.I.B.4 "to provide appropriate educational and training measures for construction site operators."

- The PRP Instructions document makes mention of the term municipal separate storm sewer (MS3). EPA recommends this term be taken out of the document to avoid confusion with the term MS4 and cause permittees to question the usefulness of this important guidance.

- Appendix D allows the permittee to make modifications to scheduled milestones in the PRP if they determine that they cannot achieve said milestone(s) or wish to modify proposed BMPs. Since the PRP has to be approved by PADEP, any modifications should be approved by the Department as well. The permit should be amended to state that PADEP approval is required before any changes to the PRP are implemented.

In addition to the comments listed above, EPA is providing the enclosed mark-ups of the draft permit and factsheet with our supplemental comments. In accordance with the terms of our Memorandum of Agreement with PADEP, EPA has 90 days, or until September 6, 2015 to provide additional comments and/or object to this permit. If you should have any questions, please do not hesitate to contact me, or have your staff contact Mrs. Liz Ottinger at 215-814-5783.

Sincerely,

Brian P. Trulear

Brian Trulear, Chief
NPDES Permits Branch
Water Protection Division

Enclosures

cc: Andrew Gaul, PADEP