



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 8, 2005

Stephen R. Pritchard, Acting Commissioner
Massachusetts Executive Office of Environmental Affairs
Department of Conservation & Recreation
251 Causeway Street, Suite 600
Boston, MA 02114-2104

Re: National Pollutant Discharge Elimination System (NPDES) General Permit for Storm
Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s)
Permit Numbers: MAR042047 (Division of Urban Parks and Recreation)
MAR042037-42046 (Division of State Parks and Recreation)

Dear Commissioner Pritchard:

On March 2, 2005, several members of my staff and a representative from the Massachusetts Department of Environmental Protection met with representatives of your agency. The purpose of the meeting was to review the status of the Department of Conservation and Recreation's ("DCR") required Notices of Intent ("NOI") seeking permit coverage under the National Pollutant Discharge Elimination System ("NPDES") General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems ("MS4s"). The meeting was informative for all parties.

The purposes of this letter are two-fold. First, we wish to provide you with the status of DCR's NOI submissions and to advise you of EPA's intention to work with DCR in its efforts to comply with Clean Water Act storm water requirements. Second, this letter is intended to advise you of DCR's current non-compliance with the Clean Water Act and the potential implications of such non-compliance.

The current status of DCR's NOI submissions is as follows:

State Parks: DCR submitted NOIs for ten state parks operated by its Division of State Parks and Recreation. In July 2004, EPA authorized discharges from eight of the state park MS4s and in September 2004, EPA authorized discharges from the remaining two state park MS4s. While EPA deemed the state park NOIs to be administratively complete, there are deficiencies with respect to various aspects of the Storm Water Management Program ("SWMP") component of the NOIs that DCR will need to address. Additionally, EPA believes that there may be additional state parks for which permit application is required but for which DCR has failed to seek permit coverage. If there are discharges from such parks for which DCR has not sought permit coverage, DCR is in violation of the Clean Water Act, 33 U.S.C. § 1311, for discharges of storm water from these facilities without a permit.

Urban Parks: DCR submitted one NOI for its Division of Urban Parks and Recreation facilities. This NOI is administratively incomplete and is also substantively deficient in numerous respects. Accordingly, EPA has *not* granted DCR authorization to discharge from Urban Parks facilities which are subject to storm water permitting requirements. DCR is therefore discharging from these facilities without a permit in violation of the Clean Water Act, 33 U.S.C. § 1311.

Division of Water Supply Protection: DCR has not sought permit coverage for any of its facilities within this Division. Discharges from at least some of these properties may be automatically designated as requiring permit coverage under the Phase II Storm Water Rule. If there are discharges from such properties for which DCR has not sought permit coverage, DCR is in violation of the Clean Water Act, 33 U.S.C. § 1311, for discharges of storm water from these facilities without a permit.

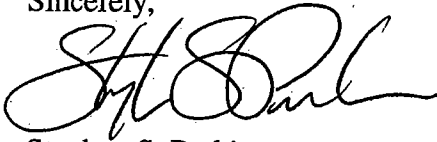
DCR will continue to violate the Clean Water Act until such time as it submits complete NOIs for all facilities within its jurisdiction that require MS4 storm water discharge permit coverage and obtains authorization to discharge pursuant to the Small MS4 General Permit (or an individual NPDES permit if appropriate). DCR's failure to submit complete NOIs and DCR's continued discharge without authorization may result in an enforcement action by EPA pursuant to the Clean Water Act, 33 U.S.C. § 1319. Further, please be advised that this letter does not constitute a waiver of any enforcement rights. EPA reserves the right to seek any and all remedies available under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, as amended, for any violation of the Clean Water Act. You should also be aware that the Charles River Watershed Association ("CRWA") and the Conservation Law Foundation ("CLF") requested a hearing on your NOIs, among others, at which they submitted comments on the adequacy of DCR submissions. The Clean Water Act provides citizens, including environmental groups like CRWA and CLF, the right to sue violators of the Act.

The EPA Region 1 Office of Ecosystem Protection will shortly provide to you under separate cover a detailed discussion of the actions that DCR needs to take to come into compliance with Clean Water Act storm water requirements. EPA fully expects that DCR will expeditiously

address the deficiencies to be outlined in this letter. EPA is committed to assisting municipalities and public agencies such as DCR in fulfilling their compliance obligations under the Phase II Storm Water Rule. In this regard, EPA has endeavored to assist DCR in identifying DCR facilities with discharges requiring permit coverage and will continue to do so. EPA will likewise continue to provide assistance to DCR in its efforts to rectify deficiencies with respect to the NOIs that DCR has submitted to date.

We appreciate your efforts and attention in addressing storm water management. To discuss specific issues related to the NOIs, please contact David Gray at 617-918-1577 or Gray.Davidj@EPA.GOV. To discuss legal issues related to this matter, please contact Kathleen Woodward, Senior Enforcement Counsel, at 617-918-1780 or Woodward.Kathleen@EPA.GOV.

Sincerely,



Stephen S. Perkins
Director, Office of Environmental Stewardship

cc: Nicholas A. Vontzalides, DCR Deputy General Counsel
Ellen Roy Herzfelder, Secretary, Massachusetts Executive Office of Environmental Affairs
Robert W. Golledge, Jr., Commissioner, Massachusetts Department of Environmental Protection