



**HOME BUILDERS & REMODELERS ASSOCIATION
OF CONNECTICUT, INC.**

3 Regency Drive, Suite 204, Bloomfield, CT 06002
Tel: 860-216-5858 Fax: 860-206-8954 Web: www.hbact.org

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October 6, 2015

(via email: deep.adjudications@ct.gov)

Brendan Schain
Hearing Officer
Department of Energy and
Environmental Protection
Office of Adjudications
79 Elm Street
Hartford, CT 06106-5127

Dear Mr. Schain,

These comments are being submitted pursuant to the Notice of Public Informational Meeting, General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4 GP). The HBRA of Connecticut is a professional trade association with about eight hundred (800) member firms statewide employing tens of thousands of CT's citizens. Our membership includes residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. We build 70% to 80% of all new homes and apartments in the state each year and engage in countless home remodeling projects.

We appreciate the opportunity to comment on the MS4 GP. As background, the HBRACCT intervened in the agency's current Construction Activities Stormwater GP. Our intervention in that GP, as well as the intervention of the CT Fund for the Environment (CFE), resulted in a settlement of respective issues after several years of negotiation (see Final Decision in the matter of General Permit, DEP-WPED-GP-015, dated August 21, 2013).

Importantly for our comments on the MS4 GP, the regulatory threshold under our settlement agreement with DEEP and CFE on the Construction Activities Stormwater GP was and is one (1) acre of soil disturbance. However, DEEP is now proposing through the MS4 GP that municipalities require soil disturbances down to one-half (½) acre be regulated as noted below.

If the intent or effect of this provision is to force soil disturbances of ½ acre up to 1 acre to comply with the provisions or requirements of the Construction Activities Stormwater GP, **then we consider this provision in the MS4 GP to be a breach of our settlement agreement on the Construction Activities GP.** For example, contrast the language of the Construction Activities Stormwater GP with the language in the MS4 GP.

Construction Activities GP, Section 3(d) (page 17 of 45): "For construction projects with a total disturbance of between one and five acres, the permittee

shall adhere to the erosion and sediment control land use regulations of the municipality in which the construction activity is conducted, as well as the Guidelines and the Stormwater Quality Manual.”

MS4 GP, Section 6(a)(4) (page 21 of XX), “The permittee shall implement and enforce a program to control stormwater discharges (to its MS4) associated with land disturbance or development ... activities from areas with one half acre or more of soil disturbance Such program shall include the following elements:

(A) Legal Authority

(i) The permittee shall establish an ordinance, bylaw, regulation, standard condition of approval or other appropriate legal authority that requires: developers, construction site operators, or contractors to maintain consistency with the 2002 Guidelines ..., the 2004 Connecticut Stormwater Quality Manual, ... and all stormwater discharge permits issued by the DEEP”

Therefore, DEEP is extending the reach of its Construction Stormwater GP from 1 acre or more of soil disturbance to ½ acre or more. It's just doing it through mandating municipalities do it. While, technically, no language of the Construction Activities Stormwater GP is changed, effectively it is, contrary to what DEEP, CFE and the HBRACT agreed to in 2013. Accordingly, we strongly urge the DEEP to change the threshold in its MS4 GP Section 6(a)(4) from “one half acre or more ...” to “one acre or more of soil disturbance ...” to not only be consistent with the Construction Activities Stormwater GP but also to honor the settlement agreement to which all parties in good faith signed.

Similarly, the post construction control measures contained in the MS4 GP seem to be more strict than those negotiated in the Construction Activities Stormwater GP. Compare the post construction control measures provisions of the two GPs:

Construction Activities GP, Section 5(b)(2)(C)(ii) (page 32 of 45): “The site design shall incorporate runoff reduction practices, low impact development (‘LID’) practices or other measures”

MS4 GP, Section 6(a)(5) (page 23 of XX), “The permittee shall establish an ordinance, bylaw, regulation, standard condition of approval or other appropriate legal authority that requires, to the MEP, that the permittee shall first consider the use of low impact development (‘LID’) and runoff reduction site planning and development practices prior to the consideration of other practices in its land use regulations, guidance or construction project requirements to meet or exceed those LID and runoff reduction practices identified in the Stormwater Quality Manual. ...”

So, while the requirement in the MS4 GP is slightly tempered with the caveat of making such requirements to the Maximum Extent Practicable (MEP), in the Construction Activities Stormwater GP, three options are given equal weight for post construction control measures, while the MS4 GP requires municipalities to adopt a requirement placing more weight on LID and runoff reduction practices over other measures. This removes some level of flexibility for post construction control practices offered in the Construction Stormwater GP. It also mandates the use of LID measures whereas in the Construction Activities Stormwater GP LID measures are to be considered on equal footing with other options. Moreover, the MEP caveat in the MS4 GP post construction requirement should be defined in Section 2 so that there is a consistent understanding among all municipalities of the meaning of maximum extent practicable.

Again, we urge DEEP to remain true to our settlement on the Construction Activities Stormwater GP and not extend that GP's reach or change its provisions through requiring municipalities to be its implementing force.

Thank you again for the opportunity to comment on the proposed MS4 GP.

Sincerely,

William H. Ethier, CAE
Chief Executive Officer

Cc: Christopher Stone, DEEP, BMMCA-Water permitting and Enforcement Division
(chris.stone@ct.gov)