



June 9, 2010

By electronic transmission

Attention: Desk Officer for EPA
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Water Docket
United States Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Caswell F. Holloway
Commissioner

Carter H. Strickland, Jr.
Deputy Commissioner
for Sustainability

Re: Information Collection for Regulated
Municipal Separate Storm Sewer Systems (MS4s)
Docket ID No. EPA-HQ-OW-2009-0817

To Whom It May Concern:

The New York City Department of Environmental Protection (DEP) appreciates the opportunity to comment on the proposed *Regulated Municipal Separate Storm Sewer Systems Questionnaire* (Questionnaire) as well as on its potential use as a data collection tool to support an additional, nationwide stormwater management rule.

The Questionnaire seeks detailed information about various aspects of MS4 programs. As with any potential national data collection effort or rule, DEP seeks to ensure that EPA's efforts incorporate sufficient flexibility to account for local water quality, public health, financial capabilities, investments in other pollution controls, and other conditions. As an agency of the nation's largest and most densely populated city, DEP is particularly concerned about one-size-fits-all approaches to water quality and their potential affect on New York City's overall quality of life and potential for growth. These broader measures are critical to counteracting the low density development elsewhere that is the root cause of much non-point source pollution and greenhouse gas emission. DEP's specific comments follow.

1. The Questionnaire should seek information about water-borne disease outbreaks and other data to establish the public health need for increased stormwater controls relative to other issues. This connection cannot be presumed, particularly in coastal cities where the ambient saline water is not used as a public drinking water supply. Similarly, the Questionnaire should seek site-specific information about the ecological effects of MS4 discharges relative to other sources. Public health and ecological effects depend in great

part upon tidal flow and other characteristics of receiving waters, and that information must be gathered to support further action in this area.

2. In addition, the Questionnaire should seek information about the applicable state water quality standards and the extent to which they are impaired by MS4 discharges relative to other sources. Flexible standards tied to the characteristics of individual waterbodies are an important structural element of the Clean Water Act. Reaching those standards, where attainable, must remain the goal of all municipalities and be the basis for additional regulations. In New York City, the biggest challenges to attaining the water quality standards established by the New York State Department of Environmental Conservation (NYSDEC) are combined sewer overflows (CSOs) and nitrogen, not MS4 discharges.
3. The Questionnaire does not gather information about weather. This is a critical factor for determining the need for and efficacy of additional stormwater controls, and would be subsumed in the data gathered in response to the first and second numbered comments above. DEP believes that this location-specific information will illustrate that appropriate stormwater practices may vary in MS4s in arid, mild, or humid climates.
4. As currently structured, the financial capabilities section focuses on general financial information rather than overall expenditures on water quality and environmental protection. From 2002 to 2009, New York City spent more on capital projects for water quality than on education, housing, sanitation, or other pressing social needs. Within the water quality category, New York City is currently engaged in several projects to address specific water quality challenges, including point source discharges of nitrogen. As a result, the City has committed more than \$5 billion to wastewater infrastructure and \$1.5 billion in sewer improvements since 2002. This has allowed us to achieve secondary treatment removal standards system-wide and to reach other benchmarks. The draft Questionnaire's focus on specific categories of stormwater-related expenditures could distort municipalities's actual history of investment in water quality improvement strategies.

Regarding wet weather challenges, DEP is focused on reducing CSOs to levels that will attain applicable water quality standards. Since 2002, DEP has spent \$1 billion on CSO-related capital projects. Over the next decade, the City will invest approximately \$6 billion in additional wastewater treatment and CSO reduction controls. These improvement projects, combined with ongoing system optimization and rehabilitation programs, will allow significant additional volumes of wastewater and stormwater to be treated during dry and wet-weather events. DEP will continue to prioritize capital projects based on the City's most immediate public health concerns and most significant sources of water quality impairments. The Questionnaire should provide an opportunity for MS4 communities to clarify the other steps taken to achieve water quality goals, outside of the types of expenditures addressed in its specific questions. Further, any stormwater rule subsequently proposed should provide municipalities with the flexibility to direct scarce public resources towards the most-effective pollution controls, as New York City has done.

5. The series of questions on municipal finances should request information about demographics on a census tract or zip code level, where available, so as to determine more accurately the affordability of additional requirements. Large municipalities such as New York City contain

concentrations of low-income households that can be masked by overall median household income. The overall financial burden on our most vulnerable populations, including relative shelter and food costs, must be taken into account.

6. The Questionnaire should gather data about the history of water rates. Many municipalities have been forced to request significant price increases year after year to pay for water infrastructure. The recent history of any rate increases can be a significant limitation on an MS4 community's ability to pay for additional requirements.
7. Reliance on a standardized questionnaire may mask the complexities of stormwater-related issues and the unique conditions of larger municipalities. New York City is an older, ultra-urban environment with a population density that is twice that of other large U.S. cities (and Manhattan and certain central business districts are more densely populated than the city average). Today, New York City is home to over 8.4 million people. Over 70 percent of the city's land area is covered with impervious surfaces, building footprints typically consist of lot line-to-lot line building coverage, and the right-of-way is underlain by complex webs of water, electric, gas, and telecommunications utilities, subways, and sidewalk vaults. Bedrock lies just below the surface in many areas of the city, while other areas have a high water table in otherwise porous soils. These factors affect the feasibility of certain stormwater control techniques and should be elicited in the Questionnaire.
8. The Questionnaire appears to be focused on retention controls rather than detention controls. While DEP and other City agencies are in various stages of implementing green infrastructure pilot project to evaluate the performance of infiltration technologies in New York City, DEP expects that the constraints described in the previous paragraph will mean that developers and owners will continue to rely on detention systems. These systems should not be discounted. They partially restore natural hydrologic cycles by reducing peak flow, which protects sewer systems and receiving waters alike. Stormwater management requirements should be based on a municipality's density and development patterns, geologic and subsurface conditions, and best available technologies. Municipalities should have the flexibility to determine the appropriate range of stormwater objectives and options for new construction and retrofit projects. In New York City, a fair and consistent citywide stormwater management requirement for development in both the combined and separately sewer areas of the City would likely rely, in part, on detention strategies.
9. The Questionnaire should collect data about redevelopment trends. In growing areas, performance standards for new construction can be a highly effective method for controlling stormwater pollution.
10. It is unclear from the Questionnaire and supporting documents how the EPA will obtain consistent results about factors such as flow rates and financial information, or how it will establish a national baseline.

As EPA further develops its forthcoming stormwater management rule, DEP would appreciate the opportunity to engage directly with the Headquarters Office that is generating that proposal. Please do not hesitate to contact me with any questions.

Very truly yours,

/s/ Carter H. Strickland, Jr.

Carter H. Strickland, Jr.
Deputy Commissioner for Sustainability

Cc (by electronic mail):

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