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Steven Chester, Director  
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Dear Mr. Chester,

Having reviewed the draft permit to begin April 1, 2008, there are several comment and concerns in regards to this new permit. The first concern does not have to do with the permit itself, but the MDEQ's lack of notification in regards to this permit. Currently the only formal written correspondence we have received from the MDEQ in regards to this draft permit was a letter in September 2007, notifying us that the October 1, 2007 application has been delayed. None of the permittees within Genesee County were notified by the MDEQ in writing that the draft permit was available for Public Notice. We found out through our consultant, who had to call Dave Drullinger from the MDEQ to get detailed directions on how to find draft permit on the internet.

The original purpose of having both a jurisdictional permit and a watershed permit was to allow the watershed permittees to work together to facilitate involvement of watershed jurisdictions, agencies, organizations and the general public to develop the watershed management plan (WMP). The watershed plan was to address the local concerns for that particular watershed. Since 2003 after the permittees spent a lot of time and money to develop a WMP, the MDEQ came out with their "guidance". At that time the Flint and Shiawassee Watershed workgroups were ready to implement the WMP(s). Instead much more time and money was spent rewriting WMP's to meet the MDEQ's changing requirements. The new 2008 permit requirements will have the permittees within these watersheds once again spending time and money that was going to implementation on planning. Throughout this new permit large sections of once were "guidance" have now been placed within the permit specifying how work will be done. We do not believe that the "guidance" by the State should be in the permit, it should remain guidance.

**I.A.2.a. Discharge Point Locations:** We understand the need of MDEQ to legally know what is being permitted through the MS4 program. In order to meet this need, we recommend the MDEQ include the same language as is currently contained in the current NPDES MS4 permit. This language requires the permittees to supply information to MDEQ on their known outfalls. At the same time, the IDEP also provides the Department further information by requiring updated information as new outfalls are identified.

**I.A.2.b. Discharge Point Labeling:** Outfall labeling has been conducted by some permittees as a method of internal tracking. However, it is not appropriate to require this in the permit. Each permittee must already supply the MDEQ a location of the MS4 outlets with Latitude and Longitude. Although some permittees may only have a few MS4 outfalls, some of the cities and Counties can have hundreds to thousands of outfalls. It would be a very time-consuming and expensive activity that will not lead to water quality improvements. In addition, marking open ditches in some sort of permanent manner as they discharge into waters of the state does not seem to be easy to implement. Also, this is not a program that could be used for public education. We suggest removing the language for 2.a and 2.b from the permit.

Anyone that would have to go back to the located pipe would have the GPS location and a description of the pipe. In the case of our consultants they have a picture of the pipe. Specifically, the cost and time to Genesee County to label the outfalls would be time and money that could be spent on other programs that would have a real impact on water quality. It is our opinion that this program does not.

**I.A.2.b. New discharge point notification:** The permit does not specify how often the permittee has to notify the state of new MS4 outfalls. Once again some Cities and Counties that take over the storm systems in plats or condominiums can add a significant number of outfalls a year. In the case of Genesee County this could be very time consuming unless it was done annually or with the progress report. The permit needs to define how often the state needs to be notified, whether it is for every outfall or just in the progress reports. (also found in I.A.3.d.)

**I.A.3. Public Participation Process & Watershed Management Plan:** With the new 2008 draft permit there is little need for a public participation process. The new draft permit does not allow for the local stakeholder to direct how the WMP & SWPPI is to be written, nor how the IDEP plan is to be implemented. For example, almost the entire SWPPI guidance documents have been incorporated into the Permit. It leaves little room for public input.

**I.A.4.a.2. Alternative Approaches:** It appears that the requested flexibility in the permit is addressed by stating that alternative approaches are acceptable. This is a good start. But, in looking at the language as a whole, we feel alternative approaches utilizing the watershed plan as the basis for the SWPPI, is unlikely to be pursued and the flexibility put into this permit will be a lost opportunity.

We believe that the mindset of most permittees is to first assure they do what is necessary to be in compliance. Staff of local governments working on this permit are accountable to elected officials. They are unlikely to propose large-scale alternative approaches to elected officials that appear to present a compliance risk. As it is written, the draft permit is in too much conflict with this compliance risk aversion. That is because it is too hard to predict what alternative approaches would be deemed acceptable and the timeframe for that determination.

As noted in our overall comments, we feel that when permittees choose the watershed permit they are choosing an alternative approach. Therefore, the entire watershed permit should be written in a manner that embraces the watershed approach and integrates the watershed plan and the SWPPI. Again, if the permit is too prescriptive, there's no incentive to work together and focus on holistic resource restoration and protection because activities are predetermined. On the contrary, if they are relieved of the prescriptive requirements, they have an incentive to come together to identify and implement cost-effective actions.

Nonetheless, we agree that there are some measures that should be part of the watershed approach. But what, where, and when should be something the permittee and watershed group designs. It should not be prescribed in the permit. Critical elements of this watershed approach are:

- Institutional/Financial arrangements
- Resource monitoring
- Collaborative IDEP activities
- Collaborative PEP activities
- Collaborative and/or consistent stormwater quantity and quality development standards
- Collaborative and/or consistent habitat restoration and/or protection initiatives
- Pollution prevention on public lands
- Coordinated reporting

**I.A.4.b.1 TMDL (SWPPI Requirements):** The draft permit calls for the monitoring of E.coli and Total Phosphorous (TP) within three (3) years of the issuance of the COC. Specifically, permittees are instructed to "take at least one representative sample of a stormwater discharge from at least 50% of the major discharge points within the urbanized area."

Our major concern with this requirement is there the term "representative sample." What does representative sample mean? Representative in terms of rain event, event-mean concentration, or some other metric? The draft permit is unclear. This lack of clarity will result in inconsistent data collection activities throughout the state. Additionally, collecting 50% the major discharge points within the urbanized area" may place an undue burden on some urban communities.

Not only would a consultant have to do dry weather screening, but would have to go back to the same site to take a wet weather sample. Because of the size of Genesee County and to keep travel costs down we often focus on a regional area for IDEP before moving on. If we had to take samples from all over the County within 3 years plus do dry weather screening for IDEP, it would definitely place a burden on the County and the Phase 2 communities.

Another general concern with using Total Maximum Daily Loads (TMDL) on the watercourses is not all communities are subject to this permit. This is going to cause a legal problem that phase II communities will have to regulate a pollutant within a stretch of a waterbody when the non-point pollutants are coming from non-phase II communities or farms under the enforcement of the Department of Agriculture. *For example if the Flint River between Holloway Dam and Mott Lake Dam has a TMDL for phosphorus and the water is tested as it enters the regulated area. If the phosphorus levels are near or exceed the TMDL limits the phase II communities will be required to put overly restrictive requirements on discharges to compensate for the upstream contributing area that has no phase II communities and do not have to enforce any TMDL(s).* It is still unclear if under this permit expensive pollutant cleanups could be required by the MDEQ to make the Phase II communities clean the water to bring the TMDL levels within acceptable limits.

**I.A.4.b.2a Public Education Plan:** The permit requires the PEP to educate on 9 topics as appropriate. The listed topics exceed the EPA education list that our communities have been using to direct our education program. Any educational topics that are in the state permit but not required by the EPA will be considered a State unfounded mandate and would require the State to fund those activities.

**I.A.4.b.3 IDEP Comments: Spill Response and Table 1 Prioritization:** The section that states the permit needs to include spill and emergency response procedures should be removed from this permit. These types of procedures are already required for communities under other regulatory requirements.

Table 1 is useful as guidance, not a requirement. Permittees are afforded the decision-making responsibilities as to the prioritization approach based on individual or watershed-based IDEP activities. As such, this belongs as part of a guidance document and not in the permit where it may be perceived as a requirement.

**I.A.4.b.3.b.2 Dry weather screening:** The permit is confusing. Section I.A.4.b.1.a talks about those discharges covered by a TMDL have to be tested within an Urbanized area. This section says each MS4 discharge point. The permit needs to define if a permittee needs to perform dry weather flow testing for all the MS4 outlets or only those within urbanized areas.

**I.A.4.b.4.a. Post-Construction Storm water Controls for New Development and Redevelopment:** There are various indications of "minimum treatment volumes" in the requirements. One-inch of runoff from an entire site is actually much larger than the calculated runoff from the 90-percent annual non-exceedance storm. In fact, the one-inch of runoff from the entire site will frequently exceed the volume controls stated in the channel protection criteria. Also, it is highly unlikely that a developer's engineer or a permittee would analyze 10 years of data to determine a 90-percent exceedance storm simply because it would require special approval of the MDEQ.

The 80 mg/L maximum identified in the 80/80 rule will be difficult to evaluate without some guidance on acceptable methods for determining initial loading. Also, presentations given during the development of the statewide LID manual indicate that if the 2-year peak rate and volume are controlled then it can be assumed that the quality requirements have been met.

We object on principal that the MDEQ would make statewide requirements on treatment volumes. Individual sites are engineered and reviewed based on their unique situations and to set arbitrary limits without any consideration for soil types, topography, existing local requirements would not only undermine the local communities ability to enforce but would restrict the engineers ability to design the site for the best environmental impact.

**I.A.4.b.4.b. Channel Protection:** The standards for controlling peak rate and volume for a 2-year storm if used WITH existing flood control standards may be difficult for sites to meet in areas.

In general, the state should be cautious in identifying a specific method required for runoff calculations as all hydrologic methods have their limitations – one size does not fit all. Methods, other than the curve number method, have been in use and are widely accepted in the engineering community.

If this requirement is added to the permit there should not be any exceptions to this requirement. Section I.A.4.b.4.b.4. lists 5 areas of exception to the channel protection criteria. We once again object on principal that the MDEQ would make statewide requirements on channel protection. Not all channels are waters of the state; some may be MS4's and designed for a flow rate that differs from the permit requirements. The waters of the state are already regulated under the MDEQ Inland lakes and streams. Also many of the watercourses have been dedicated as County drains under PA 40 of 1956 within the last 100-years. That may create a conflict between PA 40 and this permit. Individual sites are engineered and discharges allowed based on their unique situations and once again to set arbitrary limits without any consideration for soil types, topography, hydraulic analysis or existing local requirements would not only undermine the local communities ability to enforce but could have a negative affect on the channel.

It is our understanding that the proposed standards are intended to “not make things worse” in the watershed. *For example, the channel protection criteria for redevelopment will not result in a perceived benefit if the existing site is already impervious. Many communities would like to see an improvement to the existing conditions within their watersheds. Another example is restricting (or at least the appearance of restricting) the applicability to those developments that are 1-acre or larger. If this is the case, project sponsors will submit projects that are less than 1-acre, most notably in redevelopment sites. Incorporating requirements such as these to the permit may make it more difficult to require more of developments within their communities because it would be characterized as going beyond state requirements.*

Finally, if permittees are required to follow the criteria outlined in these standards, then the thousands of BMPs that have been designed and constructed to address water quality and bankfull issues will already be outdated and will be required to be prioritized for retrofitting. This requirement alone will set existing permittees back many years when they have actually achieved significant improvements in water quality.

We strongly recommend setting “minimum treatment volumes” but removing specific runoff calculation methods. The latter can be provided as additional guidance and can be changed or updated in the future. Since BMP installations varies by site, there will always be a degree of professional judgment required and tying to be to specific in the permit will only result in future problems in administering and complying with the permit. SEMCOG’s memo points out several of the possible pitfalls, most of which could be avoided by providing guidance outside the permit that allows for more flexibility.

**I.A.4.b.6.a. Employee/Contractor Training:** The draft permit presents a very prescriptive approach. As with the current permit, we feel that the permit should set the target for what the DEQ wants to accomplish and then leave it to the communities to figure out how to get there. Guidance outside the permit is recommended.

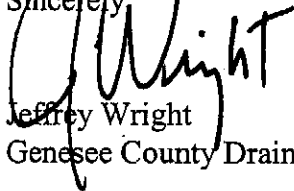
**I.A.4.b.6.c. & f. Roadways, Parking Lots, and Bridges/Turf Grass:** Generally speaking, we suggest that the watershed approach should be left more open in order to provide incentives for communities to remain in the program and let the jurisdictional permit be prescriptive. For example on the good housekeeping issues the draft permit says remove 25% TSS. But most watershed plans have a goal that says meet water quality standards, or something similar. We should put the burden on the communities to meet a target, like water quality standards or to not make the water quality worse in the future, and then leave it to the communities to figure out how to do it. In some cases, communities may not need to reduce sediment by 25%; in other cases they may need to do more. The 25% is arbitrary.

Again, we think that targets should be set and let the communities figure out the details. Guidance outside the permit is recommended.

**I.A.4.b.6.c. Flood Control Projects:** For those communities such as cities and counties that may have large numbers of flood controls such as detention basins this requirement would take a huge amount of time and money just to convert their records into a form to submit to the state, once again we think that targets should be set and let the communities figure out the details.

**Conclusion:** There are several requirements that will place an undo burden on communities without any proof that they will produce an equivalent improvement to water quality. These take the form of both required activities and reporting requirements. The draft permit requirements would increase the real dollar cost to communities in order to fulfill their obligation; and some of the required information to be collected does not have a clear purpose and there is little or no direction on how it is to be analyzed or used. These foreseeable consequences are likely to compound each other and reduce the general permit's intent – to plan and implement storm water management on a watershed basis.

Sincerely,



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