



ENVIRONMENTAL PROTECTION AGENCY

[EPA-R01-OW-2024-0493; FRL-12409-01-R1]

Notice of Availability of Draft National Pollutant Discharge Elimination System (NPDES) Massachusetts Small Municipal Separate Storm Sewer Systems General Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Draft NPDES General Permit.

SUMMARY: The Regional Administrator, U.S. Environmental Protection Agency – Region 1 (EPA), is providing a Notice of Availability for the Draft National Pollutant Discharge Elimination System (NPDES) Massachusetts Small Municipal Separate Storm Sewer System General Permit (MA MS4 GP) for discharges to certain waters of the Commonwealth of Massachusetts. This Draft NPDES MA MS4 GP (“Draft GP”) establishes Notice of Intent (NOI) requirements, permit eligibility requirements, and conditions and practices for the management of stormwater discharges from small MS4s. The Draft GP is available on EPA Region 1’s website at <https://www.epa.gov/npdes-permits/massachusetts-small-ms4-general-permit> and at www.regulations.gov, Docket No. EPA-R01-OW-2024-0493. The Fact Sheet for the Draft GP sets forth principal facts and the significant technical and legal issues considered in the development of the Draft General Permit and is also available at this website.

DATES: Comments must be received on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The public comment process and the public hearing will be conducted in accordance with 40 CFR part 124, EPA's Procedures for Decision making. All persons, including applicants, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their positions on the Draft GP by the close of the public comment period, either by submitting written comments as listed in the **ADDRESSES** section of this **Federal Register**, or by submitting written or oral comments at the public hearing.

EPA will hold a virtual public hearing in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments for the official draft permit record. The virtual public hearing will be held Tuesday, January 28, 2025 at 6:30 p.m. EPA will begin pre-registering speakers for the hearing upon publication of this document in the *Federal Register*. To register to speak at the virtual hearing, please use the online registration form available at: <https://www.epa.gov/npdes-permits/massachusetts-small-ms4-general-permit>. On January 27, 2025, EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/npdes-permits/massachusetts-small-ms4-general-permit>.

In reaching a final decision on this Draft GP, EPA will respond to all significant comments and make responses available to the public on EPA Region 1's website. All comments must be postmarked or delivered electronically by the close of the public comment period.

ADDRESSES: Written comments on the Draft GP, identified by Docket ID No. EPA-R01-OW-2024-0493, may be submitted via the Federal eRulemaking Portal at <https://www.regulations.gov/> (enter Docket ID No. into search bar).

In the event that interested parties cannot access the Portal, comments may be emailed to Danielle Gaito at gaito.danielle@epa.gov or provided via mail to: U.S. EPA Region 1, Water Division, Attn: Danielle Gaito, 5 Post Office Square, Suite 100, Mail Code 06-4, Boston, Massachusetts 02109-3912. If comments are submitted in hard copy form, please also email a copy to the EPA contact above.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from: Danielle Gaito, U.S. EPA Region 1, Water Division, Stormwater Permit Section at gaito.danielle@epa.gov or (617) 918-1297. The Administrative Record, including the Draft GP and Fact Sheet, are on file and may be inspected between 9 a.m. and 5 p.m. Monday through Friday, excluding legal holidays, at 5 Post Office Square, Boston, MA. Requests to view the Administrative Record can be made to the EPA contact above.

SUPPLEMENTARY INFORMATION: EPA is proposing to reissue three draft NPDES general permits for the discharge of stormwater from small MS4s to certain waters within the commonwealth of Massachusetts. The three permits are:

MAR041000—Traditional cities and towns

MAR042000—Non-traditional state, federal, county and other publicly owned systems

MAR043000—Non-traditional transportation systems

For convenience, EPA grouped these three distinct permits together in a single document (referred to as the draft “permit” in singular) and have provided a single fact sheet for all three.

The Draft GP, appendices, and fact sheet are available at: <https://www.epa.gov/npdes-permits/massachusetts-small-ms4-general-permit>.

The conditions in the Draft GP are established pursuant to Clean Water Act (CWA) section 402(p)(3)(B)(iii) to ensure that pollutant discharges from small MS4s are reduced to the Maximum Extent Practicable (MEP), protect water quality, and satisfy the appropriate requirements of the CWA. The Draft GP applies to small municipal separate storm sewer systems in Massachusetts as defined in the regulations at 40 CFR 122.26(b)(16). When final, the Draft GP will replace the Final Massachusetts MS4 GP issued on April 4, 2016 and modified on December 7, 2020. This Draft GP carries forward and builds on the requirements of EPA’s previous MA small MS4 general permits.

The non-numeric conditions and limits for stormwater discharges authorized under the Draft GP are in the form of best management practices (BMPs). The regulations at 40 CFR 122.44(k)(2) provide that permits may include BMPs to control or abate the discharge of pollutants when authorized under section 402(p) of the CWA for control of stormwater discharges. Due to the variability associated with stormwater, EPA believes the use of BMPs is currently the most appropriate method to regulate discharges of stormwater from municipal systems.

The Draft GP establishes requirements for small MS4s to “reduce the discharge of pollutants to

the maximum extent practicable (MEP), including management practices, control techniques, and system, design and engineering methods” Section 402(p)(3)(B)(iii) of the CWA. The Draft GP requires small MS4s to update and continue to implement a comprehensive stormwater management program (SWMP) to reduce the discharge of pollutants. Part 2.3 of the Draft GP requires small MS4s to implement a SWMP that includes the following minimum control measures: public education and outreach; public participation; illicit discharge detection and elimination; construction stormwater management; stormwater management in new development and redevelopment; and good housekeeping in municipal operations. EPA views the MEP standard in the CWA as an iterative process and, as such, requirements should continually adapt to current conditions and BMP effectiveness. Accordingly, the Draft GP advances the MEP requirements of the 2016 MA MS4 Permit, particularly with respect to implementation of green infrastructure and low impact design elements.

Section 402(p)(3)(B)(iii) of CWA authorizes EPA to include in an MS4 permit “such other provisions as [EPA] determine[s] appropriate for control of . . . pollutants.” Parts 2.1 and 2.2 of the Draft GP carry forward water quality-based effluent limitations from the 2016 MA MS4 Permit to ensure that discharges do not cause or contribute to exceedances of water quality standards. The provisions, expressed in the form of additional control measures beyond the minimum control measures in the Part 2.3 of the Draft GP, apply specifically to stormwater discharges to impaired waterbodies with and without an EPA-approved total maximum daily load (TMDL). The Draft GP extends these requirements to additional waterbodies for which EPA approved a TMDL or Alternative Restoration Plan since the issuance of the 2016 MA MS4 Permit.

Other Legal Requirements: Endangered Species Act (ESA): The Draft GP does not authorize stormwater discharges which adversely affect any species listed as threatened or endangered under the ESA or which result in the adverse modification or destruction of designated critical habitat. EPA has updated the provisions related to the ESA. Concurrently

with the public notice of the Draft GP, EPA is requesting concurrence with the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) and the United States Fish and Wildlife Service with EPA's preliminary finding based on the results of EPA's assessment of the potential effects to endangered and threatened species and their critical habitats as a result of the issuance of the Draft MS4 GP.

Essential Fish Habitat (EFH): In accordance with the 1996 Amendments (Pub. L. 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), the Draft GP does not authorize stormwater discharges whose direct or indirect impacts do not prevent or minimize adverse effects on any EFH. EPA determined that the permit action will not adversely affect the EFH of designated species. 16 U.S.C. 1855(b). Additional mitigation is not warranted under section 305(b)(2) of the Magnuson-Stevens Act. EPA is providing this determination to NOAA Fisheries for their review concurrent with the public notice of the Draft GP.

National Historic Preservation Act (NHPA): The Draft GP does not authorize stormwater discharges which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the NHPA. Concurrently with the public notice of the Draft GP, EPA will initiate consultation under the NHPA related to the stormwater management activities under the Draft GP.

Coastal Zone Management Act (CZMA): The CZMA, 16 U.S.C. 1451 *et seq.*, and its implementing regulations (15 CFR part 930) require a determination that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) is consistent with the CZMA. Concurrent with the public notice of the Draft GP, EPA is requesting concurrence from the Massachusetts Coastal Program (MassCZM) with EPA's Federal consistency review.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

David Cash,
Regional Administrator,

EPA Region 1.

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