



April 10, 2015

Steve A. Watts
NYSDEC
47-40 21st Street
Long Island City, NY 11101-5407

Re: Revised Draft MS4 SPDES Permit No. NY-028-7890

Dear Mr. Watts,

Thank you for the opportunity to comment on the revised Draft MS4 Permit for New York City, which DEC released in March 2015. The Stormwater Infrastructure Matters (S.W.I.M.) Coalition is a coalition of 70 member organizations dedicated to ensuring swimmable, fishable waters around New York City through natural, sustainable storm water management practices (such as green infrastructure) in our neighborhoods.

We understand that NYS Department of Environmental Conservation (DEC) and the NYC Department of Environmental Protection (DEP) have been negotiating for a year over revisions to the initial draft permit released last year. While we appreciate the effort DEC has put in to this permit, we continue to believe that it does not go far enough to protect New York City waters.

The following is a list of our concerns:

Construction Site Size Requirements

We believe most residents of New York City will attest to the fact that a great majority of construction projects in the city are small. Requiring regulation of only projects larger than one acre does not seem like a meaningful approach to managing runoff from new development and redevelopment projects in the City.

Rather than requiring the City to conduct a study, we urge the DEC to evaluate existing data on construction projects and patterns closely to determine the best size, in line with best practices in other major U.S. cities and metropolitan areas.

A more appropriate size threshold will ensure that green infrastructure practices become widespread throughout our neighborhoods, not only at a small number of large development sites in select areas of the city.

Green Infrastructure Standards for Redevelopment Projects, Right-of-Way Projects, and Sewer Upgrades and Other Flood Management Projects

Because most construction in New York City is “redevelopment” of already developed sites, it is essential to have a strong stormwater management standard for redevelopment projects, not just for new development.

Again, in line with best practices elsewhere, the permit should hold new development and redevelopment projects to the same protective standards, requiring the on-site capture of the 90th percentile storm (1.5 inches of rainfall in New York City) using green infrastructure techniques.



There is also a great need- and a huge opportunity- to incorporate green infrastructure routinely into city projects in the public right-of-way, such as street and sidewalk rehabilitation, water and sewer utility projects, parks, playgrounds, greenways, and others.

Similarly, improvements to public drainage infrastructure, since it often has the undesirable side-effect of directing more polluted runoff to nearby waterways, should be accompanied by green infrastructure projects that simultaneously help protect water quality and further improve flood control.

Stronger Requirements for Water Quality Improvement

The draft permit is based on the premise that stormwater discharges impair water quality and must be properly managed to prevent pollutants from entering our waterways. However, the draft permit does not require any specific pollutant load reductions that would ensure the city's waterways meet state standards to protect uses like fishing, boating, and swimming.

The permit should clearly prohibit discharges that are known to cause or contribute to existing water quality impairments, and should establish binding deadlines for the city to eliminate existing violations.

Coordination With Other Ongoing Programs, Including CSO Long Term Control Plans

DEC needs to ensure that the myriad of water quality improvement programs underway in the City work together to achieve success.

For many waterbodies affected by MS4 pollution, the City is already developing (or has submitted to DEC) Combined Sewer Overflow Long Term Control Plans; in those plans, the City often points to MS4 pollution as a reason why solving CSOs, alone, will not completely clean up the water body. There are also efforts, such as the floatables control program, the Green Infrastructure Plan, and brownfields cleanup efforts and superfund remediation.

We believe it is critical that these related or overlapping programs must be coordinated well for the efficient use of public resources, effective solutions, and better understanding by the public of the City's efforts. We recommend that DEC explicitly require the City to create a mechanism for coordinating its MS4 program with these other efforts.

More Meaningful Public Participation and Involvement

Public comments on the initial draft of the permit last year urged DEC to require the City to provide more access to annual reports and more opportunity to provide feedback on them, including both online and at public meetings. We thank DEC for including such requirements in the new draft of the permit. However, DEC has not accepted some of the other public participation suggestions that were offered. We urge DEC to reconsider.

For illicit discharge plans, construction site stormwater control, post-construction stormwater control, and industrial and commercial stormwater source management, the permit should require the City to develop a public-reporting system for complaints (accessible telephonically and electronically) that not only allows the members of the public to file complaints but also allows them to track their complaints through to resolution by the City, either online or through a point of contact in the City.



DEC should also guarantee the opportunity for members of the public to share our comments on the Stormwater Management Program, to be developed by the City, with the DEC through a public comment and public hearing processes.

While the permit requires that the City involve the public in the development and implementation of the SWMP, we believe it is important for the DEC, as the regulatory agency issuing the permit, to hear our comments on the SWMP, so that the DEC will be in a better position to modify the permit if necessary. We recommend that the city take comments and report about what they changed because of comments, with no requirement to share comments.

Thank you very much for your consideration of these comments. S.W.I.M. Coalition also supports and incorporates the more detailed comments being submitted by NRDC, Riverkeeper, and NY/NJ Baykeeper.

Sincerely,

Julie A. Welch
S.W.I.M. Coalition Coordinator, On Behalf of the S.W.I.M. Coalition Steering Committee

Sean Dixon, Riverkeeper
Robin Kriesberg, Bronx River Alliance
Larry Levine, Natural Resources Defense Council
Paul Mankiewicz, the Gaia Institute
Tatiana Morin, New York City Soil & Water Conservation District
Nina Sander, Rocking the Boat
Jaime Stein, Pratt Institute
Shino Tanikawa, New York City Soil & Water Conservation District

cc: Emily Lloyd, Commissioner, NYC DEP (Emily.lloyd@dep.nyc.gov)
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