

Date: August 29, 2018

To: Padraic Monks
DEC Stormwater Program

From: MS4 Subcommittee of the CCRPC Clean Water Advisory Committee

Thank you for the opportunity to comment on the draft Stormwater Permitting Rule. Please consider these comments by the MS4 Subcommittee:

General Comment

1. The definitions between the MS4 Stormwater Permit and the draft Stormwater Permitting Rule do not match. The Subcommittee recommends that the Agency reconcile the definitions in each of the documents to ensure they match.

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2. The page numbers do not match up with where the sections are actually located in the document.

Section 22-101(c)(9)

3. The Rule requires certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty to satisfy certain permit requirements. This requirement is limiting and expensive for municipalities that do not have a licensed professional engineer on staff. Most people working in the stormwater field are not licensed professional engineers and have the experience to certify whether a stormwater system is in compliance and satisfying permit requirements. The Subcommittee recommends that the requirement should extend to stormwater designers and certified inspectors and that the Agency look into offering a State-wide certification program similar to what the State offers for wastewater operators that would allow experts in the stormwater field certify compliance with stormwater systems.

Section 22-111(b)

4. How will compliance with MRGP standards be addressed? There are regulatory programs in place, but it is unclear how the Agency will determine how implementing the requirements under the MRGP will affect water quality standards.

Section 22-111(c)

5. The cost benefit of phosphorus removal by a stormwater system should also be considered when establishing watershed specific priorities in basin plans.

Section 22-201(25)

6. The definition of impervious surface should explicitly include gravel surfaces.

Section 22-201(40)

7. The definition of outfall is not consistent between the Stormwater Rule and the MS4 Permit. Outfall is not included in the definitions in the MRGP. Considering that municipalities are required to stabilize outfalls and that the difference between an outlet of a stormwater system and outfall is unclear, it is recommended that the Agency ensure that the definition is consistent across all permitting programs and that the differences between outfall and outlet are clearly indicated.

Section 22-201(45)(A)

8. Please include the reference that indicates that sewage from vessels is not considered a pollutant.

Section 22-201(64)

9. Please clarify why stormwater ponds are not included in the definition for stormwater system.

Section 22-302(a)

10. Please clarify what responsibility the Secretary has to respond to an application that is administratively complete. It is recommended that the Secretary should respond to an administratively complete application within 60 days and this time period should be indicated in the Rule.

Section 22-601(d)(3)(F)

11. Please clarify what additional information the Secretary may request from a designated MS4 operator seeking coverage under an individual permit. This statement is vague.

Section 22-901(c)(1)

12. Please clarify why the January 1, 2018 date is being used when this date has passed and the three-acre general permit has not been issued.

Section 22-901(c)(3)(D)

13. Has the Agency determined whether credits can be used across sectors?
14. Will a municipality be able to provide input on where funds are allocated within the watershed?
15. Define the watershed scale the Agency is referring to.

Section 22-901(d)(2)

16. The Subcommittee echoes the same comments mentioned above regarding the requirement to obtain a licensed professional engineer to certify compliance with the stormwater system. The Secretary should extend this requirement to stormwater designers, certified stormwater inspectors, etc.

Section 22-1001(c)(2)

17. The Rule indicates that a permittee may receive credit for treating all or portions of a site through the use of practices in the Vermont Stormwater Manual and based on a design storm different than specified in the Vermont Stormwater Manual. Please clarify how different of a design storm a permittee can design for, because this statement can be interpreted as the permittee being allowed to design to a smaller design storm.

Section 22-1001(c)(4)(C)

18. Clarify what type of land use the Rule is referring to. Is it existing land use or re-development?

Section 22-1001(c)(4)(F)

19. This criteria should be removed.

Section 22-1001(c)(4)(G)

20. The Subcommittee recommends that the word “natural” should be added before wetland as there are constructed wetlands, gravel wetlands, etc. that are included in stormwater systems.

21. Construction should be allowed within a managed buffer. There is a difference between a natural wetland buffer and a managed buffer that has been maintained over time and this should be noted within the Rule. The utilization of buffer space for water quality improving BMPs may in many cases restore the natural hydrology of the site. Excluding construction of a stormwater system in a managed buffer is too restrictive and will hinder a municipality’s ability to meet their stormwater permit requirements.

Section 22-1002(b)(4)

22. Please provide a detailed analysis on how the Agency determined that \$10,000 per acre of impervious surface was an accurate amount to charge as an impact fee. There are numerous resources available, including national standards and the ERP grants, which indicate the cost of constructing, operating, and maintaining a stormwater system. The Subcommittee agrees that this impact fee amount is too low and needs to be set at the actual cost, because this will de-incentivize applicants from doing more on their site. Please see the table below which details the cost to retrofit various stormwater systems in the Town of Williston. The average retrofit is about \$19,000 which is twice the amount that the draft Rule is proposing to charge as an impact fee.

ERP Grant #	Type	\$/Impervious Acre Treated
2018-ERP-M-1-16	Wet Pond Retrofit	\$5,537

2018-ERP-M-1-17	Wet Pond Retrofit, New Grassed Swale	\$21,421
2018-ERP-M-1-18	Wet Pond Retrofit	\$7,000
2018-ERP-M-1-19	Wet Pond Retrofit	\$26,190
2018-ERP-M-2-05	Wet Pond Retrofit	\$11,261
2018-ERP-M-2-06	New Wet Pond Construction	\$65,910
2017-ERP-BG-001	Wet Pond Retrofit	\$43,193
	<hr/> Average Retrofit	<hr/> \$19,100
	Single New Construction	<hr/> \$65,910

23. Impact fees should not be allowed for new development. Please provide clarity on the Agency's decision to allow this.

Section 22-1002(b)(5)

- 24. The Stormwater Fund will have a limited amount of money. How will projects be prioritized for funding?
- 25. There should be a timeline for when funds can be spent within a watershed. Funds should not be indefinitely reserved for an applicant to utilize. The Subcommittee recommends that the Agency develop a timeline for how long funds can be reserved.

Section 22-1201(b)(13)(C)(i)

- 26. The Rule requires a permittee to orally report any noncompliance which may endanger health or the environment within 24 hours. Who is the representative that municipalities are required to report to?

Section 22-1201(b)(13)(C)(ii)(II)

- 27. There isn't a numerical amount listed for the maximum daily discharge limitation for any pollutants listed in the permit. Should there be or what document should municipalities refer to for this limitation?