



Why Should I Care About the MS4 Permit?

By Jim Gove

The short answer is you may not, but your pocketbook sure does.

The MS4 permit is a regulation that will require certain “regulated communities” to clean up what are termed “impaired waterways.” You may not think your local waterways are “impaired,” but if you live in any of the following municipalities, you are subject to the requirements of this permit: Allenstown, Amherst, Atkinson, Auburn, Barrington, Bedford, Bow, Brentwood, Candia, Chester, Danville, Derry, Dover, Durham, East Kingston, Epping, Exeter, Fremont, Goffstown, Greenland, Hampstead, Hampton, Hampton Falls, Hollis, Hooksett, Kensington, Kingston, Lee, Litchfield, Londonderry, Lyndeborough, Madbury, Manchester, Merrimack, Milford, Milton, Mount Vernon, Nashua, New Castle, Newfields, Newington, Newmarket, Newton, North Hampton, Pelham, Pembroke, Plaistow, Portsmouth, Raymond, Rochester, Rollinsford, Rye, Salem, Sandown, Seabrook, Somersworth, South Hampton, Stratham, Wilton, and Windham.

I was at an informational session recently on the MS4 permit hosted by the U.S. Environmental Protection Agency (“EPA”). Now, this permit has been in progress for a long time. It was first issued as a draft in 2009. The outrage was so great that the EPA withdrew it for re-drafting. The same thing happened in 2013, and *again* in 2015. The EPA is going to issue the final permit this summer—no draft this time—with an effective date of sometime in 2017.

Why no draft this time? Because they know there will be a huge outcry from the communities. To comply with the permit, the communities are going to have to ask the voters

for a huge amount of money. In fact, enforcement contemplated by the permit by its own terms doesn’t even take effect until after five years. The first five years will be just for planning for what will need to be done. The following ten years of the permit are for meeting the goals set by the permit. Does that sound like big bucks are involved? You betcha.

Let’s back-up. You may think your streams, lakes, and Great Bay are pretty clean. And they are, compared to their conditions before the enactment of the Clean Water Act. No more streams colored with chemicals or sediments; no more streams bursting into flames. And we in the Northeast do not see discharges into streams of silver mines, of iron mines, of coal mines or from huge farms upstream of Chesapeake Bay. But we do have some pollutants.

Many of our waters have bacteria, phosphorous, nitrogen, chlorides (salt), and low pH (acid). These are called impaired waterways. They are very common in southern New Hampshire. And EPA wants us to clean them up.

Although the EPA gives the state “revolving funds” for clean water projects, the fund is a pittance compared to the total costs of the job. Many towns and cities are looking at significant costs to modify their entire storm water runoff collection systems.

How much? In the 2013 comments on the draft permit, a number of communities estimated the costs of complying with the MS4 Permit. Rochester estimated it would cost \$250 million over 5 years for total compliance; Portsmouth estimated \$3.5 million over 5 years; and Manchester was looking at more than \$3 million/year for only a portion of the compli-

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ance. Other communities had similar estimates: Londonderry, \$100,000/year for only a portion of the compliance; Bedford, \$700,000 per year for only part of the compliance. Municipalities also questioned the effectiveness of the proposed compliance measures. Their municipal storm water systems are targeted by the MS4 permit but, they pointed out, there are other contributors to water quality degradation that are not targeted at all.

Walking out after the meeting, I had informal discussions with some of the municipal officials. With this new iteration of the permit, they are still looking of hundreds of thousands of dollars to comply. As one of them told me, there is no end in sight. If the waters still are considered impaired by the EPA after the fifteen-year period, permit compliance—and the associated costs—will not end, despite the municipality's efforts to comply.

There is also the question of how much is enough. Many of the officials

felt that the incremental increase in water quality was not offset by the expenditures that will be required. In other words, there does not appear to have been any cost/benefit analysis by EPA. Moreover, with no money to support this permit, it sure feels like an unfunded government mandate.

The real rub is when these same officials have to go to the voters and explain how the property tax bills will go through the roof to fund the compliance. It's political suicide. In addition, what if the voters turn it down? The EPA has authority to level fines and require immediate actions. Who will they be fining?

I know that a number of communities have decided, if forced by the EPA, to take the matter to federal court. They have banded together to fight the permit. Other communities are just hoping for the best, wishing it would go away, or that EPA will somehow let the whole thing slide.

Folks, the EPA will not be letting this slide. The MS4 permit will be finalized

and issued this summer. More than once I heard officials whisper that they were thankful that they would be retired when these issues came to a head.

I would suggest that you all should figure out where your community stands on the MS4 permit. No one is against having clean water. The question is "how clean" and "at what price"?

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