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Foley: MassDEP – A Voice of Reason in the Stormwater Permitting Debate.

EPA has been working to craft a general permit for small Municipal Separate Storm Sewer Systems for quite some time. The [most recent draft permit](#), published last September, has received significant comment, most recently from the Massachusetts Department of Environmental Protection. While emphasizing cooperation and appreciate for EPA's efforts at collaboration, it is difficult to read [MassDEP's comments](#) as anything other than as a sign of significant concern about overreach by EPA.

What's the problem with the draft permit? Nothing that a modicum of attention to cost - and cost-effectiveness - couldn't solve. Indeed it's telling that MassDEP led its comments with concerns about costs, noting that EPA's own estimates show that, for three small communities in the Charles River watershed, annual compliance costs would range from \$865,000 to \$1.7M annually.

MassDEP also requested that EPA "harmonize" the permit requirements with the Commonwealth's 2008 stormwater rules, stating that EPA should use:

the Massachusetts Stormwater Standards as the basis for its successor MS4 permit, rather than requiring a second federal-only layer of permit requirements on top of the existing Massachusetts Stormwater Standards.

Substantively, MassDEP's most significant concern was that the draft MS4 permit reflects:

a significant shift in approach from the BMP-based program envisioned in the 2003 permit to the current draft which includes additional provision to ensure that the discharges from small MS4s do not cause or contribute to an exceedance of water quality standards.

Hear, hear. There's a reason that stormwater standards have always been focused on attaining reductions to the "maximum extent practicable" based on best management practices. As MassDEP also noted, it is this shift that significantly drives the increase in costs. I would have thought that it went without saying, but stormwater discharges aren't like manufacturing discharges that are far more predictable and easy to control and predict.

There are a number of other important points in the MassDEP comments, including support for pollution credit trading programs, but this is the heart of the issue. If the MS4 general permit is going to succeed in obtaining cost-effective reductions in stormwater pollution, EPA is going to have to be responsive to these concerns.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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