

Maine Pollutant Discharge Elimination System (MEPDES) Fact Sheet and Supplemental Information for Issuance of a General Permit for Post-Construction Discharge of Stormwater in the Long Creek Watershed

AGENCY: Maine Department of Environmental Protection (DEP)

ACTION: Notice to Issue MEPDES General Permit

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Reference Sites: This document references Maine statutes (M.R.S.A citations), Maine rules (CMR citations), Federal Clean Water Act, and Federal rules (CFR citations). See the specific web sites for further information.

- The texts of Maine statutes can be found at:
<http://www.mainelegislature.org/legis/statutes/>
- The text of Department rules can be found at:
<http://www.state.me.us/sos/cec/rcn/apa/06/chaps06.htm>
- The text of the Clean Water Act can be found at:
<http://www.epa.gov/npdes/pubs/cwatxt.txt>
- The text of Title 40, Part 122 of the Federal rules can be found at:
http://www.access.gpo.gov/nara/cfr/waisidx_08/40cfr122_08.html
- The text of the U.S. Environmental Protection Agency Preliminary Residual Designation of stormwater discharges to Long Creek pursuant to the Clean Water Act may be found at:
<http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/LongCreekRD.pdf>
- The Long Creek Watershed Management Plan and supporting information can be found at www.restorelongcreek.org.
- Additional information concerning stormwater in Maine may be found at:
<http://www.maine.gov/dep/blwq/docstand/stormwater/index.htm>

Summary: The Maine Department of Environmental Protection (“DEP”) is issuing a MEPDES general permit for post-construction discharges of stormwater from property with one acre or more of impervious area in the Long Creek watershed located in the municipalities of South Portland, Westbrook, Portland and Scarborough, Maine. This permit covers the discharge of stormwater from such properties to Long Creek and its tributaries, or to a municipal separate storm sewer system or other conveyance that discharges to Long Creek or its tributaries. The general permit describes permit coverage and limitations, definitions, requirements, procedures, and standard conditions. There is also a section addressing the relationship of this permit to other programs.

A. Introduction

In 1987, Congress amended the Clean Water Act and added Section 402(p). This section required the Environmental Protection Agency (EPA) to develop a comprehensive program for addressing storm water discharges. Section 402(p)(1) requires EPA, or states that are delegated to implement the Clean Water Act to address through permits the specific following types of storm water discharges:

- Discharge subject to an NPDES permit before February 4, 1987;
- Discharge associated with industrial activity, including construction;
- Discharge from a municipal separate storm sewer system serving a population of 250,000 or more;
- Discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

In addition, Section 402(p) allows a permitting authority to designate other stormwater discharges for permitting where the authority finds that the discharge is contributing to a violation of a water quality standard or is a significant contributor of pollutants the waters of the United States.

On January 12, 2001, the EPA authorized the Department to administer the NPDES program in most areas of the State. The Department has incorporated certain requirements that were previously part of the federal program into Maine's stormwater program.

On December 3, 2008, EPA Region 1, in consultation with the State of Maine, determined that a designation of certain stormwater discharges in the Long Creek watershed was appropriate because they are contributing to applicable water quality violations. EPA's "Preliminary Residual Designation Pursuant to Clean Water Act" can be found online at: (<http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/LongCreekRD.pdf>).

This preliminary designation was published in the Federal Register on December 31, 2008 (http://www.restorelongcreek.org/docs/FR_notice_12-31-08.pdf). The preliminary designation requires that property with one acre or more of impervious area that discharges to Long Creek obtain a permit under the Clean Water Act.

On October 28, 2009 EPA issued its final designation decision order.

In 2006, prior to EPA's designation determination, the City of South Portland had received an EPA grant to develop a comprehensive watershed management plan for Long Creek. A steering committee was established, consisting of both private and public sector stakeholders. Sub-committees were also established to work through the technical and policy issues for Long Creek. Participants sought to develop a plan that would provide an economically efficient approach to restoring water quality in Long Creek. EPA's determination caused participants to become interested in developing a plan to provide an implementation scheme that would allow for complying with permit requirements.

This general permit provides designated property owners with a means to comply with the requirements of the designation and provides a means for restoration of Long Creek to proceed through implementation of the Long Creek Watershed Management Plan.

B. Use of the General Permit Option

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants to waters of the United States is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit, unless such a discharge is otherwise authorized by the Act. Title 38 M.R.S.A. Section 413 of Maine's waste discharge law provides that no person may directly or indirectly discharge or cause to be discharged any pollutants without first obtaining a license from the Department. Standards and requirements are specified in statute and rule. Although such permits are generally issued to individual discharges, EPA's and Maine's regulations authorize the issuance of "general permits" to categories of discharges (see 40 CFR Section 122.28 and 06-096 CMR 529(2)).

As the NPDES permitting authority in Maine, DEP is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require the same or similar monitoring requirements; and
- In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

Upon reviewing these factors and the circumstances of the Long Creek designation, DEP has determined that designated stormwater discharges may be appropriately controlled through a general permit process given that they are of similar nature, largely from roads, commercial parking lots and buildings and will best be dealt with using a collective, watershed-wide approach. This general permit meets the requirements of 06-096 CMR 529, "General Permits for Certain Wastewater Discharges" and 06-096 CMR 521(9), "Storm water discharges."

C. The General Permit -- Information concerning certain provisions.

"Parts" as used below, refer to the enumerated parts of the general permit.

Part I -- General permit coverage

The general permit authorizes the direct discharge of stormwater from designated discharges in the Long Creek watershed. Designated discharges are those discharges from property with one acre or more of impervious area that flow to Long Creek or its tributaries, or to a municipal separate storm sewer or other public or private system that discharges to Long Creek or its tributaries.

Part II -- Definitions

The general permit makes use of existing state definitions when possible. These include "impervious area," "parcel," "common scheme of development" (within "parcel" definition), "peak flow," "person," "stormwater," "stream," and "watershed." Federal definitions used in the general permit include "municipal separate storm sewer system (MS4)," "Notice of Intent" (NOI), and "Notice of Termination." (NOT). The term "direct discharge" in the permit and fact sheet refers to a "point source" discharge. "Discharge" is a separately defined term. These definitions differ from the use of the terms in EPA's residual designation, where "direct discharge" refers to the conveyance of stormwater from a property directly to Long Creek or its

tributaries and “indirect discharge” refers to the discharge of stormwater from a property to Long Creek and its tributaries through an MS4 system or other public or private storm sewer conveyance. In the latter case, a discharge that reaches Long Creek indirectly through an MS4 may still meet the definition of a “direct discharge” as it is used in Maine regulations and as it appears in the Part II definitions of this permit.

Part III -- Procedure

This part of the general permit specifies NOI and NOT requirements, including associated submissions. The NOI must include evidence that the owner has a contract with the Long Creek Watershed Management District to participate in implementation of the Long Creek Watershed Management Plan. An NOT is required within 20 days of ceasing stormwater discharge. In cases of property transfer, the seller is not required to file an NOT if the buyer files an NOI to continue general permit coverage within 14 days of the property transfer. An owner may also choose to file an application for an individual permit at any time. When an individual permit is issued, prior coverage under the general permit ceases.

Part IV -- Requirements

This part of the general permit specifies that the permittee must participate in implementation of and comply with the Long Creek Watershed Management Plan. Implementation of the plan is the legal responsibility of the permittee, even though work will be carried out by a third party, the Long Creek Watershed Management District (District). The permittee is therefore responsible for both making necessary payments and carrying out other work as agreed to in a contract with the District, and for ensuring that the District carries out the specified restoration work in the watershed.

The Long Creek Watershed Management Plan (Plan) identifies restoration projects, including structural best management practices (BMPs) that can be installed in specified catchment areas of the watershed (the land area from which stormwater flows to a single runoff discharge point), and in-stream and riparian work. A technical committee recommended these projects after an assessment of various options. Structural BMP projects were sorted into Tiers 1, 2 and 3 based on the amount of benefit in relation to installation costs, with Tier 1 projects being the most economical and Tier 3 projects being the least economical for the benefits they produced. Based on its evaluation of the proposed projects, the DEP has concluded that installation of all of the Tier 1 and 2 projects, implementation of all of the proposed in-stream and riparian projects, along with on-going maintenance work, will be sufficient to allow Long Creek to meet the state’s water quality standards. The Plan provides for treatment of stormwater within priority catchment areas, which in combination with the identified in-stream and riparian restoration work, and non-structural management practices, such as street sweeping, provides the most treatment for a given amount of funding. The DEP recognizes that retrofitting existing developed area may be expensive and that the most economical approaches should be taken first. The DEP further recognizes that this approach means that the stormwater runoff on some individual properties may not be treated by on-site structural controls. This is an acceptable and appropriate approach to take so long as the collective effort of all permitted parties, both under the general permit and under individual permits, results in water quality standards being met in Long Creek.

The general permit requirements include flexibility in terms of the amount of work that must be completed under the Plan. The funding level of projects that must be completed, in terms of percentage of total cost funded, must equal or exceed the percentage of impervious area that is included on the property of participating operators. Operators that do not participate in the Plan will be responsible for treating their own discharges through an individual permit, which will reduce to overall amount of projects needing to be completed under the Plan. The permit also

provides that a fee rate for a permittee cannot be increased due to another permittee defaulting on payment during the term of the general permit. This provision was included to provide predictability to property owners, who might otherwise not feel comfortable in entering into a contract to participate in the Plan. If a large number of property owners were to default on payments to the District, the amount of time needed to implement the required projects may necessarily be extended to a subsequent permit cycle. Rates would then be adjusted during the following cycle to allow completion of the projects, in addition to on-going costs for monitoring and maintenance work.

The DEP recognizes that over the life of the Plan, conditions in the watershed will change. New opportunities to provide economical stormwater treatment will arise, particularly with redevelopment projects that will involve soil disturbance. The Plan and the list of required projects may be changed from time to time, provided a new project provides at least as much benefit as the project it would replace, and is approved by the DEP.

The general permit requires that continual inspection and maintenance of stormwater treatment practices be carried out in accordance with the Plan, and that a water quality monitoring plan for Long Creek be established and carried out by the Long Creek Watershed Management District in order to measure progress in restoring Long Creek. The Department will periodically assess progress being made with respect to meeting water quality standards in Long Creek by December 31, 2020.

Part V -- Relationship to other General and Individual Permits

This part of the general permit addresses the fact that it may not apply where an individual permit has been issued for a discharge, or where an owner is already required to have separate NPDES stormwater coverage, such as for an industrial discharge, or for a construction activity. In the case of industrial activities requiring coverage for stormwater discharges, the DEP expects to issue a combined Industrial and Long Creek Post-Construction General Permit that will cover stormwater discharges from both industrial activity and from impervious area. In the case of construction projects, this post-construction general permit would apply upon termination of the construction general permit.

Part VI -- Standard Conditions

This part lists a short set of standard conditions applicable to all MEPDES permits, and references other standard conditions applicable under existing rules.