

**VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
RESPONSE TO NOTICE OF PRELIMINARY DESIGNATION OF NEW SMALL
MS4S UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
(NPDES) OF THE CLEAN WATER ACT
December 5, 2012**

Comments received on draft General Permit 3-9014:

Identification	Submitted by:	Signed by:
RC	City of Rutland	Honorable Chris Louras Mayor
RT	Town of Rutland	Stanley F. Rhodes III Selectboard Chairman
ST	Town of St. Albans	Christine Murphy Town Manager
SC	City of St. Albans	Dominic Cloud City Manager

Following each numbered comment below, the () identifies the commenter's identification.

Comments pertaining to the MS4 designation criteria

1. After review of the designation criteria, St. Albans Town is unclear as to whether we are eligible for designation under section I (A) of the permit. We would request that the Agency explain how the Town of St Albans meets the criteria under section I (A) "Permit Coverage". In particular, we would like a definition of an "urbanized area" and an explanation of how the criteria found in 40 CFR 123.35 (b) specifically applies to the Town of St Albans. (ST)

Response:

Please see "Procedure for Designation of Regulated Small MS4s", 2. Potential Designation, Designation Criterion 1. The Town of St. Albans MS4 has significant stormwater discharges to two stormwater impaired streams that have complete and approved stormwater TMDLs. In addition the Town is contiguous with St. Albans City, has high growth potential and is interconnected with the St. Albans City MS4. An *urbanized* area is a land area with an intensive level of development, and/or high population and density. A census designated *urbanized area* is a larger urban area and is defined at: <http://www.census.gov/geo/www/tiger/glossary.html#glossary>

Please note that the section referenced above and 40 CFR 123.35(b) requires DEC to develop designation criteria and apply them outside of urbanized areas.

2. DEC has subjected Rutland Town to the MS4 permit reasoning simply that because some development has occurred north of Killington Avenue, the Town must produce some stormwater runoff...DEC has the authority to grant a waiver to the Town and should do so here.

Response: It is the opinion of the Department that because the Town of Rutland discharges stormwater from its municipal system to a stormwater-impaired water it is appropriately regulated under the MS4 General Permit.

3. Why is the Town of Rutland subject to the MS4 designation and the Town of Mendon did not receive the MS4 designation? (RT)

Response:

It is the opinion of the Department that Mendon does not have a substantial storm sewer system that could be captured under the definition of MS4 whereas portions of Rutland Town within the Moon Brook watershed meet the MS4 definition. Depending on future condition, stormwater discharges from Mendon may be regulated under the current or future MS4 permit, or pursuant to the Department's Residual Designation Authority.

4. There is insufficient evidence to support (the) determination (that): the Rutland City "MS4 has been designated as a result of its discharges to state waters that the Secretary has determined are significantly impaired by storm water runoff.." (RC)

Response:

The Department disagrees with the City and has provided documentation to the City for the basis of its determination that Moon Brook is principally impaired by stormwater runoff. The Department has prepared a comprehensive analysis of its biological monitoring data for Moon Brook which is available. The report is: *Biological and Aquatic Life Use Attainment Assessment of Moon Brook – 2010*. The Department has also, in the Moon Brook TMDL, presented the comprehensive analysis of the flow regime and why it is considered to be the source of the impairment (see: http://www.anr.state.vt.us/dec/waterq/stormwater/docs/sw_moo_tmdl_finalapproved.pdf). Finally, the Department, thru various subcontractors, has documented the geomorphic condition of the stream channel and established that the channel is in an unstable and adjusting condition and yielding excessive levels of sediment as a result. (see: <http://www.anr.state.vt.us/dec/geo/waterinx.htm>). The level of impairment of the Moon Brook biological community varies from good to excellent in Rutland Town to poor (the lowest possible rating) below US Route 7 in Rutland City.

5. There is other, more compelling, evidence that the impairment in the upper reaches of Moon Brook is due to elevated temperature. (RC)

Response:

The Department is in agreement with this assessment in regards to the fishery of upper Moon Brook; however, the elevated temperatures are modest in the lower reach and the biological impairment remains. The condition of the receiving water and causes of impairment are established during the Department's bi-annual 303(d) listing process.

6. There is overwhelming evidence that the natural conditions in the lower reaches of Moon Brook negate the possibility of establishing the habitat necessary to support a population of the aquatic life forms whose presence is necessary in order to be considered unimpaired. (RC)

Response:

The Department is not aware of overwhelming evidence that precludes the establishment of adequate biological habitat in the lower reach of the stream. The Department is aware that the stream has experienced considerable growth and development pressure for many years. However, there are examples in Vermont of streams in urbanized areas that meet Class B water quality standards or have been improved and now meet Class B water quality standards.

7. We would request that an analysis of projected (implementation) costs be undertaken before final designation of the Town of St Albans so that we can fully notice our residents as to the fiscal impact of this permit. (ST)

Response:

The Department has developed preliminary cost estimates for implementation of the Flow Restoration Plans required under the MS4 General Permit. The Department will provide this and any other technical information available to the Town.

8. As a technical matter, the permit proposes to designate the entire City of St. Albans as an MS4. Yet this seems inappropriate for the approximately 40 percent of the City where waste water and storm water are combined. (SC)

Response:

Only the area of St Albans City not draining to the combined sewer system and draining to Stevens Brook and Rugg Brook are subject to the requirements of the MS4 permit. Burlington and Rutland City have similar scenarios. It is noteworthy that Burlington has generally applied the requirements of the 6 minimum measures city wide as a matter of administrative convenience, even though they are not required to do so.

Please note that other questions submitted under the heading of comments pertaining to the initial designation of new small MS4s were more appropriately addressed in the *Response to Comments on Draft General Permit 3-9014 for stormwater discharges from small municipal separate storm sewer systems*.