

**Response to Public Comments on the Proposed Amendment to NPDES General Permit For
Small Municipal Separate Storm Sewer Systems (MS4)
General Permit: 3-9014, NPDES Number: VTR040000**

February 18, 2004

The Agency of Natural Resources (ANR) solicited public comment on its proposal to amend General Permit 3-9014 by extending coverage to the urbanized portions of Milton, Jericho and Underhill and its proposal to waive permit requirements for MS4s operated by the towns of Jericho and Underhill. The Town of Milton provided the only comments. ANR thanks everyone who took the time to review the proposed permit amendment and the Town of Milton for its comments.

Based on the public comment ANR has decided to adopt the amendments as originally proposed. Changes were also made at the end of the permit to reflect the facts that 1) there is a thirty day period to appeal the adoption of the amendments and 2) the expiration date of the general permit remains unchanged.

The Town of Milton's letter and ANR's letter in response are posted on ANR's website. Following are excerpts from these letters

Comment 1 from the Town of Milton, requesting that it be granted a waiver from the general permit requirements.

The Town understands that based on the 2000 Census a portion of Milton is considered "urbanized area" and has been automatically designated as an MS4 community. However, the Town believes that it is eligible for a waiver.

Although the urbanized area of Milton has more than 1,000 residents, a storm sewer system as defined by the EPA does not exist. Instead the area is primarily drained by infiltrating stormwater into sandy soils that predominate in Milton's Town Core. There are ditches, catch basins and storm sewer pipes dispersed throughout Milton; however, in many cases where stormwater conveyance exists in the public ROW, the outfalls occur on private land where the Town does not have jurisdiction. We do not believe this drainage meets the EPA definition of a system "owned by a *public body* that discharges into the waters of the United States". We ask that the Agency reconsider its definition of a municipal separate storm sewer system as it applies to Milton.

ANR Response to Comment 1

As noted in the comment, much of the stormwater in the urbanized area of Milton infiltrates into sandy soils and that in many cases where stormwater conveyance exists in the public ROW, the outfalls occur on private land. These facts taken alone or together are not sufficient to justify a waiver from MS4 permit requirements.

EPA rules contain two key definitions relevant to the question of whether Milton is an MS4. The first is the definition of “municipal separate storm sewer system” at 40 C.F.R 122.26(b)(8) which reads in pertinent part as follows:

Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (i) **Owned or operated** (emphasis added) by a State, city, town,...having jurisdiction over disposal of...storm water, that discharges to waters of the United States;
- (ii) Designed or used for collecting or conveying storm water;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW)...

Based on the facts in your letter, although much of the stormwater in Milton’s town core infiltrates into sandy soil, there remains a portion of the stormwater that is ultimately conveyed to waters of the United States via ditches, catch basins and storm sewer pipes. What brings Milton within the definition of an MS4 is the fact that the Town owns or operates all or parts of the system that collect and convey stormwater to waters of the United States. The fact that many of the outfall pipes for that system are on private land does not alter that conclusion. The Town may not own the site of many of the outfall pipes but it operates the storm sewer system that determines, in whole or in part, the quantity and quality of water discharged from them.

The second key definition is the definition of “small municipal separate storm sewer system” at 40 C.F.R 122.26(b)(16) which states in part:

- (16) *Small municipal separate storm sewer system* means all separate storm sewers that are:
 - (i) **Owned or operated** (emphasis added) by...a State, city, town,...having jurisdiction over disposal of...storm water...that discharges to waters of the United States.
 - (ii) Not defined as "large" or "medium" municipal separate storm sewer systems...
 - (iii)...The term does not include separate storm sewers in very discrete areas, such as individual buildings.

The import of this definition is that Milton is a “small” MS4 because it neither a “large” nor “medium” MS4 and because the storm sewer system owned or operated by the Town serves multiple properties rather than an individual building.

Based on these EPA definitions and the facts in your letter we believe that the Town of Milton is clearly a small MS4. In addition, your letter failed to demonstrate that the Town met the requirements for a waiver set out in 40 C.F.R. 122.32(d) or (e).

Comment 2 from the Town of Milton, requesting that it be given additional time to comply with permit requirements.

If Milton is required to comply with the NPDES permit for stormwater, consideration should be given to allow the Town an appropriate amount of time to prepare for the requirements of the regulation. It should be noted that the original entities subject to the permit had three years to familiarize themselves with the federal requirements governing this permit and met with State representatives in monthly meetings for over a year prior to issuance of the permit. It would seem appropriate to allow Milton adequate time to familiarize itself with the regulation as well. The Town will attempt to make a timely filing of its Notice of Intent to seek coverage under the permit as required by the federal rules. However, the stormwater management plan will be submitted only after it can be appropriately planned and budgeted. It would be shortsighted to rush and under fund a plan that is integral to the effective management of stormwater in our community.

ANR Response to Comment 2

With respect to your request for additional time to comply with the MS4 permit we continue to believe that 180 days is adequate. Pursuant to EPA rules (40 C.F.R. 122.26(e)(9)) the Town of Milton should have made application for coverage under the general permit by March 10, 2003. When the Agency issued the general permit on March 19, 2003 it publicly acknowledged the mistake in failing to require the Town of Milton to obtain permit coverage (brought to its attention by the Conservation Law Foundation) and the Agency announced its intention to amend the permit to include the Town. By allowing 180 days for the Town to prepare its application for coverage under the general permit the Agency is consistent with 40 C.F.R. 122.26(e)(9) which allows MS4s that period of time to seek coverage when designated after a permit has initially been issued.

Comment 3 from the Town of Milton, requesting financial assistance in meeting its permit obligations.

Any resources, such as grants, that can be provided by the State to help Milton meet the requirements of this unfunded and unanticipated mandate would be appreciated.

ANR Response to Comment 3

The Agency has submitted to the Environmental Protection Agency a request for Clean Water Act section 104(b)(3) funds to assist the Town of Milton in developing their stormwater management plan. We are optimistic that the agency will be notified before spring and that the

funding will be received. However we cannot guarantee this award and would encourage the Town to continue to look for other potential funding sources. The Agency would like to provide any assistance it can to help locate a source of funding for this plan. We look forward to working with Milton to address the problem of stormwater pollution and believe we both have the same goal of keeping Milton's surface waters cleaner and safer for everyone.