



*Friends of the Wild Rivers*

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EPA Region 6, Water Quality Protection Division (6WQ-CA)

Attn: Diane Smith

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Docket No. 6WQ-03-SW01

RE: MS4 General Permits – NMS040000

To Whom It May Concern:

As a statewide river conservation organization based in New Mexico, Amigos Bravos, Friends of the Wild Rivers, would like to submit the following comments on the NPDES Storm Water General Permit for Small Municipal Separate Storm Sewer Systems (MS4). In New Mexico, issues of water quality and quantity are integral to all aspects of life. The cultural and ecological survival of the communities of New Mexico is intricately tied to our rivers, acequias and other water bodies and we strongly support efforts to curb pollution to our waters through strong storm water controls. We have organized our comments into a number of general topic areas:

(proposed deletions are indicated by strikethrough and [ ] and proposed additions are indicated by underline.)

Public Participation:

- By not requiring a public hearing before each discharger is granted coverage this general permit violates the Clean Water Act's public hearing requirements. 33 U.S.C. § 1342(a)(1). The State of Montana Court of Appeals recently supported this argument in a case that addressed numerous issues regarding MS4s including public participation "We conclude that (1) the general permit violates the Clean Water Act by denying the public notice and the ability to comment; (2) the respondent failed to make a determination of whether the general permit will cover expanded discharges of storm water requiring additional control measures; and (3) the general permit impermissibly departs from the federal standard for

- reducing pollutants; we reverse and remand.” (State of Minnesota in Court of Appeals, C6-02-1243, May 6, 2003)
- The permit needs to include a well-defined process to enable the public to have input into whether or not the permit is working on an ongoing and discharger by discharger basis. Suggested language for implementing public involvement in SWMP effectiveness: Section 5.2.2.6 – The permittee shall have annual public meetings and comment periods upon completion of the draft annual report and monitoring results. The person responsible for implementing and revising the SWMP will review and incorporate public comments into SWMP implementation and necessary revisions to the SWMP. This language would create a regular forum for public input into the SWMP process. This process should be ongoing as long as the discharger is covered under the permit. Adaptive management that includes public input is crucial to ensure the success of any program and is especially necessary for new programs such as the MS4 storm water control permit process.
  - Another issue of concern with public participation is the language outlining public involvement in the NOI and SWMP development process. Language in section 5.2.2.1 and 5.2.2.2 should be clearer to insure that MS4s solicit public involvement and comments prior to submitting a NOI and then again prior to submitting the SWMP to the EPA for approval. This will ensure public participation at the beginning of the process. Language in section 5.2.2.3 should be amended to encourage the person(s) responsible for the SWMP to address public concerns and incorporate changes if appropriate: “Develop and implement a process by which public comments to the plan are received ~~and~~ reviewed, and addressed and that appropriate changes are incorporated by the person(s) responsible for the SWMP.”

#### Monitoring / Measurable Goals –

- There seems to be an inconsistency with sections 5.1.2.2 and 5.6. Section 5.1.2.2 requires MS4s to write and meet measurable goals in implementing the Storm Water Management Plan (SWMP). Yet section 5.6, which outlines the monitoring requirements, requires water quality monitoring only from MS4s that will impact a water with a TMDL completed. How will progress towards these measurable goals be met if there is not consistent comprehensive water quality monitoring program to determine if they have been met or if even if there has been any improvement. All MS4s should be required to implement some kind of water quality monitoring program to determine if the SWMP is effective.
- What is meant by a “measurable goal”? Amigos Bravos contends that a “measurable goal”, when talking about water quality issues, is linked to water quality standards as outlined in EPA regulations “a water quality standard defines the water quality goals of a water body” (40 CFR 131.2). There should be numeric goals outlined in this permit that MS4s must strive to meet through implementing their SWMP. If no numeric goals are set by EPA in the language of the permit then the MS4 should be required to set numeric goals in their SWMP and then monitor during storm events to determine if those goals are

- being met. To reduce costs of such a requirement MS4s should be encouraged to pursue the numerous opportunities to partner with local and regional academic institutions for implementing storm water monitoring.
- Enforcement is not adequately outlined in the permit. Language should be included (perhaps added as a section 5.6.4) that outlines the enforcement mechanisms that are in place if the results of the monitoring show that measurable goals are not being met.

#### Individual MS4 Permits

- The permit needs to include a process for requiring a discharger to obtain an individual permit under certain circumstances. In Michigan there are numerous scenarios outlined in the general MS4 permit under which a permittee cannot obtain coverage under the general permit and must obtain coverage under an individual permit. These scenarios include: 1. If the discharger is a significant contributor to pollution in the effected water body; 2. If the discharger is not complying under the general permit; 3. The regulating entity has determined that the criteria under which coverage under the general MS4 permit no longer applies; and 5. If endangered species are involved. In Pennsylvania individual permits are required in cases where there are impairment problems in the receiving water body, compliance problems or endangered species concerns. To protect New Mexico's waters the general permit should require an individual permit under some circumstances, such as the ones outlined above.

#### Joint SWMPs

- A clearer mechanism for defining and assessing the accountability requirements for each entity involved with a joint SWMP should be outlined in the permit. This section (section 3.4) needs to explicitly state that all areas of all partnering regulated MS4s need to be covered by the joint SWMP.

Amigos Bravos concludes that there are numerous crucial problems and issues that need to be addressed before moving forward with finalizing and implementing the MS4 general permit. We hope that Region 6 EPA will review and incorporate our suggestions.

Sincerely,

Rachel Conn  
Clean Water Circuit Rider  
Amigos Bravos

