



40 West 20th Street
New York, NY 10011
(212) 727-2700
Fax (212) 727-1773

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Pilar Patterson
Chief Mail Code 401-02B
Division of Water Quality
Bureau of Surface Water Permitting
P.O. Box 420
Trenton, NJ 08625-0420
Via electronic mail: pilar.patterson@dep.state.nj.us

Re: *Comments regarding Draft Surface Water Renewal Permits, Category: CSM-Combined Sewer Management, for Camden City (NJPDES Permit No. NJ0108812), Gloucester City (NJPDES Permit No. NJG0108847), and Camden County MUA, (NJPDES Permit No. NJ0026182)*

Dear Ms. Patterson:

Please accept these comments, submitted on behalf of Natural Resources Defense Council (NRDC), concerning the three above-captioned draft NJPDES Surface Water Renewal Permits.¹ NRDC is a national nonprofit environmental organization working to solve the most pressing environmental issues we face today, including securing safe and sufficient water for people and the environment. NRDC has over 1.3 million members and online activists nationwide, including many thousands in New Jersey.

NRDC supports the New Jersey Department of Environmental Protection's (NJDEP) transition from a statewide general permit for combined sewer overflows (CSOs) to an individual permit system, in which NJPDES permits will require CSO communities to develop CSO Long Term Control Plans (LTCPs) that comply with the U.S. Environmental Protection Agency's (USEPA) CSO Policy.

We understand that NJDEP intends the above-referenced permits to serve as models for individual CSO permits elsewhere in the state. We urge NJDEP to consider our comments when developing draft permits for other CSO communities as well.

¹ The specific sections of the draft permits we address in this letter are identical across all three permits. For simplicity, all citations herein to specific permit sections are to the Camden City NJPDES Permit No. NJ0108812 (and the associated Fact Sheet). All of our comments are addressed to the corresponding provisions in all three permits.

Our comments below focus on three specific issues.² First, we support the permit’s express requirement to evaluate green infrastructure as a CSO control measure, on equal terms with other CSO control methods. Second, we recommend that NJDEP modify the permits to ensure that the permittees also consider water conservation measures as a complementary CSO control strategy. Third, we urge NJDEP to modify the permits to ensure that the permittees implement stringent post-construction stormwater volume reduction requirements for new development and redevelopment.

Our specific comments follow below:

1. NRDC supports the permit language requiring consideration of “green infrastructure” in the development of LTCs.

As detailed in NRDC’s 2011 report *Rooftops to Rivers II*, cities across the country are embracing green infrastructure as a cost-effective approach to reducing CSOs, which also provides a wide range of urban sustainability benefits.³ NRDC supports the draft permits’ explicit requirement to evaluate green infrastructure as a CSO control alternative, in combination with other traditional approaches.⁴

Whereas traditional CSO control strategies involve expanding and adding to existing “gray” infrastructure that conveys rainwater away from where it falls and treats it as a waste, green infrastructure treats rainwater as a resource and manages it onsite, through features that mimic natural hydrologic functions, such as infiltration into soil, evapotranspiration into the air, and onsite capture for productive use. Unlike gray infrastructure, green infrastructure addresses the root cause of CSOs: the huge amounts of polluted runoff generated by impervious spaces in the built environment. Green infrastructure practices – most of which rely on vegetated spaces that absorb runoff -- also yield many important co-benefits, such as beautifying neighborhoods, cooling and cleansing the air, reducing asthma and heat-related illnesses, and lowering heating and cooling energy costs.

We encourage the permittees to learn from the experiences of other cities, such as those profiled in *Rooftops to Rivers II*, and jointly develop a LTC that maximizes the use of green infrastructure.

2. NJDEP should modify the permits to list “water conservation” as a strategy to be considered in the development of LTCs.

Green infrastructure is an effective CSO control strategy because it reduces the volume of water in over-burdened combined sewer systems. Reducing the sanitary flow in a combined sewer system can help to serve the same goal. For example, New York City estimates that reductions in

² We do not endeavor, in this letter, to comprehensively address the draft permits’ adequacy to meet all of the requirements of EPA’s CSO Control Policy (which is codified in section 402(q) of the Clean Water Act).

³ www.nrdc.org/rooftops

⁴ Draft Surface Water Renewal Permit Action-Camden City NJPDES Permit No. NJ0108812, section G(4)(e), available at http://www.nj.gov/dep/dwq/pdf/draft_cso_0108812.pdf [hereinafter *Camden Draft Permit*].

sanitary flow – through successful water conservation measures such as rebates for low-flow toilet replacements -- will reduce CSO volumes by approximately 1.7 billion gallons per year (an 8% decrease) by 2030.⁵ We urge NJDEP to modify the permits to explicitly identify water conservation as one of the alternatives to be considered in the development of a LTCP.

3. NJDEP should modify the draft permits to require stringent controls on the quantity of runoff from new development and redevelopment projects.

To maximize the use of green infrastructure to reduce sewage overflows, municipalities must not only invest in green infrastructure retrofits on public property, but must also ensure that private development and redevelopment projects incorporate green infrastructure practices to reduce the volume of runoff into public sewers. Philadelphia's *Green City, Clean Waters* program presents a strong model. The city's Clean Water Act permits are being modified to include an enforceable long-term target of managing one inch of runoff from one-third of the impervious area in the city's combined sewer service area; the city's plan to meet that requirement includes major investment in green infrastructure on public property, as well as implementation of a local regulation requiring new development and redevelopment projects to infiltrate one inch of stormwater runoff onsite.⁶

New Jersey's stormwater regulations and general permits for municipal separate storm sewer systems (MS4s) areas recognize the value of reducing the volume of runoff; they include quantitative standards to limit the quantity of "post-construction" stormwater runoff from development projects, and provide that municipalities must implement these standards through local ordinances. According to the Fact Sheets accompanying the draft Camden CSO permits, it appears that NJDEP intends to require the permittees to apply these same standards within combined sewer service areas. The Fact Sheets state that the permittees must "extend applicable stormwater management practices, ordinances and rules to combined sewer areas of their towns."⁷ The Fact Sheet further explains: "This would mean the permittee should apply the same ordinances and rules in the combined sewer areas of the municipality as they apply in the separately sewered areas..."⁸

The actual text of the draft permits, however, does not appear to include such a specific requirement. Rather, the permit requires implementation of unspecified stormwater pollution prevention "rules and ordinances," without reference to extending existing ordinances and rules in separately sewered areas to the combined sewer areas.⁹ NJDEP should revise the permit language to state explicitly that a permittee must implement requirements in combined sewer areas that are at least as stringent as the stormwater rules and ordinances and rules applicable in separately sewered areas.

⁵ See NYC Green Infrastructure Plan, available at http://www.nyc.gov/html/dep/html/stormwater/nyc_green_infrastructure_plan.shtml

⁶ See *Rooftops to Rivers II*, *supra*.

⁷ *Fact Sheet*, N.J. DEP'T OF ENVTL. PROT. 12(2013), available at http://www.nj.gov/dep/dwq/pdf/draft_cso_0108812.pdf.

⁸ *Id.*

⁹ See Camden Draft Permit, *supra* note 1, § F(7).

Critically, however, we also urge NJDEP to improve upon the existing MS4 post-construction stormwater quantity standards – both for purposes of these and other CSO permits, and for future iterations of the statewide MS4 general permits (which are due for renewal in 2014).¹⁰ To reduce runoff from existing developed areas, stringent post-construction stormwater quantity standards must be applied not only to “new development” on previously undeveloped land, but also to “redevelopment” projects on sites that have been built-upon previously. New Jersey’s current post-construction stormwater requirements for MS4 areas do not do so; rather, as highlighted by a recent New Jersey Future report, the state’s standards include broad exceptions that generally allow redevelopment projects to continue discharging the same volume of runoff as the previous development on the site.¹¹

In contrast, other jurisdictions that are using post-construction stormwater regulations to help reduce CSOs, such as Philadelphia and New York City, apply their standards equally to new development and redevelopment projects. Similarly, MS4 requirements in other jurisdictions apply robust runoff reduction requirements to redevelopment; for example, the U.S. Environmental Protection Agency recently highlighted the MS4 permit for Washington, DC as a model, explaining that it “requires onsite retention of 1.2” of rainfall from all 24-hour storms for all new and redevelopment projects 5,000 square feet or larger, as well as for most retrofit projects.¹²

In sum, to ensure that the permittees maximize the use of green infrastructure to reduce CSOs, NRDC urges NJDEP to modify the draft permits to establish a stringent on-site retention standard for post-construction runoff from both new development and redevelopment.

* * *

Thank you for your consideration of our comments. We would welcome the opportunity to discuss these comments further with NJDEP, and to work with the agency to improve post-construction stormwater standards for both CSO and MS4 areas throughout the state.

Sincerely,



Lawrence Levine
Senior Attorney

¹⁰ NRDC is currently working with Sustainable Jersey, through a working group in which NJDEP also participates, to identify opportunities to improve the state’s existing MS4 standards consistent with best practices nationwide. We look forward to continuing that dialogue.

¹¹ *Green Infrastructure in the State of New Jersey: Statutory and Regulatory Barriers to Green Infrastructure Implementation*, at 19-20. Retrieved on 6/16/13 from <http://www.njfuture.org/wp-content/uploads/2013/01/New-Jersey-Future-Statutory-Regulatory-Barriers-to-Green-Infrastructure-in-NJ.pdf>

¹² USEPA, *National Water Program Best Practices and End-of-Year Performance Report, Fiscal Year 2012*, at 41. Retrieved on 6/16/13 from http://water.epa.gov/resource_performance/performance/upload/OW_End_of_Year_ReportOverview_for508.pdf