

**ALLGEIER, MARTIN and ASSOCIATES, INC.**

*Consulting Engineers • Hydrologists • Surveyors*

HYDRO DIVISION - ROLLA OFFICE

112 West 8<sup>th</sup> Street  
Rolla, Missouri 65401

Phone: (573) 341-9487  
FAX: (417) 680-7300

January 2, 2015

Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, Missouri 65102

ATTN: NPDES Permits and Engineering  
Section/Permit Comments

RE: Draft Permit No. MOR040000

Greetings:

I have reviewed the above referenced draft permit and have the following comments:

Section 5 regarding monitoring is an unfunded mandate that places an undue burden on communities that have limited staff and budgets.

Why are communities being required to sample? If there is not a documented problem then why sample? Without additional data regarding conditions in the watershed such as land use changes, impervious cover, soil types, previous rainfall events, the data collected is relatively meaningless.

Given that the objective of the program is to improve water quality by applying Best Management Practices, (BMP's), specific sampling without direct indication of problems is most likely wasted money.

Some smaller communities that have been included in the MS4 program due to their proximity to larger MS4's do not have six discrete sampling locations.

Given the random nature of rainfall, not all wet-weather samples can always be collected during the same storm, requiring multiple deployments of equipment and personnel resulting in increased cost for compliance. The estimated costs presented in the fact sheet neglect travel time and overtime costs (not all rainfall occurs between 8:00 a.m. and 5:00 p.m.).

Missouri Department of Natural Resources

Page 2

January 2, 2015

Collecting rainfall samples and testing uncontaminated rainfall pH may necessitate collection of rainfall samples separate from stream sampling, incurring additional costs.

The inspection processes associated with the communities' illicit discharge ordinance will identify sources of contamination that the sampling would only duplicate.

In summary, the proposed sampling requirement will impose an unfunded burden on area communities. The proposed requirements are neither practical nor cost effective. The data collected will be of limited value and will duplicate data currently being collected by Phase 1 communities.

Thank you for the opportunity to comment on the proposed draft permit.

Sincerely,  
Allgeier, Martin and Associates, Inc.  
Hydro Division

A handwritten signature in black ink, appearing to read "Joseph P. Wilson".

Joseph P. Wilson, PH, PE



city  
of

# CREVE COEUR

300 North New Ballas Road • Creve Coeur, Missouri 63141  
(314) 432-6000 • Fax (314) 872-2539 • Relay MO 1-800-735-2966  
[www.creve-coeur.org](http://www.creve-coeur.org)

December 31, 2014

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

City staff has reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 24, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the subsequent comments submitted by the Metropolitan St. Louis Sewer District (MSD). Both agencies raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Creve Coeur is committed to working with MSD and the Department to ensure that area waters are protected through application of good science and stakeholder input. However, the City remains concerned that the permit, as drafted, sets a standard that may not be achievable. Please contact me at (314) 442-2084 or at [mwohlberg@ci.creve-coeur.mo.us](mailto:mwohlberg@ci.creve-coeur.mo.us) if you have any questions about the City's position or if you would like to discuss these issues further.

Sincerely,

CITY OF CREVE COEUR

Matt Wohlberg, P.E.

City Engineer

cc: Mark Perkins, Creve Coeur City Administrator  
Jay Hoskins, MSD

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January 2, 2015

Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
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Section/Permit Comments

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Why are communities being required to sample? If there is not a documented problem then why sample? Without additional data regarding conditions in the watershed such as land use changes, impervious cover, soil types, previous rainfall events, the data collected is relatively meaningless.

Given that the objective of the program is to improve water quality by applying Best Management Practices, (BMP's), specific sampling without direct indication of problems is most likely wasted money.

Some smaller communities do not have six discrete sampling locations, especially those that have been included in the MS4 program due to their proximity to larger MS4's.

Given the random nature of rainfall, not all wet-weather samples can always be collected during the same storm, requiring multiple deployments of equipment and personnel resulting in increased cost for compliance. The estimated costs presented in the fact sheet neglect travel time and overtime costs (not all rainfall occurs between 8:00 a.m. and 5:00 p.m.).

Missouri Department of Natural Resources

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January 2, 2015

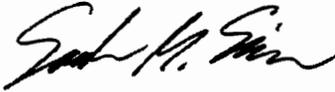
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The inspection processes associated with the communities' illicit discharge ordinance will identify sources of contamination that the sampling would only duplicate.

In summary, the proposed sampling requirement will impose an unfunded burden on area communities. The proposed requirements are neither practical nor cost effective. The data collected will be of limited value and will duplicate data currently being collected by Phase 1 communities.

Thank you for the opportunity to comment on the proposed draft permit.

Sincerely,  
Allgeier, Martin and Associates, Inc.  
Hydro Division

A handwritten signature in black ink, appearing to read "Sarah M. Simon". The signature is fluid and cursive, with the first name "Sarah" being the most prominent.

Sarah M. Simon, PE



December 30, 2014

ATTN: NPDES Permits and Engineering Section / Permit Comments  
Missouri Department of Natural Resources  
Water Protection Program,  
P.O. Box 176  
Jefferson City, MO 65101

Re: Comments for Draft Missouri State Operating Permit  
MOR040000 Revised 11.12.2014

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

After consultation with other permittees in St. Charles County as well as Metropolitan Saint Louis Sewer District (MSD), we have developed a list of specific comments to share with the Department. In addition to these specific comments we voice support and concurrence with those comments made by the Association of Missouri Clean Water Agencies (AMCA).

As a point of context regarding our comments: These comments are made with reference to inclusion as mandatory components of the permit. Many of these provisions have application in case by case basis and should be included in Stormwater Management Program plans where appropriate, however, they are not a one size fits all solution. Where we request exclusion of a component of the draft permit we make it in this context.

Comment #1: Our highest priority is a request that MODNR review and approve each permit's Stormwater Management Program plan. For small communities with limited technical capacity and staffing it is difficult to stay current with changes to the state permit. Even with the best of intentions it is easy for a community's efforts to stray from what is mandated by the Department. Review and approval of the SWMP by the Department is the only way to ensure MS4's understand their responsibilities as the State Permit expands in scope and complexity. We submit that it is the responsibility of the Department to provide guidance rather than relying only on the threat of enforcement to achieve the objective of improved water quality. Approval of a SWMP will provide needed clarity regarding the Department's compliance expectations and just as important provide a full Clean Water Act permit shield.

Comment #2: The Department must approve the newly required MS4 TMDL Implementation Plans. Without approval small MS4's cannot hope to have any certainty that their plan will be consistent with other plans and appropriate to address the specific impairment targeted by the TMDL.

Comment #3: Lake Saint Louis has significant concern that the Fact Sheet appears to signal a move toward standards other than or “in addition to” the Maximum Extent Practicable (MEP) standard. MEP is the standard in the permit and must remain such to assure an affordable and appropriate approach to regulation. Any move away from the MEP standard has the potential to make MS4’s responsible for water quality problems outside of their control including those exempt from regulation.

Comment #4: Lake Saint Louis concurs with the assessment of MSD in their December 2, 2013 comment letter that the Department has not completed an affordability analysis (cost of compliance analysis) that meets the requirements of Section 644.145, RSMo. In addition to the objections listed in MSD’s letter we wish to point out that significant portions of the City’s budget are restricted to specific purposes by statute or ballot language. The City did place a ballot measure for stormwater on the April 2012 ballot which was unsuccessful. With *Zweig et al. v Metropolitan St. Louis Sewer District* as guidance the City has concluded that there is no source for additional revenue to address the additional requirements of the new permit without a vote, and this approach has already failed locally.

Comment #5: Monitoring: A single annual sample will provide little information, and is subject to any number of anomalies that will provide false information about the condition of our water bodies.

Comment #6: The particular group of pollutants selected for testing include tests that several local labs could not perform. Once our on call engineering consultant was able to find a Lab that could perform the required tests the anticipated cost for sampling and testing was quoted at \$9,000 per year. Nearly three times the \$3,720 estimated in the Department’s fact sheet.

Comment #7: While many MS4’s also have Waste Water Permits, Lake Saint Louis does not. Development of an effective and meaningful science based monitoring program, and interpretation of the results requires significant time from staff with appropriate technical expertise. Contracting this staff if not already a part of the organization is an expense that is not included in the Fact Sheet.

Comment #8: In the case of Lake Saint Louis, the cost to implement the Monitoring program in the Draft Permit will most likely be covered by reducing budgets for installation of retrofit BMP’s, creek stabilization or preventative maintenance of the existing pipe system. Further, by making this a required component of the MS4’s permit 319 money can no longer be used for monitoring. Those communities with logical science based monitoring programs funded with 319 money may lose them. Adding this particular system of monitoring will have an adverse effect on water quality across the State which will be irreversible due to anti-backsliding provisions.

Comment #9: In summary the monitoring program suggested by the permit lacks a scientific basis. It is an example of regulation for regulation’s sake and will provide no improvement or data that can be used to improve Missouri’s Waters.

We suggest making in-stream water quality monitoring a recommended option. Monitoring should be focused on activities that would provide representative data, considering seasonal and weather related variations and pollutants that are expected or have been shown in the past to be present in high levels.

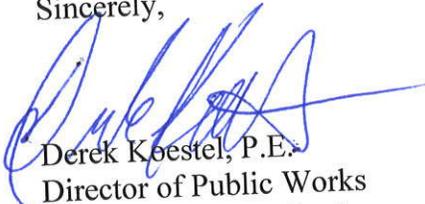
Comment #10: We support the District’s decision to remove the provisions in MCM-5 in the previous draft permit related to mimicking pre-developed conditions.

12/30/2014

Our Lakes are the identity and crowning attraction of Lake Saint Louis. We value and are committed to clean water because it is quite literally central to our existence. For these reasons we support a permit developed on the foundation of thorough science and stakeholder input.

Thank you for the opportunity to provide comments during this process. Please contact me at 636-695-4221 if you have any questions or would like to discuss these issues further.

Sincerely,



Derek Koestel, P.E.  
Director of Public Works  
City of Lake Saint Louis



December 19, 2014

# City of Ellisville

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By Electronic Mail (publicnoticenpdes@DNR.mo.gov)

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Ellisville is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact Mr. John Collins at 636-227-9660 if you have any questions or would like to discuss these issues further.

Sincerely,

William L. Schwer  
City Manager/City Engineer

cc: Jay Hoskins - MSD



**Phone: (573) 364-8659**

**Fax: (573) 364-8602**

**email: shargis@rollacity.org**

January 2, 2015

Missouri Department of Natural Resources  
Water Protection Program  
Water Pollution Branch  
P.O. Box 176  
Jefferson City, Missouri 65102

Re: Comments on Draft Missouri State Operating Permit

To whom it may concern:

Please accept the following as the City of Rolla's official comments on the Missouri Department of Natural Resources Draft Missouri State Operating Permit.

Many of the changes implemented in the Draft Operating Permit appear to be advantageous to regulated municipalities and will assist each community in its ability to comply with permit regulations.

However, of concern are the requirements under Section 5.1.2. It has been estimated that the addition of the annual "In-stream Water Quality Monitoring" program will cost the city in excess of \$15,000 per year. While the city is capable of conducting some of the laboratory testing in-house, the majority will require the use of an independent laboratory. This is an expense that is currently unfunded. City of Rolla funding has been in a steady decline from 2007 on, particularly in the general fund which provides money for activities such as this. These factors combined ensure that unfunded programs are virtually impossible to implement at this time. Given the current economy and environment, a temporary moratorium on requirements such as these would be helpful.

Perhaps it would be more advantageous to ensure that the requirements already in place are understood, implemented and enforced before new requirements are added. Regulations change so rapidly that it is difficult for municipalities, particularly the ones with small operating budgets, to keep up. The City of Rolla has always strived to meet all federal and state requirements in our operating procedures and will continue to do so. Reconsideration of this matter by the state would be appreciated.

Please feel free to contact me at (573) 364-8659 if you have any questions or require any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "SH", is written over the word "Sincerely,".

Steve Hargis, P.E.  
Director of Public Works  
SH/acm

Cc: RF, File, ACM

# CITY OF LADUE

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## Public Works

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December 31, 2014

By Electronic Mail (publicnoticenpdes@DNR.mo.gov)

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Ladue is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact Anne Lamitola at (314) 993-5665 if you have any questions or would like to discuss these issues further.

Sincerely,



Anne C. Lamitola, P.E.  
Director of Public Works

cc: Jay Hoskins - MSD



Director of Public Works  
**Bob Ruck**  
City of Manchester  
14318 Manchester Road  
Manchester, Missouri 63011

(636) 227-1385, ext. 131

December 31, 2014

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit  
MOR040000 Comments**

Dear Mr. Wieberg:

The City of Manchester appreciates the opportunity to provide the Department of Natural Resources with our comments regarding the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Manchester is committed to working with MSD and the Department of Natural Resources to ensure that Missouri's waters are protected through application of good science and stakeholder input.

Sincerely,  


Bob Ruck  
Director of Public Works

cc: Jay Hoskins - MSD

HOME  
BUILDERS  
ASSOCIATION  
OF ST. LOUIS  
& EASTERN  
MISSOURI

10104  
OLD OLIVE  
STREET ROAD

ST. LOUIS,  
MISSOURI  
63141-5908

314 994 7700

FAX  
314 432 7185

WEBSITE  
WWW.STLHBA.COM

January 2, 2015

Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, MO 65102

Attn: Chris Wieberg, Chief, Operating Permits Section

Re: Draft Missouri State Operating Permit MOR040000 Comments

Dear Mr. Wieberg,

On behalf of the Home Builders Association of St. Louis and Eastern Missouri (HBA) and its nearly 600 member companies, I thank you for the opportunity to comment on the Missouri Department of Natural Resources' (DNR) draft Small Municipal Separate Storm Sewer Systems (MS4) General Operating Permit.

The HBA's membership consists of firms that participate in all levels of residential development and construction. Our members live and work in the communities in which they build, and regularly plan and design their projects to optimize environmental protection and resource conservation. However, we have concerns with a number of aspects of the draft MS4 General Operating Permit, and we appreciate your willingness to consider comments from the home building industry.

The HBA supports the November 24, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA). Additionally, we join with the Metropolitan St. Louis Sewer District (MSD) in submitting the following:

**MS4 Permit Implementation and Total Maximum Daily Loads (TMDLs)**

The HBA believes TMDLs, TMDL implementation plans, and MS4 National Discharge Pollutant Elimination Systems (NPDES) permit programs must communicate and implement a consistent, affordable, and appropriate approach. We believe aspects of the proposed MS4 permit fall short. The HBA understands MSD has been assured in discussions related to the St. Louis area bacteria TMDLs and implementation plans that best management practices (BMPs) to the maximum extent practicable (MEP) is the standard MS4 permits will implement. However, the proposed MS4 permit and the accompanying fact sheet frame TMDL implementation as "in addition to" the MEP standard. Sections 1.4.1 and 1.4.2 of the proposed permit appear acceptable; however, the discussion of these sections in the permit fact sheet is incorrect and should be revised to conform to the text of the permit. While the HBA recognizes the fact sheet is not an enforceable part of the permit, we believe it is important that the permit and fact sheet provide a consistent explanation of the applicable compliance standard. Accordingly, we believe the fact sheet should be revised to consistently indicate that MEP is the standard that MS4 permittees will implement.



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Additionally, the HBA believes DNR must approve the newly required MS4 TMDL implementation plans. Approval of such plans is an important step to ensuring proper TMDL implementation. This will be a benefit as it establishes clear, specific, and measureable measures by which the MEP standard will be evaluated for the current permit cycle.

### **Cost of Compliance Analysis**

While the HBA acknowledges DNR's willingness to modify a permittee's fact sheet to incorporate actual cost (Section 3.1.2.1), we believe DNR does not perform affordability analyses (costs of compliance analysis) that meet the requirements of Section 644.145 (RSMo). MSD provided comments in December 2013 related to this issue, and the HBA supports those comments.

### **Monitoring**

The fact sheet indicates DNR "added water quality monitoring requirements to this permit as a means to begin measuring the success toward the goal of meeting water quality standards." However, here in the St. Louis area, MSD already has an extensive in-stream network of monitoring for a wide variety of pollutants. As the HBA understands it, the data generated from that network is reported to DNR annually and used by DNR in evaluating water quality in the St. Louis area. The HBA believes this is a positive reflection of the quality of MSD's data. So, while we acknowledge the importance of monitoring data, we object to the collection of data if the reasoning is not based on sound science. In their current form, the water quality monitoring requirements listed in Section 5.1.2 should be removed from the permit if a permittee (such as MSD) already collects far superior data through existing programs.

The HBA has learned from MSD that a single, annual sample will provide limited information about the water quality of a stream. Bacteria and chloride, two pollutants that are ubiquitous to urban areas across the state can be used as examples. Assessment of whether a stream meets the water quality standard for bacteria is based on a recreation season geometric mean; a single data point is insufficient for this purpose. Chloride, from de-icing materials, is typically measured during winter months; sampling between July 1 and September 30 does not align with that critical period.

The wet weather water quality monitoring effort is particularly problematic. Wet weather monitoring is biased to a discrete period of time that, for some pollutants, is not representative of typical conditions. There are many sources of pollution besides MS4 contributions during wet weather, and correlating the effectiveness of the MS4 program to wet weather water quality data would be impossible using the methodology described in the permit. Also, the degree of effort, special equipment, and associated cost required for meaningful wet weather monitoring and data assessment is not fully considered in the cost of permit compliance.

Taking these comments into account, the HBA suggests DNR make an in-stream water quality monitoring program a recommended option, and focus the monitoring option on activities that would provide representative data while taking into consideration seasonal and weather-related variation in pollutant loading.



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### Miscellaneous Requests for Clarification

The HBA requests clarification on Section 3.1.3.1 related to the statement “The permittee shall document the calculations or other evidence when indicating the assumptions and requirements of the applicable TMDL will be met.” Should this statement be revised?

The HBA also requests clarification in Section 3.1.3.2 regarding who will perform the stated evaluation.

Again, thank you for allowing the HBA to share our input. We do hope you will consider our comments, in addition to comments provided by the Partnership for Tomorrow, MSD, and AMCA. Please contact me if you have any questions, if you would like additional information, or if there is an opportunity to further discuss. I can be reached at 314.817.5616 or [SchwartzE@hbastl.com](mailto:SchwartzE@hbastl.com).

Regards,



Emily Schwartz Post  
Assistant Staff Vice President for Public Policy

cc: HBA Environmental Affairs Committee  
Pat Sullivan, Executive Vice President, HBA  
Emily Wineland, Staff Vice President for Public Policy, HBA



THE  
PARTNERSHIP  
FOR TOMORROW



January 2, 2015

Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, MO 65102

Attn: Chris Wieberg, Chief, Operating Permits Section

Re: Draft Missouri State Operating Permit MOR040000 Comments

Dear Mr. Wieberg,

On behalf of the Partnership for Tomorrow (PFT), I thank you for the opportunity to comment on the Missouri Department of Natural Resources' (DNR) draft Small Municipal Separate Storm Sewer Systems (MS4) General Operating Permit.

The PFT, a coalition of the construction and development industries, is comprised of the following organizations: the Associated General Contractors of Missouri, the Home Builders Association of St. Louis and Eastern Missouri, the Missouri Growth Association, the St. Louis Association of REALTORS<sup>®</sup>, the St. Louis Council of Construction Consumers, and the St. Louis Regional Chamber. Our mission is to stimulate job growth, attract and retain residents, and promote new businesses within the St. Louis region through balanced policy related to construction and development.

The PFT is writing to convey our support for the November 24, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA) as these comments raise a number of significant concerns that we share. Additionally, we join with the Metropolitan St. Louis Sewer District (MSD) in submitting the following comments:

**MS4 Permit Implementation and Total Maximum Daily Loads (TMDLs)**

The PFT believes TMDLs, TMDL implementation plans, and MS4 National Discharge Pollutant Elimination Systems (NPDES) permit programs must communicate and implement a consistent, affordable, and appropriate approach. We believe aspects of the proposed MS4 permit fall short. The PFT understands MSD has been assured in discussions related to the St. Louis area bacteria TMDLs and implementation plans that best management practices (BMPs) to the maximum extent practicable (MEP) is the standard MS4 permits will implement. However, the proposed MS4 permit and the accompanying fact sheet frame TMDL implementation as "in addition to" the MEP standard. Sections 1.4.1 and 1.4.2 of the proposed permit appear acceptable; however, the discussion of these sections in the permit fact sheet is incorrect and should be revised to conform to the text of the permit. While the PFT recognizes the fact sheet is not an enforceable part of the permit, we believe it is important that the permit and fact sheet provide a consistent explanation of the applicable compliance standard. Accordingly, we believe the fact sheet should be revised to consistently indicate that MEP is the standard that MS4 permittees will implement.

Additionally, the PFT believes DNR must approve the newly required MS4 TMDL implementation plans. Approval of such plans is an important step to ensuring proper TMDL implementation. This will be a benefit as it establishes clear, specific, and measurable measures by which the MEP standard will be evaluated for the current permit cycle.

### **Cost of Compliance Analysis**

While the PFT acknowledges DNR's willingness to modify a permittee's fact sheet to incorporate actual cost (Section 3.1.2.1), we believe DNR does not perform affordability analyses (costs of compliance analysis) that meet the requirements of Section 644.145 (RSMo). MSD provided comments in December 2013 related to this issue, and the PFT supports those comments.

### **Monitoring**

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The PFT has learned from MSD that a single, annual sample will provide limited information about the water quality of a stream. Bacteria and chloride, two pollutants that are ubiquitous to urban areas across the state can be used as examples. Assessment of whether a stream meets the water quality standard for bacteria is based on a recreation season geometric mean; a single data point is insufficient for this purpose. Chloride, from de-icing materials, is typically measured during winter months; sampling between July 1 and September 30 does not align with that critical period.

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Taking these comments into account, the PFT suggests DNR make an in-stream water quality monitoring program a recommended option, and focus the monitoring option on activities that would provide representative data while taking into consideration seasonal and weather-related variation in pollutant loading.

### **Miscellaneous Requests for Clarification**

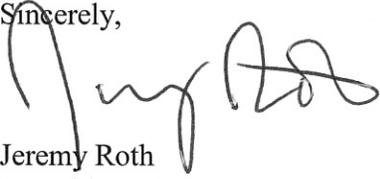
The PFT requests clarification on Section 3.1.3.1 related to the statement "The permittee shall document the calculations or other evidence when indicating the assumptions and requirements of the applicable TMDL will be met." Should this statement be revised?

The PFT also requests clarification in Section 3.1.3.2 regarding who will perform the stated evaluation.

Thank you for allowing the PFT to share our input. We do hope you will carefully consider and satisfactorily resolve our comments, in addition to comments provided by MSD and AMCA. We are committed to working with DNR to ensure Missouri's waters are protected through the application of sound science and stakeholder input. Please contact Emily Schwartze Post at the Home Builders Association of St. Louis and

Eastern Missouri (314.817.5616 or [SchwartzE@hbastl.com](mailto:SchwartzE@hbastl.com)) if you have any questions, if you would like any additional information, or if there is an opportunity to further discuss.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Roth', written in a cursive style.

Jeremy Roth  
McBride & Son Companies  
Chairman, the Partnership for Tomorrow

cc: Members, Partnership for Tomorrow



ASSOCIATION OF MISSOURI  
CLEANWATER AGENCIES

November 24, 2014

By Electronic Mail ([publicnoticenpd@dnr.mo.gov](mailto:publicnoticenpd@dnr.mo.gov))

Mr. John Madras  
Director  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

**Re: Comments in re Proposed Reissuance of MOR040000 (Small  
Municipal Separate Storm Sewer Systems (MGP))**

Dear Mr. Madras:

I am writing on behalf of the Association of Missouri Cleanwater Agencies ("AMCA") to provide comments regarding the Department's proposed reissuance of the Small Municipal Separate Storm Sewer Systems ("MS4") General Permit (hereinafter, "Proposed MGP").

AMCA comprises public water, sewer, and stormwater utilities statewide. Because a number of our members operate small MS4s, AMCA has a strong interest in the reissuance of the MGP.

In 2013, AMCA submitted comments regarding the Department's prior permit draft. These comments are incorporated hereto by reference. We appreciate the changes DNR made in the Proposed MGP to address AMCA's earlier concerns. Unfortunately, the Proposed MGP still contains terms that are legally inappropriate and which put small MS4s at significant risk for lawsuits and/or allegations of non-compliance. Accordingly, we request that the final MGP be issued consistent with the following comments.

**A. MS4s Are Not Required to Comply with Water Quality Standards or Numeric TMDL Wasteload Allocations**

In our 2013 comments, AMCA highlighted permit sections that included language that could be incorrectly read to require compliance with the state's water quality standards ("WQS") and TMDL wasteload allocations ("WLAs"). AMCA explained why the permit should be revised to reference the correct compliance standard for MS4s – BMPs (Best Management Practices) to the maximum extent practicable ("MEP").

AMCA specifically requested changes to language in Section 4.1.1.2 which require a permittee to develop a stormwater management program and plan ("SWMP") to "protect water quality" and "satisfy the appropriate water quality requirements of the Missouri Clean Water Law "CWL" and Clean Water Act "CWA" in accordance with 40 CFR 122.34." We asked that the requirement simply restate that MS4s must implement BMPs to the MEP and delete the requirement "to protect water quality" and satisfy the appropriate water quality requirements.

DNR refused to change this problematic language arguing that "(t)he language in the current version of the permit mirrors nearly exactly the language in federal regulation."

We disagree. We note that the federal Clean Water Act, does not include either of the quoted phrases above. By adding them to the permit (regardless of whether noted in EPA regulation), DNR is going beyond the statutory MEP standard. If that is not DNR's intention then DNR should simply remove the language. At a minimum, this made up language will cause confusion regarding what is required. For example, what is meant by the requirement to "protect" water quality? This unnecessary and vague requirement opens permittees up to EPA or citizen challenge anytime in their view a MS4 is not "protecting" water quality.

For these reasons, DNR must revise Section 4.1.1.2 as follows: "Develop, implement and enforce a SWMP designed to reduce the discharge of pollutants from the permittee's regulated small MS4 to the MEP, ~~to protect water quality, and to satisfy the appropriate water quality requirements of the Missouri CWA and CWA 40 CFR 122.34.~~"

In addition to Section 4.1.1.2, there is inappropriate WQS and TMDL WLA text that must be corrected at:

- 1.4.1 – Includes the same "protect water quality" and "appropriate water quality requirements" text as in 4.1.1.2. This language should also be removed.
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We conclude by noting that for the past 15 years, every final legal decision on the issue of MS4 water quality standards compliance has found that WQS compliance by MS4 permittees is not required. See, e.g. *Conservation Law Found, Inc. v. Boston Water & Sewer Comm'n*, 2010 U.S. Dist. LEXIS 134838, 73 ERC (BNA) 1282 (D. Mass. 2010); *Miss. River Revival, Inc. v. City of St. Paul*, 2002 U.S. Dist. LEXIS 25384, 56 ERC (BNA) 1114, 33 Env'tl. L. Rep. 20131 (D. Miss. 2002); *City of Acadia v. State Water Res. Control Bd.*, 135 Cal.App.4<sup>th</sup> 1392 (2006); *Texas Indep. Producers v. EPA*, 410 F.3d 964 (7<sup>th</sup> Cir 2005); *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cap. App. 4<sup>th</sup> 866 (2004); *Matter of Natural Resources Defense Council, Inc. v. New York State Dept. of Env'tl. Conservation*, 111 A.D. 3d 737, (N.Y. App. Div. 2013). Accordingly, DNR should stick exclusively to the applicable "BMPs to the MEP" standard in the final MS4 GP.

Finally, we also note that page 1 of the Fact Sheet contains the following explanation which we believe incorrectly states the water quality-based requirements for MS4s. We urge DNR to remove the second item ("requirement to comply with more stringent requirements...") as follows:

The department believes that the remaining two subsections 1.4.2 .1 and 1.4.2.2 address the ~~two~~ primary standards for MS4: ~~1) requirements for MS4s to implement Best Management Practices (BMPs) to the Maximum Extent Practicable (MEP) toward the goal of protecting water quality in the receiving streams as a baseline MS4 permit standard; and 2) requirements to comply with more stringent requirements as may be indicated in assumptions and requirements of approved and effective TMDLs.~~

## **B. New Section 5.1 Monitoring Requirements**

We question why DNR added a new instream monitoring section in the Proposed MGP. Monitoring requirements can be expensive and often MS4 operators find that the results are unhelpful for making programmatic improvements. We fail to see how two annual dry weather samples followed by three annual wet weather samples can tell us anything about stormwater impacts.

During wet weather, the pollutants found instream come from a wide variety of sources – often completely unrelated to MS4 discharges. Thus, by requiring this monitoring, DNR implicitly suggests that instream pollutant loadings will be related to MS4 discharges. That is likely not the case in many instances for many pollutants. Accordingly, we ask DNR to reconsider its preliminary decision to include this monitoring in light of the following: (1) what type of results DNR expects to see, (2) how those results will be used/beneficial, and (3) Whether this monitoring will provide information that is commensurate in value to the public cost to obtain it

If Section 5.1 remains in the final permit over our objection, we do ask that DNR delete the last sentence of Section 5.1.2.1.3.2 because it is unfair to request such an assessment based upon one-time sampling events. Section 5.1.2.1.3.2 requires:

At the time of sampling, the permittee shall record any observed erosion of streambanks, scouring, or sedimentation in streams, such as sand bars or deltas.

**C. Requirement to Inspect All Stormwater Structures and Facilities within The Permit Area is Too Broad**

Section 4.1.5 of the Proposed MGP requires that a permittee inspect or require inspection of any structures put in place to prevent or remove pollutants as well as the facilities in general “to ensure that all BMPs are continually implemented and effective.” The SWMP must also include a “monitoring plan with implementation schedule.” We have several concerns with these requirements.

First, permittees should not be required to inspect (or have inspected) entire facilities. There is no need for an MS4 to look at anything but a BMP that is discharging to its system. Small MS4s should not be asked, for example, to inspect an entire commercial property simply because it has a stormwater pond. We doubt that a small MS4 has the legal authority to do so.

Second, the federal requirement for MCM-5 (post-construction stormwater management) addresses the long-term operation and maintenance of post-construction BMPs. It does not address whether the BMP is “continually implemented and effective.” In other words, a BMP inspection is typically done to review whether the BMP is still in place, is working, and is being properly maintained. BMP inspections do not assess whether the BMP is effectively reducing pollutants consistent with its design. It is not actually possible to assess whether a BMP is “continually” implemented given that BMP inspections are performed as snapshots in time rather than continuously reviewed.

Third, AMCA believes DNR meant for inspections to apply to post-construction, permanent BMPs. However, the requirement is written in a way that could be misread

to require inspections of construction BMPs. There are programs in place that require these inspections. There is no need to include such a requirement in Section 4.1.5.

For all of these reasons, AMCA requests that DNR revise this permit provision as follows:

4.1.5 The permittee shall inspect (or require inspection of) any permanent structures that function to prevent pollution of stormwater or to remove pollutants from stormwater ~~and the facility in general to ensure~~ determine whether these that all BMPs are ~~continually implemented and effective in operation and being properly maintained, and a monitoring plan with implementation schedule shall be referenced~~ An explanation for how the inspections will be prioritized and scheduled shall be included in the SWMP document; and

**D. Small MS4s Are Not Required to Inspect and Enforce Against High-Risk Industrial and Commercial Enterprises within Their Permit Area**

Section 4.2.3.1.12 of the Proposed MGP requires that a permittee “inventory, inspect and have enforcement authority for high risk industries and commercial enterprises within their boundary that may contribute pollutants via stormwater to the MS4.”

Phase I large and medium MS4s are required by federal law to address discharges from certain industrial facilities to the MS4. There is no similar requirement for small MS4s in federal law, undoubtedly because these permittees are smaller and have more limited resources. DNR has no authority to require that small MS4s inventory, inspect and enforce against high risk industries (undefined) and commercial enterprises as mandated by 4.2.3.1.12. This is highly burdensome, expensive, and unnecessary – the state already has a program for addressing stormwater discharges from regulated industrial facilities. We believe an MS4 inspection requirement is duplicative of State inspections of state-permitted facilities. Also, we question whether we have the authority to inspect such facilities.

For these reasons, DNR should delete Section 4.2.3.1.12 in its entirety.

**E. MCM-6 (Good Housekeeping) Should Be Clarified**

Phase I large and medium MS4s are required to review flood management projects for water quality impacts. There is not a similar requirement for small MS4s. Accordingly, Section 4.2.6.1.6 should be deleted.

**F. Miscellaneous Requests for Clarification or Changes**

- Section 1.3 (Limitations of Coverage) – Section 1.2.2.2 authorizes the discharge of certain types of non-stormwater discharges (for example, discharges or flows from emergency fire-fighting activities). Section 1.3 limits coverage to only those non-stormwater discharges regulated by a separate NPDES permit. These two sections are inconsistent. Section 1.3 should be revised to read: “The permittee, as defined herein, shall effectively prohibit non-stormwater discharges into the MS4, except to the extent such discharges are regulated with a separate NPDES permit or are authorized by Section 1.2.2.2 above.” Likewise, Section 1.4.2.1 should be revised to

read: "Effectively prohibit pollutant discharges to the MEP in stormwater discharges and effectively prohibit unauthorized discharges into the MS4, except to the extent the discharges are authorized by Section 1.2.2.2 above." Section 7 of the Proposed MGP includes definitions. The definition for "illicit discharge" should be revised to clarify that non-stormwater discharges are acceptable if they are listed in Section 1.2.2.2.

- Section 1.4.3 mandates that the permittee comply with the permit terms and with "plans and schedules developed in fulfillment of this permit." This effectively makes the SWMP and TMDL plans an enforceable part of the MGP. In response to AMCA's request, DNR refused to approve the SWMP in order to provide the permittee with a permit shield. The permit must specify that the SWMP will be reviewed and approved by DNR. Further, any plan which is approved as submitted (or revised and submitted by the permittee following DNR comments) comes with a waiver of any finding of affordability. Only where DNR requires changes which the permittee is unwilling to accept would DNR have to perform an affordability determination.
- Table 2 is entitled Legal Authority for Selected Required Program Stormwater Elements. Some of the references are overly-broad (for example, not all of Chapter 644 of the CWL applies to MS4 permit requirements) and some are incorrect (for example, the reference to 40 CFR 122.44(d)(1)(vii)(B)). If DNR decides to retain this table it should verify the citations.
- Per Section 4.1.2.1, a permittee's SWMP must include "Best management practices (BMPs); control techniques and system, design, and engineering methods; and such other provisions as the permitting authority determines appropriate for the control of such pollutants as per 402(p)(3)(B)(iii)." Although this language parallels the compliance standard in the CWA, small MS4 permits have consistently been written to require implementation of the six minimum control measures ("MCMs") provided in federal regulations. There has been no need for additional "control techniques," etc. More importantly, requiring that the SWMP include "other such provisions," as determined by DNR makes the permit unlawfully vague. It is impossible for a permittee to understand what is expected for compliance purposes from reviewing this term. Practically speaking, it is also inconsistent with DNR's stated position that it will not be involved in SWMPs ("It is up to the community to decide what to put into their SWMP"). AMCA requests that DNR strike all text after the reference to BMPs in 4.1.2.1.

On a related note, Section 4.4.3 authorizes the Department to require changes in the SWMP in order to address water quality impacts, incorporate more stringent statutory or regulatory requirements, or include conditions deemed necessary to address state law. This language is inconsistent with DNR's initial decision to stay out of the business of approving SWMPs. It makes no sense to approve/require changes but not to approve the underlying SWMP document. Again, we believe the permit should specify that DNR will approve SWMPs.

Section 4.4.5 states that only those sections of the SWMP that are "specifically required as permit conditions" are subject to a formal modification process. It is not

obvious to AMCA which sections of a SWMP are or are not "required as permit conditions." A clarification may be warranted in the permit.

- Section 4.2.3.1.5 should be revised to eliminate the requirement that the permittee conduct "ambient sampling" (undefined) to identify priority areas with a higher potential for illicit connections. Not only is this burdensome and potentially expensive, but permittees likely already know where illicit connections are more prevalent based on the age of the system, local land use, and other factors.

Thank you for considering our comments. Please contact me if we may answer any questions or provide further information about this correspondence.

Sincerely,



Steve Meyer, P.E.  
AMCA President

C: Sara Parker Pauley, Director  
Leanne Tippet Mosby  
AMCA Members



ASSOCIATION OF MISSOURI  
CLEANWATER AGENCIES

November 24, 2014

By Electronic Mail ([publicnoticenpd@dnr.mo.gov](mailto:publicnoticenpd@dnr.mo.gov))

Mr. John Madras  
Director  
Water Protection Program  
Missouri Department of Natural Resources  
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Jefferson City, MO 65102

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**D. Small MS4s Are Not Required to Inspect and Enforce Against High-Risk Industrial and Commercial Enterprises within Their Permit Area**

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For these reasons, DNR should delete Section 4.2.3.1.12 in its entirety.

**E. MCM-6 (Good Housekeeping) Should Be Clarified**

Phase I large and medium MS4s are required to review flood management projects for water quality impacts. There is not a similar requirement for small MS4s. Accordingly, Section 4.2.6.1.6 should be deleted.

**F. Miscellaneous Requests for Clarification or Changes**

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read: "Effectively prohibit pollutant discharges to the MEP in stormwater discharges and effectively prohibit unauthorized discharges into the MS4, except to the extent the discharges are authorized by Section 1.2.2.2 above." Section 7 of the Proposed MGP includes definitions. The definition for "illicit discharge" should be revised to clarify that non-stormwater discharges are acceptable if they are listed in Section 1.2.2.2.

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- Table 2 is entitled Legal Authority for Selected Required Program Stormwater Elements. Some of the references are overly-broad (for example, not all of Chapter 644 of the CWL applies to MS4 permit requirements) and some are incorrect (for example, the reference to 40 CFR 122.44(d)(1)(vii)(B)). If DNR decides to retain this table it should verify the citations.
- Per Section 4.1.2.1, a permittee's SWMP must include "Best management practices (BMPs); control techniques and system, design, and engineering methods; and such other provisions as the permitting authority determines appropriate for the control of such pollutants as per 402(p)(3)(B)(iii)." Although this language parallels the compliance standard in the CWA, small MS4 permits have consistently been written to require implementation of the six minimum control measures ("MCMs") provided in federal regulations. There has been no need for additional "control techniques," etc. More importantly, requiring that the SWMP include "other such provisions," as determined by DNR makes the permit unlawfully vague. It is impossible for a permittee to understand what is expected for compliance purposes from reviewing this term. Practically speaking, it is also inconsistent with DNR's stated position that it will not be involved in SWMPs ("It is up to the community to decide what to put into their SWMP"). AMCA requests that DNR strike all text after the reference to BMPs in 4.1.2.1.

On a related note, Section 4.4.3 authorizes the Department to require changes in the SWMP in order to address water quality impacts, incorporate more stringent statutory or regulatory requirements, or include conditions deemed necessary to address state law. This language is inconsistent with DNR's initial decision to stay out of the business of approving SWMPs. It makes no sense to approve/require changes but not to approve the underlying SWMP document. Again, we believe the permit should specify that DNR will approve SWMPs.

Section 4.4.5 states that only those sections of the SWMP that are "specifically required as permit conditions" are subject to a formal modification process. It is not

obvious to AMCA which sections of a SWMP are or are not "required as permit conditions." A clarification may be warranted in the permit.

- Section 4.2.3.1.5 should be revised to eliminate the requirement that the permittee conduct "ambient sampling" (undefined) to identify priority areas with a higher potential for illicit connections. Not only is this burdensome and potentially expensive, but permittees likely already know where illicit connections are more prevalent based on the age of the system, local land use, and other factors.

Thank you for considering our comments. Please contact me if we may answer any questions or provide further information about this correspondence.

Sincerely,



Steve Meyer, P.E.  
AMCA President

C: Sara Parker Pauley, Director  
Leanne Tippet Mosby  
AMCA Members



ASSOCIATION OF MISSOURI  
CLEANWATER AGENCIES

November 24, 2014

By Electronic Mail ([publicnoticenpd@dnr.mo.gov](mailto:publicnoticenpd@dnr.mo.gov))

Mr. John Madras  
Director  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

**Re: Comments in re Proposed Reissuance of MOR040000 (Small  
Municipal Separate Storm Sewer Systems (MGP))**

Dear Mr. Madras:

I am writing on behalf of the Association of Missouri Cleanwater Agencies ("AMCA") to provide comments regarding the Department's proposed reissuance of the Small Municipal Separate Storm Sewer Systems ("MS4") General Permit (hereinafter, "Proposed MGP").

AMCA comprises public water, sewer, and stormwater utilities statewide. Because a number of our members operate small MS4s, AMCA has a strong interest in the reissuance of the MGP.

In 2013, AMCA submitted comments regarding the Department's prior permit draft. These comments are incorporated hereto by reference. We appreciate the changes DNR made in the Proposed MGP to address AMCA's earlier concerns. Unfortunately, the Proposed MGP still contains terms that are legally inappropriate and which put small MS4s at significant risk for lawsuits and/or allegations of non-compliance. Accordingly, we request that the final MGP be issued consistent with the following comments.

**A. MS4s Are Not Required to Comply with Water Quality Standards or Numeric TMDL Wasteload Allocations**

In our 2013 comments, AMCA highlighted permit sections that included language that could be incorrectly read to require compliance with the state's water quality standards ("WQS") and TMDL wasteload allocations ("WLAs"). AMCA explained why the permit should be revised to reference the correct compliance standard for MS4s – BMPs (Best Management Practices) to the maximum extent practicable ("MEP").

AMCA specifically requested changes to language in Section 4.1.1.2 which require a permittee to develop a stormwater management program and plan ("SWMP") to "protect water quality" and "satisfy the appropriate water quality requirements of the Missouri Clean Water Law "CWL" and Clean Water Act "CWA" in accordance with 40 CFR 122.34." We asked that the requirement simply restate that MS4s must implement BMPs to the MEP and delete the requirement "to protect water quality" and satisfy the appropriate water quality requirements.

DNR refused to change this problematic language arguing that "(t)he language in the current version of the permit mirrors nearly exactly the language in federal regulation."

We disagree. We note that the federal Clean Water Act, does not include either of the quoted phrases above. By adding them to the permit (regardless of whether noted in EPA regulation), DNR is going beyond the statutory MEP standard. If that is not DNR's intention then DNR should simply remove the language. At a minimum, this made up language will cause confusion regarding what is required. For example, what is meant by the requirement to "protect" water quality? This unnecessary and vague requirement opens permittees up to EPA or citizen challenge anytime in their view a MS4 is not "protecting" water quality.

For these reasons, DNR must revise Section 4.1.1.2 as follows: "Develop, implement and enforce a SWMP designed to reduce the discharge of pollutants from the permittee's regulated small MS4 to the MEP, ~~to protect water quality, and to satisfy the appropriate water quality requirements of the Missouri CWA and CWA 40 CFR 122.34.~~"

In addition to Section 4.1.1.2, there is inappropriate WQS and TMDL WLA text that must be corrected at:

- 1.4.1 – Includes the same "protect water quality" and "appropriate water quality requirements" text as in 4.1.1.2. This language should also be removed.
- 1.4.2.2 -- Although the requirement to comply with WLAs is qualified by the reference to the CWA MEP standard, there is an inappropriate reference to load allocations, which are not applicable to MS4 point sources. There is also an inappropriate reference to 40 CFR 122.44(d)(1)(vii)(B). This does not apply to MS4s. The appropriate reference is to 40 CFR 122.44(k). With regard to the reference to 40 CFR 122.34(e)(1), Guidance states that EPA "strongly recommends" not including any additional requirements beyond the minimum measures for MS4s until EPA has completed a review of the program pursuant to 40 CFR 122.37 unless the operator agrees or a TMDL includes "specific measures" for addressing water quality concerns. A generic reference to 122.34(e)(1) is, accordingly, inappropriate.
- 3.1 – There is no federal requirement for MS4 permits to include TMDL provisions. Although 40 CFR 122.44(d)(vii)(B) requires that permits be "consistent with the assumptions and requirements of any applicable wasteload allocation for the discharge," the introductory paragraph to 122.44 makes clear that the subsections apply *when applicable*. Subsection (d) references water-quality based effluent limits, which are not applicable to MS4s. Subsection (k) is the only section that applies to MS4s. Assuming for argument's sake that a TMDL planning requirement is appropriate, Section 3.1.3 requires that the permittee continue to

implement the plan throughout the permit term unless the requirements of the TMDL are "being met." This essentially requires the permittee to comply with a TMDL WLA, which is inconsistent with the MEP standard. Section 3.1 should be re-written to: (i) reflect MEP and (ii) direct a permittee to design an TMDL plan with a goal of addressing TMDL WLAs over time using BMPs and adaptive management.

- 4.1.1.1 – Includes text nearly identical to 4.1.1.2. It should be revised in a similar manner to that suggested above.
- 4.1.6 – States that with each reissuance of the permit, the permittee "shall comply with new or revised standards as soon as practicable..." The compliance standard is MEP, not "as soon as practicable." In addition, the language regarding expectations for compliance with requirements of a future permit reissuance is unnecessary and certainly premature. DNR should establish a schedule for the requirements in the next permit once those have been defined through the public notice and comment process. Accordingly, the second sentence of Section 4.1.6. should be stricken.
- 5.3.1.3 – The annual report must include information on "the success of the program at reducing the discharge of pollutants to the MEP, to protect water quality and to meet the appropriate water quality requirements..." This text should be revised in a similar manner to that suggested above for 4.1.1.2 (sentence should end after the term "MEP").

We conclude by noting that for the past 15 years, every final legal decision on the issue of MS4 water quality standards compliance has found that WQS compliance by MS4 permittees is not required. See, e.g. *Conservation Law Found, Inc. v. Boston Water & Sewer Comm'n*, 2010 U.S. Dist. LEXIS 134838, 73 ERC (BNA) 1282 (D. Mass. 2010); *Miss. River Revival, Inc. v. City of St. Paul*, 2002 U.S. Dist. LEXIS 25384, 56 ERC (BNA) 1114, 33 Env'tl. L. Rep. 20131 (D. Miss. 2002); *City of Acadia v. State Water Res. Control Bd.*, 135 Cal.App.4<sup>th</sup> 1392 (2006); *Texas Indep. Producers v. EPA*, 410 F.3d 964 (7<sup>th</sup> Cir 2005); *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cap. App. 4<sup>th</sup> 866 (2004); *Matter of Natural Resources Defense Council, Inc. v. New York State Dept. of Env'tl. Conservation*, 111 A.D. 3d 737, (N.Y. App. Div. 2013). Accordingly, DNR should stick exclusively to the applicable "BMPs to the MEP" standard in the final MS4 GP.

Finally, we also note that page 1 of the Fact Sheet contains the following explanation which we believe incorrectly states the water quality-based requirements for MS4s. We urge DNR to remove the second item ("requirement to comply with more stringent requirements...") as follows:

The department believes that the remaining two subsections 1.4.2 .1 and 1.4.2.2 address the ~~two~~ primary standards for MS4: ~~1) requirements for MS4s to implement Best Management Practices (BMPs) to the Maximum Extent Practicable (MEP) toward the goal of protecting water quality in the receiving streams as a baseline MS4 permit standard; and 2) requirements to comply with more stringent requirements as may be indicated in assumptions and requirements of approved and effective TMDLs.~~

## **B. New Section 5.1 Monitoring Requirements**

We question why DNR added a new instream monitoring section in the Proposed MGP. Monitoring requirements can be expensive and often MS4 operators find that the results are unhelpful for making programmatic improvements. We fail to see how two annual dry weather samples followed by three annual wet weather samples can tell us anything about stormwater impacts.

During wet weather, the pollutants found instream come from a wide variety of sources – often completely unrelated to MS4 discharges. Thus, by requiring this monitoring, DNR implicitly suggests that instream pollutant loadings will be related to MS4 discharges. That is likely not the case in many instances for many pollutants. Accordingly, we ask DNR to reconsider its preliminary decision to include this monitoring in light of the following: (1) what type of results DNR expects to see, (2) how those results will be used/beneficial, and (3) Whether this monitoring will provide information that is commensurate in value to the public cost to obtain it

If Section 5.1 remains in the final permit over our objection, we do ask that DNR delete the last sentence of Section 5.1.2.1.3.2 because it is unfair to request such an assessment based upon one-time sampling events. Section 5.1.2.1.3.2 requires:

At the time of sampling, the permittee shall record any observed erosion of streambanks, scouring, or sedimentation in streams, such as sand bars or deltas.

**C. Requirement to Inspect All Stormwater Structures and Facilities within The Permit Area is Too Broad**

Section 4.1.5 of the Proposed MGP requires that a permittee inspect or require inspection of any structures put in place to prevent or remove pollutants as well as the facilities in general “to ensure that all BMPs are continually implemented and effective.” The SWMP must also include a “monitoring plan with implementation schedule.” We have several concerns with these requirements.

First, permittees should not be required to inspect (or have inspected) entire facilities. There is no need for an MS4 to look at anything but a BMP that is discharging to its system. Small MS4s should not be asked, for example, to inspect an entire commercial property simply because it has a stormwater pond. We doubt that a small MS4 has the legal authority to do so.

Second, the federal requirement for MCM-5 (post-construction stormwater management) addresses the long-term operation and maintenance of post-construction BMPs. It does not address whether the BMP is “continually implemented and effective.” In other words, a BMP inspection is typically done to review whether the BMP is still in place, is working, and is being properly maintained. BMP inspections do not assess whether the BMP is effectively reducing pollutants consistent with its design. It is not actually possible to assess whether a BMP is “continually” implemented given that BMP inspections are performed as snapshots in time rather than continuously reviewed.

Third, AMCA believes DNR meant for inspections to apply to post-construction, permanent BMPs. However, the requirement is written in a way that could be misread

to require inspections of construction BMPs. There are programs in place that require these inspections. There is no need to include such a requirement in Section 4.1.5.

For all of these reasons, AMCA requests that DNR revise this permit provision as follows:

4.1.5 The permittee shall inspect (or require inspection of) any permanent structures that function to prevent pollution of stormwater or to remove pollutants from stormwater ~~and the facility in general to ensure~~ determine whether these that all BMPs are ~~continually implemented and effective in operation and being properly maintained, and a monitoring plan with implementation schedule shall be referenced~~ An explanation for how the inspections will be prioritized and scheduled shall be included in the SWMP document; and

**D. Small MS4s Are Not Required to Inspect and Enforce Against High-Risk Industrial and Commercial Enterprises within Their Permit Area**

Section 4.2.3.1.12 of the Proposed MGP requires that a permittee “inventory, inspect and have enforcement authority for high risk industries and commercial enterprises within their boundary that may contribute pollutants via stormwater to the MS4.”

Phase I large and medium MS4s are required by federal law to address discharges from certain industrial facilities to the MS4. There is no similar requirement for small MS4s in federal law, undoubtedly because these permittees are smaller and have more limited resources. DNR has no authority to require that small MS4s inventory, inspect and enforce against high risk industries (undefined) and commercial enterprises as mandated by 4.2.3.1.12. This is highly burdensome, expensive, and unnecessary – the state already has a program for addressing stormwater discharges from regulated industrial facilities. We believe an MS4 inspection requirement is duplicative of State inspections of state-permitted facilities. Also, we question whether we have the authority to inspect such facilities.

For these reasons, DNR should delete Section 4.2.3.1.12 in its entirety.

**E. MCM-6 (Good Housekeeping) Should Be Clarified**

Phase I large and medium MS4s are required to review flood management projects for water quality impacts. There is not a similar requirement for small MS4s. Accordingly, Section 4.2.6.1.6 should be deleted.

**F. Miscellaneous Requests for Clarification or Changes**

- Section 1.3 (Limitations of Coverage) – Section 1.2.2.2 authorizes the discharge of certain types of non-stormwater discharges (for example, discharges or flows from emergency fire-fighting activities). Section 1.3 limits coverage to only those non-stormwater discharges regulated by a separate NPDES permit. These two sections are inconsistent. Section 1.3 should be revised to read: “The permittee, as defined herein, shall effectively prohibit non-stormwater discharges into the MS4, except to the extent such discharges are regulated with a separate NPDES permit or are authorized by Section 1.2.2.2 above.” Likewise, Section 1.4.2.1 should be revised to

read: "Effectively prohibit pollutant discharges to the MEP in stormwater discharges and effectively prohibit unauthorized discharges into the MS4, except to the extent the discharges are authorized by Section 1.2.2.2 above." Section 7 of the Proposed MGP includes definitions. The definition for "illicit discharge" should be revised to clarify that non-stormwater discharges are acceptable if they are listed in Section 1.2.2.2.

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Thank you for considering our comments. Please contact me if we may answer any questions or provide further information about this correspondence.

Sincerely,

A handwritten signature in blue ink that reads "Steve Meyer" with a checkmark at the end.

Steve Meyer, P.E.  
AMCA President

C: Sara Parker Pauley, Director  
Leanne Tippet Mosby  
AMCA Members



ASSOCIATION OF MISSOURI  
CLEANWATER AGENCIES

November 24, 2014

By Electronic Mail ([publicnoticenpd@dnr.mo.gov](mailto:publicnoticenpd@dnr.mo.gov))

Mr. John Madras  
Director  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

**Re: Comments in re Proposed Reissuance of MOR040000 (Small  
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We disagree. We note that the federal Clean Water Act, does not include either of the quoted phrases above. By adding them to the permit (regardless of whether noted in EPA regulation), DNR is going beyond the statutory MEP standard. If that is not DNR's intention then DNR should simply remove the language. At a minimum, this made up language will cause confusion regarding what is required. For example, what is meant by the requirement to "protect" water quality? This unnecessary and vague requirement opens permittees up to EPA or citizen challenge anytime in their view a MS4 is not "protecting" water quality.

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We conclude by noting that for the past 15 years, every final legal decision on the issue of MS4 water quality standards compliance has found that WQS compliance by MS4 permittees is not required. See, e.g. *Conservation Law Found, Inc. v. Boston Water & Sewer Comm'n*, 2010 U.S. Dist. LEXIS 134838, 73 ERC (BNA) 1282 (D. Mass. 2010); *Miss. River Revival, Inc. v. City of St. Paul*, 2002 U.S. Dist. LEXIS 25384, 56 ERC (BNA) 1114, 33 Env'tl. L. Rep. 20131 (D. Miss. 2002); *City of Acadia v. State Water Res. Control Bd.*, 135 Cal.App.4<sup>th</sup> 1392 (2006); *Texas Indep. Producers v. EPA*, 410 F.3d 964 (7<sup>th</sup> Cir 2005); *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cap. App. 4<sup>th</sup> 866 (2004); *Matter of Natural Resources Defense Council, Inc. v. New York State Dept. of Env'tl. Conservation*, 111 A.D. 3d 737, (N.Y. App. Div. 2013). Accordingly, DNR should stick exclusively to the applicable "BMPs to the MEP" standard in the final MS4 GP.

Finally, we also note that page 1 of the Fact Sheet contains the following explanation which we believe incorrectly states the water quality-based requirements for MS4s. We urge DNR to remove the second item ("requirement to comply with more stringent requirements...") as follows:

The department believes that the remaining two subsections 1.4.2 .1 and 1.4.2.2 address the ~~two~~ primary standards for MS4: 1) requirements for MS4s to implement Best Management Practices (BMPs) to the Maximum Extent Practicable (MEP) toward the goal of protecting water quality in the receiving streams as a baseline MS4 permit standard; and 2) requirements to comply with more stringent requirements as may be indicated in assumptions and requirements of approved and effective TMDLs.

## **B. New Section 5.1 Monitoring Requirements**

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Third, AMCA believes DNR meant for inspections to apply to post-construction, permanent BMPs. However, the requirement is written in a way that could be misread

to require inspections of construction BMPs. There are programs in place that require these inspections. There is no need to include such a requirement in Section 4.1.5.

For all of these reasons, AMCA requests that DNR revise this permit provision as follows:

4.1.5 The permittee shall inspect (or require inspection of) any permanent structures that function to prevent pollution of stormwater or to remove pollutants from stormwater ~~and the facility in general to ensure~~ determine whether these that all BMPs are ~~continually implemented and effective in operation and being properly maintained, and a monitoring plan with implementation schedule shall be referenced~~ An explanation for how the inspections will be prioritized and scheduled shall be included in the SWMP document; and

**D. Small MS4s Are Not Required to Inspect and Enforce Against High-Risk Industrial and Commercial Enterprises within Their Permit Area**

Section 4.2.3.1.12 of the Proposed MGP requires that a permittee “inventory, inspect and have enforcement authority for high risk industries and commercial enterprises within their boundary that may contribute pollutants via stormwater to the MS4.”

Phase I large and medium MS4s are required by federal law to address discharges from certain industrial facilities to the MS4. There is no similar requirement for small MS4s in federal law, undoubtedly because these permittees are smaller and have more limited resources. DNR has no authority to require that small MS4s inventory, inspect and enforce against high risk industries (undefined) and commercial enterprises as mandated by 4.2.3.1.12. This is highly burdensome, expensive, and unnecessary – the state already has a program for addressing stormwater discharges from regulated industrial facilities. We believe an MS4 inspection requirement is duplicative of State inspections of state-permitted facilities. Also, we question whether we have the authority to inspect such facilities.

For these reasons, DNR should delete Section 4.2.3.1.12 in its entirety.

**E. MCM-6 (Good Housekeeping) Should Be Clarified**

Phase I large and medium MS4s are required to review flood management projects for water quality impacts. There is not a similar requirement for small MS4s. Accordingly, Section 4.2.6.1.6 should be deleted.

**F. Miscellaneous Requests for Clarification or Changes**

- Section 1.3 (Limitations of Coverage) – Section 1.2.2.2 authorizes the discharge of certain types of non-stormwater discharges (for example, discharges or flows from emergency fire-fighting activities). Section 1.3 limits coverage to only those non-stormwater discharges regulated by a separate NPDES permit. These two sections are inconsistent. Section 1.3 should be revised to read: “The permittee, as defined herein, shall effectively prohibit non-stormwater discharges into the MS4, except to the extent such discharges are regulated with a separate NPDES permit or are authorized by Section 1.2.2.2 above.” Likewise, Section 1.4.2.1 should be revised to

read: "Effectively prohibit pollutant discharges to the MEP in stormwater discharges and effectively prohibit unauthorized discharges into the MS4, except to the extent the discharges are authorized by Section 1.2.2.2 above." Section 7 of the Proposed MGP includes definitions. The definition for "illicit discharge" should be revised to clarify that non-stormwater discharges are acceptable if they are listed in Section 1.2.2.2.

- Section 1.4.3 mandates that the permittee comply with the permit terms and with "plans and schedules developed in fulfillment of this permit." This effectively makes the SWMP and TMDL plans an enforceable part of the MGP. In response to AMCA's request, DNR refused to approve the SWMP in order to provide the permittee with a permit shield. The permit must specify that the SWMP will be reviewed and approved by DNR. Further, any plan which is approved as submitted (or revised and submitted by the permittee following DNR comments) comes with a waiver of any finding of affordability. Only where DNR requires changes which the permittee is unwilling to accept would DNR have to perform an affordability determination.
- Table 2 is entitled Legal Authority for Selected Required Program Stormwater Elements. Some of the references are overly-broad (for example, not all of Chapter 644 of the CWL applies to MS4 permit requirements) and some are incorrect (for example, the reference to 40 CFR 122.44(d)(1)(vii)(B)). If DNR decides to retain this table it should verify the citations.
- Per Section 4.1.2.1, a permittee's SWMP must include "Best management practices (BMPs); control techniques and system, design, and engineering methods; and such other provisions as the permitting authority determines appropriate for the control of such pollutants as per 402(p)(3)(B)(iii)." Although this language parallels the compliance standard in the CWA, small MS4 permits have consistently been written to require implementation of the six minimum control measures ("MCMs") provided in federal regulations. There has been no need for additional "control techniques," etc. More importantly, requiring that the SWMP include "other such provisions," as determined by DNR makes the permit unlawfully vague. It is impossible for a permittee to understand what is expected for compliance purposes from reviewing this term. Practically speaking, it is also inconsistent with DNR's stated position that it will not be involved in SWMPs ("It is up to the community to decide what to put into their SWMP"). AMCA requests that DNR strike all text after the reference to BMPs in 4.1.2.1.

On a related note, Section 4.4.3 authorizes the Department to require changes in the SWMP in order to address water quality impacts, incorporate more stringent statutory or regulatory requirements, or include conditions deemed necessary to address state law. This language is inconsistent with DNR's initial decision to stay out of the business of approving SWMPs. It makes no sense to approve/require changes but not to approve the underlying SWMP document. Again, we believe the permit should specify that DNR will approve SWMPs.

Section 4.4.5 states that only those sections of the SWMP that are "specifically required as permit conditions" are subject to a formal modification process. It is not

obvious to AMCA which sections of a SWMP are or are not "required as permit conditions." A clarification may be warranted in the permit.

- Section 4.2.3.1.5 should be revised to eliminate the requirement that the permittee conduct "ambient sampling" (undefined) to identify priority areas with a higher potential for illicit connections. Not only is this burdensome and potentially expensive, but permittees likely already know where illicit connections are more prevalent based on the age of the system, local land use, and other factors.

Thank you for considering our comments. Please contact me if we may answer any questions or provide further information about this correspondence.

Sincerely,



Steve Meyer, P.E.  
AMCA President

C: Sara Parker Pauley, Director  
Leanne Tippet Mosby  
AMCA Members

December 30, 2014

By Electronic Mail (publicnoticenpdes@DNR.mo.gov)

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Vinita Park is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact Gerald French at 314-428-7373 if you have any questions or would like to discuss these issues further.

Sincerely,

Gerald B. French, Sr.  
Public Works Director

cc: Jay Hoskins - MSD



**Metropolitan St. Louis  
Sewer District**

2350 Market Street  
St. Louis, MO 63103

December 31, 2014

**Via Email:** [publicnoticenpdes@DNR.mo.gov](mailto:publicnoticenpdes@DNR.mo.gov)

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, Missouri 65101

**RE: *Draft Missouri State Operating Permit MOR040000 Comments***

Dear Mr. Wieberg:

The Metropolitan St. Louis Sewer District (MSD) has reviewed the Draft Missouri State Operating Permit MOR040000 placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

At the outset, MSD fully supports the November 25, 2014 comments prepared by AMCA, as they raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's comments.

We offer additional comments for your consideration below.

**MS4 Permit Implementation and TMDLs**

The Department's TMDL, TMDL Implementation Plan, and MS4 NPDES permit programs must communicate and implement a consistent, affordable, and appropriate approach. We believe aspects of the proposed MS4 permit fall short. MSD has been given repeated assurance from Department staff during discussions about St. Louis area bacteria TMDLs and TMDL Implementation Plans that best management practices (BMPs) to the Maximum Extent Practicable is the standard that MS4 permits will implement. However, in numerous locations, this proposed permit and the accompanying fact sheet frame TMDL implementation as "in addition to" to the MEP standard.<sup>1</sup> Sections 1.4.1 and 1.4.2 of the proposed permit appear to be acceptable; however the

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<sup>1</sup> Some examples: "The department believes that the remaining two subsections 1.4.2.1 and 1.4.2.2 address the two primary standards for MS4: 1) requirements for MS4s to implement BMPs to the MEP toward the goal of protecting water quality in the receiving streams as a baseline MS4 permit standard; and 2) requirements to comply with more stringent requirements as may be indicated by the assumptions and requirements of approved and effective TMDLs." (5th paragraph of page 1 of Fact Sheet)

"The requirements of today's permit regarding discharges to impaired waters are appropriate and necessary in addition to the baseline MEP standard." (top of page 4 of Fact Sheet).

"Unlike industrial and wastewater permits, the standards for MS4s are two-fold: a baseline standard or MEP, plus compliance with enforceable assumptions and requirements based on study such as TMDLs and similar (which may include waste load allocations.)" (page 7, item 2 of Fact Sheet)

discussion of these sections in the permit fact sheet is incorrect and should be revised to conform to the text of the permit. While we recognize the fact sheet is not an enforceable part of the permit, we believe it is important that the permit and fact sheet provide a consistent explanation of the applicable compliance standard. Accordingly, the fact sheet must be revised to consistently indicate that MEP is the standard that MS4 permittees will implement.

We continue to believe the Department should approve the whole SWMP, because this will provide permittees and DNR with certainty about what is required to comply with the permit. We also feel it is key to providing permittees with a full Clean Water Act permit shield.

The Department must approve the newly required MS4 TMDL Implementation Plans. This is crucial. Approval of the TMDL Implementation Plan is a critical step to ensuring a consistent, affordable, and appropriate approach to TMDL implementation. This approach is consistent with most other state permitting authorities, who require permittees develop a TMDL plan for agency review and approval.<sup>2</sup>

In summary, approval of the SWMP and TMDL Implementation Plan would be a benefit to the Department and MSD because it establishes the clear, specific, and measureable measures by which the MEP standard will be evaluated for the current permit cycle.

### **Cost of Compliance Analysis**

While we acknowledge the Department's willingness to modify a permittees' fact sheet to incorporate actual cost (3.1.2.1), MSD continues to believe that the Department has not performed an affordability analysis (cost of compliance analysis) that meets the requirements of Section 644.145, RSMo. Our December 2, 2013, MS4 permit comment letter explained in detail our objections, and MSD refers to that letter for a detailed explanation of the issues.

### **Monitoring**

The fact sheet indicates the Department "added water quality monitoring requirements to this permit as a means to begin measuring the success toward the goal of meeting water quality standards." MSD already has an extensive in-stream network of monitoring for a wide variety of pollutants, and the data generated from that network has been reported to the Department in our annual report for many years. Most of the data that the Department uses in evaluating the water quality of our service area is generated by MSD, a positive reflection of the quality of this data. MSD acknowledges the importance of monitoring data, and plans to continue this monitoring effort. However, we object to collecting data that we believe is not based on nor which supports sound science. The in-stream monitoring requirements listed in (5.1.2) are inadequate for the Department's stated purpose. In their current form, these water quality monitoring requirements should be removed from the permit – especially for permittees such as MSD who collect far superior data through our existing programs.

A single, annual, sample will provide limited information about the water quality of a stream. As examples, consider bacteria and chloride, two pollutants that are ubiquitous to urban areas across Missouri. Assessment of whether a stream meets the water quality standard for bacteria is based on a

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"Section 1.4 of the permit has been modified to clarify MEP as the baseline standard with a goal toward water quality standards, unless water quality criteria is otherwise indicated such as that through TMDLs. However, these are two separate standards." (bottom of page 9)

<sup>2</sup> Post-Construction Performance Standards & Water Quality-Based Requirements. EPA 833-R-14-003. June 2014.

**METROPOLITAN ST. LOUIS SEWER DISTRICT  
DRAFT MISSOURI STATE OPERATING PERMIT MOR040000 COMMENTS  
DECEMBER 31, 2014**

recreation season geometric mean; a single data point is insufficient for this purpose.<sup>3</sup> Chloride, from deicing materials, is typically measured during winter months; sampling between July 1 and September 30 does not align with that critical period.

The wet weather water quality monitoring effort is particularly problematic.<sup>4</sup> Wet weather monitoring is biased to a discrete period of time that, for some pollutants, is not representative of typical conditions. Our experience is that there are many sources of pollution (besides the MS4 contributions) during wet weather, and correlating the effectiveness of the MS4 program to wet weather water quality data would be impossible using the methodology described by the permit. Also, the degree of effort, special equipment, and associated cost required for meaningful wet weather monitoring and data assessment is not fully considered in the cost of compliance assessment.

Our suggestion is to make an in-stream water quality monitoring program a recommended option, and also to focus the monitoring option on activities that would provide representative data, considering seasonal and weather related variation in pollutant loading.

**Miscellaneous Requests for Clarification**

Please revise 3.1.3.1 to state “The permittee shall document the calculations or other evidence when indicating that the assumptions and requirements of the applicable TMDL ~~will be~~ **are being** met.” Otherwise, please clarify the Department’s intent.

Please clarify 3.1.3.2: please clarify who is to perform the evaluation. The need for clarity reinforces the importance of SWMP and TMDL Implementation Plan approval by the Department.

Please correct the reference in Section 4.1.1.1: “~~CWA~~ 40 CFR 122.34”.

Please remove the “and” at the end of 5.1.3.6: The results of such analyses; ~~and~~

Please provide copies of the IMR form (5.1.4.2) to review, as they were not provided in the fact sheet.

Thank you for the opportunity to provide comments during this process. If you have any questions please feel free to contact Jay Hoskins at (314) 436-8757.

Sincerely,



Susan M. Myers  
General Counsel

cc: John Lodderhose - MSD  
Jay Hoskins - MSD  
Roland Biehl - MSD

<sup>3</sup> For reference, we note that Missouri’s 303(d) listing methodology requires a minimum of 5 samples per year taken during the recreational season.

<sup>4</sup> As examples, in addition to the start/end of the rainfall event, many other factors should be considered when sampling and/or when assessing data, such as the uniformity of the rainfall event across the watershed, the distribution of rainfall intensity during the storm, and stream flow during the sampling event.



December 31, 2014

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Bridgeton is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact me at 314-373-3812 if you have any questions or would like to discuss these issues further.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Petersen', with a horizontal line extending to the right.

Brian Petersen  
Assistant City Engineer  
City of Bridgeton, Missouri

cc: Jay Hoskins - MSD



# CITY OF FLORISSANT

*Honorable Thomas P. Schneider, Mayor*

December 31, 2014

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Florissant is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact me at 314-839-7643 if you have any questions or would like to discuss these issues further.

Sincerely,

Timothy J. Barrett, P.E., CFM  
City Engineer

cc: Jay Hoskins - MSD

<b>CITY HALL</b> 955 Rue St. Francois Florissant, MO 63031 314 / 921-5700 Fax: 314 / 921-7111 TDD: 314 / 839-5142	<b>POLICE DEPARTMENT</b> 1700 North Highway 67 Florissant, MO 63033 314 / 831-7000 Fax: 314 / 830-6045	<b>PARKS DEPARTMENT</b> #1 James J. Eagan Drive Florissant, MO 63033 314 / 921-4466 Fax: 314 / 839-7672	<b>HEALTH DEPARTMENT</b> #1 St. Ferdinand Drive Florissant, MO 63031 314 / 839-7654 Fax: 314 / 839-7656	<b>MUNICIPAL COURT</b> 1055 Rue St. Francois Florissant, MO 63031 314 / 921-3322 Fax: 314 / 839-7663
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[www.florissantmo.com](http://www.florissantmo.com)

# ALLGEIER, MARTIN and ASSOCIATES, INC.

*Consulting Engineers • Hydrologists • Surveyors*

HYDRO DIVISION - ROLLA OFFICE

112 West 8<sup>th</sup> Street  
Rolla, Missouri 65401

Phone: (573) 341-9487

FAX: (417) 680-7300

January 2, 2015

Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, Missouri 65102

ATTN: NPDES Permits and Engineering  
Section/Permit Comments

RE: Draft Permit No. MOR040000

Greetings:

I have reviewed the above referenced draft permit and have the following comments:

Section 5 regarding monitoring is an unfunded mandate that places an undue burden on communities that have limited staff and budgets.

Why will communities be required to sample runoff? Without additional data regarding conditions in the watershed such as land use changes, impervious cover, soil types, previous rainfall events, the data collected is relatively meaningless.

Some smaller communities that have been included in the MS4 program due to their proximity to larger MS4's do not have six discrete sampling locations.

Given the random nature of rainfall, not all wet-weather samples can always be collected during the same storm, requiring multiple deployments of equipment and personnel resulting in increased cost for compliance. The estimated costs presented in the fact sheet neglect travel time and overtime costs (not all rainfall occurs between 8:00 a.m. and 5:00 p.m.).

Collecting rainfall samples and testing uncontaminated rainfall pH may necessitate collection of rainfall samples separate from stream sampling, incurring additional costs.

The inspection processes associated with the communities' illicit discharge ordinance will identify sources of contamination that the sampling would only duplicate.

Missouri Department of Natural Resources  
Page 2  
January 2, 2015

In summary, the proposed sampling requirement will impose an unfunded burden on area communities. The proposed requirements are neither practical nor cost effective. The data collected will be of limited value.

Thank you for the opportunity to comment on the proposed draft permit.

Sincerely,  
Allgeier, Martin and Associates, Inc.  
Hydro Division

A handwritten signature in black ink, appearing to read "Charles E. Patterson". The signature is written in a cursive style with a large initial "C" and "P".

Charles E. Patterson PhD, PE

Department of Public Works  
200 Park Drive  
Ballwin, MO 63011-3728



(636) 227-9000  
Fax: (636) 207-2333  
www.ballwin.mo.us

December 31, 2014

By Electronic Mail (publicnoticenpdes@DNR.mo.gov)

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Ballwin is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact City Engineer Gary Kramer at 636-227-9000 if you have any questions or would like to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Kuntz".

Robert A. Kuntz  
City Administrator

cc: Jay Hoskins - MSD

January 2, 2015

Missouri Department of Natural Resources

Water Protection Program

P.O. Box 176

Jefferson City, MO 65102

E-mail: [publicnoticenpdes@dnr.mo.gov](mailto:publicnoticenpdes@dnr.mo.gov)

Re: Public Comments for the Proposed Small Municipal Separate Storm Sewer System General Permit, MOR040000

The City of Raymore, Missouri would like to convey its concern with the new monitoring requirements contained in Section 5.1.2.1 of the Proposed Small Municipal Separate Storm Sewer System (“MS4”) General Permit. The previous General Permit required monitoring solely for waters for which a TMDL had been approved. *See* Small Municipal Separate Storm Sewer System General Permit, MOR040000, Section 5.1.1 (2008). Section 5.1.2.1 of the proposed General Permit would require monitoring at six (6) locations throughout the municipality’s watershed regardless of whether a particular stream is impaired or whether a TMDL has been approved. This heightened monitoring requirement is unnecessarily burdensome, does not improve small municipalities’ current MS4 programs, and surpasses the requirements of similar General Permits in other states. Moreover, the federal Phase II MS4 regulations do not require monitoring in MS4 general permits.

The City of Raymore contains just under 20,000 people. Like many small municipalities in Missouri, its resources to implement a monitoring-intensive program under the General Permit for MS4s are relatively limited. Further, there are no obvious benefits of increasing monitoring requirements above and beyond waters with established TMDLs. The very purpose of TMDLs is to monitor and protect impaired waters of the state. Thus, imposing heightened monitoring requirements on waters not protected by TMDLs is entirely unnecessary and excessively burdensome for small municipalities. Any potential benefits related to the heightened monitoring requirements would not outweigh the increased costs associated with monitoring in waters that do not have an approved TMDL.

Additionally, the heightened monitoring requirements would not provide additional value to small municipalities’ current MS4 programs. The City of Raymore and other small municipalities are required to maintain programs that support the six minimum control measures within the MS4 General Permit. These minimum control measures require sufficient monitoring, prevention, and control of pollution of storm water within small municipalities, particularly given the municipalities’ limited resources. Monitoring at a required minimum of six (6) locations, for at least 19 parameters, will result in the collection of a significant amount of data, but does little to help the City evaluate the effectiveness of its MS4 programs. There is no rational link between this mandatory program, imposed on all MS4 permittees, and the City of Raymore’s specific needs and concerns for protecting water quality.

Lastly, as perhaps the strongest evidence of the unreasonableness of the heightened monitoring requirements, the requirements contained in Section 5.1.1 are well above what other states have required in their General Permits for MS4s. *See, e.g.*, Kansas General Permit for MS4s, Part III, <http://www.kdheks.gov/muni/download/First-Time-Permittees-MS4-Draft-Permit.pdf> (tying monitoring to TMDL requirements); Minnesota General Permit for MS4s, Part IV, <http://www.pca.state.mn.us/index.php/view-document.html?gid=19474> (not containing a specific monitoring requirement outside of operation of Alum or Ferric Chloride Phosphorus Treatment Systems); Ohio General Permit for MS4s, Part V, [http://www.epa.ohio.gov/portals/35/permits/SmallMS4\\_Final\\_GP\\_sep14.pdf](http://www.epa.ohio.gov/portals/35/permits/SmallMS4_Final_GP_sep14.pdf) (incorporating monitoring requirements under 40 CFR Section 122.41(j), which only specifies methods of monitoring, and does not specify locations or frequency of monitoring).

MDNR has offered no explanation or basis for imposing a statewide mandatory requirement for sampling and monitoring by every Phase II MS4 municipality under the General Permit regardless of the water quality in the stream being monitored. Absent any basis for this requirement, and absent any federal requirement to impose these obligations, these obligations are arbitrary and force an unreasonable burden on Phase II municipalities such as the City.

We appreciate the opportunity to provide these comments. The City of Raymore is committed to working with the Department to ensure that Missouri's waters are protected through application of sound science and informed stakeholder input.

Sincerely,

Michael Krass

Director of Public Works

City of Raymore

*Charlie A. Dooley*  
County Executive

Saint Louis  
**COUNTY**  
**HIGHWAYS & TRAFFIC**  
**PUBLIC WORKS**

*Sheryl L. Hodges, D.E., P.E., L.P.G.*  
Director

December 31, 2014

By Electronic Mail (publicnoticenpdes@DNR.mo.gov)

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local Municipal Separate Storm Sewer System (MS4) program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about Total Maximum Daily Load (TMDL) implementation through the MS4 permit. The Department's MS4 National Pollutant Discharge Elimination System permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's Storm Water Management Plan and TMDL Implementation Plans.

St. Louis County Government is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact me at 314-615-8157 if you have any questions or would like to discuss these issues further.

Sincerely,



Ray A. Gawlik, P.E., CPESC  
Storm Water Manager

cc: Ted Medler, P.E.-St. Louis County  
Glenn Henninger, P.E.-St. Louis County  
Jay Hoskins - MSD



Growing Our Communities Together

Dan Ross  
Executive Director

December 17, 2014

Bill Kolas  
Mayor, Higginsville  
President

Mr. John Madras  
Water Protection Program Director  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Mo 65102

Raeanne Presley  
Mayor, Branson  
Vice President

Jan Marcason  
Councilmember, Kansas City  
Past President

Re: Comments on Proposed Reissuance of MOR040000 (Small Municipal Separate Storm Sewer Systems)

Dear Mr. Madras:

On behalf of the Missouri Municipal League (MML) we have reviewed the November 24, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA). We fully support the comments as they raise very important issues about the proposed reissuance of the Small MS4 General Permit (MGP). We would appreciate the Department's careful consideration of AMCA's comments regarding the MOR040000 (MGP).

Please note the Missouri Municipal League's policy statement adopted by the League membership of more than 665 municipalities states as follows:

"MML opposes any state storm water discharge permit regulation that exceeds the scope of the National Pollutant Discharge Elimination System (NPDES) permit application regulations for storm water discharge. MML strongly urges the EPA and DNR to develop a more simplified and flexible approach to management of municipal storm water runoff than has been imposed on the state's larger municipalities. MML opposes any "end-of-pipe" testing requirement in storm water permits. Storm water regulations should be applied equally to all jurisdictions."

We find that the issues raised by AMCA with the MGP coincide with League policy. In particular:

A) Requiring MS4s to comply with Water Quality Standards or Numeric TMDL Wasteload Allocations - suggests that the MGP is exceeding the parameters of the Missouri Clean Water Law, as well the federal law. The Missouri Municipal League policy opposes any state storm water discharge permit regulations that exceed the scope the NPDES.

B) New Monitoring requirements in Section 5.1 of the MGP - AMCA's comments raise important questions about the effectiveness and cost of these requirements. MML policy formally opposes any "end-of-pipe" testing requirements in storm water permits.

December 17, 2014

Page 2

C) Inspection requirements in Section 4.1..5 and Section 4.2.3.1.12 - MML agrees with AMCA's assessment that the MGP requirement to inspect stormwater structures and facilities within the permit area is too broad. We further agree with AMCA that the authority for municipalities to perform such inspections is questionable.

As the leading association representing more than 665 municipalities and more than 7,000 local officials we would request that you consider these comments. As you know, recent court cases have limited municipal authority to impose fees to fund Storm Water Utility operations. Municipal budgets are straining to provide basic services. We ask that DNR not exceed requirements placed on it by the EPA. Please contact me if we may answer any questions or provide further information about this correspondence.

Sincerely,

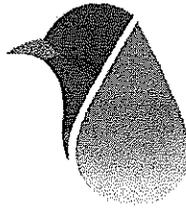
Missouri Municipal League

A handwritten signature in cursive script that reads "Dan Ross".

Dan Ross, Executive Director

Enclosure: AMCA Comments of November 24, 2014 re Proposed Reissuance of MOR040000

CC: Sara Parker Pauley, Director  
Leanne Tippet Mosby, Division Director  
Steve Meyer, AMCA President



ASSOCIATION OF MISSOURI  
CLEANWATER AGENCIES

November 24, 2014

By Electronic Mail ([publicnoticenpdcs@dhr.mo.gov](mailto:publicnoticenpdcs@dhr.mo.gov))

Mr. John Madras  
Director  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

**Re: Comments in re Proposed Reissuance of MOR040000 (Small  
Municipal Separate Storm Sewer Systems (MGP))**

Dear Mr. Madras:

I am writing on behalf of the Association of Missouri Cleanwater Agencies ("AMCA") to provide comments regarding the Department's proposed reissuance of the Small Municipal Separate Storm Sewer Systems ("MS4") General Permit (hereinafter, "Proposed MGP").

AMCA comprises public water, sewer, and stormwater utilities statewide. Because a number of our members operate small MS4s, AMCA has a strong interest in the reissuance of the MGP.

In 2013, AMCA submitted comments regarding the Department's prior permit draft. These comments are incorporated hereto by reference. We appreciate the changes DNR made in the Proposed MGP to address AMCA's earlier concerns. Unfortunately, the Proposed MGP still contains terms that are legally inappropriate and which put small MS4s at significant risk for lawsuits and/or allegations of non-compliance. Accordingly, we request that the final MGP be issued consistent with the following comments.

**A. MS4s Are Not Required to Comply with Water Quality Standards or Numeric TMDL Wasteload Allocations**

In our 2013 comments, AMCA highlighted permit sections that included language that could be incorrectly read to require compliance with the state's water quality standards ("WQS") and TMDL wasteload allocations ("WLAs"). AMCA explained why the permit should be revised to reference the correct compliance standard for MS4s - BMPs (Best Management Practices) to the maximum extent practicable ("MEP").

AMCA specifically requested changes to language in Section 4.1.1.2 which require a permittee to develop a stormwater management program and plan ("SWMP") to "protect water quality" and "satisfy the appropriate water quality requirements of the Missouri Clean Water Law "CWL" and Clean Water Act "CWA" in accordance with 40 CFR 122.34." We asked that the requirement simply restate that MS4s must implement BMPs to the MEP and delete the requirement "to protect water quality" and satisfy the appropriate water quality requirements.

DNR refused to change this problematic language arguing that "(t)he language in the current version of the permit mirrors nearly exactly the language in federal regulation."

We disagree. We note that the federal Clean Water Act, does not include either of the quoted phrases above. By adding them to the permit (regardless of whether noted in EPA regulation), DNR is going beyond the statutory MEP standard. If that is not DNR's intention then DNR should simply remove the language. At a minimum, this made up language will cause confusion regarding what is required. For example, what is meant by the requirement to "protect" water quality? This unnecessary and vague requirement opens permittees up to EPA or citizen challenge anytime in their view a MS4 is not "protecting" water quality.

For these reasons, DNR must revise Section 4.1.1.2 as follows: "Develop, implement and enforce a SWMP designed to reduce the discharge of pollutants from the permittee's regulated small MS4 to the MEP, ~~to protect water quality, and to satisfy the appropriate water quality requirements of the Missouri CWL and CWA 40 CFR 122.34.~~"

In addition to Section 4.1.1.2, there is inappropriate WQS and TMDL WLA text that must be corrected at:

- 1.4.1 – Includes the same "protect water quality" and "appropriate water quality requirements" text as in 4.1.1.2. This language should also be removed.
- 1.4.2.2 -- Although the requirement to comply with WLAs is qualified by the reference to the CWA MEP standard, there is an inappropriate reference to load allocations, which are not applicable to MS4 point sources. There is also an inappropriate reference to 40 CFR 122.44(d)(1)(vii)(B). This does not apply to MS4s. The appropriate reference is to 40 CFR 122.44(k). With regard to the reference to 40 CFR 122.34(e)(1), Guidance states that EPA "strongly recommends" not including any additional requirements beyond the minimum measures for MS4s until EPA has completed a review of the program pursuant to 40 CFR 122.37 unless the operator agrees or a TMDL includes "specific measures" for addressing water quality concerns. A generic reference to 122.34(e)(1) is, accordingly, inappropriate.
- 3.1 – There is no federal requirement for MS4 permits to include TMDL provisions. Although 40 CFR 122.44(d)(vii)(B) requires that permits be "consistent with the assumptions and requirements of any applicable wasteload allocation for the discharge," the introductory paragraph to 122.44 makes clear that the subsections apply *when applicable*. Subsection (d) references water-quality based effluent limits, which are not applicable to MS4s. Subsection (k) is the only section that applies to MS4s. Assuming for argument's sake that a TMDL planning requirement is appropriate, Section 3.1.3 requires that the permittee continue to

implement the plan throughout the permit term unless the requirements of the TMDL are "being met." This essentially requires the permittee to comply with a TMDL WLA, which is inconsistent with the MEP standard. Section 3.1 should be re-written to: (i) reflect MEP and (ii) direct a permittee to design an TMDL plan with a goal of addressing TMDL WLAs over time using BMPs and adaptive management.

- 4.1.1.1 – Includes text nearly identical to 4.1.1.2. It should be revised in a similar manner to that suggested above.
- 4.1.6 – States that with each reissuance of the permit, the permittee "shall comply with new or revised standards as soon as practicable..." The compliance standard is MEP, not "as soon as practicable." In addition, the language regarding expectations for compliance with requirements of a future permit reissuance is unnecessary and certainly premature. DNR should establish a schedule for the requirements in the next permit once those have been defined through the public notice and comment process. Accordingly, the second sentence of Section 4.1.6. should be stricken.
- 5.3.1.3 – The annual report must include information on "the success of the program at reducing the discharge of pollutants to the MEP, to protect water quality and to meet the appropriate water quality requirements..." This text should be revised in a similar manner to that suggested above for 4.1.1.2 (sentence should end after the term "MEP").

We conclude by noting that for the past 15 years, every final legal decision on the issue of MS4 water quality standards compliance has found that WQS compliance by MS4 permittees is not required. See, e.g. *Conservation Law Found, Inc. v. Boston Water & Sewer Comm'n*, 2010 U.S. Dist. LEXIS 134838, 73 ERC (BNA) 1282 (D. Mass. 2010); *Miss. River Revival, Inc. v. City of St. Paul*, 2002 U.S. Dist. LEXIS 25384, 56 ERC (BNA) 1114, 33 Env'tl. L. Rep. 20131 (D. Miss. 2002); *City of Acadia v. State Water Res. Control Bd.*, 135 Cal.App.4<sup>th</sup> 1392 (2006); *Texas Indep. Producers v. EPA*, 410 F.3d 964 (7<sup>th</sup> Cir 2005); *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4<sup>th</sup> 866 (2004); *Matter of Natural Resources Defense Council, Inc. v. New York State Dept. of Env'tl. Conservation*, 111 A.D. 3d 737, (N.Y. App. Div. 2013). Accordingly, DNR should stick exclusively to the applicable "BMPs to the MEP" standard in the final MS4 GP.

Finally, we also note that page 1 of the Fact Sheet contains the following explanation which we believe incorrectly states the water quality-based requirements for MS4s. We urge DNR to remove the second item ("requirement to comply with more stringent requirements...") as follows:

The department believes that the remaining two subsections 1.4.2 .1 and 1.4.2.2 address the ~~two~~ primary standards for MS4: ~~1) requirements for MS4s to implement Best Management Practices (BMPs) to the Maximum Extent Practicable (MEP) toward the goal of protecting water quality in the receiving streams as a baseline MS4 permit standard; and 2) requirements to comply with more stringent requirements as may be indicated in assumptions and requirements of approved and effective TMDLs.~~

**B. New Section 5.1 Monitoring Requirements**

We question why DNR added a new instream monitoring section in the Proposed MGP. Monitoring requirements can be expensive and often MS4 operators find that the results are unhelpful for making programmatic improvements. We fail to see how two annual dry weather samples followed by three annual wet weather samples can tell us anything about stormwater impacts.

During wet weather, the pollutants found instream come from a wide variety of sources – often completely unrelated to MS4 discharges. Thus, by requiring this monitoring, DNR implicitly suggests that instream pollutant loadings will be related to MS4 discharges. That is likely not the case in many instances for many pollutants. Accordingly, we ask DNR to reconsider its preliminary decision to include this monitoring in light of the following: (1) what type of results DNR expects to see, (2) how those results will be used/beneficial, and (3) Whether this monitoring will provide information that is commensurate in value to the public cost to obtain it

If Section 5.1 remains in the final permit over our objection, we do ask that DNR delete the last sentence of Section 5.1.2.1.3.2 because it is unfair to request such an assessment based upon one-time sampling events. Section 5.1.2.1.3.2 requires:

At the time of sampling, the permittee shall record any observed erosion of streambanks, scouring, or sedimentation in streams, such as sand bars or deltas.

**C. Requirement to Inspect All Stormwater Structures and Facilities within The Permit Area is Too Broad**

Section 4.1.5 of the Proposed MGP requires that a permittee inspect or require inspection of any structures put in place to prevent or remove pollutants as well as the facilities in general “to ensure that all BMPs are continually implemented and effective.” The SWMP must also include a “monitoring plan with implementation schedule.” We have several concerns with these requirements.

First, permittees should not be required to inspect (or have inspected) entire facilities. There is no need for an MS4 to look at anything but a BMP that is discharging to its system. Small MS4s should not be asked, for example, to inspect an entire commercial property simply because it has a stormwater pond. We doubt that a small MS4 has the legal authority to do so.

Second, the federal requirement for MCM-5 (post-construction stormwater management) addresses the long-term operation and maintenance of post-construction BMPs. It does not address whether the BMP is “continually implemented and effective.” In other words, a BMP inspection is typically done to review whether the BMP is still in place, is working, and is being properly maintained. BMP inspections do not assess whether the BMP is effectively reducing pollutants consistent with its design. It is not actually possible to assess whether a BMP is “continually” implemented given that BMP inspections are performed as snapshots in time rather than continuously reviewed.

Third, AMCA believes DNR meant for inspections to apply to post-construction, permanent BMPs. However, the requirement is written in a way that could be misread

to require inspections of construction BMPs. There are programs in place that require these inspections. There is no need to include such a requirement in Section 4.1.5.

For all of these reasons, AMCA requests that DNR revise this permit provision as follows:

4.1.5 The permittee shall inspect (or require inspection of) any permanent structures that function to prevent pollution of stormwater or to remove pollutants from stormwater ~~and the facility in general to ensure~~ determine whether these that all BMPs are ~~continually implemented and effective~~ in operation and being properly maintained, and a monitoring plan with implementation schedule shall be referenced An explanation for how the inspections will be prioritized and scheduled shall be included in the SWMP document; and

**D. Small MS4s Are Not Required to Inspect and Enforce Against High-Risk Industrial and Commercial Enterprises within Their Permit Area**

Section 4.2.3.1.12 of the Proposed MGP requires that a permittee “inventory, inspect and have enforcement authority for high risk industries and commercial enterprises within their boundary that may contribute pollutants via stormwater to the MS4.”

Phase I large and medium MS4s are required by federal law to address discharges from certain industrial facilities to the MS4. There is no similar requirement for small MS4s in federal law, undoubtedly because these permittees are smaller and have more limited resources. DNR has no authority to require that small MS4s inventory, inspect and enforce against high risk industries (undefined) and commercial enterprises as mandated by 4.2.3.1.12. This is highly burdensome, expensive, and unnecessary – the state already has a program for addressing stormwater discharges from regulated industrial facilities. We believe an MS4 inspection requirement is duplicative of State inspections of state-permitted facilities. Also, we question whether we have the authority to inspect such facilities.

For these reasons, DNR should delete Section 4.2.3.1.12 in its entirety.

**E. MCM-6 (Good Housekeeping) Should Be Clarified**

Phase I large and medium MS4s are required to review flood management projects for water quality impacts. There is not a similar requirement for small MS4s. Accordingly, Section 4.2.6.1.6 should be deleted.

**F. Miscellaneous Requests for Clarification or Changes**

- Section 1.3 (Limitations of Coverage) – Section 1.2.2.2 authorizes the discharge of certain types of non-stormwater discharges (for example, discharges or flows from emergency fire-fighting activities). Section 1.3 limits coverage to only those non-stormwater discharges regulated by a separate NPDES permit. These two sections are inconsistent. Section 1.3 should be revised to read: “The permittee, as defined herein, shall effectively prohibit non-stormwater discharges into the MS4, except to the extent such discharges are regulated with a separate NPDES permit or are authorized by Section 1.2.2.2 above.” Likewise, Section 1.4.2.1 should be revised to

read: "Effectively prohibit pollutant discharges to the MEP in stormwater discharges and effectively prohibit unauthorized discharges into the MS4, except to the extent the discharges are authorized by Section 1.2.2.2 above." Section 7 of the Proposed MGP includes definitions. The definition for "illicit discharge" should be revised to clarify that non-stormwater discharges are acceptable if they are listed in Section 1.2.2.2.

- Section 1.4.3 mandates that the permittee comply with the permit terms and with "plans and schedules developed in fulfillment of this permit." This effectively makes the SWMP and TMDL plans an enforceable part of the MGP. In response to AMCA's request, DNR refused to approve the SWMP in order to provide the permittee with a permit shield. The permit must specify that the SWMP will be reviewed and approved by DNR. Further, any plan which is approved as submitted (or revised and submitted by the permittee following DNR comments) comes with a waiver of any finding of affordability. Only where DNR requires changes which the permittee is unwilling to accept would DNR have to perform an affordability determination.
- Table 2 is entitled Legal Authority for Selected Required Program Stormwater Elements. Some of the references are overly-broad (for example, not all of Chapter 644 of the CWL applies to MS4 permit requirements) and some are incorrect (for example, the reference to 40 CFR 122.44(d)(1)(vii)(B)). If DNR decides to retain this table it should verify the citations.
- Per Section 4.1.2.1, a permittee's SWMP must include "Best management practices (BMPs); control techniques and system, design, and engineering methods; and such other provisions as the permitting authority determines appropriate for the control of such pollutants as per 402(p)(3)(B)(iii)." Although this language parallels the compliance standard in the CWA, small MS4 permits have consistently been written to require implementation of the six minimum control measures ("MCMs") provided in federal regulations. There has been no need for additional "control techniques," etc. More importantly, requiring that the SWMP include "other such provisions," as determined by DNR makes the permit unlawfully vague. It is impossible for a permittee to understand what is expected for compliance purposes from reviewing this term. Practically speaking, it is also inconsistent with DNR's stated position that it will not be involved in SWMPs ("It is up to the community to decide what to put into their SWMP"). AMCA requests that DNR strike all text after the reference to BMPs in 4.1.2.1.

On a related note, Section 4.4.3 authorizes the Department to require changes in the SWMP in order to address water quality impacts, incorporate more stringent statutory or regulatory requirements, or include conditions deemed necessary to address state law. This language is inconsistent with DNR's initial decision to stay out of the business of approving SWMPs. It makes no sense to approve/require changes but not to approve the underlying SWMP document. Again, we believe the permit should specify that DNR will approve SWMPs.

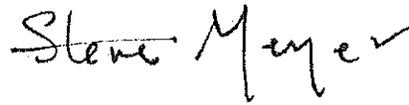
Section 4.4.5 states that only those sections of the SWMP that are "specifically required as permit conditions" are subject to a formal modification process. It is not

obvious to AMCA which sections of a SWMP are or are not "required as permit conditions." A clarification may be warranted in the permit.

- Section 4.2.3.1.5 should be revised to eliminate the requirement that the permittee conduct "ambient sampling" (undefined) to identify priority areas with a higher potential for illicit connections. Not only is this burdensome and potentially expensive, but permittees likely already know where illicit connections are more prevalent based on the age of the system, local land use, and other factors.

Thank you for considering our comments. Please contact me if we may answer any questions or provide further information about this correspondence.

Sincerely,

A handwritten signature in black ink that reads "Steve Meyer". The signature is written in a cursive style with a checkmark at the end.

Steve Meyer, P.E.  
AMCA President

C: Sara Parker Pauley, Director  
Leanne Tippet Mosby  
AMCA Members



# CITY OF BRANSON

## Engineering/Public Works Department

110 West Maddux St., Suite 310 • Branson, Missouri 65616  
(417) 337-8559 • Fax (417) 337-8181

December 8, 2014

Mr. John Madras  
Director, Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

RE: Proposed Reissuance of MOR040000 (Small Municipal Separate Storm Sewer Systems)

Dear Mr. Madras,

The Branson Board of Aldermen met today regarding DNR's proposed reissuance of the Small Municipal Separate Storm Sewer Systems General Permit. During the meeting, the Aldermen expressed concerns that the proposed general permit contains terms that are legally inappropriate and which puts Branson at significant risk for lawsuits and/or allegations of non-compliance.

The Board of Aldermen discussed the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA) and fully support those comments as they raise very important issues for Branson's MS4 program.

The City of Branson appreciates DNR's careful consideration of AMCA'S comments as submitted by Steve Meyer, P.E., President of AMCA.

Sincerely,

David H. Miller, P.E.  
Branson City Engineer

CLASSIFICATION: UNCLASSIFIED

Dear Sir or Madam:

The purpose of this e-mail is to inquire about paragraph 5.1.2.1 of the draft permit MO-R04000 that was distributed for public notice on 1 November 2014. The permit paragraph reads as follows:

"In stream dry and wet weather monitoring shall be conducted at six (6) locations. Where feasible, these locations should be along the primary stem of the principal watercourse in separate sub-regional watersheds that fall entirely or partially within the corporate boundaries of the MS4. Specific monitoring locations shall be established by the permittee through consideration of criteria that may include; location of significant development, nearby land-use, illicit discharge "hot spots", previous in-stream sampling locations, or other criteria as may be determined by the permittee. However, monitoring locations shall be selected from areas where flow is likely to occur. The location of these sampling points and the rationale for their location shall be included in the SWMP".

After a thorough review of Fort Leonard Wood's MS4 boundary, it has been determined that there are only two (2) locations that would meet the above the criteria of having flow during dry periods (Ground Hog Hollow and East Gate Hollow). The other streams along the boundary of the FLW MS4 are losing and do not have flow during dry periods. Please provide us with guidance on how we would proceed given our circumstances if the requirement is included in the Final General Permit.

Thank you,  
Craig French  
DPW Environmental IMLD-PWE  
Solid Waste, Recycling & MS4 Program Manager  
1334 First Street, Bldg 2222  
573-596-0131 ex 61385 [howard.c.french2.civ@mail.mil](mailto:howard.c.french2.civ@mail.mil)  
[http://ice.disa.mil/index.cfm?fa=card&sp=90035&s=447&dep=\\*DoD&sc=5](http://ice.disa.mil/index.cfm?fa=card&sp=90035&s=447&dep=*DoD&sc=5)

CLASSIFICATION: UNCLASSIFIED



January 2, 2015

Missouri Department of Natural Resources  
Water Protection Program  
ATTN: NPDES Permits and Engineering Section/Permit Comments  
P.O. Box 176  
Jefferson City, MO 65102  
VIA EMAIL: [publicnoticenpdes@dnr.mo.gov](mailto:publicnoticenpdes@dnr.mo.gov)

RE: Permit Number MOR040000

To whom it may concern:

Please accept these comments on behalf of the Missouri Coalition for the Environment (MCE) regarding the General Operating Permit for municipal separate storm sewer systems (MS4s), proposed by the Department of Natural Resources. MCE is a 45-year old non-profit organization dedicated to the protection of Missouri's air, water, and land resources. MCE regularly advocates for the strengthening of water quality standards, the protection of watersheds, and the enforcement of National Pollutant Discharge Elimination System (NPDES) permits. MCE represents members from across the state of Missouri and is a party to the consent decree governing the Metropolitan St. Louis Sewer District.

The State Operating Permit for MS4s has direct implications on the quality of our water resources and the health of Missouri residents. It is critical that this permit build on the progress of the last five years and hold storm water permittees accountable. Our state's economy and the health and livelihoods of its residents depend on these systems and on the Department's ability to enforce the laws and regulations governing them. Therefore, we appreciate the opportunity to comment on the General Operating Permit and urge you to adopt a permit that prioritizes water quality and reduces pollution from storm water, a major contributor to numerous impairments across the state.

Some of the proposed changes to the General Operating Permit for MS4s will adversely impact water quality, as described below:

1. The permit proposes to replace strict adherence to Water Quality Standards (WQS) with a baseline of Maximum Extent Practicable (MEP). As stated in the Department's fact sheet, this change constitutes backsliding. We oppose any backsliding that undermines water quality and dilutes adherence to water quality standards. If the Department's rationale is accepted, it is important that MEP serve as a baseline contingent upon the demonstration of effective best management practices (BMPs). It is also essential that MEP, based on BMPs effective at protecting water quality standards, remain the first and baseline criteria, not to be undermined by other criteria such as Waste Load Allocations (WLAs).
2. The draft permit also constitutes backsliding in violation of the Clean Water Act as it relates to new development and redevelopment. The 2008 permit requires new development and redevelopment projects to reasonably mimic pre-construction runoff conditions, but this

requirement does not appear in the proposed permit. *See Section 4.2.5.1 Post Construction Storm Water Management in New Development and Redevelopment.* The Department does not offer any rationale for this backsliding and the language should be restored to the permit. Furthermore, requiring projects to reasonably mimic pre-construction conditions can serve the Department and permittees in addressing anti-degradation requirements if sufficient monitoring is conducted.

3. The monitoring requirements under Section 5 are not reasonably certain to yield meaningful results and are insufficient to protect water quality. The proposed permit does not require sufficient frequency in wet or dry weather and the required six testing locations may be insufficient for some permittees. A more rigorous monitoring schedule is needed and should be based on the size of the project, watershed context, service area, or other quantifiable measurement to ensure that the monitoring is effective. The required location of monitoring also needs to be described in more detail. Insufficient monitoring criteria is likely to lead to unreliable data and an inaccurate skewing of the results that endangers water quality, aquatic ecosystems, and human health.

The regulation of MS4s is vital to protecting Missouri's water and the health of its citizens. With the improvements in green infrastructure and technology, the Department has the opportunity, and obligation, to ensure the protection of our water quality through this General Operating Permit. Thank you for your consideration of these comments and we wish you a happy new year.

Sincerely,



Heather B. Navarro  
Executive Director



December 19, 2014

By Electronic Mail ([publicnoticenpeds@dnr.mo.gov](mailto:publicnoticenpeds@dnr.mo.gov))

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Dr.  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

The City of O'Fallon has reviewed the Draft Missouri State Operating Permit MOR040000 placed on public notice October 31, 2014 and again on November 12, 2014. We appreciate the opportunity to provide the Department with our comments.

The City of O'Fallon supports the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA) as well as comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/Local MS4 program. We appreciate the Departments careful consideration of their comments as well.

We have also consulted with other permittees in St. Charles County as well as MSD. After completion of the consultation, we have the following specific comments to share with the Department.

**Approval of the SWMP**

Our highest priority is a request that MDNR must approve the MS4 SWMP as a whole because it will provide permittees and the Department with certainty about what is required to comply with the permit. We also feel it is important to providing permittees with a permit shield for compliance secondary to not meeting EPA requirements.

### **MEP vs. TMDL Compliance**

The Department must approve the newly required MS4 TMDL Implementation plan. Without approval, small MS4's cannot hope to have any certainty that their plan will be consistent with other plans and appropriately address the specific impairment targeted by the TMDL.

The fact sheet appears to give the impression that the Department is moving toward standards other than or "in addition to" the MEP standard. MEP is the standard in the permit and must remain as such to ensure an affordable and appropriate approach to regulation. A move away from the MEP standard has the potential to make MS4's responsible for water quality concerns outside of their control including those exempt from regulation or permitted facility not owned by the MS4 which may be regulated by a separate MDNR permit with separate requirement. The department should consider revising this requirement/language.

### **Affordability of Compliance**

O'Fallon has observed concerns in this area and believes the department should consider some further evaluation of this portion of the permit. We also concur with the recommendations as requested in the December 2, 2013, MSD letter to the MDNR. The Department should consider that most Cities' budget funds are restricted for specific uses by statute or ballot language.

The City also feels that the Department should consider debt which it currently states as "N/A" in the fact sheet. We are conscious of surrounding MS4 permittees, but our comments regarding this topic will remain specific to our own MS4 in this respect. Again, we are aware that the fact sheet is not enforceable; however the examples are to be considered when determining appropriate permit compliance and budget fund allocation.

In the example provided in the fact sheet, the Department does not consider outstanding debt and demonstrates the impression that all MS4 have some sort of flexible funding source at their discretion. Outstanding debt must be considered when determining the ability and feasibility to fund such monitoring practice and remove the assumption that this is a small expense. Many MS4 have very limited funds and are required to allocate all funds to a specific line item in their budget process. In our MS4, permit compliance, salaries, employee benefits, asset purchase, contracting services, capital improvement projects, general infrastructure maintenance, etc. are all included in the portion of stormwater funds received by a shared parks/stormwater sales tax. Repayment of debt from bonds is also taken from the portion of funds received for the stormwater fund to operate. There are no "general funds" allocated to the O'Fallon stormwater program.

Item 4 of the fact sheet addendum the Department utilizes the City of O'Fallon as an example of operating and maintenance cost. It is important for the Department to understand that though there is a funding mechanism, again this is a shared Parks/Stormwater sales tax fund. When revenues are down,

there are fewer funds available. Also of note, the example provided is not a complete representation of stormwater funds available in O'Fallon. The portion of stormwater funds received is not a set percentage. City Council determines each budget year the portion of funds provided to stormwater. The average percentage is closer to 23%-25% of funding for stormwater and 75%-77% funding for Parks. In 2011, City Council was generous to stormwater by allowing more funds to complete some larger, long awaited, capital improvement projects. We also have 2 rather large bonds that are being repaid which depletes fund availability as it is deducted from the percent of funding received. Additionally, the City currently has a rather large list of stormwater capital improvement projects that a majority of funds will be allocated for that will cost approximately \$2.6 million as well as future infrastructure projects currently estimated at \$7.6 million. Again, there are no general funds available to fund the O'Fallon stormwater program.

### **Monitoring**

We have concerns with regards to the ability to identify sources of pollutants that are being requested to be monitored in the permit. With this lack of ability to identify sources properly, there is a further concern with permit language that we will not be effective in demonstrating the MS4 effectiveness at removing pollutants of concern, and/or offer useful data for DNR and the permittees. An example of source concern would be metals and liquids from automobiles traveling throughout the MS4. Control of traffic and automobiles that travel through the MS4 is not something in our control. Working machinery will continue to produce metal filings and fluid discharge even if properly maintained. Some of these particles are so minute that stormwater BMPs will not capture all of the particles due to their minute sizes.

The cost for O'Fallon to implement the monitoring program will require a full bidding process for services to complete. Informal engineering estimates provided to us by other sources estimate that sampling and lab costs will be closer to \$9,000 per year. This amount is significantly higher than the example provided.

O'Fallon will have to consider the reduction of budget funds for installation of BMP's, creek stabilization or other preventative maintenance throughout the stormwater system in order to implement a monitoring program. This will not be popular with the residents who authorized our Parks/Stormwater Sales Tax fund in the hopes of addressing storm water concerns and providing needed maintenance of our infrastructure.

A single, annual sample will provide limited information about the water quality of a stream. As examples, consider bacteria and chloride; two pollutants that are ubiquitous to urban areas across Missouri. Sampling between July 1 and September 30 does not align with some sampling parameters required in this draft permit.

The wet weather water quality monitoring effort is particularly problematic. Wet weather monitoring is biased to a discrete period of time that, for some pollutants, is not representative to typical conditions.

Correlating the effectiveness of the MS4 program to wet weather quality data would be impossible using the methodology described in the current draft permit. Also the degree of effort, special equipment, and associate cost required for meaningful wet weather monitoring and data assessment is not fully considered in the cost of compliance assessment.

**Miscellaneous Request for Clarification:**

5.1.4.2 Please provide copies of the IMR form to review as it was not included in the fact sheet.

In summary, approval of the SWMP and TMDL Implementation Plan would be a benefit to the Department and City of O'Fallon because it will establish the clear, specific and measurable measures by which the MEP standard will be evaluated for the current permit cycle.

Our suggestion is to make an in-stream water quality monitoring program a recommended option and focus the monitoring option on activities that would provide representative data considering seasonal and weather related variation in pollutant loading.

Thank you for the opportunity to provide comments during this process. If you have any questions, please feel free to contact me at [micheleg@ofallon.mo.us](mailto:micheleg@ofallon.mo.us) or 636.379.7632.

Sincerely,



Michele Gremminger, CESSWI, CMS4S  
Stormwater Management Coordinator  
City of O'Fallon

Cc: Bonnie Therrien, City Administrator

Ecc: file

Missouri Department of Transportation  
David B. Nichols, Director

573.751.2551  
Fax: 573.751.6555  
1.888.ASK MODOT (275.6636)

December 31, 2014

Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, MO 65102

**Attn: NPDES Permits and Engineering Section/Permit Comments**

To Whom it May Concern,

Subject: **Permit No. MOR040000**  
**MoDOT Comments**

MoDOT has the following comments regarding the proposed permit conditions.

1. Section 1.3 and Section 1.4.2.1 should be revised to include discharges authorized by Section 1.2.2.2 as well as those regulated with a separate NPDES permit.
2. Section 1.4.2.2 states that a MS4 must “Attain applicable wasteload and load allocations (WLAs/LAs) for each EPA approved and effective Total Maximum Daily Load (TMDL) for each receiving waterbody...”. This statement is unrealistic in its assumption that the MS4 must *attain* WLAs under the permit cycle or annual review. It should instead require the implementation of BMPs to the MEP to satisfy the requirements.
3. Section 2.2.1. Alternate permit is not defined in Missouri Clean Water Law as a type of general permit.
4. Section 3.1.1 states that “Any regulated MS4 identified as a potential source...”. Is there a process for an MS4 to be *identified* as a potential source? Is this process outlined in the general permit or within a TMDL? The requirement should read for an MS4 identified as a source in the TMDL....
5. Section 3.1.2. If an MS4 discharges to a waterbody identified in Table 1 but is not identified as having a WLA, that MS4 should not have to submit a plan. Section 3.1.2 should distinguish between MS4s that discharge to the waterbodies in the table and those identified as primary sources under a written TMDL. There is a distinction between them.
6. Sections 4.1.1.1 and 4.1.1.2 is almost exactly the same and should be revised to contain more concise language.
7. Section 4.1.5 requires the permittee to inspect “facilities” over actual BMPs and requires the MS4 determine the “effectiveness” of the pollutant removal rather than that the BMP is operating and being maintained properly. This section should be revised to require inspection of the specific BMPs and that the inspection determine that they are operating and being maintained properly. The term “facilities” can be misinterpreted to be entire facilities instead of specific BMPs.



8. Section 4.1.6 is unrealistic in requiring how an MS4 complies with some future permit conditions. Each MS4's compliance schedule should be looked at on an individual basis, as each complies to the MEP under the MS4s circumstances.
9. Sections 4.2.2.1.1, 4.2.2.1.2, 4.2.2.1.3 and 4.2.2.1.3 (misprint, likely should be 4.2.2.1.4). These requirements are municipal oriented and would be so onerous for MoDOT to comply with that it would be unmanageable.
10. Section 4.2.3.1.5 is a burdensome and potentially expensive requirement that is limitless in nature and undefined in requirements and should be eliminated.
11. Section 4.2.4.1 requires that the MS4 control run-on from adjacent development. MoDOT does not have the legal authority to make requirements of adjacent development and the section should be written more specifically to MS4s that have control over development within their boundaries.
12. Section 4.2.5.1 again requires the MS4 to control stormwater from development and should be rewritten to specifically apply to MS4s that have the legal authority to require such.
13. Section 5.1.2.1 is written for an MS4 that has specific corporate boundaries. Monitoring locations described do not correspond with MoDOT's MS4. The description given for sampling requirements is overly specific. Provide a flow diagram or better description of the expectation.
14. Section 5.3.1.3 should be changed to strike the following part of the sentence "to meet appropriate water quality requirements".
15. In general the TMDL plans and changes to the SWMP regarding plans for discharges and sampling requirements are costly and require a large personnel effort to comply due to the fact that as a DOT our coverage area is statewide at most and ALL urban designated areas at the least. The costs for *multiple* TMDL plans and potentially greater than 6 monitoring locations statewide is significant and MoDOT's permit should be looked at specifically for areas of focus and additionally, areas of scaling back. The general permit is written for municipal operations and makes it extremely difficult for a DOT to comply.

Thank you for the opportunity to comment.

Sincerely,



Buck Brooks  
Wetland Coordinator

ms



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690 Chesterfield Pkwy W • Chesterfield MO 63017-0760  
Phone: 636-537-4000 • Fax 636-537-4798 • [www.chesterfield.mo.us](http://www.chesterfield.mo.us)

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December 19, 2014

By Electronic Mail ([publicnoticenpdes@DNR.mo.gov](mailto:publicnoticenpdes@DNR.mo.gov))

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000 placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department of Natural Resources with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department of Natural Resource's careful consideration of AMCA's and MSD's comments. In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department of Natural Resource's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Chesterfield is committed to working with the Department of Natural Resources to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact me at (636) 537-4764 if you have any questions or need additional information.

Sincerely,

James A. Eckrich, P.E.  
Public Works Director / City Engineer

cc: Jay Hoskins - MSD ([jhoskins@stlmsd.com](mailto:jhoskins@stlmsd.com))



The City of Hazelwood  
December 31, 2014

much more  
than you imagine



By Electronic Mail (publicnoticenpdes@DNR.mo.gov)

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Hazelwood is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact Earl Bradfield at 314-513-5013 if you have any questions or would like to discuss these issues further.

Sincerely,

Earl Bradfield MCRP, AICP  
City Planner

cc: Jay Hoskins - MSD

City Hall & Public Works  
t: 314.839.3700  
f: 314.839.0249  
415 Elm Grove Lane

City Maintenance  
t: 731.8701  
f: 731.4240  
115 Ford Lane

Fire Department  
t: 731.3424  
f: 731.1976  
6800 Howdershell Road

Municipal Court  
t: 839.2212  
f: 838.5169  
415 Elm Grove Lane

Parks & Recreation  
t: 731.0980  
f: 731.0989  
1186 Teson Road

Police Department  
t: 839.3700  
f: 838.5169  
415 Elm Grove Lane

# CITY *of* CAPE GIRARDEAU

PUBLIC WORKS DEPARTMENT

RECEIVED

DEC 09 2014

WATER PROTECTION PROGRAM

December 3, 2014

Mo Dept of Natural Resources  
Water Protection Program  
P. O. Box 176  
Jefferson City, Mo 65102

Attn: NPDES Permits and Engineering Section / Permit Comments

Re: Draft Missouri State Operating Permit Mo-Ro4

Dear Gentlemen / Ladies,

On behalf of the City of Cape Girardeau I wish to offer the following comment on the Draft Missouri State Operating Permit:

The Association of Missouri Cleanwater Agencies (AMCA) has prepared a set of comments on this draft permit. As you know this permit impacts all of the MS4 communities in Missouri, which includes Cape Girardeau. The City of Cape Girardeau supports the comments presented by the AMCA.

Sincerely,



Stan Polivick  
Traffic Operations Engineer

P.O. Box 367, 300 East Pearl Street - Harrisonville, Missouri 64701 p. (816) 380-8900 f. (816) 380-8906

RECEIVED

DEC 29 2014

December 23, 2014

WATER PROTECTION PROGRAM

Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, MO 65102-0176  
Attn: NPDES Operating Permits Section/Permit Comments

**RE: Comments to the Proposed Reissuance of MOR040000 Small Municipal  
Separate Storm Sewer System (MS4) General Permit**

The City of Harrisonville has reviewed the November 25, 2014 comments submitted by the Association of Missouri Cleanwater Agencies (AMCA) and as a member fully supports and endorses those comments.

Thank you for your consideration of these comments.

**CITY OF HARRISONVILLE, MISSOURI**



Jerry W. Gibbs, P.E.  
Director of Public Works



# City of Lake Lotawana

December 21, 2014

Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, MO 65102-0176

RECEIVED  
DEC 26 2014  
WATER PROTECTION PROGRAM

Attn: NPDES Operating Permits Section/Permit Comments

**RE: Comments to the Proposed Reissuance of MOR040000 Small  
Municipal Separate Storm Sewer System (MS4) General Permit**

The City of Lake Lotawana has reviewed the November 25, 2014 comments submitted by the Association of Missouri Cleanwater Agencies (AMCA) and supports those comments.

Thank you for your consideration of these comments.

**CITY OF LAKE LOTAWANA, MISSOURI**

Signed by,

Rhonda Littrell  
City Clerk of the City of Lake Lotawana  
At the direction of:  
Dave Welsh  
Mayor of the City of Lake Lotawana

RECEIVED

DEC 19 2014

**WATER PROTECTION PROGRAM**

December 15, 2014

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RE: Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of Woodson Terrace is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact Douglas G. Zaiz at 314-427-2600 if you have any questions or would like to discuss these issues further.

Sincerely,



Douglas G. Zaiz  
Director Public Works

cc: Jay Hoskins - MSD



# City of Independence

## WATER POLLUTION CONTROL DEPARTMENT

P.O. Box 1019 • INDEPENDENCE, MISSOURI 64051-0519 • (816) 325-7711 • FAX (816) 325-7722

AN EQUAL OPPORTUNITY EMPLOYER  
December 2, 2014

**RECEIVED**

DEC 18 2014

Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, MO 65102  
ATTN: NPDES Permits and Engineering/Permit Comments

**WATER PROTECTION PROGRAM**

Re: Comments re Proposed Reissuance of MOR040000 Small Municipal Separate Storm Sewer System (MS4) General Permit

The following comments regarding the proposed reissuance of the Small MS4 General Permit are submitted on behalf of the City of Independence Water Pollution Control Department. The City of Independence MS4 holds a Phase I MS4 permit and thus will not be subject to the proposed Small MS4 General Permit. However, our understanding is that the Department of Natural Resources (Department) may use the Small MS4 General Permit as a model in developing Phase I MS4 permits. In our view, the proposed Small MS4 General Permit is too prescriptive, especially to be used as a model for developing Phase I MS4 permits for first class cities. We look forward to negotiating appropriate permit terms with the Department.

We have reviewed the November 25, 2014 comments submitted electronically by the Association of Missouri Cleanwater Agencies (AMCA). The City of Independence is a member of AMCA, and we fully support those comments as they raise very important issues for MS4 programs. We appreciate the Department's careful consideration of AMCA's comments.

Thank you for considering our comments. Please feel free to contact us if you have any questions.

Sincerely,

Dick Champion, Jr., Director  
Water Pollution Control

cc: Rob Patten  
Karla Pierce  
Dorris Bender  
Ted Martin

A COMMUNITY IN EASTERN JACKSON COUNTY



I offer these comments in response to the recent public notice of the Missouri Small MS4 draft operating permit #MOR040000.

1. **Water Quality Standards:** It is good the state recognizes the two distinct "standards" scenarios (in Section 1.4 of the permit). This appears to be backsliding from the previous more stringent 2003 and 2008 permits; however, backsliding (this interim relaxation of Water Quality Standards where MEP can be applied in the process of pursuing WQS compliance) can be rationalized as consistent with certain court decisions and the iterative process toward water quality standards. However, this is only acceptable where MEP is but one of two distinctly separate standards:

a) **Maximum Extent Practicable or MEP in lieu of strict water quality standards as a baseline**, on the condition that adequate best management practices are required in the permit and made clear and measurable in the MS4's stormwater management program plan (as decided in the 2013 Boston Sewer and Water District findings); and  
b) **any more stringent criteria determined necessary to comply with TMDL limits and similar requirements** based in more detailed study.

It is important the state fully vet any argument that MEP should always trump more stringent limits, because these two requirements are well separated and supported as such in the Clean Water Act and federal regulation. Certain arguments (for MEP to be the only standard) are ill-founded and misleading, omitting full and relevant court decisions, rationale and circumstances for the department director to require more specific criteria for example when determined to be considered MEP through state-of-the-practice or when the permittee fails to adequately implement best management practices to the maximum extent practicable.

2. **Water Quality Monitoring requirements.** Water quality monitoring can be very informative and assist the communities in working toward measurable water quality goals. However, there appears to be an inequity in the requirements in that all permittees are required to perform the same amount of monitoring regardless of size. More thought could be given to monitoring per number of outfalls and types of discharge settings.

3. **The removal of "reasonably mimic" from new post-construction development requirements.** This requirement should be returned to the permit, because its removal constitutes a backsliding that cannot be well reasoned or justified. Its removal is also contradictory in purpose to required best management practices "in lieu" of strict adherence to water quality standards. The "mimic" term and concept is addressed throughout the clean water act, federal regulation, many policy and guidance documents, is evident in many projects across the country and in Missouri, is reasonably affordable, helps to address anti-degradation intentions and therefore considered by many to be state-of-the-practice stormwater management to address urban runoff quality. In fact, a more prescriptive definition of reasonably mimic could be beneficial and should be considered for inclusion in the permit. If the state removes the "reasonably mimic" term, it should then at least include a more prescriptive requirement for new development projects to provide on-site retention of the 90th percentile storm event except where continuous simulation modeling defines a more specific "reasonably mimic" scenario. It is certainly critical to retain this requirement and an even more descriptive requirement for post-construction redevelopment (such as on site retention of the 75th percentile storm event) in order to avoid backsliding, to be current with maximum extent practicable, to be consistent with the model ordinance recently developed by EPA and DNR for southwest Missouri and to be consistent with the strategies in DNR's 2013 Missouri Guide to Green Infrastructure. Finally, given any relaxation of WQS (that is MEP in lieu of WQS as one of the two standards), it is critical that adequate best management practices be retained in the permit and expanded as needed for accountability.

4. Finally, the state should require in the permit that MS4s adopt a set of stormwater practice specifications that provide local/regional prescription to achieve the post-construction runoff quality goals, lest the state develop such a statewide manual for mandatory adoption.

Thank you for the opportunity to comment on this permit.

Sincerely,  
Ruth Wallace, CMS4S  
2020 Chickadee Road  
Jefferson City, MO 65101  
[573 424 1981](tel:5734241981)  
[ruth.arnoldwallace@gmail.com](mailto:ruth.arnoldwallace@gmail.com)



**Public Works and Parks**

6801 Delmar Boulevard, University City, Missouri 63130, Phone: (314) 505-8560, Fax: (314) 862-0694

December 31, 2014

By Electronic Mail (publicnoticenpdes@DNR.mo.gov)

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

RE: Draft Missouri State Operating Permit MOR040000 Comments

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

We support the November 25, 2014 comments prepared by the Association of Missouri Cleanwater Agencies (AMCA), as well as the comments submitted by the Metropolitan St. Louis Sewer District (MSD). They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate the Department's careful consideration of AMCA's and MSD's comments.

In particular, we share the concerns raised about TMDL implementation through the MS4 permit. The Department's MS4 NPDES permit must communicate and implement a consistent, affordable, and appropriate approach to TMDL implementation. This approach should include Department approval of the permittee's SWMP and TMDL Implementation Plans.

The City of University City is committed to working with the Department to ensure that Missouri's waters are protected through application of good science and stakeholder input. Please contact Megan Fuhler at 314-505-8565 if you have any questions or would like to discuss these issues further.

Sincerely,

Richard L. Wilson PE  
Director

cc: Jay Hoskins - MSD



*Discover.*

December 29, 2014

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

Re: Comments for Draft Missouri State Operating Permit  
MOR040000 Revised 11.12.2014

Dear Mr. Wieberg,

We have reviewed the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014. We appreciate the opportunity to provide the Department with our comments.

The City of St Charles has consulted with other municipalities in St. Charles County as well as Metropolitan Saint Louis Sewer District (MSD) and has developed some specific comments to share with the Department. The City of St Charles concurs with those comments made by the Association of Missouri Clean Water Agencies (AMCA) and those submitted by MSD.

#### TMDLs

The inclusion of total maximum daily load (TMDL's) indicates a move away from maximum extent practicable (MEP) as the standard required for MS4's. This requires the permittee to develop an implementation plan for TMDL's that may or may not have WLA's/ LA's and are quite possibly based on old data. MEP is the regulatory standard for MS4's and should remain so.

#### Monitoring Requirements 5.1.2

The City appreciated the prescriptive and detailed nature of the In-stream Water Quality Monitoring section. However, we question the ability to obtain representative and usable data from such limited testing.

***Department of  
Public Works***

***Engineering Division***

City of Saint Charles  
200 North Second Street  
Saint Charles, MO 63301  
636.949.3237  
[www.stcharlescitymo.gov](http://www.stcharlescitymo.gov)

The analyte list in 5.1.2.1.2.1 is an expensive suite of tests. The Department's estimated cost to complete such testing may be in error by 200% or more.

BMP Operation and Maintenance 6.3

This paragraph and the majority of the language in this section appears to have been "borrowed" from a permit intended to address discharges from a fixed municipal facility such as a wastewater treatment plant (WWTP). Many stormwater BMP's within the City's jurisdiction are privately owned, operated and maintained and the City performs periodic inspection for functionality. Section 6.3 also requires "adequate laboratory controls and appropriate quality assurance procedures" which implies more quantitative lab analysis. This is an expense that is not captured in the Department's affordability analysis.

SWMP Approval

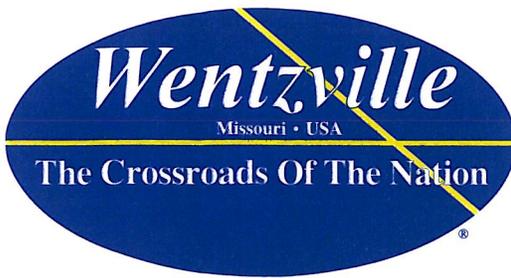
The Department should review and approve the SWMP in its entirety, providing a permit shield to the MS4. This is particularly important with respect to TMDL Implementation Plans such that consistency is maintained within watersheds.

Thank you for the opportunity to provide comments during this process. Please contact me at 636-949-3237 if you have any questions or would like to discuss these issues further.

Sincerely,



Jerry Hurlbert, P.E.  
Director of Public Works  
City of St Charles



Public Works Department  
200 E. Fourth Street  
Wentzville, MO 63385

January 2, 2015

Missouri Department of Natural Resources  
Water Protection Program  
Attn: NPDES Operating Permits Section/Permit Comments  
P.O. Box 176  
Jefferson City, MO 65102-0176

By Electronic Mail ([publicnoticenpdes@DNR.mo.gov](mailto:publicnoticenpdes@DNR.mo.gov))

Subject: **Draft Missouri State Operating Permit MOR040000 Comments**

Dear Mr. Wieberg and staff:

We appreciate the opportunity to provide comments of the Draft Missouri State Operating Permit MOR040000, placed on public notice October 31, 2014, revised on November 12, 2014.

In addition to supporting comments from the Association of Missouri Cleanwater Agencies' (AMCA) and the Metropolitan St. Louis Sewer District (MSD), the City of Wentzville offers the following remarks and constructive feedback regarding the draft permit's impact on local Municipal Separate Storm Sewer System (MS4) programs, compliance status, and the effect on water quality. We appreciate the Department's careful consideration of these comments before making a final determination.

**1. Proposed Permit Language Goes Beyond Statutory Maximum Extent Practicable (MEP) Language**

Wentzville has significant concern regarding a move toward standards "in addition to" the federal statutory MS4s compliance standard, Best Management Practices (BMPs) to the Maximum Extent Practicable (MEP). The proposed additions to permit sections 1.4.1, 1.4.2.2, and 4.1.1.1 requires compliance with state water quality standards (WQS) and TMDL wasteload allocations (WLA). In particular, section 1.4.2.2 requires attaining applicable WLA for TMDLs as a permit requirement, with compliance expected no later than 5 years from permit issuance (4.1.6). Load allocations are not applicable to MS4 permittees. There are no federal requirements for MS4 permits to include TMDL provisions. Even more concerning, if TMDL and WQS attainment becomes a permit standard, these efforts are no long eligible for 319 grant funding.

In Wentzville, Peruque Creek is listed on the 303d List of Impaired Waters with the specified pollutant "Fishes Bioassessments/Unknown" and the source listed as "Nonpoint Source." A TMDL will therefore be developed by DNR, and the Wentzville MS4 would likely be named in the TMDL plan, but with no clear or specific understanding of sources or measurable methods to overcome the noncompliance issue. There are major concerns about mandatory TMDL implementation through the MS4 permit.

MEP must remain the permit standard to assure an affordable and appropriate approach to improving water quality. The City respectfully requests language be modified so the MS4 NPDES permit communicates and implements a consistent, affordable, and appropriate approach to compliance and TMDL implementation:

- MS4s must implement BMPs and TMDLs to the MEP. Remove draft permit section 1.4.2.2 and references “to protect water quality,” and “satisfy the appropriate water quality requirements of the Missouri Clean Water Law and Clean Water Act in accordance with CFR 122.34.”
- For clarity, do not omit the MEP definition in the permit (as explained in the Fact Sheet).

In addition, this approach should include Department approval of the permittee’s SWMP and TMDL Implementation Plans. Department review and approval is the only way to ensure MS4s understand their responsibilities as the regulations expand in scope and complexity. Definitive approval provides the necessary clarity of the Department’s compliance expectations to effectively achieve water quality improvements and permit compliance.

## **2. An Affordability Analysis per RSMo. 644.145 has not been conducted for TMDL plan implementation.**

DNR has conducted a cost of compliance analysis for TMDL plan development, but not implementation. Yet, the draft permit’s compliance hinges on TMDL Wasteload Allocation attainment (Section 1.4.2.2). Significant portions of the City’s budget are restricted to specific purposes by statute or ballot language. A parks and stormwater tax has failed despite multiple attempts at passage, and efforts to create a stormwater utility were halted after the *Zweig et al. v Metropolitan St. Louis Sewer District* litigation. Therefore, the City of Wentzville does not have a dedicated funding source for stormwater management. We suggest:

- Amending 4.1.6 to state “If a TMDL is applicable to the MS4, TMDL plans must be developed in accordance with Section 3 and implemented per the approved TMDL implementation schedule unless applicable TMDL assumptions and requirements are being met.” The Department can then publicly review the cost of attainment per RSMo. 644.145 and implementation schedule upon the effective date of a new TMDL as outlined on Fact Sheet page 5.
- Change “Attain” to “Address” in 1.4.2.2 and add “consistent with the approved TMDL Implementation schedule.”
- The Fact Sheet (page 5) references using numeric benchmarks and interim milestones that address assumptions and TMDL requirements where applicable. We suggest using this language in the permit to require these elements in the TMDL plan or comprehensive integrated plan for wastewater and stormwater NPDES obligations. Exceeding a benchmark is not generally an MS4 permit violation, but would require corrective action. Failure to implement corrective action could be a permit violation<sup>1</sup>.

## **3. Proposed In-stream Monitoring Requirements Have No Direct Correlation to MS4 Discharges and Do Not Effectively Assess MS4 Achievements or WQS Compliance**

Proposed in-stream monitoring requirements (rather than effluent or BMP monitoring) makes MS4s responsible for water quality issues outside our control. It misleadingly ties MS4s to other potential pollutant sources: unpermitted agricultural activities; permitted industrial or construction discharges; other upstream MS4 discharges; or other pollutant sources upstream or outside our jurisdiction. A single annual sample could be extremely skewed and provides little information. Even if there was a more direct correlation, it could take years to show water quality improvements from changes within the MS4’s control.

In addition, there are no applicable WQS for proposed monitoring parameters such as conductivity, chemical oxygen demand, turbidity, total nitrogen, total phosphorus, total suspended solids, and surfactants. Additionally, observations of erosion, scouring, or sedimentation are not referenced in WQS and do not have direct correlation to the MS4 alone.

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<sup>1</sup> EPA. (2014). *Revisions of the Nov. 22, 2002 Memo "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"*. Washington, D.C.

Suggested change:

- Recommend optional stormwater monitoring of permitted discharges or facilities rather than in-stream monitoring. This would more effectively assess permit performance, allow flexibility to permittees in how they set up the monitoring program to provide representative data, and ensure MS4s are only accountable for their contributions (not everything coming downstream). After an assessment phase, priorities can be developed for parameters and MS4 discharge locations that have a reasonable potential to cause or contribute to an in-stream excursion of WQS.

As referenced in the Fact Sheet, “CFR 122.44(1)(2)jC which states: “A less stringent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy.” This applies to in-stream monitoring.

**4. MS4s Do Not Own and Maintain All Facilities and Systems Installed to Achieve Compliance.**

Most stormwater facilities in Wentzville are privately owned and operated. The City of Wentzville, similar to the Department of Natural Resources, has inspection and enforcement authority in ordinances or maintenance agreements that requires proper operation. MS4s physically cannot “at all times properly operate and maintain” these facilities, just like DNR cannot “at all times properly operate and maintain land disturbance sites.” Even for facilities the City owns, there can be a maintenance issue May we suggest:

- 6.3 The permittee shall properly operate and maintain all facilities and systems of treatment or control (and related appurtenances) which are owned and operated by the permittee and used by the permittee to achieve compliance with the conditions of the permit. In the event operations or maintenance issues would cause a violation of WQS or permit conditions, the permittee shall take corrective action to bring the facility into compliance. Where facilities are privately owned and operated, the permittee shall have inspection and enforcement authority to bring the facility into compliance.

**5. Draft post-construction language is appropriate and flexible, however it is unclear if linear transportation projects are included in the term *development* or *redevelopment*.**

Clean water regulations are typically applied to polygon developments; whether commercial, residential, or industrial. However, when MS4s have linear transportation reconstruction or widening projects, there are compounding hurdles with right-of-way/property acquisition, access, and utility conflicts.

- Amend 4.2.5 and/or 7. to define *development* and/or *redevelopment* and clarify if section 4.2.5 applies to linear transportation projects. This would help MS4s better understand the scope of permit regulations.

The City of Wentzville is committed to working with the Department to ensure Missouri’s waters are protected through the application of sound science and clear, specific, and measurable permit requirements. Please feel free to contact me directly at (636) 639-2055 or at [jamie.paige@wentzvillemo.org](mailto:jamie.paige@wentzvillemo.org) if you have any questions or would like to discuss these issues further.

Sincerely,



Jamie Paige, CSM  
Stormwater Management Coordinator

cc: Susan Mueller, Public Works Director  
Douglas Lee, Assistant Public Works Director



RUSSELL W. BATZEL  
MANAGER, TRANSPORTATION &  
DEVELOPMENT SERVICES  
(636) 477-6600, EXT. 1304

December 31, 2014

Mr. Chris Wieberg  
Chief, Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
1101 Riverside Drive  
Jefferson City, MO 65101

**RECEIVED**

JAN 06 2015

**WATER PROTECTION PROGRAM**

RE: Draft Missouri State Operating Permit MORO40000 Comments

Dear Mr. Wieberg:

We have reviewed the Draft Missouri State Operating Permit MORO40000, placed on public notice on October 31, 2014. We appreciate the opportunity to provide our comments.

As a member of the Association of Missouri Cleanwater Agencies (AMCA), we support their comments provided to you as well as the comments submitted by the Metropolitan St. Louis Sewer District. They raise very important issues regarding the draft permit and the State/local MS4 program. We appreciate your careful consideration of AMCA's and MSD's comments.

Of particular importance to us is that MODNR review and approve each permittee's Stormwater Management Program plan. The City of St. Peters is committed to clean water practices and has the support of our community which in 2012 passed a sales tax increase by a 72% favorable vote to support storm water management. Since passage of that tax increase the City has completed over \$8 million of projects relating to storm water basin retrofits and stream bank restoration to improve water quality from storm water discharges. We need to know that DNR supports our efforts through approval of our Storm Water Management Plan as it relates to our MS4 permit.

Please contact me at 636-477-6600 ext. 1304 if you have any questions or would like to discuss these issues further.

Sincerely,

Russell W. Batzel, P.E.  
Manager, Transportation & Development Services