

STORMWATER REGULATORY PROGRAMS FOR THE MAINE TURNPIKE AUTHORITY

The document details federal and state stormwater regulatory programs pertinent to the Maine Turnpike Authority (Authority), the respective stormwater requirements and the current status of each program. Each program is designated a Task number that corresponds to a Consultant service in the Scope of Work for Contract 2012.106 - Stormwater Management and Compliance Assistance Services.

Maine Pollutant Discharge Elimination System (MEPDES) General Permits:

- 1. Municipal Separate Storm Sewer Systems (MS4 Permit) - MEPDES General Permit for the Discharge of Stormwater from the Maine Department of Transportation (MaineDOT) and the Authority.**

Status: Implementation of requirements within Permit Year (PY) 5 of the existing MS4 permit are in progress (e.g., annual progress report, implementing measurable goals, tracking and documenting progress, etc.). In 2011, the Maine Department of Environmental Protection (MaineDEP) and MS4 permittees began to consider the new permit requirements that the United States Environmental Protection Agency (USEPA) will likely require based on recently renewed USEPA MS4 permits in New Hampshire and Massachusetts. The requirements proposed by USEPA for the next MS4 permit include (but are not limited to) additional wet weather monitoring (i.e., collecting samples during rain events) and costly analytical sampling/monitoring for numerous parameters (e.g., chlorine, ammonia, potassium, surfactants, etc.). Although MaineDEP is the delegated authority in Maine, USEPA must approve the next MS4 permit; therefore, MaineDEP plans to work closely with the regulated MS4 permittees, including the Authority and MaineDOT, to develop alternate permit language and requirements that are suitable replacements for USEPA's more stringent and costly MS4 requirements. A subcommittee of regulated MS4 municipalities convenes regularly to discuss and develop a surrogate approach for the MS4 permit in lieu of the costly monitoring requirements suggested by USEPA. The subcommittee has met with the Governor's office to elevate concerns regarding the costly MS4 requirements proposed by EPA. The next MS4 permit will also likely include language to address the proposed statewide Impervious Cover (IC) Total Maximum Daily Load (TMDL), which must be carefully vetted in consideration of the State Transportation Agencies' MS4 permit requirements (i.e., MS4 permit is currently perceived as the regulatory enforcement mechanism for the IC TMDL). The current MS4 permit expires 6/30/2013. **(SEE TASK 1)**

- 2. MEPDES Construction General Permit (MCGP) - MEPDES General Permit for the Discharge of Stormwater from Construction Activity with Basic Performance Standards Appendices.**

Status: The current MCGP, which expired in 2008 and has been administratively extended by MaineDEP, applies to construction activities with one acre or more of disturbed area¹. Revisions to the current MCGP were proposed circa 2010 and included provisions to increase the applicability threshold to 5 acres for the Authority/MaineDOT, and may also include USEPA provisions established in 40 CFR 450 – Construction and Development Point Source Category. Prior to renewing the MCGP, the MaineDEP is expected to convene stakeholders meetings, perhaps in conjunction with the stakeholders' process for Chapter 500 – Stormwater Management. Proposed revisions will likely include an increased threshold for

¹ "Disturbed area" is currently defined in the MCGP as "clearing, grading and excavation, which means all the land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project." Furthermore, "disturbed area" does not include routine maintenance, but does include redevelopment and new impervious area.

Authority/MaineDOT projects to five acres of disturbed area, but will also incorporate federal rules recently promulgated by USEPA (i.e., 40 CFR 450 – Construction and Development Point Source Category) that establish effluent limitations and performance standards for construction projects. (SEE TASK 2)

3. Multi-Sector General Permit (MSGP) - MEPDES General Permit for the Discharge of Stormwater from Industrial Activity

Status: While MaineDEP proposed in 2010 to include vehicle and equipment maintenance garages, such as those operated by the Authority and MaineDOT, as a regulated sector in the MSGP, USEPA is expected to propose the same in their national rule making effort to expand the stormwater program (due in 2013). As with previous MSGP efforts, MaineDEP may consider a Memorandum of Agreement (MOA) with the two State Transportation Agencies to capture and streamline the associated policy and management requirements. (SEE TASK 2)

4. Long Creek General Permit (GP) - MEPDES General Permit (GP) for Post-Construction Discharge of Stormwater in the Long Creek Watershed

Status: MaineDEP issued this GP in November 2009 that required landowners in the Long Creek watershed (with one acre or more of impervious area) to seek permit coverage as a result of an USEPA ruling exerting residual designation authority (RDA) for post-construction stormwater discharges. An individual permit (IP) was also offered by MaineDEP and obtained by the Authority for holdings within Long Creek Watershed. The Authority is subject to the General Permit requirements within Long Creek for two parcels, Crosby Maintenance and the mainline north of Exit 45 in South Portland to north of Exit 46 in Portland. Recently, the watershed boundary for Long Creek was re-delineated and appears to include additional portions of the Authority ROW in the vicinity of Exit 45 in South Portland. Furthermore, the Authority Administration Building, which is partially located within the Long Creek watershed, is subject to Individual Permit requirements as well. The requirements for these permits include routine inspections, training and documentation to ensure compliance with this federally-based MEPDES permit. (SEE TASK 2)

5. Other Permits - USEPA is proposing other permits and actions, including (but not limited to) a National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) and National rulemaking initiative to expand stormwater programs Total Maximum Daily Loads (TMDLs)

Status: In addition to the NPDES PGP resulting from a recent court ruling designating pesticide applications as a point source discharge, EPA is also expected to release findings from a recent national rulemaking initiative that began in 2009, which included stakeholders groups and information collection requests (ICRs) over a 2-year period. EPA's findings to be released in 2013, which will likely be incorporated into MaineDEP rule making as the delegated authority, are expected to expand the applicability of stormwater programs and may require additional Best Management Practices (BMPs) associated with development and redevelopment, as well as retrofits of existing infrastructure at some point in the future. By the end of 2012, Maine DEP is expected to release a statewide TMDL for Impervious Cover, which is expected to be enforceable through MEPDES permits, like the MS4. The Authority traverses several of the 28 watersheds included in the statewide IC TMDL. (SEE TASK 2)

In the event that a MEPDES MOA is pursued by the Authority and MaineDOT, all of these MEPDES/NPDES permits would likely be considered for inclusion in a statewide approach to streamline stormwater requirements for the two State Transportation Agencies throughout Maine. **(SEE TASK 5)**

Regulatory Requirements in Code of Maine Rules (CMR) or Maine Statute

1. Chapter 500: Stormwater Management Law for new construction and redevelopment

Status: In 2011, DEP began an audit of over 200 regulatory rules, including the stormwater-related rules (e.g., Chapter 500, 502, 529, etc.). Prior to this audit, proposed rulemaking was already underway in 2010 to modify Chapter 500. Based on recent meetings with MaineDEP, Chapter 500 rulemaking may resume in 2013. The resulting final revisions may affect Authority construction practices, standard contract language and the current Memorandum of Agreement (MOA) with MaineDEP and MaineDOT. **(SEE TASK 3)**

2. Chapter 502: Direct Watersheds of Lakes Most at Risk (MAR) from New Development and Urban Impaired Streams (UIS)

Status: Similar to Chapter 500, modifications to the list of UIS watersheds and MAR lakes were proposed in 2010, prior to MaineDEP embarking on the current regulatory audit. When rulemaking resumes, there is at least one additional UIS watershed that traverses Authority ROW (i.e., Thatcher Brook in Biddeford) that may affect the Authority and more UIS watersheds that may affect MaineDOT. **(SEE TASK 3)**

3. Chapter 529: General Permits for Certain Wastewater Discharges

Status: Modifications to Chapter 529 were recently made to include provisions for IP coverage for regulated discharges in the Long Creek watershed. Chapter 529 is also referenced in the other MEPDES permits and may require modification to allow for a MEPDES MOA for the two State Transportation Agencies or other statewide approach to manage and streamline stormwater requirements. **(SEE TASK 3)**

4. Chapter 500 MOA: MOA for Stormwater Management between MaineDOT, the Authority and MaineDEP

Status: The revision of Chapters 500 and 502 may require the existing stormwater MOA to be updated; however, the existing MOA must continue to be implemented in its existing form (e.g., tracking and documenting inspections, BMP standard practices, annual reporting, etc.) until such time that it is revised. **(SEE TASK 4)**

5. Other CMRs: Site Location of Development Act (SLODA or Site Law) and other rules affected by DEP's regulatory audit/regulatory reform

Status of Site Law: Although most linear transportation projects are exempt from SLODA coverage, many times the State Transportation Agencies are required to construct non-linear projects that require Site Law permit considerations. The associated permit conditions must be managed appropriately, such as the reconstruction of services plazas (i.e., West Gardiner and Kennebunk) and other similar facilities (i.e., Authority Headquarters). Recently, MaineDOT has proposed and implemented a SLODA General Permit to provide a consistent and streamlined approach for these State transportation projects. **(SEE TASK 2)**

Status of Regulatory Reform: Due to recent legislative actions and MaineDEP's internal audit of environmental rules, there may be a number of rules that may affect the Authority's and/or MaineDOT's stormwater-related requirements. Therefore, these changes in State policy must be appropriately vetted into existing programs, contract language/requirements, permitting/planning considerations and other on-going O&M programs. **(SEE TASK 2)**

UIS Watershed Management Planning, Participation and Considerations

- 1. UIS Watershed Management Plans (WMPs):** MaineDEP is encouraging, commissioning and now requiring WMPs to be developed in lieu of, or in addition to Total Maximum Daily Loads (TMDLs) for the UIS watershed.

Status: Authority Right of Way (ROW) intersects with at least four UIS watersheds where WMPs have been developed to foster a community-based approach to restore the UIS to its assigned stream classification. WMP requirements sometimes require the Authority and/or MaineDOT to incorporate new and/or additional BMPs, both structural and non-structural. **(SEE TASK 5)**

- 2. Proposed Statewide IC TMDL:** MaineDEP has drafted a statewide IC TMDL requiring WMPs and Low Impact Development (LID) techniques to be developed and utilized in 29 watersheds throughout Maine

- **Status:** The Authority intersects with close to 1/3 of the 29 watersheds listed in the proposed IC TMDL, while MaineDOT ROW intersects with all 29 watersheds. As mentioned above, this statewide IC TMDL is expected to be finalized in 2012. Therefore, continued collaborative communications between the two State Transportation Agencies, as well as with the MaineDEP and host municipalities, will be critical in maintaining awareness of IC TMDL requirements, such as WMP development, in an effort to avoid potential litigious actions. Following finalization, requirements associated with the IC TMDL will be better understood, but are expected to include: reference/inclusion in MS4 permit language, participation in numerous statewide WMP efforts and consideration of appropriate BMPs and Low Impact Development (LID) techniques to reduce the effective IC maintained by the Authority. **(SEE TASK 5)**

- 3. Stormwater Utility Development:** Sustainable funding source/mechanism for meeting rising stormwater-related costs, including routine O&M, installation/retrofits of BMPs and other projects within a watershed that may be required to meet regulatory requirements, such as MS4 permit obligations, attainment of water quality classification standards, enforcement actions, etc.

Status: Many host municipalities throughout Maine are considering stormwater utility district development to provide sustainable funding for their municipal projects and BMPs identified in the WMPs and USEPA enforcement actions. Two of Maine's largest cities, Portland and Bangor,

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are currently in the process of developing a stormwater utility district. Although similar districts have already been established in other communities (e.g., Lewiston's stormwater utility fee, Long Creek's special assessment district, etc.), these two cities will set the pace and possibly establish precedence for other community's utility efforts that may follow. Decisions will be made relative to each community's needs and resources; of particular concern will be each community's decision whether or not roadways will be charged an annual fee for IC within the watershed or if the State Transportation Agencies will be expected to contribute during redevelopment projects within each community. Regular attendance at meetings where WMPs and stormwater utilities are being considered and/or developed is critical to manage potential commitments.

(SEE TASK 5)