



November 12, 2010

Mr. Richard Claytor, Jr. P.E.  
Horsley Witten Group  
90 Route 6A  
Sandwich, MA 02563

Mr. Rich Niles  
AMEC  
2 Robbins Road  
Westford, MA 01886

Dear Mr. Claytor and Mr. Niles:

The 495/MetroWest Partnership, NAIOP Massachusetts - the Commercial Real Estate Development Association, and Associated Industries of Massachusetts (AIM), on behalf of our broad constituencies, have been actively following EPA's use of the Residual Designation Authority (RDA) in the Upper Charles. Our organizations have submitted extensive comments on the EPA's Draft Permit for Residually Designated Discharges in the towns of Bellingham, Franklin, and Milford. With the comment period closed and an EPA-funded Stormwater Utility Feasibility Evaluation now underway, we would like to offer our recommendations on how the study could provide the greatest value not only to the EPA, but also to the affected communities and landowners identified in the Draft Permit.

The 495/MetroWest Partnership, through a unique public-private collaboration with businesses, municipalities, and other stakeholders, is the regional leader for creating an environment that prepares for and cultivates sustainable growth. We accomplish this by coordinating, educating, and advocating for solutions to regional constraints and limited natural resources, and have conducted numerous initiatives to address workforce housing, transportation, and water resources.

NAIOP Massachusetts represents the interests of more than 1,200 members involved with the development, ownership, management, and financing of more than 175 million square feet of office, research & development, industrial, mixed-use, retail, and institutional space in the Commonwealth.

Associated Industries of Massachusetts (AIM) is an organization of Massachusetts companies representing more than six thousand employers in both the manufacturing and non-manufacturing sectors in the Commonwealth. AIM was founded in 1915 and has since sought to advocate positive public policy decisions to promote a vibrant and expanding economy, and retain and expand job opportunities in Massachusetts.

Our organizations assembled a group of our members with interest and expertise in the area of stormwater in June 2010, and again on November 2, 2010. The result of the two meetings was a recommendation to review the Work Assignment and Work Plan for the Stormwater Utility Feasibility Evaluation to ensure that certain items that are deemed necessary to accurately evaluate the feasibility of a stormwater utility are included.

Based on our review and discussions, we urge you to address the following issues (and how they will relate to the requirements of the RDA General Permit) in your final evaluation:

- **Funding for Stormwater Utility Implementation** - While the three communities are grateful for the \$300,000 for the feasibility evaluation, there is no question that the costs to implement any stormwater utility on a municipal or regional basis would be far greater than the feasibility evaluation costs. We request that the final evaluation include a cost estimate for the implementation of a stormwater utility (i.e., all costs associated with the creation and management

of the utility), as well as information on what funding support is or will be made available to these municipalities to implement stormwater utilities. Furthermore, if the EPA plans to expand the RDA Pilot Program into all communities within the Charles River Watershed, then adequate funding must be provided to all affected communities to evaluate and/or implement stormwater utilities. These costs must be understood as part of evaluating the impacts of the RDA General Permit and the role that stormwater utilities could play in that regulatory program.

- **Implementation Hurdles** - The Stormwater Utility Feasibility Evaluation should include a detailed plan with specific strategies on how to overcome the many hurdles associated with the creation and management of a stormwater utility including: Town Meeting approval process, education and outreach with multiple communities, creation of equitable and valid rate structures, regional billing and management issues, coordination with the phosphorous control plans, and a timeline for planning, development and implementation, including the legal easement acquisition process.
- **Credits and Abatements** - A recommendation for the method of assigning both structural and non-structural credits and abatements into the potential fee structure for the recommended utility(s) should be included. Will there be a standard that is adopted for calculating/awarding credits and abatements? Or will it be left to each entity as the individual utility is developed? This is critical as a municipal utility may not be able to provide direct benefits to private landowners. Unless being a utility ratepayer exempts a Designated Discharge Site from the permitting requirement, the primary benefit of the utility for private landowners would be the credits.
- **Recommendation for Local, Regional, or Watershed-based Stormwater Utilities** - A final recommendation on how to organize/develop either local (community by community), regional, or watershed-based stormwater utilities should be provided. We also suggest a public/private utility structure be considered (with an accompanying cost benefit analysis), such as the Long Creek Watershed Management District, in addition to a regional/municipal utility structure.
- **Coordination of Phosphorous Control Plans and Stormwater Utilities** - Additional information and guidance is needed on how the Municipal Phosphorous Control Plans will be coordinated with the Stormwater Utilities. Who will be responsible for completing the Municipal Phosphorous Control Plans? If there is a local, community-based utility, will the cost of the phosphorous control plans be covered by fees generated by the utility? What if it is a regional utility? How will individual Phosphorous Control Plans work with the goal of having a watershed-based Phosphorous Control Plans? Who will be reviewing and coordinating the watershed Phosphorous Control Plans? Clearly, there are many issues that need to be thought through.
- **Town Meeting Hurdles** - The hurdles associated with approving a Stormwater Utility under a Town Meeting system should be considered. The length of time required to receive the approvals individually on a town by town basis, and the reality that it may not be approved (or that multiple Town Meetings may be required before approval is obtained) must be addressed. Consideration should be given to whether a town would even undertake this option if it is not a requirement under an RDA or other regulatory mechanism. While cities may pass an ordinance with City Council's approval, towns must go through Town Meeting. This discrepancy must be addressed.
- **Industry/Business Representation** - Businesses, unlike residents, do not have the right to vote at Town Meeting, but they are required to pay utility fees. A recommended strategy is needed to ensure that businesses have a voice in the decision making process (especially related to the fee structure).
- **Implementation Cost Estimate** - A cost estimate should be prepared for establishing and administering the stormwater utility, including the education and outreach before actually voting on a utility, the managerial tasks that must take place before beginning to charge fees, as well as the follow up time and effort for settling abatements, credits and resolving billing issues.
- **Role of Stormwater Utilities in the RDA General Permit** - Perhaps most importantly, it is essential that the RDA General Permit acknowledge the role that stormwater utilities will play as a means of complying with the General Permit. It is our understanding that implementation of a municipal or regional utility would preclude the need to file an NOI for any Designated Discharge sites that are part of the utility rate base. Otherwise, those Designated Discharge site would be forced to pay

both the utility fees and the compliance costs associated with the General Permit, which is clearly unfair, and result in widespread opposition to the implementation of utilities.

- **Timetable** - The Feasibility Evaluation should provide a realistic timetable for implementing and operating a Stormwater Utility as well as creating and implementing a Phosphorous Control Plan and Certified Municipal Phosphorous Program.

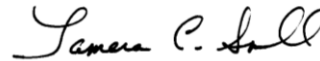
We recognize that some of these recommendations are mentioned in your Work Plan, however, we want to emphasize the importance of addressing *all* of the many significant challenges associated with the creation and management of a stormwater utility. We are concerned that the Work Plan does not seem to address the integration of a Designated Discharge site stormwater plan and a municipal phosphorous program, both of which are essential to each of the communities' compliance with the RDA pilot program and the new MS4 requirements. A resolution to the Certified Municipal Phosphorous Program (CMPP), as described in the Draft Permit, is an absolute necessity to a successful Feasibility Evaluation and we hold the opinion that it cannot be a choice of "a stormwater plan, a Phosphorous Control Plan (PCP) and/or a CMPP"; there needs to be a "both/and" mentality as opposed to an "and/or" option. Your final Evaluation is particularly significant, given the EPA's stated intent to broaden the Pilot Program beyond the three communities. It is essential that this Stormwater Utility Feasibility Evaluation establish the foundation for the possible implementation of future stormwater utility programs in the Charles River Watershed.

On behalf of our broad and varied constituencies, we appreciate your consideration of our recommendations. Please feel free to contact us with any questions. We look forward to working with you throughout the Stakeholder process to ensure an evaluation benefiting the targeted towns, owners of Designated Discharge sites, and the Charles River.

Sincerely,



Jessica Strunkin  
Deputy Director of Public Policy & Public Affairs  
495/MetroWest Partnership



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U.S. Senator John F. Kerry  
U.S. Senator Scott P. Brown  
Congressman James P. McGovern  
Congressman Richard E. Neal  
State Senator Richard T. Moore  
State Senator Richard J. Ross  
State Senator Karen E. Spilka  
State Representative Jennifer Callahan  
State Representative John Fernandes  
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