

**MMA**Massachusetts  
Municipal  
Association**Underwater: Financing New Regulations****Saturday, January 24, 2015**

Room 204, 2nd floor, Hynes Convention Center

*Presented by the MMA Policy Committee on Public Works, Transportation and Public Utilities*

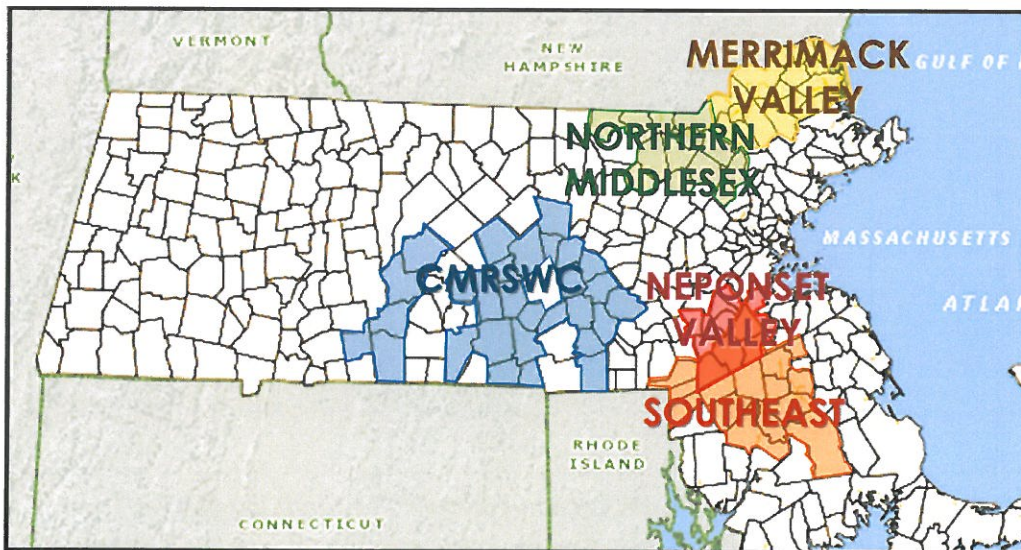
New regulations are driving up the cost of providing and treating water. This session focuses on new and established financing tools to ensure compliance with these requirements through means such as property surcharges, stormwater utilities, low-interest loans, principal forgiveness and regionalization.

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*(see opposite side for Regional Stormwater Coalition Contacts)*

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Organization Name (# of Towns Participating - FY2014)	Contact Name(s)	Contact Information
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## **Drinking Water and Wastewater Infrastructure New Funding Opportunities**

In some areas of Massachusetts, a majority of the existing wastewater and drinking water infrastructure was built following World War II, and it continues to age and slowly deteriorate. In other areas, cities and towns are exploring their options for installing wastewater treatment and disposal facilities for the first time. Water and wastewater infrastructure improvement and replacement projects can be expensive, yet given the potential magnitude of impacts resulting from failure of such infrastructure, proper maintenance and timely replacement is essential. Municipalities and utilities are ultimately responsible for the ongoing process of evaluation, maintenance and replacement of this infrastructure to protect water quality and public health. However, there are significant funding challenges that inhibit the ability of municipalities to fulfill this duty. In response to these funding challenges the Massachusetts legislature passed Chapter 259 of the Acts of 2014. This Memorandum highlights the relevant sections of the new legislation that create the opportunity for a significant new revenue stream for municipal funding of drinking water and wastewater infrastructure.

Massachusetts municipalities have traditionally funded drinking water and wastewater infrastructure projects with monies appropriated from their general funds or monies raised through betterment assessments. The recently enacted legislation, which has been codified at G.L. c.40, §39M, creates an alternative to these traditional funding methods that will enable municipalities to do more effective long term planning for drinking water and wastewater infrastructure projects. Similar to the Community Preservation Act of 2000, the new legislation permits municipalities that accept the law to impose a surcharge on real property at a rate up to, but not exceeding, three per cent (3%) of the real estate tax levy against real property for water infrastructure purposes. As with the CPA, revenues collected through the surcharge are not counted for the purpose of establishing the limit on the local tax levy imposed by Proposition 2½. All monies collected from the surcharge must be deposited into a special fund separate from the general fund known as the Municipal Water Infrastructure Investment Fund. Monies in the Fund may be appropriated by the local legislative body “exclusively for maintenance, improvements and investments to municipal drinking, wastewater and stormwater assets.”

In order to collect the surcharge and establish a Municipal Water Infrastructure Investment Fund, a municipality must follow the two-step process to adopt the law established by G.L. c.40, §39M(f). First, the municipality’s legislative body must vote by a majority to accept the statute and designate the surcharge percentage. Thereafter, the voters of a city or town must vote to accept the law at the next regular municipal or state election. The collection of the surcharge would begin the first fiscal year following adoption unless the municipality specifies a future fiscal year in its acceptance vote.

Any city or town that has accepted the law may later revoke its acceptance, or amend the amount of the surcharge, by following the same procedures required for initial acceptance. However, a municipality may not amend its applicable surcharge rate more than once in any 12 month period. Even if a municipality votes to revoke its acceptance of the law, any monies remaining in the fund after revocation must still be expended exclusively for maintenance, improvements and investments to municipal drinking, wastewater and stormwater assets.

If you have further questions regarding the legislation please contact Attorney John W. Giorgio at [jgiorgio@k-plaw.com](mailto:jgiorgio@k-plaw.com) or 617-556-0007.

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# Small MS4 Draft Permit Changes and Community Impacts\*

New Regulation	Impact	Implementation Schedule	Change from Previous Draft Permit
<b>Minimum Control Measure 1: Public Education and Outreach</b>			
Two targeted messages to each of the following specific audiences – residential, business/commercial/institutional, developer (construction), and industrial	Distribute two targeted messages each year, for a total of eight educational messages over the permit term. The message to each audience shall be spaced at least one year apart.	Annually, beginning Year 1	No Change
<b>Minimum Control Measure 2: Public Involvement and Participation</b>			
Annually provide public an opportunity to comment on Stormwater Management Program and Annual Reports	Make Stormwater Management Program and Annual Reports available to the public	Annually, beginning Year 1	No change
<b>Minimum Control Measure 3: Illicit Discharge Detection and Elimination (IDDE) Program</b>			
Ordinance to prohibit non-stormwater discharges must be in place	Complete ordinance approval process	Beginning of permit term	No change
Prepare inventory of all identified Sanitary Sewer Overflows (SSOs)	Develop an inventory of all identified SSOs	Within 120 days from beginning of permit	Previously, within 60 days from beginning of permit
Develop a map of the entire stormwater system	Complete stormwater system map.	By end of Year 2	No change
Complete an outfall and interconnection inventory of all outfalls each year	Perform outfall and interconnection inventory if not completed under first permit term	By end of Year 1	Previously, inventory of 25% of the outfalls per year, beginning in Year 2
Establish written protocol that identifies responsibilities for eliminating illicit discharges	Review current protocol for eliminating illicit discharges for consistency with new permit requirements and then formalize with a written procedure	By end of Year 1	No change
Develop a written, systematic procedure for locating and removing illicit discharges, called "Catchment Investigation Procedure"	Review current procedure for locating and removing illicit discharges for consistency with new permit requirements and formalize with written procedure	By end of Year 1	No change
Delineate the catchment area tributary to each outfall and rank each catchment as "excluded," "problem," "high priority," or "low priority" for its potential to have illicit discharges	Assess each outfall catchment area and determine potential for illicit discharges based on screening factors.	By end of Year 1	No change in schedule, but previously classified each catchment as "high," "medium" or "low"


\* Based on review of changes to requirements in the 2014 Draft Massachusetts Permit

Key:  Revised requirement

# Small MS4 Draft Permit Changes and Community Impacts\*

New Regulation	Impact	Implementation Schedule	Change from Previous Draft Permit
<b>Minimum Control Measure 3: Illicit Discharge Detection and Elimination (IDDE) Program</b>			
Perform investigations of catchments to each outfall according to Catchment Investigation Procedure	<ul style="list-style-type: none"> <li>• Complete Catchment Investigation Procedure for Problem catchments</li> <li>• Complete Catchment Investigation Procedure for catchments with sampling results indicating an illicit connection.</li> <li>• Complete Catchment Investigation Procedure for all catchments.</li> </ul>	<ul style="list-style-type: none"> <li>• Complete 80% of the Problem catchments by end of Year 3 and 100% by end of Year 5</li> <li>• Complete 100% of these catchments by end of Year 5</li> <li>• Complete 40% of all catchments by end of Year 5 and 100% by end of Year 10</li> </ul>	Previously, complete investigations of 50% of the catchments with "high" or "medium" ratings by end of Year 3 and 100% by end Year 5, and complete investigations of catchments with "low" ratings within 7 years from beginning of permit
Train employees annually about IDDE Program	Provide annual training and document in Annual Report	Annually, beginning Year 1	No change
<b>Minimum Control Measure 4: Construction Site Stormwater Runoff Control</b>			
Ordinance to require sediment and erosion control must be in place	Complete ordinance approval process	Beginning of permit term 1	No change
Develop a construction site runoff control program, which includes written procedures for site plan review.	If not existing, develop a construction site runoff control program, which includes written procedures for site plan review.	By end of Year 1	No change
<b>Minimum Control Measure 5: Stormwater Management in New Development and Redevelopment</b>			
Ordinance to address post-construction runoff in new development and redevelopment must be in place	Complete ordinance approval process	Beginning of permit term	No change


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Key:  Revised requirement

# Small MS4 Draft Permit Changes and Community Impacts\*

New Regulation	Impact	Implementation Schedule	Change from Previous Draft Permit
<b>Minimum Control Measure 5: Stormwater Management in New Development and Redevelopment</b>			
Amend ordinance to contain new provisions	<p>Ordinances for new development and redevelopment projects must be revised to include the following language:</p> <ul style="list-style-type: none"> <li>• Retain the first 1 inch of runoff from impervious surfaces or provide the level of pollutant removal equal to or greater than the level of pollutant removal provided through the use of biofiltration on the first 1 inch of runoff.</li> <li>• Stormwater management systems on sites with documented soil contamination or stormwater management systems on industrial sites shall not include BMPs that promote infiltration and shall use treatment BMPs on site.</li> <li>• Stormwater management systems designed to include infiltration near environmentally sensitive areas shall incorporate designs that allow for shutdown and containment where appropriate to isolate the system in the event of a spill.</li> <li>• Stormwater management systems shall include the development of long-term operation and maintenance plans.</li> <li>• All BMPs shall be constructed in accordance with the Mass Stormwater Handbook Volume 2, Chapter 2.</li> <li>• Stormwater management systems shall be designed to avoid disturbance of area susceptible to erosion and sediment loss.</li> </ul>	By end of Year 2	Previously, for new development of 1 or more acres, require compliance with Standards 3, 4, 5 and 6 of the Massachusetts Stormwater Management Standards regardless of proximity to resource areas under the Massachusetts Wetlands Protection Act. For redevelopment of 1 or more acres, require compliance with Standard 7.
Submission of as-built plans upon completion of construction projects and submission of procedures to ensure long-term O&M of stormwater BMPs	Modify existing ordinances to require submission of as-built plans and long-term O&M procedures	Submit within 1 year from completion of project	Previously, as-built plans due within 90 days from completion of project
Prepare a report assessing current street design and parking lot guidelines and whether changes to design standards to support low impact design options are feasible	Prepare a report on the feasibility of modifying existing street design and parking lot guidelines to support low impact design	By end of Year 3	By end of Year 2
Prepare a report assessing the feasibility of making the following infrastructure practices allowable: green roofs, infiltration practices and water harvesting devices	Prepare a report on the feasibility of allowing green infrastructure practices	By end of Year 4	By end of Year 3
Estimate number of acres of impervious area and directly connected impervious area	Determine total impervious area and directly connected impervious area	By End of Year 1	No change
Annually report the number of acres of impervious area and directly connected impervious area that have been added or removed during the prior year	Include changes in impervious area and directly connected impervious area in Annual Report	Annually, beginning in Year 2	No change

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New Regulation	Impact	Implementation Schedule	Change from Previous Draft Permit
<b>Minimum Control Measure 5: Stormwater Management in New Development and Redevelopment</b>			
Complete an inventory and priority ranking of MS4-owned property and infrastructure that has the potential to be retrofitted with BMPs that reduce the frequency, volume and peak intensity of stormwater discharges	Assess feasibility of retrofitting city- or town-owned property and infrastructure with stormwater BMPs	By end of Year 4	By end of Year 2
Annually report on MS4-owned property and infrastructure that have been retrofitted with BMPs to mitigate impervious area and directly connected impervious area.	Provide in annual report BMP retrofits at MS4-owned property.	Annually, beginning in Year 5	Annually, beginning in Year 3
<b>Minimum Control Measure 6: Good Housekeeping and Pollution Prevention</b>			
Develop written O&M procedures for parks, municipal buildings and facilities, vehicles and equipment, roadway and storm systems	Review existing O&M procedures for consistency with permit requirements and develop O&M procedures for any municipal operations that currently do not have them.	By end of Year 1	No change
Develop an inventory of all municipally-owned parks and open space; buildings and facilities; and vehicles and equipment.	Prepare inventory of municipally-owned facilities and equipment.	By end of Year 1	Within 6 months of the effective date of permit
Develop an inventory of all floor drains within all municipally-owned facilities	Prepare inventory of all floor drains within municipally-owned facilities.	Within 6 months of the effective date of permit	This requirement has been removed from the permit.
A program to repair and rehabilitate MS4 infrastructure to reduce or eliminate the discharge of pollutants	Develop a program to repair and rehabilitate MS4 infrastructure	Within 1 year of the effective date of permit	Previously, within 6 months of the effective date of permit
A program to inspect and maintain the storm drain systems and all stormwater treatment structures, including, but not limited to, water quality swales, retention/detention basins, infiltration structures, and proprietary treatment devices,	Inspect and maintain the storm drain system and all stormwater treatment structures.	Annually, beginning in Year 1	No change
Routine cleaning and maintenance of catch basins	Optimize catch basin cleaning program to ensure that no catch basin is more than 50 percent full.	Annually, beginning in Year 1	No change
Routine sweeping and/or cleaning streets and municipally-owned parking lots	Sweep/clean these areas once in the spring.	Annually, beginning in Year 1	Previously, fall sweeping was also required, as well as side-walk sweeping
Procedures for winter road maintenance, including use and storage of salt and sand	Establish procedures for winter road maintenance, including use and storage of salt and sand	Not provided	No change
Develop SWPPP for maintenance garages, public works facilities, transfer stations and other waste handling facilities	Review existing SWPPPs for consistency with permit requirements and develop SWPPPs for any municipal operations that currently do not have them	By end of Year 2	Previously, by the end of Year 1


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Key:   Revised requirement

# Small MS4 Draft Permit Changes and Community Impacts\*

New Regulation	Impact	Implementation Schedule	Change from Previous Draft Permit
<b>NOI and Reporting Requirements</b>			
Submit NOI	Prepare and submit NOI	Submit within 90 days of effective date of permit	No change
Develop a Stormwater Management Program	Prepare a Stormwater Management Program	Submit within 1 year of the effective date of permit	Previously, submit within 120 days following a permittee's receipt of authorization from EPA
Submit Annual Reports	Submit Annual Reports each year on permit effective date	Annually, beginning in Year 1	Submitted date changed to permit effective date
<b>Outfall Monitoring for IDDE Program</b>			
Perform dry weather screening and sampling (where flowing) of every MS4 outfall and interconnection (except Excluded and Problem Catchments)	Complete dry weather screening	By end of Year 3. Municipality may rely on previous sampling under MS4 2003 permit.	Previously, dry and wet weather screening on 25 percent of outfalls, annually beginning in Year 2
Perform wet weather screening in the spring only for those catchments that indicate the presence of one or more System Vulnerability Factors (as listed in the permit)	Perform wet weather screening for catchments based on System Vulnerability Factors.	Must complete as part of the Catchment Investigation Procedure in order for a catchment to be marked as "complete."	Previously, dry and wet weather screening on 25 percent of outfalls, annually beginning in Year 2
For impaired waters with TMDLs, implementation of control measures to meet the TMDL load allocation.	Refer to Appendix F for a municipality's TMDL requirements. Implement control measures to meet TMDL load allocations and document progress in Annual Reports.	Annually, beginning in Year 1	No change
For impaired waters without TMDLs, implementation of control measures to address water quality impairments.	Refer to Appendix H for a municipality's water quality impairment requirements. Implement control measures to address the water quality impairments and document progress in Annual Reports.	Annually, beginning in Year 1	This is a new requirement. Previously, permittees were required to address discharges to these waters in a less formal manner.

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Key:  Revised requirement