



LEGISLATIVE VIEWPOINT

New Jersey State League
of Municipalities

222 West State Street, Trenton, New Jersey 08608
PHONE (609) 695-3481 • FAX (609) 695-0151
EMAIL league@njslom.org • www.njslom.org

Michael J. Darcy, CAE
EXECUTIVE DIRECTOR

Michael F. Cerra
ASSISTANT EXECUTIVE DIRECTOR

Jon R. Moran
SENIOR LEGISLATIVE ANALYST

Loretta Buckelew
SENIOR LEGISLATIVE ANALYST

Edward W. Purcell
LEAGUE STAFF ATTORNEY

April 3, 2017

Attention: "Comments on Public Notice NJ0141852 and NJ0141861"
New Jersey Department of Environmental Protection
Mail Code 401-02B
Division of Water Quality
Bureau of Nonpoint Pollution Control
P.O. Box 420 – 401 East State Street
Trenton, New Jersey 08625-0420

**Re: New Jersey State League of Municipalities Comments on NJDEP Draft
Renewal Tier A and Tier B Municipal Stormwater General Permits**

To Whom It May Concern:

The New Jersey State League of Municipalities offers the following comments regarding the New Jersey Department of Environmental Protection's ("NJDEP") Draft Renewal Tier A and Tier B Municipal Stormwater General Permits. The League supports efforts to assure that our environmental resources are protected and clean water policies generally. However, the League has a number of concerns with the proposal that we respectfully request be addressed.

The League's concern is that a number of the specific requirements contained within NJDEP's Draft Renewal Tier A and Tier B Municipal Stormwater General Permits, either by themselves or collectively, may constitute unfunded mandates upon municipalities which are prohibited under Article VIII, Section 2, Paragraph 5 of the New Jersey State Constitution. The Council on Local Mandates established by the State Constitution developed the following three pronged test to identify unconstitutional unfunded mandates:

- (i) That a rule or regulation imposes a mandate on a unit of local government;
- (ii) That additional direct expenditures are required for the implementation of the rule or regulation; and
- (iii) That the rule or regulation fails to authorize resources, other than the property tax, to offset the additional direct expenditures. IMO Complaints filed by the Monmouth-Ocean Education Services Commission, et al. at 6 (08/20/04).

In IMO Complaint filed by Roxbury Township (08/14/11), Roxbury Township objected to then requirement in NJDEP's MS-4 Tier A General Permit issued to it that the municipality adopt and enforce ordinances requiring (i) dumpsters and other refuse containers that are outdoors or exposed to

stormwater to be covered at all times and (ii) the retrofitting of existing storm drain inlets which were in contact with repairs or resurfacing on private property. The Council on Local Mandates determined that NJDEP's MS-4 Tier A General Permit issued to Roxbury Township requiring it to adopt and enforce ordinances relating to dumpsters and refuse containers was an unfunded mandate which violated the New Jersey State Constitution.

Generally, the MS4 Draft Renewal Permit regulations include the following new or modified requirements:

- More frequent site inspections of storm water outlets;
- Significant additional administrative costs, including increases in record keeping for Public Works, Engineering and the municipality;
- Enhanced mapping requirements regarding storm water outlets;
- Enhanced public awareness campaigns and educational requirements without a funding source.

Some examples of specific requirements in NJDEP's Draft Renewal Tier A Permit which give the League concern include the following:

- Part IV.B.2 - Requiring Tier A Municipalities (i) to implement public education and outreach programs and educational pollution prevention activities about the impacts of stormwater discharges on surface water and groundwater and to involve the public in reducing pollutants in stormwater and mitigating flow, and (ii) to annually conduct activities that total at least 12 points and include activities from at least 3 of the 5 categories set forth in attachment B;

- Part IV.B.4.d - Requiring Tier A Municipalities to review and analyze development applications for compliance with Part IV.B.4 (Post Construction) for the permit even if a separate permit is required by the Department for the same or similar activity;

- Part IV.B.4.j.ii - Requiring Tier A Municipalities to ensure long term cleaning, operation and maintenance of storm water management measures on properties not owned or operated by the Tier A municipality; and

- Part IV.B.5.f- Requiring municipal board and governing body members to undertake training within five months of permit issuance.

The League would like to further discuss these issues with the Department.

We appreciate your consideration of these comments.

Very truly yours,

Michael F. Cerra

Michael F. Cerra
Assistant Executive Director & Director,
Government Affairs