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February 3, 2004

Mr. Sanford Miller  
Town Manager  
Town of Milton  
43 Bombardier Road  
Milton, VT 05468-3205

Dear Mr. Miller:

Thank you for providing comments dated January 12, 2004, on the Agency's proposed amendment to NPDES General 3-9014 for municipal separate storm sewer systems (MS4). We gave your comments a careful review. However, based on the facts set forth in your letter, the Agency is not persuaded that the Town of Milton is eligible for a waiver from the MS4 General Permit.

You noted that much of the stormwater in the urbanized area of Milton infiltrates into sandy soils and that in many cases where stormwater conveyance exists in the public ROW, the outfalls occur on private land. These facts taken alone or together are not sufficient to justify a waiver from MS4 permit requirements.

EPA rules contain two key definitions relevant to the question of whether Milton is an MS4. The first is the definition of "municipal separate storms sewer system" at 40 C.F.R 122.26(b)(8) which reads in pertinent part as follows:

*Municipal separate storm sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (i) **Owned or operated** (emphasis added) by a State, city, town,...having jurisdiction over disposal of...storm water, that discharges to waters of the United States;
- (ii) Designed or used for collecting or conveying storm water;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW)...

Based on the facts in your letter, although much of the stormwater in Milton's town core infiltrates into sandy soil, there remains a portion of the stormwater that is ultimately conveyed to waters of the United States via ditches, catch basins and storm sewer pipes. What brings Milton within the definition of an MS4 is the fact that the Town owns or operates all or parts of the system that collect and convey stormwater to waters of the United States. The fact that many of the outfall pipes for that system are on private land does not alter that conclusion. The Town may not own the site of many of the outfall pipes but it operates the storm sewer system that determines, in whole or in part, the quantity and quality of water discharged from them.

The second key definition is the definition of "small municipal separate storm sewer system" at 40 C.F.R. 122.26(b)(16) which states in part:

(16) *Small municipal separate storm sewer system* means all separate storm sewers that are:

(i) **Owned or operated** (emphasis added) by...a State, city, town,...having jurisdiction over disposal of...storm water...that discharges to waters of the United States.

(ii) Not defined as "large" or "medium" municipal separate storm sewer systems...

(iii)...The term does not include separate storm sewers in very discrete areas, such as individual buildings.

The import of this definition is that Milton is a "small" MS4 because it neither a "large" nor "medium" MS4 and because the storm sewer system owned or operated by the Town serves multiple properties rather than an individual building.

Based on these EPA definitions and the facts in your letter we believe that the Town of Milton is clearly an MS4. In addition, your letter failed to demonstrate that the Town met the requirements for a waiver set out in 40 C.F.R. 122.32(d) or (e).

With respect to your request for additional time to comply with the MS4 permit we continue to believe that 180 days is adequate. Pursuant to EPA rules (40 C.F.R. 122.26(e)(9) the Town of Milton should have made application for coverage under the general permit by March 10, 2003. When the Agency issued the general permit on March 19, 2003 it publicly acknowledged the mistake in failing to require the Town of Milton to obtain permit coverage (brought to its attention by the Conservation Law Foundation) and the Agency announced its intention to amend the permit to include the Town. By allowing 180 days for the Town to prepare its application for coverage under the general permit the Agency is consistent with 40 C.F.R. 122.26(e)(9) which allows MS4s that period of time to seek coverage when designated after an a permit has initially been issued.

Page 3

The Agency has submitted to the Environmental Protection Agency a request for Clean Water Act section 104(b)(3) funds to assist the Town of Milton in developing their stormwater management plan. We are optimistic that the agency will be notified before spring and that the funding will be received. However we cannot guarantee this award and would encourage the Town to continue to look for other potential funding sources. The Agency would like to provide any assistance it can to help locate a source of funding for this plan.

We look forward to working with Milton address the problem of stormwater pollution and believe we both have the same goal of keeping Milton's surface waters cleaner and safer for everyone.

Sincerely,

James Pease  
Stormwater Section  
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