



TOWN OF KITTELY
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REPORT TO PLANNING BOARD

Meeting Date: May 26, 2022
From: Jessa Kellogg, Public Works Inspector
Subject: Update on MS4 General Permit for Stormwater Discharges

EXECUTIVE SUMMARY

The Town of Kittery is subject to the 2013-2018 General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4 General Permit), a federally mandated program under the Clean Water Act administered by the Maine Department of Environmental Protection. One of the permit requirements specifies that certain municipal staff and elected officials be made aware of the MS4 General Permit and its requirements on an annual basis.

Planning Board member review of this Report fulfills the permit requirement for Permit Year 9, which ends 7/1/2022. This Report also provides additional information on upcoming Ordinance changes.

BACKGROUND

In 2003 the Town of Kittery became subject to the MS4 General Permit. The 2013-2018 General Permit has been administratively continued and currently we are in Permit Year 9. A new MS4 General Permit was finalized on October 15, 2021 and will go into effect on 7/1/2022. The MS4 General Permit applies to the "Urbanized Area" of the Town and is designed to reduce the discharge of pollutants from the Town's regulated, separated storm drain system, to protect water quality, and satisfy appropriate requirements of the Clean Water Act.

33 U.S.C 1251 Section 402(p) of the Clean Water Act
40 CFR 122.26 Stormwater discharges (applicable to State NPDES programs)
38 M.R.S.A §413 Maine Water Pollution Control Law

NEW PERMIT EFFECTIVE 7/1/2022

1. A new MS4 General Permit (Permit) was finalized on October 15, 2020 and will go into effect on 7/1/2022.
2. On November 13, 2020 Friends of Casco Bay (FOCB) filed an appeal of the Permit with the Board of Environmental Protection with three requests:

- a. To make the Permit become effective at an earlier date (which has passed)
 - b. To require that regulated MS4s mandate the use of Low Impact Development in to the maximum extent feasible, and
 - c. To require that MS4s take action to correct water quality impairments whenever the MS4 discharges to a water with an EPA approved Total Maximum Daily Load.
3. The FOCB Appeal was settled with a Permit Modification that was finalized on 11/23/2021. The Town was required to develop planning documents for the Permit while the Appeal was being settled, and completed the following:
- a. The Town filed a Notice of Intent to comply with the new Permit and has created a 5-year Stormwater Management Plan (Plan) showing how we will address the new Permit Requirements. The NOI and Plan are available on the Public Works Department's Stormwater/MS4 Program page, www.kitteryme.gov/stormwater.
 - b. The NOI and Kittery's Plan were out for public comment from 4/13/2021 to 5/12/2021 and no comments were received from the public.
 - c. The Maine DEP provided minimal comments, which Town Staff addressed. The Kittery Plan was resubmitted to the Maine DEP on 9/3/2021.
 - d. A second step order was prepared and issued for public comment on 3/16/2022. One more set of changes will need to be made to the 5-year Plan address the FOCB Appeal/Permit Modification and the second step order.

CONTINUED IMPLEMENTATION OF CURRENT PERMIT UNTIL 7/1/2022

Kittery currently teams with 4 other Towns (York, Eliot, South Berwick and Berwick) to address the permit requirements and will continue to do so under a regional contract through Southern Maine Planning and Development Commission (SMPDC). The MS4 Permit requires that Town staff complete many different tasks. Even as Town staff have been preparing the 5-Year Plan for the next permit cycle, they continue to implement the current 5-Year Plan.

The Public Works Department's Stormwater/MS4 Program page, www.kitteryme.gov/stormwater, details many of the requirements, and contains a link to the current 5-Year Plan as well as the final 5-year Plan for the next permit.

ORDINANCE REVIEW DISCUSSION

The Board of Environmental Protection ruled in favor of the FOCB Appeal on two of the three elements LID and Impaired Waters. As such, the Town is being required to update its ordinances to include Low Impact Development requirements. On behalf of the York County (including Kittery) and Portland area communities that are regulated under the Permit, the SMPDC applied for and received grant funding to create a model Low Impact Development Strategies ordinance. Creation of a model ordinance for LID strategies will ensure more consistent application of LID across Maine. This work will be presented to the Planning Board in

the Fall of 2022 and Spring of 2023. These LID ordinance changes are required to be incorporated into the Town Code by 6/30/2024.

There should not be any cost implications to the Town related to the impaired waters portion of the FOCB Appeal, because there is only one impaired water with a Total Maximum Daily Load (TMDL), which was approved by EPA in 1999, and the impairments are not related to stormwater discharges. The Town has actively worked with the Spruce Creek Association to obtain grant funding to help correct its non TMDL water quality impairments in Spruce Creek. This work will continue regardless of the outcome of the Appeal.

There are a few ordinance changes related to sediment and erosion control that the new permit also requires. Over the next year the Planning Board will review several sections of Title 16 to incorporate the requirements, which must be adopted by 6/30/23.

- Title 16.2 Definitions
- Title 16.7 General Development Requirements
- Title 16.8.8.1 Stormwater Drainage
- Title 16.9.1.3 Prevention of Erosion

Town Staff and their third-party consultant are providing a presentation to the Planning Board on 5/26/2022 with more information related to the sediment and erosion control ordinance changes that are due to be incorporated by 6/30/2023.

CONTACTS FOR FOLLOW UP QUESTIONS

The following people are primarily responsible for implementing the MS4 General Permit and can be contacted for more information:

Jessa Kellogg – Public Works Inspector
David Rich – Commissioner of Public Works
Kendra Amaral – Town Manager