

**Justin S. Greene**  
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**Camilla Bustamante**  
*Commissioner, District 3*



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*Commissioner, District 4*

**Hank Hughes**  
*Commissioner, District 5*

**Gregory S. Shaffer**  
*County Manager*

April 30, 2024

Environmental Protection Agency, Region 6  
NPDES Permitting and Wetlands Section  
Water Division  
Ms. Monica Burrell, P.E., Environmental Engineer  
1445 Ross Avenue  
Dallas, TX 75202-2733

Via Email to: [burrell.monica@epa.gov](mailto:burrell.monica@epa.gov)

RE: New Mexico Strawman MS4 Permit 3-6-24

Dear Ms. Monica Burrell,

Thank you for the opportunity to participate in the review of the *New Mexico Strawman MS4 Permit 3-6-24* (Strawman MS4 Permit) document provided on March 7, 2024, being proposed for MS4s in the State of New Mexico. We appreciate the ability to provide perspective on the proposed new permit from the County's viewpoint, as a small MS4m located outside of the Middle Rio Grande, and through the collaborative lens of the Santa Fe area small MS4 permittees.

Santa Fe County (County) has done a high-level review of this Strawman MS4 Permit and compared it to the current 2007 *General Permit for Discharges from Small MS4s NMRO40000 Permit* (2007 MS4 Permit) and well as the 2015 draft *General Permit for Discharges from Small MS4s NMRO40000 Permit in the State of New Mexico* (2015 Draft Statewide MS4 Permit). Below is a summary of our high-level comments and concerns. We want the MS4 permit program to be successful in our community and we reviewed this permit in terms of reasonable, attainable solutions to support improved stormwater quality goals. In addition to the high-level comments, we have compiled a list of specific edits to the Strawman MS4 Permit text and included these as an attachment to this letter.

- **Support of Watershed-Based Permit Approach.** The County is in favor of the watershed-based permit approach that is currently in the Strawman MS4 Permit. The County, along

102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX:  
505-995-2740 [www.santafecountynm.gov](http://www.santafecountynm.gov)

with the Santa Fe area small MS4 permittees, firmly supports strengthening the efforts to continue to cooperatively support stormwater compliance goals.

- **Request clarity on requirements and implementation schedule for small MS4s.** The County, as a Phase II or small MS4, would appreciate more clarity in the Strawman MS4 Permit text on what requirements apply to the Phase II MS4s and what requirements apply to the Phase I (larger) MS4s. This combined Phase I/Phase II permit was a surprise because the current 2007 MS4 Permit and 2015 Draft Statewide MS4 Permit were specific to Phase I (small) MS4s. Clarity is especially important for the small MS4s located outside of the Middle Rio Grande area and the new small MS4s because compared to the current 2007 MS4 Permit and 2015 Draft Statewide MS4 Permit, the proposed permit changes are significant and the expectations are impactful. One suggestion is that EPA consider separate sections for small MS4s or clear, formal distinctions in the current organization of the permit.
- **Request time extensions for implementation schedules in Permit.** The County requests that EPA review and consider time extensions from those currently listed in the Strawman MS4 Permit for Phase II MS4s and for where cooperative elements are requested. Currently, Phase II New Mexico permittees outside of the Rio Grande watershed do not have formal cooperative elements in place, and developing these with buy-in from each agency will take time. In addition to cooperative element time extensions, several proposed permit requirements are completely new to the County.

As an example, the County currently does not have an MS4 Permit requirement to review complaint records and develop a targeted source reduction program (for the Illicit Discharges and Improper Disposal). Six (6) months for a Phase II to develop this program would not be feasible. A minimum 12-month implementation schedule will be needed for new permit elements to ensure funding can be fit into the budgeting time frame needed for the County. Also, there are many uses of "from effective date of permit" as it relates to implementation schedules. Since there is time required for the two-step process before EPA authorizes an MS4 to discharge in accordance with the requirements of the general permit, should these implementation schedules relate to "from authorization date by EPA" or "from NOI approval date", since some dates may be before EPA and the public review of the permittees' programs have occurred? For example, the Strawman MS4 Permit currently shows over 15 months from the effective date of permit to when EPA would authorize an MS4 to discharge in accordance with the requirements of the general permit, yet there are many implementation schedules shorter than this time frame (6 months, 12 months, 14 months, etc.).

- **Additional explanation on the two-step NOI process.** A flow chart and timeline would be helpful to better understand this process. For example, it is unclear if an MS4 is authorized to discharge under this general permit before EPA provides written notification of authorization for the supplemental (second step) NOI. As another example, it is unclear if the MS4 permittees and EPA both need to provide public notice for the supplemental NOI. It is also unclear how the public comments will impact and influence the permit requirements, as well as how much deference will be given to public comments.
- **Request more flexibility in the monitoring requirements.** As EPA is aware, wet-weather

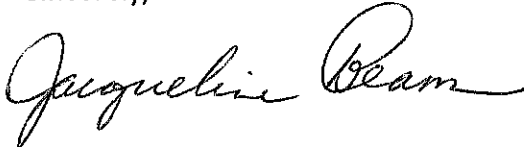
sampling in the arid southwest is a challenge. Many Phase II MS4s, especially those located outside of the Middle Rio Grande area, face additional monitoring challenges as staff and resources may not be available locally and samples will need to be driven to Albuquerque for testing. The County requests EPA consideration for flexibility in the monitoring program to meet MS4 permittee locations, challenges, and water quality goals. The County would like to discuss with EPA the overall permit outcomes and goals and how the monitoring program best supports those with meaningful data that can be realistically collected by MS4 permittees. As an example, the 2015 Draft Statewide MS4 Permit states that any portion of the hydrograph may be sampled, which would be preferred by the County, however the Strawman MS4 Permit offers less flexibility on the hydrograph collection, stating that each segment of hydrograph must be sampled.

- **Request more flexibility related to operations and procedures in some permit language.** There are several areas of the permit related to operations and procedures that the County recommends be written to allow permittees greater flexibility. One example is in the Post-Construction Stormwater Management in New Development and Redevelopment section where the permit text sets a specific timeline for as-builts. This should be set by agency procedures and contracts, not by this permit. Another example relates to the Pollution Prevention/Good Housekeeping for Municipal/Co-permittee Operations section and de-icing. The operational manual for de-icing is understandable, but the specific requirement should be set by agency procedures and contracts, not by this permit.
- **Request clarity and additional defined details on e-reporting.** The Strawman MS4 Permit text needs refinement in some sections related to e-reporting verses emailing reports and using referenced forms. In addition, the permittees could use additional information, and perhaps training, on how the e-reporting system will function and related signatory requirements. Many logistical items associated with e-reporting typically fall outside of the department managing the MS4 program and can add time and complexity to reporting.
- **Request clarity on annual reporting requirements.** The Strawman MS4 Permit, similar to prior permits, lists various statements in the "Control Measures" sections such as "...document the program effectiveness in the Annual Report" and "The permittee shall assess the overall success of the program and document the program effectiveness in the Annual Report". EPA also has a form that does not directly correspond to the permit reporting requirements that it wants permittees to use for Annual Reports. With e-reporting and the new MS4 permit, clear direction on what needs to be reported and how to report should be provided in the permit. Statements like those listed above are unclear, addressed differently by various permittees, and likely difficult for EPA to review in a consistent manner.
- **Formal maps of 2010/2020 census boundaries.** The area used for the urbanized area is unclear – it states use US census data "by either the 2010 and 2020". This is confusing. We request that EPA provide permittees with the correct GIS boundary to use for all areas to clearly define the MS4/UA areas within New Mexico.

Thank you again for the opportunity to comment on the Strawman MS4 Permit. If you need any clarification for any of the comments, please feel free to contact me. We look forward to the

continued opportunity to provide input into this process and thank you for your continued support.

Sincerely,

A handwritten signature in cursive script that reads "Jacqueline Beam". The signature is fluid and elegant, with the first name and last name clearly distinguishable.

Jacqueline Beam  
Sustainability Manager  
Mailing address: P.O. Box 276  
Santa Fe, NM 87504  
Office: 505-992-9832

Attachment: List of Comments on the Strawman MS4 Permit

cc: Brent Larson, EPA (w/attachment)

## **List of Specific Comments on the Strawman MS4 Permit**

- Part I.A.2 – Eligible MS4s. This list is not complete and does not include the City of Santa Fe or Santa Fe County, both current MS4 permittees.
- Part I.A.3 – Eligibility. For current MS4 permittees, would they need to submit new eligibility requirements for historical places? Or would this be assumed as being met for current permittees?
- The appendices were not included and therefore, could not be reviewed.
- Part I.A.4 – Authorized Non-Stormwater Discharges. The first sentence should be edited in that the non-stormwater discharges are not (or need not be) prohibited unless...
- Part I.A.5.f – Limitations of Coverage. Please clarify the second to last sentence in this section, which has two “nots” used.
- Part I.A.6 – Authorization Under This General Permit. There are not any timelines stated for submitting the first NOI step. The 2015 Draft Statewide MS4 Permit had timelines for the different Phase II MS4s (90 days and 180 days).
- Part I.B.2.a.vii – Contents of NOI. The use of the Rio Grande should be made more general as not all MS4s discharge to the Rio Grande within their MS4 area.
- Part I.B.2 – Contents of NOI. If e-reporting will be used, this should be mentioned here versus using the form format provided in an Appendix. This also relates to Part III.D.2 and Part III.D.4.b where mailing information to EPA and NMED is requested. NMED should be allowed access to all EPA e-reporting, and mailing items should no longer be required.
- Part I.B.3 – Where to Submit. This is an area where clarity on the e-reporting needs to be refined. Currently, an email is given to submit the NOI to EPA, and the email to an employee that is no longer at NMED is provided.
- Part I.B.3 – Where to Submit. There is a requirement that a completed copy of the signed NOI “must be maintained on-site”. This needs to be clarified – for example, is a digital copy acceptable, since hard copies are no longer typical? And what does on-site mean for an MS4 permittee? These same questions also apply to Part III.B.6 as it relates to the annual reports.
- Part I.C.2 – Discharges to Impaired Waters With and Without Approved TMDLs. Impaired waters identified in the Section 303(d) list is updated typically every 2 years. In addition, TMDLs also change, though typically not as frequently as impairments. The MS4 Permit text should clarify if MS4s are responsible for the impairments and TMDLs at the time of the permit, or if it should be adjusted to reflect the changing impairments and TMDLs. This has been in prior MS4 permits. The changing impairments and TMDLs can be a challenge as the program targets could be constantly changing.
- Part I.C.2.c.(a) and (b) – Discharges to Impaired Waters With and Without Approved TMDLs. A cooperative approach for this section seems to be missing and should be made clearer.

- Part I.C.4 – Control Measures. Some clarity is needed in the tables of program development and implementation schedules. Suggest following the 2015 Draft Statewide MS4 Permit for the column headers and organization. The Strawman MS4 Permit columns for Phase II MS4s is not clear. In addition, “the Any Permittee with cooperative elements” column is not clear – if a permittee has any cooperative permit elements, would this column apply, or does it apply only if the permittee has a cooperative element for that control measure?
- Part I.C.4.a – Construction Stormwater Discharges Control. Many requirements in this section relate to pre-construction/project design and are confusing in this section, which only has the title Construction Stormwater Discharges Control.
- Part I.C.4.a.(ii).(b) – Construction Stormwater Discharges Control. The incorrect CGP date is listed.
- Part I.C.4.b.(iii).(b) – Post-Construction Stormwater Management in New Development and Redevelopment. The permit should not set a timeline for as-builts. This should be set by agency procedures and contracts, not by this permit.
- Part I.C.4.b.(vii).(b) – Post-Construction Stormwater Management in New Development and Redevelopment. Please provide more information on the purpose and goal for the IA and DCIA measurements and reporting. Please consider if this current requirement is helpful in meeting water quality goals.
- Part I.C.4.c.(ii).(b) – Pollution Prevention/Good Housekeeping for Municipal/Co-permittee Operations. The operational manual for de-icing is understandable. But the requirement to be more protective than the existing practice is confusing, as the current practices may already be protective. This should be re-worded to allow the permittee flexibility in their program.
- Part III.A – Wet Weather Monitoring Plan. EPA mentioned PFAS testing verbally, however there are no requirements in the Strawman MS4 Permit to review. With this monitoring, the testing method is a concern and what should permittees do if and when they do test and find PFAS?
- Part III.B.4.b – Annual Report Responsibilities for Cooperative Programs. Please clarify what this means and the July 31<sup>st</sup> date - “Individual permittees shall be individually responsible for content of the report relating to the portions of the MS4 for which they are responsible and for failure to provide information for the system-wide annual report no later than July 31<sup>st</sup> of each year.” Is a system wide annual report allowed? Is each permittee an individual permittee and therefore, each permittee needs to submit their own annual report? For a reporting term that ends on June 30<sup>th</sup>, a due date of July 31<sup>st</sup> is not a reasonable timeframe for any permittee.
- Part III.D.4.a – Reporting: Where and When to Submit. Please clarify what this statement means: “The permittees must report any noncompliance that may endanger public health or the environment.” Please clarify what this includes (suggest listing examples) and who this should be reported to. Are there other regulations and systems in place that cover this type of reporting? If so, should this be part of this permit.
- Appendix D – TMDL Plan. New Mexico MS4s have never completed a TMDL plan. For Phase

II permittees, with little experience with waste load allocations (WLAs) and no prior MS4 Permit requirements related to WLAs, development of this type of plan will be a significant effort. The County requests that an example TMDL plan (format, table of contents, etc.) be provided to NM MS4s and that technical support be provided to the Phase II permittees for this requirement.

- Throughout – “second step process” phase is used – this should be refined to make this clearer. One suggestion is “second step of the NOI process” or “supplemental NOI”. The various terms currently used are confusing.
- Throughout – there are a few references to Class B, C, and D permittees, but it is unclear in the Strawman MS4 Permit how this relates to Phase I and Phase II permittees.