Discussion Topics for the Residual Designation Authority (RDA) Permitting Focus Groups

(May 2024)

Background

As part of its ongoing efforts to engage stakeholders prior to the issuance of its draft RDA permit later this year, US EPA, Region 1 has been providing informational sessions to a variety of stakeholders and inviting anyone who is interested to provide EPA with feedback on how the Residual Designation Permit might best be drafted to achieve its environmental objectives, but also to address issues that this permit raises for municipalities, future permittees and others.

Many questions have been raised through this stakeholder outreach process, as well as the permit drafting process. Some of these areas for further conversation, listed below, are among those on which EPA is seeking informed input from individuals who have ideas or suggestions about the best framework for this RDA permitting approach.*

For more information on the RDA permitting process in Region 1, see the RDA website. There you will find: the original RDA petitions, EPA's preliminary response to the petitions, background on the residual designation process, stakeholder outreach presentations, a Frequently Asked Questions document, parcel-level analyses for the Charles, the Mystic and the Neponset River watersheds and other useful information.

* Answering these questions is voluntary and optional; you may answer any of these questions that you wish; you may also answer none of these questions. Please note that in addition to the current efforts to receive feedback, there will also be an opportunity for all members of the public to provide formal comment to EPA on both the draft permit and the preliminary RDA determination. Notice of that opportunity to provide formal comments will be posted on EPA's website as well as the Federal Register later in 2024.

Focus Group Discussion Topics:

1. The phasing of structural and non-structural controls

EPA is considering phasing the permit based on impervious cover acreage thresholds so that Commercial, Industrial and Institutional properties (those that will be subject to the RDA permit which we will refer to as "CII sites" or "CII properties") with 5 acres or more of impervious cover will be subject to permitting requirements that lead to pollution reductions sooner than smaller sites (those with fewer than 5 acres of impervious cover).

In the first permit term the largest sites could be required to implement permit requirements. EPA is considering requiring pollution removal via a suite of options like structural controls (e.g., rain gardens or infiltration trenches) and nonstructural controls (e.g., parking lot sweeping) that have established pollution reduction estimates based on modeled data (refer to MS4 Appendix F, Attachments 2&3 to see an example).

It is likely, however, that all permittees would need to comply with notice of intent requirements and, possibly, other administrative or reporting requirements, before needing to implement pollution reduction requirements, such as implementation of structural or nonstructural controls.

For context, EPA's NPDES permits are issued for up to 5 years after which permits can be renewed. During a single permit term, EPA sets a timeline over which permit requirements must be implemented to address discharges. EPA is not considering including monitoring at the end of pipe for direct dischargers as a compliance option.

- EPA is considering phasing permit requirements based on the size of CII sites over time. In your view, what could the advantages and disadvantages of this phased approach be?
- What factors may be relevant in determining whether permittees can achieve 100% compliance within one permit term based on a phased permitting approach, assuming pollution reduction requirements would match those set forth in TMDL, Alternative TMDL Reports, or other regulatory frameworks?
- How might the maximum amount of pollution reduction be obtained or incentivized in the shortest amount of time (i.e., enhanced street sweeping?)

2. Considerations for re-development on site or addition of new impervious cover on site?

In the case of new or redevelopment that results in the addition of impervious cover on the CII site, EPA is considering requiring 100% disconnection to eliminate any additional pollution load and to work towards meeting water quality. Could you envision a different scenario on how not to add to the existing problem /pollutant load?

3. Off-site mitigation

EPA has received feedback that some CII sites may not be able to install necessary BMPs due to restraints on the amount of land available for stormwater controls or poor soil quality. EPA is considering allowing off-site mitigation as part of this permitting that would be similar to the approach available under the MS4.

- What might an RDA off-site mitigation program look like?
- Who might administer such a program?
- Might a regionalized stormwater management program, such as the one operating in Long Creek Maine, be necessary to manage off-site mitigation and/or any pollutant trading program that might be established?

4. Intersection with MS4 and other regulatory requirement

- What factors should EPA consider when writing the permit so the pollutant load responsibility that would lie with CII sites would be transferred from municipalities

to private landowners in a timeline that is consistent with municipal phosphorus control plans or impaired waters requirements as part of MS4?

- What responsibilities should MS4s have, if any, to certify pollution reduction occuring through private structural controls and operation and maintenance actions implemented by CII permittees?
- Should pollution reduction credits be transferred from RDA permittees to MS4 permittees? When should this happen - after RDA permittees certify implementation of structural and nonstructural controls and provide the relevant information to EPA or to the municipality? Would this happen after CII properties have met their obligations? Would municipalities want to review the CII properties pollution reduction controls prior to getting the credit?
- EPA is considering giving pollution reduction credit to CII permittees for existing structural or nonstructural controls they have been implementing (and maintaining, if applicable), if these controls comply with the crediting criteria (based on MS4 Appendix F Attachment 2&3). What information should the permittee provide EPA to support these credits?

5. Maximizing pollutant reductions in the Charles, Mystic and Neponset River Watersheds

EPA has received feedback that the RDA permit could serve as a disincentive to the development of stormwater utilities and other local stormwater funding mechanisms. What other mechanisms exist to maximize pollutant reduction and generate reliable funding streams for stormwater control strategies in the three affected watersheds? How might permit requirements support these strategies?

6. Other thoughts

Are there other RDA permit suggestions that EPA should consider as it drafts the RDA permit?