



LONG ISLAND
BUILDERS INSTITUTE

Advocating Responsible Building & Remodeling

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Commissioner Joe Martens
NYS Dept. of Environmental Conservation
625 Broadway
Albany, NY 12207-2997

January 17th, 2012

Dear Commissioner Martens:

Since the initial implementation of the SPDES General Permit for the regulation of storm water discharges from construction activities (currently GP-0-10-001), developers, municipalities and their engineers have been struggling with the application of these regulations to the unique hydrologic characteristics of Long Island. In addition to the added costs and regulatory burden associated with the program, the confusion in applying the permit conditions have Long Island municipalities and the development community concerned about the overall effectiveness of this worthwhile federal effort. It is for these reasons that the Long Island Builders Institute, the largest residential home building trade association in New York State, respectfully request a formal clarification from the New York State Department of Environmental Conservation of the regulations as they pertain to Nassau and Suffolk Counties.

In their current form, the regulations do not specifically recognize that storm water management methodologies on Long Island differ significantly from those of the other areas of the state, and questions continue to be raised about applying the "SPDES General Permit for Storm Water Discharges from Construction Activity" to local conditions. Specifically, soil and groundwater conditions on Long Island have historically required that storm water runoff be recharged into the ground to aid in the replenishment of the sole source aquifer that supplies drinking water on Long Island. In contrast, soil and topographic conditions elsewhere in the state result in storm water runoff typically being discharged into nearby streams, rivers, lakes and other waterways of the State by design, although at controlled rates. It is clear that the SPDES General Permit was developed specifically for the protection of these waterways where there is direct storm water discharge from construction sites, in contrast to the total on-site containment criteria required by Long Island jurisdictions.

We understand that the Department has attempted in the past to clarify the applicability of these regulations to situations that do not result in discharge to surface waters (see "Frequently Asked Questions," Version 3.0 – September, 2006). However, questions have persisted, particularly following the adoption of the model Storm Water Management code by most Long Island municipalities. The confusion has multiplied since these municipalities have become charged with interpreting and determining compliance with the General Permit requirements, which clearly conflict with their own local design standards. As a result, the development community has the added burden of dealing with increasingly disparate implementation of the guidelines in different jurisdictions.

In the interest of further clarifying the applicability of the permit to the specific and unique conditions on Long Island, and in view of the need to address the requirements of the model Code provisions, we respectfully offer the following suggestion for a formal clarification and statement of policy that could be issued by the Department:

1. In situations where a storm drainage system provides on-site recharge of runoff from all disturbed areas in accordance with local regulations, and soil and topographic conditions clearly indicate there is *no potential for direct discharge to surface waters of the state or a municipal storm sewer system that discharges directly to surface waters of the state*, permit coverage is not required.
2. In situations where a storm drainage system provides on-site recharge of runoff from all disturbed areas in accordance with local regulations, but soil and topographic conditions are such that runoff exceeding the

storage capacity of the system *has the potential to discharge directly to surface waters of the state or a municipal storm sewer system that discharges directly to surface waters of the state*, permit coverage may be required. However, in recognition of the unique soil and topographic conditions prevalent on Long Island, as well as the need to replenish the sole source aquifer, it is determined that an on-site recharge system which provides for storage of the runoff from a 5" rainfall inherently exceeds the required Water Quality Volume and, based on historical performance of such systems, is deemed to be sufficient to protect surface waters, and therefore permit coverage is not required.

3. In situations where a storm drainage system provides on-site recharge of the runoff from the extreme storm event for all disturbed areas, no permit coverage is required.

A formal clarification and statement of policy as outlined above would be extremely helpful in eliminating the confusion among local regulatory agencies. It would explicitly recognize the inherent difference between local (Long Island) hydrologic conditions and the rest of the state, and remove an undue burden on local projects while still providing adequate protection for surface waters. Such a clarification would go a long way in addressing the fact that the storage and leaching capacity of a typical Long Island drainage system would have to be exceeded before the surface waters received even a trace of runoff, in contrast to a typical detention system that is constantly discharging to surface waters. Thank you for your consideration in this matter. We look forward to your decision, and we are prepared to have our consultants review this matter in more detail with your staff if necessary.

Very truly yours,

Mitchell H. Pally
Chief Executive Officer

CC: Regional Director Peter Scully
Regional Representative Scott Martella