



**Testimony
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The Connecticut Council of Small Towns (COST) appreciates the opportunity to comment in **support** of **SB-1018, AN ACT CONCERNING REGULATIONS EXCEEDING FEDERAL STANDARDS OR PROCEDURES.**

COST supports efforts to shine a spotlight on proposed state agency regulations that exceed federal standards or procedures. When state agencies promulgate regulations that are more stringent than the federal requirements it is often unclear until the regulations are adopted. This practice imposes unnecessary compliance burdens and costs on regulated entities, including municipalities.

Recognizing this, a number of states have enacted laws that limit state agency authority to adopt environmental rules and regulations more stringent than federal law requires. According to the National Council of State Legislatures (NCSL), "At least 19 states have one or more laws limiting state agency authority to adopt environmental standards. Statutes generally fall into one of two categories: (1) statutes imposing an unconditional restriction on state agency authority; and (2) statutes imposing a conditional restriction on state agency authority."

Smaller communities throughout Connecticut are bumping up against this issue under the state Department of Energy & Environmental Protection's (DEEP) proposed MS4 General Permit. Currently, the United States Environmental Protection Act (EPA) requires municipalities that own and operate storm sewer systems in Urbanized Areas to comply with MS4 General Permits in accordance with EPA standards.

Although EPA authorizes the state to regulate municipalities that are not considered Urbanized Areas under the federal law, it is not required to do so. Why? Because stormwater issues are generally linked to population density. Smaller, rural towns do not have a significant amount of impervious cover – roads, parking lots, etc. – which create water quality problems relative to stormwater runoff.

Recognizing the financial burden that these requirements place on smaller communities, other states have rejected efforts to impose permit requirements on towns that are not considered urbanized areas* under the federal definition.

**An area having a population density of 1,000 or more people per square mile based on the 2010 U.S. Census Bureau data.*



Competing demands and limited municipal budgets will make it difficult or impossible for municipalities to comply with the permit, opening them up to potential enforcement action and citizens' lawsuits. Recognizing the considerable financial burden and potential liability that these requirements will place on small towns, we believe DEEP should refrain from covering them under the general permit and, instead, work with communities to encourage them to adopt meaningful stormwater programs.

EPA's Revised Stormwater Rules Have Not Been Formally Adopted

Moreover, although DEEP indicates that certain requirements are consistent with EPA's revised stormwater rules, the revised rules have not yet been adopted and have been the subject of significant controversy. It is therefore premature to adopt permit requirements in Connecticut based on federal provisions which are in a state of flux.

Proposed General Permit Imposes Considerable Unfunded Mandates on Municipalities

According to OPM, Connecticut is in a state of "permanent fiscal crisis". For Connecticut's small towns, state aid to municipalities has been largely flat funded for several years now, shifting more of the burden to fund education, public safety and other critical programs onto the backs of property taxpayers. Given the ongoing budgetary challenges facing the state and municipalities, Connecticut must refrain from imposing new unfunded mandates on municipalities which drive up local costs beyond the control of property taxpayers.

Unfortunately, as drafted, the proposed General Permit imposes extensive unfunded mandates on municipalities that may not have any appreciable impact on water quality. Despite years of reporting data, DEEP has not analyzed the data to determine whether the existing requirements have successfully addressed stormwater issues.

According to DEEP, only 25% of the towns covered under the existing permit are in compliance. Yet DEEP has not made any significant effort to assist these towns in implementing effective stormwater programs. Instead, it is moving forward with a proposal that significantly expands the scope and reach of the permit without first stepping back and figuring out what is working and what isn't.

Towns Need s Flexibility to Target Limited Resources in Ways that Maximize MS4 Operations to Address Water Quality Issues

Connecticut's small towns recognize the importance of protecting water quality in our communities and have embraced efforts to protect the state's water and other natural resources by preserving open space and watershed lands, addressing non-point source pollution, and adopting "green" land use regulations.



However, we are concerned that DEEP's General Permit – even as revised – contains overly prescriptive requirements and “make work” provisions that undermine the ability of municipalities to address stormwater and water quality issues at the local level. Addressing unique local and regional stormwater issues requires flexibility to ensure that limited financial resources can be used in a way that maximizes the impact of MS4 operations in addressing water quality issues.

To address these concerns, COST urges lawmakers to consider legislation that will:

- 1) Exempt the 49 small towns that are not required to be covered by the permit under federal law;
- 2) Ensure that DEEP does not impose requirements on Tier 1 municipalities that exceed the federal requirements;
- 3) Require DEEP to undertake a true cost/benefit analysis of new permit requirements
- 4) Consider ways of ensuring that there is a more collaborative, less adversarial model used for revising the General Permit that ensures that stakeholders have the opportunity to develop realistic goals and balanced solutions to address stormwater issues without imposing numerous unfunded mandates on municipalities; and
- 5) Consider whether there should be greater oversight of DEEP's permitting process to ensure that permits do not include extensive unfunded mandates without regard for the fiscal challenges facing our towns and cities. For example, permits could be required to be adopted pursuant to the Uniform Administrative Procedures Act, which would provide greater transparency regarding the costs and scope of agency policies.