

Meeting Summary
MS4 Listening Session
Southeast Region
PA Department of Environmental Protection (DEP)
March 25, 2009

Sabrina Stanwood of DEP gave a 1+ hour PowerPoint Presentation highlighting the MS4 Program and its renewal permit process; included was a description of the changes DEP has made to the MS4 General Permit (PAG -13). Approximately 35 individuals attended the listening session, of which approximately 24 represented Chester County municipalities.

As stated, the goals of the NPDES Phase II MS4 Stormwater Program are to: reduce the discharge of pollutants to the “maximum extent practicable” (MEP); protect water quality; and satisfy the appropriate water quality requirements of the Clean Water Act.

The Minimum Control Measures (MCMs) required under the MS4 program are: 1) Public Education and Outreach, 2) Public Participation/Involvement, 3) Illicit Discharge Detection and Elimination, 4) Construction Site Runoff Control, 5) Post-Construction Runoff Control, and 6) Pollution Prevention/Good Housekeeping. MS4 “stormwater entities” are “urbanized areas” as defined by the 2000 Census.

Two permitting processes exist: the MS4 General Permit (PAG-13) and the MS4 Individual Permit. The General Permit is designed as a streamlined process while the Individual Permit allows an MS4 to develop their own Protocol (called Program in renewal permit) or their own Stormwater ordinance (that is equal to or better than the Model Ordinance.) The Individual Permit requires an individual application, is generally more time consuming and requires more review. It was noted that MS4s that discharge stormwater to “Special Protection” Waters (High Quality or Exceptional Value) must apply for an Individual Permit. Under the General Permit, one statewide permit is issued and eligible MS4s may apply for coverage under the permit using a Notice of Intent (NOI). The General Permit requires MS4s to utilize a DEP-provided stormwater management program for permit compliance; MS4s are required to implement the six MCMs as part of this program. Further, if the MS4 discharges stormwater into any receiving waters with approved stormwater TMDLs, a stormwater TMDL plan is also required (such a plan must demonstrate, at a minimum, how Best Management Strategies can be used to address the TMDL; a minimum of at least two TMDL Control Measures must be implemented as documented in the NOI).

All MS4s must also enact and implement a stormwater ordinance from either an Act 167 Plan approved in 2005 or later, or adopt DEP’s 2009 model ordinance (note: if a municipality wants to use their own ordinance, rather than these, an Individual Permit is required).

The permit renewal process was initiated as a way to improve the overall program and ensure that municipalities have a technically and legally sufficient program to meet EPA

requirements. Some of the changes initiated from the original permit conditions include: requiring outfall inspections once within the term of the permit, modifying the requirements for field inspections (visual and odor only – DEP removed the wet chemical testing requirement), revising the permit fee schedule, requiring a schedule of compliance for enacting an appropriate stormwater management ordinance, and creating a new TMDL plan requirement (see above).

DEP is currently holding Listening Sessions throughout the state. Comments regarding the General Permit requirements (published 4/4/09 in the PA Bulletin) are due May 4, 2009. Once the final permit is published, DEP will hold public workshops. The permit application deadline is 9/9/09 and coverage under the renewal permits begins 3/10/10.

The presentation by DEP generated numerous comments and questions which were discussed in depth for the remainder of the Listening Session. Following is a summary of the key comments DEP received, as recorded by representatives of the Brandywine Valley Association (BVA) and the Chester County Water Resources Authority (CCWRA) and summarized by BVA:

Public Comments:

Request for description of accomplishments of the MS4 program to date.

Request for definition of “outfall” that is tailored to the circumstances of Chester County and the type of infrastructure that is common here.

Parag. A.3. First mention of joint (multi-municipal) permits. Commenter says this needs to be done on a watershed basis. Many details of how this would be administered are unclear. Commenters feel that a watershed-wide permit would be most effective, particularly if the aim is to address TMDL requirements. Commenters express wish to see agency promote the use of joint, multi-municipal, watershed-wide permits. (Specific case discussed is Christina TMDL. Notes: Not all municipalities with impaired waters have WLAs in the TMDL Report; Some municipalities with WLAs in TMDL Report are not MS4 permittees; and method for measuring sediment in manner consistent with expressions of load in TMDL is not defined.)

Commenters express difficulty coordinating obligations of Act 167 Planning with TMDLs and with MS4s. Would like to see a common, coordinated watershed planning and implementation program.

Suggestion to have DEP create an application for joint Individual Permit that helps municipalities anticipate what a multi-municipal, watershed-wide permit would need to have.

Question: How will municipalities (MS4 permittees) be informed or notified about their TMDL obligations?

The permit needs to clarify which kinds of TMDLs really need to be addressed by this program. Note that some approved TMDLs are not stormwater-source related.

Request clarification on whether TMDL Control Measures must be new work, or whether existing, on-going efforts, and progress made to date (before 2009), can be considered to meet (at least in part) the TMDL Control Measure. Note: If the TMDL and WLAs were developed many years past, and stormwater management improvements (of the kind that are described in the TMDL Control Measures) have been implemented since that time, commenters request consideration of that.

Suggestion that there are methods that currently exist, that are not included in the DEP BMP Manual, for estimating sediment reductions of practices that may be done as TMDL Control Measures. Suggest referring to Chesapeake Bay Program for some of these quantification methods. Suggestion that DEP should make the references to this load-reduction information more clear. Also, check to confirm that the DEP BMP Manual includes methods for estimating reduction of nutrients, as well as sediment?

Comments were made about existing sediment sources such as streambank-source sediments (erosion), and farmland-source sediments. Can reductions achieved from these sources be considered as part of meeting MS4 TMDL Control Measures requirements? Example: If a farm has been removed from crop production and placed into preservation as open space, then sediment reductions could be calculated. Also, for farming conservation practices, can sediment reductions be considered?

Clarify: Does a project have to be performed by the municipality, or forced by the municipality through regulation, in order to count as credit towards TMDL Control Measure? If “no,” (if actions of non-municipal entities can be considered), then what ongoing obligations would the municipality take on, in terms of monitoring and maintenance?

Clarify: Would TMDL Control Measures implemented in areas that are outside the permit area (outside the “urbanized area” or outside the “MS4 service area”) count towards permit obligations?

Challenge: The circumstance is described where in a certain MS4 service area, the majority of stormwater managements facilities that currently exist are privately owned. This may limit the ability of the municipality to make improvements, if they cannot gain the cooperation of owners of those facilities.

Question about TMDL Control Measures: Can permittees substitute measures that are not in the list, possibly including e.g. street sweeping, or other source-control practices?

Clarify what is covered, regarding streets and storm sewers constructed by a developer and “dedicated” to the municipality. “Owned”, or “operated”?

Comment: There seems to be a discrepancy between the costs of doing certain TMDL Control Measures. Specifically, it appears that more developed municipalities may not have the opportunity to select the less expensive Control Measures. Suggest the permit should offer a range of options that does not discriminate in this way. Also, note that the specific practices included within TMDL Control Measure #7 are extremely expensive and it is difficult to imagine any municipality choosing this measure. Control Measure #7 should be revised to be more equivalent to others in terms of benefit and cost.

Re: the tree planting TMDL Control Measure: The permit should not provide the population-based categories for required numbers of trees, but should instead equate tree numbers with sediment reduction credits, to provide a range of benefits and incentivize more tree planting.

Suggestion: Re-create the TMDL Control Measures so that each Measure provides a certain value in terms of “credits” (e.g. sediment reduction credit). Or, at least, the commenters would like for the permit to provide clear and specific load reductions to associate with each Measure, so that the results of permit-required activities can be directly compared to TMDL WLAs.

MS4 permit guidance needs to explain circumstances of TMDL and WLAs. In cases where the MS4 system is only contributing part of the assigned “WLA” for a municipality, the permit guidance should help permittees figure this out.