

MEETING SUMMARY
PA Department of Environmental Protection Public Meeting and Public Hearing –
Draft MS4 General Permit (PAG-13)

Meeting Date: June 18, 2009 at 3 pm

Meeting Location: PA DEP in Norristown, PA

Notes Prepared by: Dani-Ella Betz (Chester County Water Resources Authority) and Carrie Conwell (Chester County Planning Commission)

PADEP staff (Barry Newman and Sabrina Stanwood) opened the public meeting and provided a presentation on MS4 General Permit (PAG-13) renewals, followed by a question and answer session, and concluding with the public hearing. Below, is an outline of what transpired.

1. The power point presentation given by Sabrina Stanwood, PADEP can be viewed on the PADEP website at the following address:
http://www.depweb.state.pa.us/watershedmgmt/lib/watershedmgmt/stormwater_management/permitting/publicmeeting_ms4_sero_web_listening_session.pdf)
2. After the presentation, Ms. Stanwood and PADEP staff answered questions asked by audience members.
3. After the question and answer session, a formal public hearing commenced. Wes Horner from Brandywine Conservancy and a lawyer Steve Hahn (representing many municipalities including London Grove) testified during the formal public hearing. No other representatives from Chester County municipalities appeared to be in attendance or chose to testify.

Below, are the key points made by PADEP and the concerns raised by the attendees during the meeting and hearing:

Points made by PADEP during the presentation:

- Public comment period has been extended to July 6, 2009.
- The latest PADEP ordinance will be made available shortly. (draft will be available at: http://www.depweb.state.pa.us/watershedmgmt/lib/watershedmgmt/stormwater_management/technical_info/3-3-09_pa_model_swmo.pdf)
- July 2009 PADEP anticipates releasing a Comment/Response document associated with the MS4 public meetings.
- NPDES Phase II MS4 Permit renewal has been delayed and application materials are anticipated to be finalized and released in the Fall of 2009. PADEP hopes to authorize the permits by March 2010, if possible.
- Individual permit (IP) will be very similar to General permit (GP is the template). It will not be available for comment or released in draft form. PADEP stated that if a municipality files an IP, expect similar application materials to the GP draft they have released.
- IP will most likely not be reviewed and authorized in time for March 2010 when the new permit cycle should begin. Internally at PADEP there may be too great of a workload to review permit applications in time to meet that deadline. HQ/EV watersheds and most likely MS4s with TMDL will all file IP.
- PADEP stated that municipalities have the ability to implement TMDL Control Measures outside of the urbanized area.
- New Permittees would only include those who were newly designated, or those who had waivers in the first round of permits (there were only 9 waivers issued in the PADEP southeast region).
- ***Note – the map that PADEP showed included Oxford Borough as an urbanized area, but Chester County mapping shows the borough not as an MS4, just Upper Oxford, which did not appear on the mapping

Points made by PADEP during the question and answer session:

- Audience: If an MS4 applies when it has no TMDL in any of its watersheds, but during the permit cycle a TMDL is issued, what takes precedence? PADEP responded that you would most likely work through your current permit cycle without any changes. Another audience member said in Virginia or NC there was a lawsuit about that exact issue.
- You can apply for a general permit if you enhance the PADEP model ordinance (you can't omit anything from the ordinance.)
- Audience: If my municipality has an Act 167 pre2005 and post2005, then what stormwater ordinance do they use with a general permit? Barry Newman PADEP said you can use the PADEP ordinance and add release rates.
- Audience: Municipalities would like longer to develop their TMDL plan. Audience member stated that to know which control measure was feasible and effective that it would be impossible to have their TMDL plan figured out in a few months that would address obligations for the next five years (especially with some options requiring engineered studies such as infiltration studies, etc.). Another member from the audience suggested that the TMDL plan be a permit requirement, and not part of the permit application. PADEP responded that if you implement your TMDL plan and it doesn't help reduce waste load allocations (WLA) or if plans change, etc. that permit holders can amend their TMDL plan. Barry Newman PADEP suggested that if you can't develop your TMDL plan on time, then explain in an IP why it wasn't possible and when your full plan will be developed (relying on the reasoning that you tried to accomplish PADEP's permit requirement to the maximum extent practicable, but couldn't succeed). Mr. Newman said they may consider a different deadline for a completed TMDL plan.
- Audience: A municipality inquired that if this MS4 permit is enforceable, then what happens if the two control measures/BMPs the municipality implements don't improve anything according to the monitoring results? PADEP responded that they will take into account "maximum extent practicable" (MEP) and work with municipalities.
- Mindy Lemoine from Pennsylvania Environmental Council brought up a point that MEP really means how much money a municipality budgets for to implement improvements. She stated that PEC, using EPA money, is working on a municipal credit system to help better define MEP.
- Audience: What about BMPs already installed in the municipality since the stormwater TMDL was issued, could they include that as working toward the goals of a TMDL Plan? Jim Newbold PADEP says that they will consider giving credit to practices in place since the TMDL was written.
- Audience: What does PADEP mean when they say monitoring? PADEP responded that municipalities should use the BMP manual for monitoring guidance.
- Wes Horner from Brandywine Conservancy asked if PADEP would consider allowing municipalities to make calculations to get rid of release rates for smaller storms that may be a part of an Act 167 that municipalities must follow. He stated that by allowing this it may lead to more effective stormwater basin designs.

Formal testimony read and submitted in writing to PADEP (PADEP did not respond to the testimony):

Steve Hahn lawyer (representing many municipalities including London Grove Township)

Mr. Hahn requested more involvement of stakeholders sooner. He mentioned that this was an unfunded mandate. He stated the development of an effective TMDL plan is expensive. He asked if a municipality can get credit for BMPs on non-TMDL watershed in a municipality.

Wes Horner, Brandywine Conservancy

Mr. Horner requested more details on specific monitoring requirements should be included. He would like Low Impact Development (LID) mandated, not just encouraged. He stated that we need better criteria and evidence that municipalities are working to improve water quality. He stated new development in an impaired stream area should be required to follow LID. He stated that the PADEP Model Ordinance should be stronger.

Lawyer, representing Upper Dublin Township

He stated concerns of financial and staff constraints that would result to meet the permit requirements. He was concerned if the new MS4 can be legally binding and in concert with other laws like the new PennDOT drainage policy that compels municipalities to own PennDOT drainage. He inquired if municipality can regulate/require/work with PennDOT to reduce pollutants. He stated that there may be conflicts with the Construction Codes Act and inquired if you can force a green roof. He inquired if conflicts with the Municipal Planning Code would occur.

Representative, Clean Water Action

She stated that new discharges be prohibited in impaired waters and LID should be required. She stated that the PADEP Model Ordinance should be stronger. She stated that PADEP should ensure that permit applications are not more cumbersome and/or become a dis-incentive for municipalities that want to strengthen ordinances.

END of Hearing

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PADEP link for MS4 program

<http://www.depweb.state.pa.us/watershedmgmt/cwp/view.asp?a=1437&q=545499>