



February 8, 2012

PA Stormwater Coalition Members

RE: Update on Stormwater Coalition Activities

Dear Coalition Member:

As all of you are aware, the final form of the PAG-13 was issued by the DEP in September 2011 and our municipalities are now required to prepare and submit their Notice of Intent (NOI) by September 2012, with the target date for issuance of a PAG 13 permit by March 2013. Since the final permit was published, your Coalition has been busy on a number of fronts including assessing the final form of PAG-13 from a legal and engineering perspective, but perhaps most importantly, seeking clarity as to what the PAG-13 is intended to cover.

Specifically, it became clear during the months leading up to DEP's training that a major source of disagreement between the DEP and EPA was EPA's insistence that municipalities be responsible for controlling storm water in the "Urbanized Area", meaning the entire boundaries of the municipalities. In contrast, the DEP (as well as the Coalition) held that municipalities were only responsible for the water which enters the "Conveyance System" owned by the municipality.

It appeared that the EPA was asserting its broader interpretation of the "Urbanized Area" standard as authorized by the Clean Water Act (CWA). The DEP, along with the legal and engineering professionals of your Coalition, believe that such a position is a gross perversion of the CWA and the stormwater regulations adopted thereunder.

This distinction ("Urbanized Area" vs. "Conveyance System") is vitally important to all municipalities. Use of the "Urbanized Area" standard would essentially make municipalities responsible for every drop of rain that falls within its boundaries. By example, under this standard, rain which falls onto the parking lot of a shopping center, is collected in the privately-owned storm sewers and discharged directly into an adjoining stream, without ever having touched a municipal-owned pipe, would be the responsibility of the municipality. This is an impossibly high standard which would commit municipalities to reduce storm water flows from properties which have never discharged into the municipally owned system and whose improvements were lawfully designed and installed years ago.

c/o Montgomery Township, 1001 Stump Road, Montgomeryville, PA 18936-9605, 215-393-6900

Correspondence between EPA and DEP in summer/fall 2011 appeared to indicate that DEP was backtracking on this issue. However, in late December, the DEP finally clarified that it would not back away from its own, and our, understanding of municipal MS4 responsibility and then DEP supported this position in its presentation at the regional training sessions offered by both DEP and EPA. In a statement released December 28, 2011, Kevin Sunday, DEP Press Aide stated:

“DEP shares the municipalities' concern that EPA was attempting to impose an unreasonably burdensome and overly broad application of the permit. DEP successfully negotiated a permit that is reasonable and not overly broad. The permit, which was approved in September and will be effective in 2013, only applies to the stormwater conveyances that are owned and operated by the municipality.”

Nonetheless, continued diligence is required as we won't really know or receive DEP's final position on this most important issue until our NOI's are submitted, and we receive DEP's responsive comments.

While a significant effort has been expended around the above issue, they have not been the Coalition's only efforts. Specifically:

- Barry Wert P.E., has diligently represented the PA Storm Water Coalition at the DEP sponsored Work Group that is attempting to create a “Stormwater Management Offsetting Program”. This program is proposed to provide a framework for encouraging cooperative stormwater management programs. This offsetting program would permit MS4 regulated municipalities to partner with other “permittees” to use a portion of post-construction stormwater runoff volume reduction and/or pollutant reduction best management practices (BMP's) to be located “offsite” in order to meet the volume and/or pollutant requirements for NPDES permits. This would allow both “permittees” to take credit for a portion of the effort generating a higher overall stormwater impact in a more cost effective manner than could be accomplished individually.
- Doug Blazey, Esq. has attended the Army Corp of Engineers/DEP ‘Regional Watershed Improvement Project’ stakeholder workshops to lobby for watershed wide environmental projects that have the potential to provide substantial financial support for stormwater infrastructure improvements.
- Doug Blazey and Barry Wert, as well as other Coalition members, have already attended several of the DEP hosted Training sessions and have some early insight on issues that our members may want to evaluate when planning their NOI's applications. You should have already received an email outlining when the session for your area is being held. We strongly encourage you to make time for these important sessions.

As a result of our continued participation in these meetings, Coalition legal and engineering resources have several observations and suggestions for our municipalities as you prepare your NOI's, including recommending that you:

- Take credit for past Redevelopment. Municipalities can calculate 'improvement' credits against TMDL allocations from the date the TMDL data base was originally generated. Some of these studies go back 10 years or more. Each engineer should get a copy of the 'DVRCP' library archive aerial photos from that year and compare with the current 'Google' earth maps of their municipality. This is a relatively quick way to identify possible candidates for credit from the conversion of farmland to meadow or properties developed or re-developed with storm water management systems since that date.
- Seek County Planning Commission support for calculating reasonable estimates of future "redevelopment" turnover rates so that "credit" can be taken in each 5 year permit cycle for stormwater reductions and improvements that will occur in already developed areas due to the imposition of new Stormwater controls during the redevelopment land use approval process.
- Encourage related TMDL watershed communities and other dischargers, including the non-point source community, to meet and "read together" the watershed based TMDL in order to seek a common understanding of what load or waste load allocation belongs to whom! This is essential since each individual point source entity must develop a TMDL Implementation Plan based upon its assumed Waste Load Allocation.
- Where the TMDL limits are considered "suspect" or if they are likely to create incredibly burdensome management obligations, insert protective language in the TMDL plan such that communities can ultimately modify their first submitted plan w/o fear of being barred from making needed changes. The Coalition is going to be providing some suggestion language to incorporate this into your plan.
- Assess BMP's in order to calculate whether enough BMPs can be reasonably implemented within your municipality over some "reasonable" multi-permit cycle or whether "joint" inter-municipal solutions may be needed.
- Consider managing land disturbance projects less than 1 acre. While the DEP, apparently, does not require land disturbance less than 1 acre to be subject to E&S or PCSM permits, water from these properties, if entering the MS4 system, will become the responsibility of the MS4 and will add to the ultimate MS4 scope of responsibility. Thus, consider controlling or charging for these "smaller" land alternations as, in the aggregate, their discharge volumes accumulated and remain of significant municipal concern.

Members of the Engineering Committee who have attended these training sessions will be meeting in the next two weeks to work on an additional list of suggestions and key points your engineer's should be aware of as he/she begins the process of developing your NOI.

Finally, I would be remiss if I didn't mention that as we work with DEP, EPA and other stakeholder organizations, the fact that the Coalition has the support of 57 municipalities representing over 630,000 residents is not lost on DEP and EPA. Thanks to the support from our municipal members, the Coalition has the power of numbers and continues to be recognized as

an important 'stakeholder' in this program. We are continually being recruited to attend and provide input at important regional meetings on stormwater management issues. Our strength continues to be our cooperative and firm support for a MS4 and TMDL program that is reasonable, responsible and attainable.

We thank you for your continued support as we move forward.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Fox". The signature is written in black ink and is positioned above the printed name.

Michael J. Fox, Chairman