



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 1 2012

OFFICE OF WATER

The Honorable Jim Gerlach
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Gerlach:

Thank you for your April 26, 2012, letter regarding a February 13, 2012, letter you received from your constituent, Michael J. Fox, Chairman of the Pennsylvania Stormwater Coalition. Your letter requests clarification of whether a municipality is responsible for all stormwater generated within its jurisdiction or only stormwater carried by conveyances that a municipality owns or operates.


Under Section 402(p) of the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the U.S. Environmental Protection Agency (EPA) regulates discharges from certain municipal separate storm sewer systems (MS4s) under the National Pollutant Discharge Elimination System (NPDES) program. The NPDES regulations at 40 C.F.R. § 122.26(b)(8) define the term "municipal separate storm sewer" to mean "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains)" that are: (i) "[o]wned or operated by a State, city, town, borough, county, . . . district, or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water; (ii) "[d]esigned or used for collecting or conveying stormwater," (iii) "is not a combined sewer"; and (iv) "is not part of a Publicly Owned Treatment Works". Discharges from large and medium MS4s are subject to NPDES permits under Clean Water Act (CWA) section 402(p)(3), and discharges from small MS4s located in an "urbanized area" as that term is defined by the Bureau of the Census are subject to NPDES permits pursuant to CWA section 402(p)(6) and 40 C.F.R. § 122.32(a)(1).

The enclosed July 9, 2010, letter from the EPA Region III Water Protection Division Director Jon M. Capacasa to former Pennsylvania Department of Environmental Protection (PADEP) Deputy Secretary John Hines provides additional information on the scope of a discharge program for a regulated MS4 and how that applies to NPDES permit-regulated activity. Subsequently, on August 19, 2011, Mr. Capacasa wrote to current PADEP Deputy Secretary for Water Management, Kelly Jean Heffner, to remove the EPA's objection to PADEP's draft Phase II MS4 General Permit on a number of grounds (letter enclosed). In that letter, he reiterated the EPA's position that the scope of the MS4 is broader than simply the physical conveyance pipes leading into the system. The letter further acknowledged PADEP's agreement to follow the EPA's interpretation of the geographic scope of the MS4 on all its outreach materials.

NPDES permits for discharges from MS4s typically require the municipal permittee to implement stormwater management programs in the portions of their jurisdiction that contribute stormwater to their regulated MS4. In this manner, NPDES permits for discharges from MS4s generally regulate all stormwater from throughout the service area flowing into, through and discharged from the regulated MS4. Conversely, stormwater generated within the municipality's boundaries that does not enter the MS4 would not be subject to regulation under the MS4 permit. However, stormwater generated within the municipality's boundaries that does not enter the regulated MS4 may be regulated under State law, for example, State requirements developed to carry out a Watershed Implementation Plan developed to implement a total maximum daily load (TMDL). In addition, facilities with stormwater discharges associated with industrial activity, including stormwater discharges from certain construction activities, are independently required to obtain NPDES permit coverage whether or not they discharge to and through a regulated MS4.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-0255.

Sincerely,


for Nancy K. Stoner
Acting Assistant Administrator

Enclosures