



Confronting the Issues

Standards for Waiver of MS4 Requirements – Are They Fair and Should They be Changed? PFB Policy Development June 2021

Issue

Numerous municipalities within more densely populated areas of Pennsylvania's Chesapeake Bay Watershed are potentially subject to extensive requirements under the federal Municipal Separate Storm and Sewer System (MS4) regulations for pollution reduction and control of water channeled in their storm sewer systems. But some municipalities initially designated as part of Pennsylvania's MS4 makeup have been granted waivers from these requirements under the federal waiver provisions. MS4 municipalities in the Bay Watershed initially had to obtain either a permit or a waiver by 2017. And any permit or waiver issued only remains in effect for 5 years. Municipalities that have been granted a waiver will have to obtain approval for renewal of their waiver by 2022.

Questions

1. What should be the governing policy or criteria for the upcoming round of applications for MS4 permit waivers in 2022 by Pennsylvania municipalities in the Bay watershed?
2. How stringent should DEP review or reconsider waivers originally granted to MS4 municipalities in 2017 (and set to expire in 2022)? Should waivers be automatically renewed, or should municipalities be responsible for submitting updated analysis as condition for permit waiver?
3. Should the maximum caps in population serviced by municipal stormwater system currently contained in federal regulations for eligibility for MS4 permit waiver be changed? If so, what should the maximum caps be?
4. Should any other criteria currently established in regulation in determining approval of MS4 permit waiver applications be changed?

Background

Federal regulations generally require MS4 municipalities to obtain individual or general NPDES permits every five years and perform measures for initial pollution reduction and subsequent maintenance of pollution control of water that is channeled through the municipality's storm sewer system. But the regulations also allow for Pennsylvania's Department of Environmental Protection (responsible for administration of the federal MS4 program in Pennsylvania) to grant waivers to municipalities with "small" stormwater systems that meet the minimum criteria for waiver approval. As with MS4 permits, these waivers end 5 years after they are approved. Nearly all municipalities that were granted waiver will need to reapply and obtain approval from DEP by 2022 in order for the waiver to continue.

Of the more than 200 MS4 municipalities in the Bay Watershed, nearly 100 (48%) have been granted permit waivers. To be eligible for waiver, the municipality's stormwater system must meet one of the following categories:

1. The stormwater system serves less than 1,000 people in the municipality's "urbanized area" portion (as determined by the latest 10-year Census). To be granted waiver, the municipality must additionally show:
 - Its system is connected with another municipality's storm system - this is regulated under MS4 permit;
 - Its system discharges to a water body that has not been determined to be "locally impaired" by a pollutant; or
 - Its system discharges to a water body that is determined to be "locally impaired," but the pollutants causing impairment have been determined to not need additional pollution control measures under an approved Total Maximum Daily Load for that water body.

The municipality must still provide analysis to show the water channeled through its system is not causing or substantially contributing to local water impairment.

2. The stormwater system serves less than 10,000 people totally. To be granted waiver, DEP must have:
 - Evaluated the water bodies that receive the water discharged from the stormwater system;
 - Determined that the water body receiving the discharged water is not "locally impaired" by a pollutant, or if determined to be locally impaired, DEP also determines through an approved Total Maximum Daily Load for that water body or similar evaluation that no additional pollution control measures for the pollutant need to be performed;
 - Determined the stormwater system is not discharging into a "special protection" water body (such as a high quality or exceptional value stream); and

- Determined that future discharges of water from the stormwater system do not have potential to violate water quality standards or have adverse impacts on habitat or biological functions of the water body. Pollutants specifically mentioned in the regulations are excessive sediment, decreased levels of dissolved oxygen, pathogens, oil and grease. In cases where DEP has not performed an assessment, the municipality may be required to conduct an assessment to demonstrate that the characteristics and expected water quality of its stormwater system meet the criteria for grant of waiver.

Other than the standards for serviced population of stormwater systems, it is not clear how the criteria summarized above are evaluated and applied in determining whether an application for MS4 permit waiver should be approved. But several themes that clearly emerge from the criteria established are that for approval of waiver, the applicant municipality needs to reliably demonstrate the water channeled through its stormwater system will generally not appreciably discharge pollutants to neighboring stormwater systems or water bodies, will not add any amount of pollutants identified as the primary cause of local water impairment, will not discharge more toxic or volatile pollutants, and will not discharge into a water body that DEP has already ranked highest in water quality.

Farm Bureau Policy

AFBF: Pg. 205, under *Water Quality – Nonpoint Source Management*:

We oppose: EPA efforts to gain greater regulatory authority by including nonpoint source pollution controls under the federal storm water discharge permit program

PFB: Pg. 45, under *Stormwater and Erosion Control*:

We recommend: That for government agencies and authorities levying Stormwater Management Fees, offsetting credits to those fees be calculated, published and enacted for the following:

- a. Each acre of compliance under each of the following:
 - i. an NRCS or County Conservation District approved Conservation Plan,
 - ii. an Erosion and Sediment Plan,
 - iii. an Act 38 Nutrient Management Plan, and/or an implemented NRCS Comprehensive Nutrient Management Plan.
- b. Each approved Manure Management Plan.
- c. Erosion controlling structures including diversion ditches, grass waterways, stone waterways and terraces.
- d. NRCS or County Conservation District approved manure holding structures.
- e. Each acre of forested or wooded acres.
- f. Positive ratios of pervious to impervious areas.

We recommend: Pennsylvania agriculture be exempt from Municipal Separate Storm Sewer System (MS4) requirements mandated under the Federal Clean Water Act, and that all mandated Municipal Separate Storm Sewer System (MS4) implementation be funded by the state.