



Citizens Advisory Council

to the Department of Environmental Protection

P.O. Box 8459 • Rachel Carson State Office Building

Harrisburg, PA 17105-8459 • 717-787-4527 • Fax 717-772-2291

Please Note: Our New Fax Number is 717-787-2878

January 28, 2002

Mr. Stuart Gansell
Director, Bureau of Watershed Conservation
PA Department of Environmental Protection
P.O. Box 8555
Harrisburg, PA 17105-8555

Dear Mr. Gansell:

The Water Committee of the Citizens Advisory Council to DEP has reviewed the "Proposed Comprehensive Stormwater Management Policy" (draft policy) and has been authorized by Council to submit the following comments.

Council supports the Department's effort to develop an integrated and holistic approach to stormwater management, and agrees with the concept of encouraging greater infiltration where appropriate. Our primary criticism is that the draft policy in its current form is not very well constructed and is hard to assimilate as a stand-alone document. It assumes a level of familiarity with stormwater management that most don't have, even those who are relatively well informed on water issues. DEP needs to make it more understandable and then re-release it for public review and comment.

Objective of policy

Council supports the Department's effort to develop an integrated and holistic approach to stormwater management; too many water related programs are fragmented, with poor if any communication between staff responsible for different requirements.

Council also agrees with the concept of encouraging greater infiltration where appropriate. Increasing amounts of impermeable surface combined with the practice of storing and directing stormwater directly to water bodies instead of allowing natural infiltration may contribute to our current water management problems. Promoting infiltration and minimizing runoff can help recharge groundwater and reduce flooding while also sparing streams from scouring, erosion and sedimentation, and sudden increases in pollutant loading.

However, infiltration is not always beneficial or even possible. Significant portions of the state are underlain by geologic conditions that are poorly suited for infiltration. For example, glacial deposits underlie much of northern Pennsylvania while shale and other fine-grained rocks underlie many other areas of the state. Soils above such geologic deposits typically have very low permeability, with many unsuitable even for on-lot



wastewater disposal systems. Carbonate geology presents the opposite problem: infiltration rates in such areas are usually relatively high, and water moving in the subsurface at times dissolves the carbonate rocks, resulting in sinkholes and potential damage to surface structures. Council supports encouraging greater infiltration but cautions that DEP's program, in cooperation with county conservation districts, should be flexible enough to respond to local conditions. In most cases, conservation districts are closest to the situation and probably have the necessary expertise to make the necessary decisions if given the proper framework and adequate flexibility.

Another concern is that while reducing post-construction pollutant loadings to streams as intended, the policy could increase pollutant loading to the underlying groundwater, which is the source of drinking water for large portions of the state. Artificially infiltrated stormwater may not be filtered by the soil to the same degree as naturally infiltrated stormwater. DEP should promote infiltration where it is feasible, but needs to address the potential for pollutants to enter groundwater through artificial infiltration. DEP should take steps to ensure the quality of the water being infiltrated.

Impacts on Developers and Municipalities

The executive summary states that there will be "additional costs for developers, industry and municipalities" that will be offset by clear benefits. Both sides of this equation should be elaborated on in the document.

We understand that PENNVEST already has the authority to issue loans for stormwater management; the questions are how much money is available, and is it equitably available to both large and small municipalities? PENNVEST should encourage the construction of demonstration sites across the state so that other municipalities can observe and learn from implemented BMPs.

Implementation and Enforcement

The draft policy appears to rely on self-reporting, such as the use of the "Annual Self Inspection and Compliance Report" that is submitted by industrial stormwater permittees (page 10). Will self-reporting be the primary means used to ensure compliance? Some Council members are concerned that this policy adds a layer of requirements that will encourage more landowners to avoid getting permits rather than comply with an additional burden. As a result, the conscientious will be further burdened while those avoiding compliance will continue to pollute and benefit financially, especially given the reliance on self-reporting. DEP needs to ensure adequate enforcement to address the potential for renegades to avoid complying with these requirements.

Under the Municipal Separate Storm Sewer System (MS4) program, it appears that the municipality is responsible for the permit, even if it doesn't own the relevant facilities (e.g., a storm sewer system on a private road). Does the enforcement burden also fall on the municipality under MS4? For example, how will DEP ensure that a developer really has no discharge and therefore is not required to obtain a permit? As stated above, we need to ensure that all are required to operate at least at a common standard. This poses a potential difficulty for municipalities, and the Council is interested how the Department envisions implementation of this aspect of the program. We also recommend additional education for contractors, developers, planning commissions, etc. to ensure that all are aware of what is expected.

We understand that the conservation districts have raised concerns about delegation of previous programs (such as section 102 and 105) without money. Stormwater management may be perceived as another unfunded mandate unless DEP outlines how it envisions the program will be paid for. Do county conservation districts have adequate resources to take this on? Where will funds come from? If a conservation district decides not to participate, how will DEP implement the program in that county?

The draft policy does not seem to address the need to remediate existing retention ponds. Are existing sites grandfathered or are there plans to make modifications to existing sites?

The draft policy should explain how DEP plans to deal with permit transfers and liability. DEP should hold responsible the party who is actually creating a problem, not a permit holder who may be the previous property owner, not the violator.

Public participation

Any small construction activities that do not have a point source will be excluded from NPDES permitting requirements, and therefore from public notice and public participation opportunities, as well as EPA oversight for these activities. The Clean Water Act was passed in part because states were not providing adequate public notice and public participation opportunities, and were not adequately protecting their waters in the absence of federal oversight. The NPDES construction permit includes public participation, periodic review by DEP and/or a conservation district, and federal oversight opportunities, and could be used for post-construction stormwater discharges instead of a separate Part II permit, which lacks these features. In any case, the draft policy should elaborate on DEP's public participation plans, especially how it plans to involve watershed groups, municipalities and county planners.

Integration

The draft policy is intended to provide a comprehensive approach to stormwater management, and to add more certainty to the process by tying the different programs together. It is a framework that will increase communication and coordination between the different bureaus and divisions as well as levels of government, who currently have little interaction. However, the document itself is choppy and confusing to follow; clarifications and a flow chart that lays out the general requirements for each portion would be helpful.

The draft policy appears to be ahead of what is available both in terms of technology and available information (such as BMP manuals); even those who are fairly well informed are unaware of what's available. Is the appropriate infiltration technology available and do we know how to eliminate contamination before it enters the groundwater? This policy may help to drive further technology development but we need to define what BMPs are, and demonstrate them.

For those unfamiliar with the available technology and the referenced BMP manuals, it would be helpful to list or describe at least some examples of what might be required. There are presumably numerous technical details included in these manuals that might help in clarifying the overall approach as well as the details of implementation. Similarly, municipalities are expected to implement programs within their borders. It would be

helpful if DEP would also include access to model ordinances in the guidance. Finally, any guidance documents that are not yet drafted should be made available for review with the final policy, so that the program can be reviewed as an integrated whole.

In summary, while we support the effort to integrate stormwater management and agree with the concept of encouraging greater infiltration, the draft policy in its current form is not very well constructed and is hard to assimilate as a stand-alone document. It assumes a level of familiarity with stormwater management that most don't have, even those who are relatively well informed on water issues. DEP needs to revise it to make it more understandable and then present it again for public review and comment.

Thank you for the opportunity to comment on this important policy. If you have any questions, please contact Sue Wilson, Council's Executive Director, at 787-4527.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Hill", written over a horizontal line.

Brian Hill
Water Committee Chair