

## **Act 167 Stormwater Management**

### **Frequently Asked Questions (FAQ)**

**June 17, 2021**

**Version 1.0**

The Department of Environmental Protection (DEP) has developed this FAQ document to assist counties and the public in understanding the requirements of Act 167. This document will be maintained by DEP and may be updated with additional content over time. Questions may be directed to the appropriate DEP regional office or to DEP's Bureau of Clean Water at (717) 787-5017 or RA-EPPAMS4@pa.gov.

Nothing in this document affects regulatory requirements. The interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the interpretations in this document that weight or deference. This document provides a framework within which DEP will exercise administrative discretion in the future. DEP reserves the discretion to deviate from the interpretations in this document if circumstances warrant.

#### **FAQ #1: What is Act 167?**

Pennsylvania's [Storm Water Management Act](#) was enacted as Act 167 of 1978 to reduce the damaging impacts of accelerated stormwater runoff that can result from land development. Act 167 requires counties to prepare and adopt a watershed-based stormwater management plan for each watershed within the county (or the county as a whole) and requires municipalities to adopt and implement local ordinances to regulate land development consistent with those watershed-based stormwater management plans.

#### **FAQ#2: What is a watershed-based Stormwater Management Plan?**

Watershed Stormwater Management Plans (SWMPs) provide municipalities with a framework, including model ordinances and management practices, to control stormwater runoff from new development in a watershed. These plans include standards for managing the quantity, velocity (rate), and quality of stormwater runoff given the characteristics of the watershed, including current and future development plans. The goal is to control post-development stormwater runoff rate, volume, and quality so that those runoff characteristics approximate the pre-development conditions as closely as possible. This helps prevent increased downstream flooding and protects water resources and their uses.

**FAQ #3: Does Act 167 require pollutant load reductions?**

Act 167 requires that SWMPs provide “criteria and standards for the control of storm water runoff from existing and new development which are necessary to minimize dangers to property and life...” That requirement stops short of requiring reduction in pollution caused by development that occurred before Act 167 was enacted (i.e., before October 4, 1978). It was not until total maximum daily loads (TMDLs) implemented through National Pollutant Discharge Elimination System (NPDES) permits for Municipal Separate Storm Sewer Systems (MS4s) as required by the Federal Clean Water Act went into effect that retrofit stormwater Best Management Practices (BMPs) became required in Pennsylvania, and even then, only in particular municipalities. The legal responsibilities created by TMDLs and MS4 NPDES permits should be recognized in an Act 167 SWMP.

**FAQ #4: Does Act 167 regulate land use?**

No, Act 167 SWMPs are not intended to regulate land use. Municipalities control land use through zoning and subdivision and land development ordinances. SWMPs help inform local decision-making in land use issues, and the SWMP reflects those decisions.

**FAQ #5: What geographic scale should be used to develop a SWMP?**

The obligation in Act 167 is to have a SWMP for each watershed in the county. There are several approaches that can be used to address that requirement. DEP recommends consideration of eight-digit [Hydrologic Unit Code](#) (HUC-8) sized watersheds. However, a HUC-8 may not always be the preferred scale. For example, it is common for a HUC-8 to include land on both sides of a river. In such watersheds, a county may decide to consider a smaller scale watershed to look at each side of the river separately.

**FAQ #6: Can a county develop a joint plan with a neighboring county?**

Yes. In some cases, it makes sense for counties to develop joint plans where a watershed includes land in more than one county.

**FAQ #7: What entity should take the lead in developing a SWMP?**

Any entity can be authorized by the county to prepare the SWMP. Common choices for lead entities include the County Planning Commission, Planning Department, Planning and Zoning Commission, or Regional Planning Commission (names and roles vary across the state).

**FAQ #8: What is the process for reviewing and approving Act 167 SWMPs?**

As specified in Act 167, DEP, in consultation with the Department of Community and Economic Development (DCED), has 90 calendar days to review and approve or disapprove a SWMP. If no action is taken on a SWMP within 90 calendar days, the plan is deemed approved.

**FAQ #9: What should a county expect from DEP during the review process?**

If DEP finds that a SWMP is incomplete, the regional office of DEP reviewing the plan may contact the county and provide an opportunity for the county to either make the SWMP complete or to withdraw the SWMP. The opportunity must however be limited to what can be done within a short period of time (generally two business days) because DEP has a statutory limit on its review time. If the completion/withdrawal is not done within that period of time, DEP will proceed with a disapproval.

If a SWMP is to be disapproved by DEP and the issues are relatively minor, and a public hearing was previously held, DEP may allow the county to decide whether a public hearing on the resubmitted plan is necessary. If the county decides another public hearing is not necessary, the county should advertise that the SWMP will be discussed and potentially adopted at a public meeting. In either case, the SWMP resubmittal should include documentation of the subsequent public hearing/meeting. Counties will be required to adopt resubmitted plans (either before resubmittal or after approval) regardless of whether the original SWMP was adopted or not.

**FAQ #10: How is the public involved in the watershed stormwater planning process?**

During the watershed stormwater planning process, counties are to establish plan advisory committees consisting of county and municipal representatives. Counties may also appoint representatives from relevant interest groups and the public. Advisory committees help to define local concerns and develop stormwater control strategies. The process for county adoption of the watershed SWMP includes a public hearing. Municipal adoption of ordinances to implement the plan is also an opportunity for public input.

**FAQ #11: Must the public hearing be held before the SWMP is submitted to DEP for review?**

Act 167 requires counties to hold a public hearing and to formally adopt their Act 167 SWMP. Neither of those actions are required prior to the submittal of the SWMP to DEP.

It is DEP's preference and strong suggestion that counties hold the hearing prior to submission to make interested parties aware of issues earlier in the process. Counties may adopt a SWMP prior to submittal to DEP at their discretion. If the county has not held the public hearing and/or adopted the SWMP, the DEP approval letter will advise the county that those actions need to be taken, and when completed, that documentation must be submitted to DEP.

**FAQ #12: What is required by counties after DEP approves the SWMP?**

If the SWMP public hearing and/or adoption were not completed prior to submittal to DEP, DEP will instruct the county to complete those actions and notify DEP.

The county should also inform municipalities that the municipalities have a responsibility to amend local ordinances so that the ordinances are consistent with the SWMP within six months of SWMP adoption or DEP approval (whichever is later).

**FAQ #13: How are watershed SWMPs implemented?**

After DEP approves a SWMP and the county adopts it, Act 167 requires that anyone engaged in land development activities is required to implement stormwater management measures consistent with the SWMP and the requirements of Act 167. In addition, Act 167 requires each municipality in the watershed to adopt or amend ordinances consistent with the SWMP, including zoning, subdivision and land development, building code, and erosion and sedimentation control requirements. This stormwater management planning process is consistent with municipal obligations under federal NPDES permitting requirements for MS4s.

**FAQ #14: Does DEP provide technical assistance to counties developing SWMPs?**

DEP may offer limited technical assistance if requested by counties.

**FAQ #15: Does DEP provide financial assistance to counties developing or updating SWMPs?**

Counties are responsible for the preparation, enactment, implementation, administration, and enforcement of SWMPs, and for obtaining the necessary financial support. DEP no longer has funding specifically intended to support grants for SWMP development or revision. SWMP development or revision is however an eligible use for some State funding sources.

**FAQ #16: What is Act 15 and how does it affect SWMPs?**

Each Act 167 SWMP should be reviewed to ensure that it does not regulate or endorse the regulation of “High Tunnels” in a manner contrary to Act 15 of 2018 (Act of April 15, 2018, P.L. 91, No. 15). Act 15 amended Act 167 to include a definition for the term high tunnel, exempted some high tunnels from the provisions of Act 167, defined the characteristics of high tunnels exempt from the provisions of Act 167, and required any municipality with an ordinance in conflict with the provisions of Act 15 to amend that ordinance. DEP does not provide legal advice on

municipal ordinances, so municipalities are encouraged to contact their legal counsel to review their ordinance in relation to Act 167.

**FAQ #17: How often must SWMPs be updated?**

Act 167 requires that SWMPs be periodically reviewed and revised at least every five years.

**FAQ #18: Why is it advantageous for a county to have a current Act 167 SWMP?**

Virtually every municipality has local flooding issues that need attention. The short-term and long-term solutions to those issues are not necessarily obvious, nor is a collective consensus of solutions assured. The development of a SWMP can identify those problems, their solutions, and support applications for funding the solutions. The SWMP can include modeling to help identify where future development needs may call for stormwater controls that exceed DEP regulatory minimums so that flooding issues are not created or made worse. The SWMP can provide a model stormwater ordinance that reflects local priorities and assures municipal stormwater ordinances are consistent with DEP requirements. The model ordinance can promote actions not specifically required by DEP and can promote uniformity of ordinances among neighboring municipalities. A current Act 167 SWMP puts all land development on the same page when it comes to regulations. It simplifies the land development process, especially for an out-of-state developer. It unifies the watershed/county, spanning municipal boundaries and creates confidence that projects can move forward in a timely way.

Additionally, some grant programs, such as the Growing Greener Plus Grants Program incorporate current Act 167 SWMPs in their grant evaluation criteria, which can result in projects located within counties or watersheds with current SWMPs scoring higher than projects located in counties without current plans.

**Version History**

<b>Date</b>	<b>Version</b>	<b>Revision Reason</b>
6/17/2021	1.0	Original