Lancaster
CLEAN WATER PARTNERS

Pennsylvania Department of Environmental Protection

Policy Office

Rachel Carson State Office Building

PO Box 2063

Harrisburg, PA 17105-2063

RE: Draft–National Pollutant Discharge Elimination System (NPDES) – General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) – Lancaster Clean Water Partners

Dear Pennsylvania Department of Environmental Protection,

The Lancaster Clean Water Partners (the 'Partners') is a countywide, collaborative partnership of diverse partner organizations that come together with a common goal of clean and clear water for all Lancastrians. We appreciate the PA DEP's continued effort to manage stormwater and help us reach this shared goal. The draft PAG-13 permit and its significant proposed changes will directly impact our shared vision of clean and clear waterways by 2040 for Lancaster County.

The Partners bring together Lancaster's stormwater leaders through the Stormwater Action Team, empowering municipalities to address stormwater through cost-effective and locally relevant practices. Between January 19th, 2025 and March 12th, 2025 the Stormwater Action held two public discussion "Listening Sessions" and a number of individual conversations to gather reactions and comments following the release of the draft MS4 permit. Over 100 municipal staff, technical service providers and local leaders participated in the sessions. The following comments are taken directly from these discussions.

Clean & Clear Water and the Draft MS4 Permit

The Partners & Stormwater Action Team were pleased to see opportunities to collaborate, reduce flooding, and align other programs in the draft permit. But partners identified new permit barriers in meeting our goal of implementing cost effective, locally relevant practices.

Volume Based Approach

1. The Partner's network agrees there is research to show how managing stormwater runoff volume also decreases pollutant loads. However, more supporting research and evidence needs to be provided to ensure the volume management approach proposed for the next 50 years results in water quality improvements.
2. Lancaster MS4s have invested time and resources to meet pollution reduction plan requirements and based local planning processes on the 2018 permit.
    a. MS4s should be fairly credited for sediment reductions that were well above and beyond their requirements in the 2018 permit. Some Lancaster MS4s exceeded their required reductions by over 700%. Without having the actual calculator, we are not able to truly determine the reductions or credits. The potential of not getting the credits that were promised severely decreases trust.
3. Though there is increased planning time compared to the 2018 permit, many MS4s voiced concerns over adequate documents and resources plus the need for clearer instructions on how to reach their volume management objective.

4. Lancaster's unique, intersecting agricultural and developed land use patterns and the resulting stream impairments present a potentially challenging landscape to meet requirements of the draft permit.
    a. MS4s will face challenges reaching obligations surrounding impervious surface
    b. Opportunities to coordinate with farmers could be reduced under the new permit.
5. The Partners agree that excessive runoff can be more easily understood through local flooding. Many permittees view the volume management approach as simple and straight forward.

6. Permit aligns with other state programs but there will be challenges especially within the Chesapeake Bay to align with sediment and nutrient based programs and funding.

    a. As proposed, the revised PAG-13 only appears to align with the PAG-02. While PAG-02 addresses site stormwater, PAG-13 addresses stormwater on a more regional scale, so the volume-based approach begins to break down and misalignment with other watershed-based programs results. Based on these issues, we urge DEP to provide a more flexible alternative that allows communities to pursue more effective water quality strategies that are more cost effective and create the opportunity for additional ancillary benefits such as regional floodplain management.

Stormwater Control Measures (SCMs)

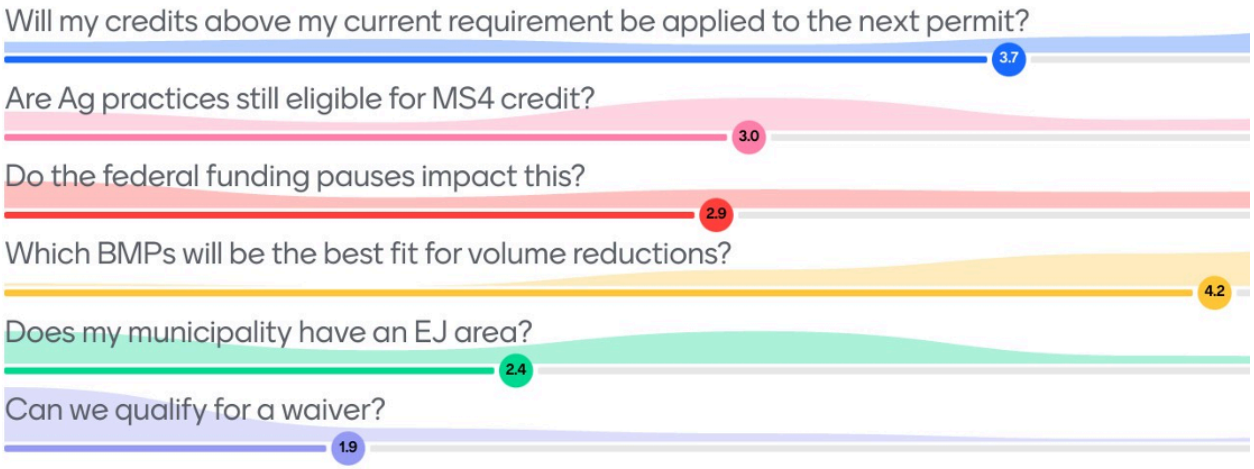
1. In public listening sessions, the biggest concern cited was the lack of clarity about what SCMs could be implemented under the new permit and the new hierarchy of practices based on the reduction each would be credited.
    a. Stream Restoration and floodplain restoration
        i. Dis-incentivizing stream restoration could have negative consequences on momentum for pollution reductions in Lancaster's waters and subsequently the Chesapeake Bay.

        ii. Need for clarity on minimum qualifying conditions for stream restoration w/o floodplain: high quality restoration with water quality benefits and habitat restoration should be encouraged.
        iii. According to the draft permit language, floodplain restoration is limited to perpendicular impervious runoff when a floodplain restoration clearly has significant effect on flow into it from upstream and reduces flow effects on the downstream area as well.
    b. Tree plantings can be the most cost effective SCM and argued that a successful planting with increased canopy should count as a volume reduction
    c. Nontyptical stormwater SCMs (constructed wetlands, riparian buffers, meadow plantings) - Lack of detail on how nontypical SCMs would meet the volume management objective
    d. Street sweepers are being phased out, when municipalities made purchases understanding and budgeting for long term crediting towards the permit and local water quality needs.
2. The SCM inventory needs ample time to be developed, with clearer instructions or simplified methods.

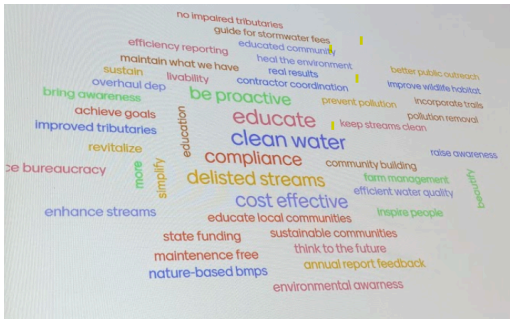
<u>Collaboration & EJ Communities</u>

1. The Partners support measurable “credits” available through collaboration.
    a. How did the Department arrive at the percentage credit reduction for collaboration? How this was calculated should be described.
    b. Facilitating collaboration could be difficult due to inconsistencies between the general permit cycle & individual permits that might be valid for years. This is a missed opportunity and there should be collaborations between them, with clear instructions on how to reconcile differences.
    c. Little to no criteria listed for collaboration and no minimum or maximum time associated leaves more questions rather than motivation to do it. Do municipalities need to be in the same HUC12 watershed or even the same county?
2. The Partners support measurable “credits” available through work in EJ areas
    a. More justification needs to be provided for MS4s to understand the reason EJ areas are offered reduction credits.
    b. PRP/VMP upstream of an EJ area, with reduced flooding effects in EJ area, should be granted EJ credit benefits.
    c. How did the Department arrive at the percentage credit reduction for work in EJ areas?

Concerns ranked in MS4 public Listening Session (2.6.2024)



What do you want your MS4 to achieve? -Survey during the 2024 MS4orum (~80 responses)



Draft PAG-13 General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s)

The following is a page by page review of the draft permit with comments compiled from municipal planners, landscape architects, and engineers. These reflect many voices from multiple events but not necessarily the perspective or a recommendation from the Lancaster Clean Water Partners.

01_-_NPDES_GP_FOR_STORMWATER_DISCHARGES_FROM_SMALL_MS4S_NOI_INSTRUCTIONS:

NOI is the first deadline MS4s face. Clear instructions, including examples and providing source data are lacking in permit. Draft permit gives more planning time than 2018, but only if final, clear permit is released in near future.

The feasibility index based on municipally owned land (potential project locations) does not account for land that has already implemented practices, and if those practices were designed to meet previous permit requirements that can be a significant loss of available space for projects.

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1. Census data does not accurately reflect municipal boundaries.
2. Use of Census data to determine impervious areas within a municipality needs to be vetted and will very likely cause a great deal of confusion and pushback. More time for explicit ground-truthing of those impervious areas should be considered.
3. It is unclear why the 2010 Census is to be used and then supplemented by the 2020 Census.
4. The determination of "…*the percentage of the total impervious areas that is treated by stormwater control measures (SCMs)*" is a highly labor-intensive effort for a municipality to achieve. Many questions arise as to whether the date of a particular SCM's installation will meet the applicable threshold, currently unstated.
5. As described in Step 1.A, an "*…impervious area that is on property owned by another entity with NPDES permit coverage for MS4 discharges (like counties or state agencies)*" is not to be included. As described in Step 1.A.1, "*…bodies of water, including surface waters and pools, should be considered impervious.*" It is unclear if Waters of the Commonwealth are to be included in the total impervious area within a given municipality's MS4 and subject to the required Volume Management Objective.
6. It is unclear why an elevated structure, such as a deck that is only a foot above the ground surface and does not have any intermittent openings to allow rainwater to pass through, should not be considered impervious.
7. It is unclear if the terms "*treated*," "*managed*," and "*reduced*" are completely synonymous with each other throughout the draft permit regulations. More specific technical criteria need to be described for these terms.

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8. As described in Step1.B.2, "*If there is no overflow from the SCM*…, *the SCM qualifies.*" It is unclear what the term overflow means in this context.

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9. It is unclear whether or not the Volume Management Objective (VMO) for an MS4 can be adjusted if their "*Financial / Socioeconomic Factors*" change during the 50 year timeframe to achieve the VMO.

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10. It is unclear whether or not the Volume Management Objective (VMO) for an MS4 can be adjusted if their "*SCM Opportunity Factor*" changes during the 50 year timeframe to achieve the VMO.
11. The first two bullet points under SCM Opportunity Indicator appear to use the phrases "*owned by the permittee*" and "*publicly owned*" interchangeably. Property leased by an MS4 is not equivalent to being owned by the MS4. Not all publicly owned property within an MS4 municipality is necessarily within the control of the MS4.
12. It is unclear what a development/redevelopment project is defined to be.
13. The collaboration credits appear to be arbitrarily determined.

INSTRUCTIONS FOR USING THE MEP CALCULATOR SPREADSHEET:

General Comments:

1. The MEP calculator should be easier to use. At a minimum, the calculator should be accompanied by instructional videos, training and a better description of the data, although the capacity and time constraints many municipalities face make this undertaking a challenge. It is a significant accounting and engineering exercise.
2. More source data should be supplied by the Department to reduce uncertainty that activities and volume objectives determined are valid.
    a. Example - The current Urban Area footprint varies depending on the source of the data. Please provide the mapping data source to be used for the updated Urban Area per the 2020 Census to ensure consistency.
3. The MEP calculator fails to measure any reduction in pollution. The relationship of volume control to pollution reduction is acknowledged, but disregarding pollution reduction completely should be evaluated again.
    a. We recommend that DEP consider giving meaningful credit directly applied to the volume management objective to municipalities that exceeded their pollutant load reduction requirements during the 2018 permit cycle. The % credit could be based on the % the municipality exceeded its PRP requirements. Many municipalities implemented multiple projects or larger scale projects that targeted impaired streams and watersheds based on the assumption that those reductions would benefit them during the next permit cycle.
4. Lack of clarity surrounding if and how to do baseline/inventory updates in the future.

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5. It is unclear exactly what information is intended to be provided in the “Surface Waters” field. Stream names? HUC identifiers? Coordinates for Waters of the Commonwealth? The XLS file does not allow for any expansion of the field, as would be necessary when multiple surface waters exist. Are only impaired surface waters to be listed? If we are to include “Chesapeake Bay,” are we also required to note any surface waters that connect our MS4 to the Chesapeake Bay?
6. It is unclear what the word “treat” fundamentally means (first 1”?), as opposed to the word “manage” used elsewhere in the MEP Calculator Instructions document. Does “treat” = “manage”?
7. It is unclear what the date threshold is to be for installation of SCMs relative to the inventory.
8. It is unclear how MS4s are to discern the “total impervious areas using the 2010 census map overlain by the 2020 census map.” This dissolved GIS data layer should be provided by PADEP.
9. Our MS4 contains a privately-owned inactive quarry that was permitted to be a “Zero-Discharge BMP” for an NPDES permit. It is a multi-acre area that is now to be considered impervious for which there is no option in the SCM Inventory to indicate it as being “treated.” This would result in an unnecessarily high VMO for our MS4.

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10. It is unclear if municipalities will have all of the required information for a “total annual utility bill for the average household in the municipality.”
11. It is unclear an MS4 will need to update the various “Financial / Socioeconomic Factors” in order to determine their “SCM Opportunity Indicator” over the 50-year period in which the VMP is to be implemented.
12. The phrase “impervious area that is owned by the permittee” should include those that are leased by the MS4. It is also unclear if the phrase “public impervious” is meant to be equivalent with “impervious area that is owned by the permittee”

Page 5:

13. It is unclear what the basis is for the “Collaboration Credit” and the value of 1% per MS4 collaborating in a VMP. Furthermore, it is unknown what the threshold of acceptability for such collaboration is. Would simply complying with these regulations result in the designation of “Collaboration?” Would MS4s be able to add on to or drop out of such “Collaboration” over the 50 year period of implementation of the VMP?
14. On the final line of this page, the initialism “ET” is used. Presuming this means “Evapotranspiration,” it is unclear how ET is to be measured / demonstrated / applied to the treatment or management of runoff volume.

Page 6:

15. If SCMs are completed or discovered, will the VMO be able to be revised over the 50 year period of implementation of the VMP?
16. It is unclear what the word “overflow” means in the context of determining the validity of an SCM to be included in the inventory.

Page 7:

17. It is unclear if the “TC = Total Cost to implement all PRP projects” is intended to apply only to Stream Restoration projects, in order to determine the Stream Restoration Credit.

Page 12:

18. It is unclear why the year 2018 is proposed as a threshold for the validity of tree plantings and impervious area reductions.

Page 13:

19. The formulas of the MEP Calculator Spreadsheet need to be more explicitly provided for examination. I was unable to utilize the XLS file and locate the pertinent cells so that I could understand and provide comment on the 3.630 runoff volume reduction factor.
20. Management of future development and redevelopment projects will have dramatically different goals than what is now regulated.

04_-_NPDES_GP_FOR_STORMWATER_DISCHARGES_FROM_SMALL_MS4S_PERMIT:

Page 16:

1. In MCM #2, PIPP should be focused in EJ communities. If a municipality does not contain EJ communities, should outreach be prioritized based on other criteria?
2. MCM #3, IDDE removal of dry weather outfall screening requirement where groundwater springs occur and allowing residential car washing are positive revisions from previous cycle

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3. In MCM #5 / BMP #1 and MCM #5 / BMP #3, the change in terminology from BMPs to SCMs is complicated by the challenges of existing MS4 SWMPs, existing MS4 Ordinance language, existing NPDES permit documentation, and existing plans / maintenance agreements that explicitly refer to BMPs, not SCMs.
4. It is unclear in MCM #5 / BMP #3 whether or not BMPs previously included in the required BMP Inventory are to be included in the inventory of "*PCSM SCMs that were installed to meet requirements in NPDES Permits for Stormwater Discharges Associated with Construction Activities issued since March 10, 2003*."
5. It is unclear in MCM #5 / BMP #3 what the phrase "*year it was installed*" exactly means as it relates to an SCM. The timeframe between initial excavation, commissioning, adequate As-Built Plans, Notice-of-Termination, and release of the Financial Security can take more than a few years.

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6. Paragraphs II.B (i.e. VMP Development) and II.C.1 (i.e. VMP Implementation) outline a timeline for submittal of each MS4's VMP before 9/30/2028 and technical review by the DEP must be completed for an approved VMP by 10/1/2029. It is unclear if sufficient guidance will be available for development of VMPs. It is unclear if sufficient staff will be available at DEP for prompt review of draft VMPs.

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7. Permittee required to submit an Individual Permit IF DEP has not approved VMP by October 1, 2029 – During the last permit cycle, some permittees experienced significant delays with PRP and Permit authorizations despite having provided DEP with all requested NOI and PRP documentation within the requested timeframes. As long as permittees submit all of the requested documentation in accordance with the instruction within the requested timeframe, the permittees should not be punished otherwise for delays. We recommend that the above referenced section of the permit be revised accordingly.

05_-_NPDES_GP WAIVER

1. Assuming the draft permit's fundamental approach is to be followed for the next 50 years, now is the time to notify municipalities of whether waivers are likely to be phased out in coming years and if so, provide a timeline. Proper notice for long-term planning is a recurring issue municipalities cite in responding to permit requirements.

07_-_NPDES_GP_FOR_STORMWATER_DISCHARGES_FROM_SMALL_MS4S_FACT_SHEET:

Page 2:

1. Conditions 4, 5, 6, and 17 under DISCHARGES NOT AUTHORIZED BY THIS GENERAL PERMIT are of questionable pertinence in light of the change in direction from Pollutant Reduction to Volume Management.

Page 4:

2. After considerable effort to make the public aware of Pollutant Reduction requirements, BMPs of various types, Riparian Forest Buffers and the associated costs, we are now faced with their deletion. Instituting new terminology and fundamentally new requirements will appear to laypersons that the regulatory agencies and local MS4s are simply guessing as to what needs to be achieved and how we are to do so.
3. With the deletion of the requirements for a Pollutant Reduction Plan, it is unclear if the previously installed BMPs for those PRPs are still required to be maintained.

08_-_NPDES_GP_FOR_STORMWATER_DISCHARGES_FROM_SMALL_MS4S_VMP_INSTRUCTIONS:

Page 1:

1. The instructions are unclear as to what exactly is to be included in the VMP itself. It would be illustrative to have a few sample VMPs available along with better specificity and training.

Page 2:

2. It Is unclear what is the ratio between square feet of Impervious Area Reduction and CF/Year.

Page 3:

3. Surface waters are considered impervious
4. Impervious areas are expected to be field-verified before the VMP is submitted to DEP. As with field-verification mentioned in other areas of the draft permit, there is to instruction or protocols.

5. It is unclear why the drainage area to an SCM must be at least 20% impervious surface and what means / criteria are to be used to determine that amount. This 20% minimum impervious surface should be lowered.

    a. Imperviousness is not the only cause of water quality impairments. In some watersheds with certain impairments, the control of stormwater runoff from impervious surfaces will result in the attainment of state water quality standards. However, the 2024 Integrated Water Quality Monitoring report identifies nearly 26,000 stream segments that identify “agriculture” as the impairment source. Many agricultural impairments are the result of runoff from pervious surfaces. Aside from the most urbanized areas of the state, many MS4 permittees have waterways with agricultural impairments. In the 2018 permit cycle, MS4 permittees had the flexibility to address both urban sources of impairment and / or agricultural sources of impairment. The strict focus on volume management from impervious surfaces for this upcoming permit cycle will limit more rural MS4 permittees from being able to actually address the sources of impairment to their waterways.

Page 4:

6. No VMP calculator released with the draft permit. This should have been included in the draft permit.

7. Municipalities do not want to propose more SCMs than necessary if they are required to submit 30%-50% design drawings for the proposed SCMs. However, it is to the municipality's benefit to identify numerous SCMs that could be implemented in case a project fails for some reason (i.e. change of mind from landowner, unforeseen site constraint identified later in design phase, etc.) at some point during the design or implementation phase. Therefore, the municipalities should be allowed to identify "back-up" SCMs that may only have preliminary design, but that could be used if the implementation of the preferred SCMs fall through.

8. The public comment period for the draft permit cannot be completed without the ability to evaluate all the components of the draft permit. Therefore, we request an extension of the public comment period until the VMP Spreadsheet is provided along with formulas to clearly define how the volume reduction metrics are achieved. Without having the opportunity to review the VMP Spreadsheet and the approved crediting calculations that are provided within the VMP Spreadsheet, the permittees will not understand how crediting will work and what SCMs may be most effective to satisfy the MS4’s volume management objectives.

Page 5:

9. 30-50% design for planned projects subject to Department approval is unreasonable

    a. We recommend preliminary feasibility studies, or a reduced design phase (i.e. 10% design drawings) for submittal with the VMP instead of 30-50% design drawings.

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10. For the 10% credit for SCMs that will help to alleviate local flooding needs, we recommend that the severity of the flood event should be defined. Is the project just reducing flood issues within a poor drainage area? Or, is it lowering base flood elevations?

10_-_NPDES_GP_FOR_STORMWATER_DISCHARGES_FROM_SMALL_MS4S_MODEL_ORDINANCE:

Decks pervious

Pool water no longer impervious

Incorporating E&S makes sense

1. There are many examples of nearly synonymous terms are used interchangeably throughout the document. Consistency and clarity will help us all avoid lawsuits when administering the Ordinance.
2. It is unclear if Minor Land Disturbance permits or Stormwater Exemptions will continue to be allowed.
3. Technical specifications will need to be added.

Page 1:

4. The fourth paragraph describes the intended meaning of the gray and yellow highlighted text. However, there are multiple examples where "*municipality-specific information*" to be entered is not highlighted in gray.

Page 7:

5. It is unclear if the requirement for a Financial Guarantee (Section 111) would also apply to a Stormwater Management Site Plan project.

Article II:

6. Terms or phrases that are not used in the body of the Model Ordinance text should be removed from this list of Definitions.
7. The definition provided for the word "Divert" is weirdly limited and no longer relatable to common understanding of that word.
8. Floodplain Management Ordinance regulations were required by DCED to be separated from other ordinances. Defining terms, such as "Floodplain" and "Floodway" that are defined elsewhere will inevitably cause confusion, conflict, and litigation.
9. "Illicit Connection" is defined, but it is unclear why "Illicit Discharge" is not.

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10. It is unclear if properties and activities of PennDOT, DEP, DGS, or PUC entities are to be included under the list of Exemptions provided in Section 306.

Page 22:

11. It is uncommon to list the justification for alternative standards proposed, as described in Section 502.R.

Page 27:

12. Our municipality prefers to fully mirror the plan review process established in our SALDO and not be compelled to render a decision of a PCSM Plan within 45 days, as required by Section 511.A.

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13. It is unclear what several of required elements listed in Section 602.11are:
    a. Protected Natural Stormwater Features
    b. Preserved Natural Open Spaces
    c. Natural Landscape SCMs
14. Section 603.D should also require an analysis of other drainage conveyance facilities, beyond just storm sewers. “Storm sewers” needs to be defined as a term in Article II.

Page 34:

15. It is unrealistic to require that any PCSM SCM is to be repaired or replaced within 24 hours of discovery by the permittee.
16. Requiring individual written inspection report from permittees for each inspection performed within ten days of the completion of the inspection will be very difficult to achieve.