

CLEAN WATER COUNCIL
Meeting Highlights
January 13, 2004

Location:

NJ Environmental Infrastructure Trust, Building 6, Suite 201, 3131 Princeton Pike, Lawrenceville, NJ

Attendees:

Pat Matarazzo, Kerry Kirk Pflugh, Dan VanAbs, Helen Heinrich, Lou Mason Neely, Jim Cosgrove, Jr, Anthony McCracken, Ray Zabihach, Barbara Rich, Pat Pittore, Larry Baier, Diane Alexander, Carmen Valentin and Ursula Montis.

Pat Matarazzo introduced Larry Baier, Director of the Division of Watershed Management at DEP and Bruce Friedman of the NJPDES program..

Larry Baier reported on the new Stormwater Rules.

- There was a significant amount of responses to the new Rule
- Major changes in Rule upon adoption - September 15, 2003, we repropose definition of major development and also a new applicability section inspired by the grandfathering provisions in the Stormwater Management Rules. Other than a few other minor changes, the Rule is the same as originally proposed on January 6th of last year.
- Definition of the original major development - defines when and what the Rule applies to. It included any development that would disturb an acre or more of land surface or that would include the addition of a quarter of an acre or more of new impervious surface. The original definition would tie us to the municipal land use law site plan or subdivision approvals. It also exempted from the Rule any development that had received preliminary or final site plan or subdivision approval prior to the effective date of the Rule. It not only exempted those developments under the provisions of the new Rule but also exempted, unintentionally, those projects from the old Rule as well. It created a rift in the Stormwater Rules and that is why, on September 15, 2003, we had to go back and repropose that definition along with the applicability section.
- Applicability section terms - It narrows significantly the scope of grandfathered projects. It requires projects to have local approval prior to the effective date of the Rule and also requires a companion Land Use Regulation Program permit from the Department (CAFRA, Waterfront Development, Stream Encroachment or Freshwater Wetlands permits) in order to qualify for grandfathering.
- Significant advances of the Rule:
 - Requirement for groundwater recharge

- Equal student reconstruction recharge rate on the site
 - Significant emphasis placed on non-structural stormwater management components
 - Treat additional stormwater through more traditional means to achieve 80% total suspended solids reduction
- The most controversial part of the Rule has to do with the special water resources protection area.
 - That is the 300 foot buffer on either side of the C1 waters and their tributaries within the immediate HUC 14 watershed areas of the C1 areas.
- The Rule, in unofficial language, is now on the Department's web site.

Bruce Friedman - Project manager for the Municipal Stormwater Regulation Program spoke on the second part of the Rules:

- NJPDES Stormwater UIC Rules, a companion to the Stormwater Rule, was also signed on January 5th which will basically implement EPA Phase II of the permitting regulations.
 - Through this Rule package and this Program, we will be issuing permits to all 566 municipalities in the state.
 - Through our permit, each municipality will be required to do a stormwater management plan and enable ordinances in accordance with the Stormwater Management Rule.
 - The permit to the 566 municipalities will be divided into tier A and tier B, tier A being the more populated areas (about 3/4 of the total of the state) and tier B representing the less developed areas.
 - Difference between the 2 permits:
 - Tier A & B deal with new development
 - Tier B municipalities have to do a Stormwater Management Plan (SMP) that works with 7:8 and an educational program.
 - Tier A also deals with existing development
 - Tier A municipalities have to do a SWP, education program and also take additional measures to deal with existing development in those municipalities
 - In 1-2 weeks a package will go out to all regulated entities to include a grant application (\$6 million in grant monies available), a copy of the final permit, and other basic information.
 - Applications are due back to the Department by March 3, 2004.
 - Municipalities will have up to 12 months to do a SMP then 12 months from the adoption of that plan to enact the ordinances, with a maximum of 2 years to put a full Plan in place. (NJ 714 Act)
 - Minor changes to the new Rule - added subchapter 24 and 25.

Questions and Answer Period:

Pat - When you start issuing permits, who issues what?

Bruce - We issue 4 general permits. Two are the tier A & B permits for the municipalities, one permit is issued to large complexes, and a separate permit to highways and thoroughfares (state, federal, interstate and county

highway systems). We are issuing a permit to the NJ DOT, which will cover all state roads throughout the state. Also, separate permits will be issued to all 21 counties to handle the county roads.

Lou Neely - When you issue permits to the counties or state, what is their responsibility for remediation or control of suspended solids?

Bruce - The permits are BMP driven. There is no monitoring or sampling of stormwater discharge. We are asking that BMP's be implemented to try to reduce the amount of suspended solids. This program is going to require a lot of outreach and assistance from the Department.

Dan VanAbs - Maintenance of the systems will be costly. How will they meet this cost?

Bruce - DOT feels comfortable doing the things we asked for, i.e., street sweeping, retrofitting of the storm drains, etc. The change is that NJPDES are now fully enforceable under the Water Control Act, so if they don't do these things, we will be able to pressure them to do so.

Pat - Is the State looking into regional stormwater entities?

Larry - Regional entities, while encouraged by the Rule, are not required by the Rule. Municipal plans are absolutely required. In terms of stormwater utilities, we are now funding a study in Morris Co. and are waiting for the results. There are legal issues that need to be addressed before we can move forward on this.

Ray Zabihach - If stormwater legislation is allowed and any municipality chooses to create a utility, they can acquire a monthly or quarterly funding from each property owner. Then you would have a dedicated pot of money to work with. This utility fund will help implement a lot of the permit Rule requirements and also benefit the stormwater management aspect as well.

Pat - questioned removal of suspended solids through the Rule.

Larry - In terms of managing suspended solids, you will remove a fair amount of phosphorus. The other nutrient removal efficiencies are very difficult to quantify. The best thing to do is source control, minimize the amount of landscape area that requires the addition of nutrients.

Dan - The municipalities are being required to develop a number of different kinds of ordinances. Will the Department have guidance in terms of model ordinances? Also, will there be specific detailed training programs for the engineers who have to deal with these types of designs?

Bruce - We are committed to have the guidance on the web prior to the due date of the application for the municipalities on or before March 2nd. We will also be sending guidance documents to all the municipalities. There will be three workshops in April. We will be doing localized ones throughout the state, probably one in each county.

Dan - I was thinking more on terms of site design. Who does that?

Larry - We will be having more intensified training on two levels; the broader overview of what the Rule requires and then the more specific detailed engineer training starting in March.

Ray - Once the municipalities adopt those requirements in the Plan, it will require a rethinking of how we do land use regulation. We will have to do more clustering to maximize much of the local coverage. It's important that guidance be available to help people see the change in how we will be doing site planning and subdivision.

Larry - We will try to have site management as a priority. Stormwater BMP manual should be up on the web soon and will hopefully provide some immediate guidance. Clearly, the training and education campaign is going to have to be significant.

Anthony McCracken - Who approves the municipal plans?

Larry - The municipal plan has got to be approved by the County.

A. McCracken - What if it not approved?

Larry - They have 90 days to revise and seek approval. We will try to make some financial assistance available to counties for plan review.

Larry - If you have C1 waters, the HUC 14 defines the geographic boundary. Any tributary to that C1 water that lies within the HUC 14, is then scribed a special water resource. The C1's are up on the web. The review on C1 streams is ongoing.

McCracken - If we think that an area will be impacted, but also see it as a growth area, what do we do? Can we seek advice from the Department?

Larry - We would have to do a balancing act. I would like to work on a statewide cross-acceptance plan to deal with this type of problem.

Helen Heinrich - Are you aware that under the Administrative Services Act, Landscape Architects, even though they are certified, and knowledgeable in drainage and grading, cannot use these non-structural methods in the state of NJ? We need to change that so they can help us. Also, are the BMPs for Agriculture totally new ones?

Larry - The BMPs in the BMP Manual are geared toward changes in land use development, etc. The Department is working with the Dept. of Agriculture towards an establishment of a Conservation Reserve Enhancement Program (KREP) as well as working through the existing Environmental Quality Incentive Program (EQIP) to go into existing agriculture operations and put in BMPs. In those cases, it's an incentive program rather than a regulatory one, where we pay a portion, if not all, of the cost to implement the BMPs.

Helen H. - Getting back to municipal stormwater - what about cultivation on private property? Will they need to have a maintenance program?

Bruce - Right now this program is centered around municipal owned or operated systems.

Barbara Rich - Would a development that uses the one or more acres of land surface or a quarter of an acre or more of impervious surface need a land use permit?

Larry - At the municipal level, they do not implement the one quarter acre impervious and do not need a land use permit.

Barbara R. - Can the municipalities get their plans adopted earlier?

Larry - Absolutely.

Pat - What does "address temperature issues" in the Rule mean?

Larry - How you address temperature depends on the receiving waters. Is it Trout production water? Is it a cold water fishery? What is the development? Does it include a lot of impervious surfaces that will be exposed to heat from the sun that will heat the water runoff into the streams and raise water temperature? Some ways to mitigate that might be to increase shade cover over impervious surfaces by planting trees; plan your bio-retention basins so that the standing water does not heat up, or put filtration techniques through forested areas. This rule applies to new development. Temperature will be a real consideration for site design.

Jim - One of questions I am constantly asked is if you can cross a C1 stream. Can you build a bridge over a C1 stream?

Larry - The Rule itself provides certain exemption on Railroad widenings, but the Rule was silent on stream crossings. It was an oversight on our part. We will have to go back in and amend the Rule to include some sort of a waiver constrict compliance which will identify specifically under what conditions we would allow a crossing of C1 water. In the meantime, we expect to use those hardship provisions in the Land Use Regulation Program Permit Rule as our flexibility. But we will be taking a very hard look at alternative access alignments so that we would not have to cross that C1 stream. I would suggest that anyone who will be contemplating a new crossing should come in to the Department for a pre-application conference.

Barbara - What direction is the Department taking on low flow channels, and the contention between soil conservation and water quality?

Larry - I think the BMPs in the Rule allows for low flow channels.

Kerry - On the membership status - requests have been made by the Commissioner's office and they have been forwarded to the Governor. We can expect a decision very soon. The letter to Commissioner covering the comments on the Reuse Public Hearing went up last week. If any of the CWC members feel that we should have a follow-up meeting with the Commissioner to hear his suggestions on how we can continue with Reuse, please let me know and I will arrange it. Kyra Hoffmann has asked if we would want to use Rutgers again to set up the Hearing for us. If so, she will like to know when we would like to have the Hearing so she can contact Rutgers and give them time to develop the brochure and notify the people. What subject do we plan to use for the Hearing, Reuse or Water Trading?

Pat - We should move forward on Trading. In the past, when the watershed concept first came out, CWC held talking sessions throughout the state. Stormwater is very confusing. CWC could put together a format to do presentations statewide to educate the people on Stormwater.

Larry - I need to sit down with Kerry and focus on our communications plan to reach the right audience. Part of the problem is not having staff resources to send to the numerous speaking engagements. CWC may be helpful in that area.

Dan V. - Water Trading is a very interesting topic, but we need something broader. At this point the Department has a number of TMDL's out there, and water quality trading is one aspect of implementing them. I think an interesting topic would be to show how a TMDL gets implemented, with water quality trading as one of those aspects. We could tie in the agricultural programs, NPS oriented TMDL's, etc. Basically to show how we take the next step and make it work?

Kerry - Do we want to have a series of speakers like we did last year? They could speak on TMDL's, non point source, agriculture, etc.

Lou - Maybe we could have the public hearing first and then the speakers, so those who are not interested in hearing the speeches, will stay for the hearing.

Pat - wondered if it would be to the State's benefit to advertise Watershed Management?

Bruce F. - Our Rules have provisions for a statewide public education program to supplement the local public education. We developed an early plan by John Laurita as part of our communications program. Kerry, Mary Helen Cervantes and Kathy Bird will be involved in coming up with a statewide education program to get information out to the public.

Pat thanked Larry and Bruce for coming. There was a short recess.

Meeting continued with a discussion on the topic of MTBE.

Barbara - reported that she was in the company of the Gov. and the Commissioner and brought the up the topic of MTBE. The response was that clean air would be the priority.

Jim - I was recently involved with MTBE and groundwater project and not much focus was placed on this problem by DEP. It does not appear to be a big issue with them.

Lou - suggested we have the Attorney from Princeton, who Pam Goodwin is acquainted with, who is handling MBTE litigation, come and speak to CWC on the subject. As CWC, we should know how pervasive he sees this issue.

Pat - USGS has done a lot of research on MTBE.

Lou - We should have Kerry and Ursula reach out to Pam, for the Princeton attorney, and to Rick Kropp (USGS) to come and speak to us on MTBE.

Pat - What other topics do we want to focus on this year besides MTBE?

Dan - Water Quality Trading should be one topic, since Larry has asked us to do that.

Jim - Stormwater is a very important topic. We should not put it aside.

Lou - Every month we should ask the question "what's new in stormwater?".

Pat - With the adoption of the Rule, will there be any challenges?

Jim - One of the key issues from a builder's perspective, is the C1 Stream issue. If DEP continues to say you cannot cross a C1 stream, it would be looked upon as a taking of land.

Pat - FYI, the Title 21 Water Reuse Rule coming out is phenomenal. I also want to let you know that I have been pushing Kerry and Gary Sondermeyer to straighten the membership appointments out, so that we can have a formal list of our members. We should be hearing something soon.

Meeting adjourned.

