

Classification of Petitioners Into Groups

At the present time there are over 70 Petitioners who have requested a contested case hearing regarding the issuance of National Pollution Discharge Elimination System (NPDES) Phase II General Permits MIG610000 (Watershed) and MIS 049000 (Jurisdictional). Pursuant to Administrative rules R 324.59e (1) (b) and (d), consolidation is warranted and the group can be pared down into a smaller number of Petitioner's who are representative of the group as a whole.

Issues Raised

The Petitioner's have all filed individual petitions challenging the Watershed and Jurisdictional permits. The petitioners, in many cases, raised practically identical issues which made it logical to form them into two different groups. The first group, group A, raised the following issues stating that the DEQ acted erroneously, arbitrarily and capriciously in that:

1. Requirements produce significant risk of non-compliance
2. Permit requires excessive financial burden without demonstrated water quality benefit
3. Permit removes local control and decision making authority in water resource management
4. Permit disregards the fundamental principles of the watershed approach to water resources management
5. Permit disregards and disrupts existing activities, programs, financial agreements, and institutional arrangements which continue to demonstrate water quality benefits.

The Second group, labeled group B contained the first issues listed above, as well as 4 extra issues listed as follows:

1. Permit discourages implementation of alternative, collaborative, cost effective approaches to water resources restoration and protection
2. Permit requires unduly rigid standards in the post construction runoff control requirements
3. Permit requires dry weather screening at all discharge points and mandates sampling parameters under the illicit discharge elimination program (IDEP) requirements which is financially burdensome and has been documented as the least effective IDEP method in southeast Michigan
4. Permit requires mapping and data collection throughout municipally owned storm water collection systems, as apposed to storm water outfall locations that discharge directly in waters of the state.

These 10 total issues make up the bulk of arguments from the overall group of 70 plus Petitioners.

There are 6 petitions from The City of Riverview, The City of Melvindale, The Kent County Road Commission, Macomb County, The Macomb County Drain Commissioner, and The City of Center Line that do not follow the overall format of the rest of the group. They are listed in the aggregate as follows:

1. The challenged permits unnecessarily require mapping, identification and sampling at discharge points that do not discharge into waters of the State of Michigan
2. The challenged watershed permit should clearly state that the elective option to monitor dry weather flow does not require MDEQ approval
3. Specific monitoring requirements for E. coli and Total Phosphorous including wet weather sampling requirements should be removed from the challenged permits and TMDL language returned to prior permit language
4. The industrial permit requirement in Part 1, Section A.4.b.6.d(1), SWPPP requirement, should be removed
5. Each subwatershed should be covered by a single storm water permit
6. The interpretation of "maximum extent practicable" in the challenged permits should be as broad as the USEPA's interpretation of that term under the CWA generally and under 40 CFR 122.34 specifically
7. The post construction storm water control section should not contain specific numerical standards
8. The challenged permits should not include mandatory field assessments of dry weather flow as part of the IDEP program
9. The 80 mg/l standard for TSS in the Post Construction section of the Challenged Permits is unsupported and should be deleted

10. The outfall labeling requirement for outfalls in the challenged jurisdictional permit is unnecessary and burdensome and should be deleted
11. The requirement in the challenged permits for a certified storm water operator under the post construction portion of the permit is unnecessary and should be deleted
12. The public education requirement in the challenged jurisdictional permit for phosphorus free fertilize and for restaurants is unnecessary and should be deleted
13. Channel protection language in the challenged permits exceeds requirements of clean water act and should be deleted
14. MDEQ should allow nesting of community MS4s into the county MS4 permit
15. the challenged permits ban the use of tar emulsions to seal asphalt and the use of phosphorus without soil testing. Neither practice is illegal in Michigan and is not restricted in the Clean Water Act and should be deleted
16. DEQ attempts to regulate water that is not “discharged”
17. DEQ attempts to regulate water that is not “waters of the state”
18. DEQ attempts to assert control over waters of the ste that are not “affected by waste disposal of any person”
19. DEQ attempts to exercise an indirect jurisdiction over private persons contrary to its authority over “sewerage systems”
20. The required program for pollution prevention for roadways, parking lots, and bridges requires that infrastructure be operated to reduce storm water pollution to the maximum extent practicable
21. The prescribed program for pollution prevention at fleet maintenance an storage yards reverses the determination that municipal fleet maintenance and storage yards were not “municipal industrial activity” pursuant to the MPDES Phase I storm water regulations
22. Most roadside ditches will be considered a major discharge and the inclusion of these open channels or ditches for monitoring is a huge undertaking with results that most likely will represent runoff coming from adjacent private properties.