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Southeast Michigan Council of Governments
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February 26, 2010

Water Docket, U.S.
Environmental Protection Agency,
Mail code: 4203M
1200 Pennsylvania Ave.,
NW., Washington, DC 20460.
Attention Docket ID No. EPA–HQ–OW–2009–0817

RE: Comments on Docket ID No. EPA–HQ–OW–2009–0817

The Southeast Michigan Council of Governments (SEMCOG), a local government organization representing 164 members and the region's lead local water quality planning agency under the Clean Water Act, submits the following comments regarding EPA's proposed stormwater rulemaking.

Overall Comments

Allow more time to analyze the lessons learned of the current program
Most of the Phase II communities were new to stormwater management activities when the permit program was implemented. These permitees are just now becoming more familiar with the process and are implementing actions at the local level. It is not clear to us locally the direct water quality impacts of these programs. As such, the national benefits of the Phase II program are likely just as unclear. As we continue implementation, we will have the lessons learned to analyze the program. We ask EPA to consider additional time and analysis to judge the impacts of the current program.

Recognize the watershed approach as the preferred mechanism for implementing the permit
In a 2007 publication, EPA cites that implementing stormwater programs on a watershed-basis "will enhance all stakeholders' efforts to protect watersheds from the cumulative impacts of a multitude of activities". Local, state and federal agencies all state the importance of the watershed approach, but if we want watershed management to move forward it needs to be part of the regulatory process.

Therefore, we ask EPA that the draft rules reflect the watershed approach. Utilizing a watershed approach allows permitees to focus on identifying the problems in the resource and subsequently to develop innovative mechanisms to solve these problems through independent, cooperative, efficient, and cost-effective approaches. The State of Michigan has developed a watershed permit option that should be encouraged throughout the country. In fact, guidance should be given to states that further encourages flexibility in meeting the stormwater rules where the watershed approach is being embraced, recognizing that watershed strategies can be different in that they consider local needs, priorities, and water quality issues.

Given the state of government finances, EPA needs to be especially careful of what is being required and the ability of permittees to implement new or expanded programs
Permittees ability to implement a permit program is limited due to the current economic climate. For perspective, the State of Michigan has the highest unemployment rate in the country. The City of Detroit's unemployment rate is over 25 percent. The impacts of Michigan's economic downturn have led to over 100,000 housing foreclosures in Southeast Michigan. Over 20 percent of jobs have been lost since 2000.

Furthermore, the economic impact in the private sector is trickling down and severly hampering local governments' ability to implement even basic services. Housing values in Southeast Michigan have declined more than any other part of the country. As a result, taxable values have severely declined and many local government budgets are being cut by 30% or more. Thus, local governments find it increasingly difficult to implement the current permit program, let alone a new program with increased and costly requirements. Additionally, revenues from new development and redevelopment in Michigan are in many cases a primary source of funding for community stormwater programs. For the foreseeable future, these revenues are projected to be a fraction of what communities received just four years ago.

While recent EPA grant programs such as the Great Lakes Restoration Initiative and the 319 program are helpful, the reality is that only a handful of communities will receive funding. What is more important is that much of this money is not eligible to fund permit-related activities. Therefore, the only practical way this permit program will work is for EPA to fund the mandate.

Permitted entities should be actively engaged in the process of developing the rule
EPA is strongly urged to engage permittees in development of the Rule. EPA's listening sessions are one mechanism, but other outreach mechanisms to create an ongoing dialogue should be used. For example, Southeast Michigan representatives were included in the first Phase II rule making process through the Federal Advisory Committee Act (FACA). We are not aware if such a process is in place for this rulemaking, but we urge EPA to take advantage of local expertise. In our experience, it works best to engage permittees in the process prior to development of the draft rule instead of trying to get buy in after the rule has been drafted reflecting agency positions.

EPA Topic Areas Seeking Comment

Establishing specific requirements to control stormwater discharges from new development and redevelopment is inconsistent with watershed management and will result in unintended consequences.
A federal standard may not address the priorities the watershed stakeholders have identified and is incongruous with a watershed approach. Under the current programs, watershed stakeholders are addressing stormwater discharges from new development and redevelopment. The watershed planning process provides stakeholders the opportunity to invest both time and funding to analyze the specific water quality and water quantity needs for their respective areas. While the need to address water quality and water quantity is a consistent theme across urbanized watersheds in the country, the approach and methodology to address both water quality and water quantity differ not only in adjacent watersheds, but across state jurisdictions as well. **The site-specific nature of decision making is what distinguishes the watershed approach from a centralized command and control program.**

For example, stringent requirements to control runoff volume through infiltration are particularly concerning in some geographic areas. In regions subject to freezing like Michigan, the ground may be frozen at times preventing infiltration entirely. Other conditions that may prevent or limit infiltration include high groundwater tables and areas with high clay soil content. While infiltration may be feasible in warm climates with sandy soils, it clearly will not work in all areas and circumstances. Even in areas where sandy soils exist, infiltration practices may be cost prohibitive in highly developed urbanized areas.

In some cases, watershed studies may reveal the need to remove a specific volume of stormwater from the system during a specific rain event. The analysis can also demonstrate that the volume control requirement may be achieved by varying the level of control across differing drainage areas within the same watershed. Establishing a one-size fits all solution will not achieve the same goal and will eliminate the investment benefit already incurred by those watershed stakeholders in determining the stormwater management requirements.

Developing a single set of consistent requirements for Phase I and Phase II permitees should be closely scrutinized to ensure that the desired outcome of cost-efficient management of our water resources occurs. At face value, combining the permit programs seems to increase efficiency at the local, watershed, state, and national level. While many of the Phase II permittees have worked together in implementing this program, the Phase I communities have largely stayed independent from the watershed process. Therefore, bringing all communities under a similar program does have its advantages.

However, there are concerns that bringing these two programs (especially if the permitted area is expanded to more rural areas) will lead to unnecessarily stringent requirements on small permitees. We encourage EPA to research the opportunity to combine the programs as long as EPA does not have all permitees go to high end of implementation just so that it properly covers the largest permit holder.

Requiring permitees to address stormwater discharges in areas of existing development through retrofitting of the sewer system, drainage area, or individual structures with improved stormwater control measures will be overly burdensome to all permitees.
Our previous comments have noted both the need to allow more time to analyze the existing Phase II program, as well as the fiscal crisis of permittees. As such, we ask EPA not to include retrofitting in the rule. In our experience, retrofitting is extremely costly. This is a cost local government can not take on at this time.

Instead, an investment into researching the practicality and cost-benefit of retrofitting existing systems must be made. The reasons a one-size fits all standard should not be required across the entire country for new or redevelopment are numerous. The same would apply to retrofitting circumstances. For example, roadways alone contribute a significant quantity of stormwater runoff as compared to other land use types. However, retrofitting these systems using a one-size fits all solution is infeasible from a practical standpoint due to mere property availability (e.g., road right-of-way availability).

Additional requirements in the rule addressing sensitive areas will be difficult to define and implement.
While we agree that some of our sensitive areas are critical to the health of our water resources, additional requirements to protect these sensitive areas will be problematic. For example, what is the definition of a sensitive area? It's easy to say areas are sensitive, but when becoming part of a permit program, this will need to be very clearly defined. Is it a bay? A certain size wetland? A certain wetland function? A certain type of lake/stream?

Second, if a sensitive area is able to be defined, how is the area of influence defined? Is it the subarea, subwatershed, watershed, etc.,?

In closing, SEMCOG urges EPA to convene local governments in a dialogue for the purpose of seeking convergence on how best to move the nation forward in addressing stormwater issues. We commit to participating and supporting such a process. If you would like to discuss these comments further, please contact Amy Mangus, Coordinator of Environmental Programs at 313-324-3350 or Chuck Hersey, Manager of Environmental Programs at 313-324-3346.

Sincerely,

Chuck Hersey, Manager
SEMCOG Environmental Programs