

MEETING THE CHALLENGES OF STORMWATER MANAGEMENT

Executive Summary of the 2004 Clean Water Council's Public Hearing

LOCATION: The Holiday Inn – Monroe in Jamesburg, New Jersey

DATE: Thursday, October 14, 2004

The purpose of the public hearing was to help the Clean Water Council (and the audience) understand the institutional, financial and political implications of New Jersey's new direction in stormwater management, and to develop recommendations as to how that program might be improved.

The 2004 program was experimental in two ways. First, it focused on the financial, institutional and political complexities of stormwater management, rather than on legal issues or the technical Best Management Practices. Second, it used a novel format to gain insight into these issues. The event started with a facilitated, round-robin discussion with eleven experts as the primary method of eliciting information. Following the panel discussion, the public was invited to submit comments.

The following observations and recommendations have been gleaned from the 171-page transcript covering the testimony given at the public hearing.

1. All speakers recognized that clean and plentiful water is a fundamental resource that is essential for the state's economic well-being. What is new with these rules, and is of tremendous importance, is the recognition that stormwater runoff needs to be treated as a valuable resource. A large part of the state's water supply is dependent upon stormwater runoff. We need to do more with this water than just send it to the ocean in a way that avoids downstream flooding. Stormwater management should more closely mimic the natural hydrologic cycle which enables this water to infiltrate into the ground, replenishing local aquifers and providing baseflow for streams, thus enhancing our water supply. Because these rules represent a new way of viewing stormwater runoff, it will take years before people have fully integrated this new perspective into their operations
2. Several speakers noted that these new rules represent a monumental change in water pollution prevention because they address existing development as well as new development. The development and implementation of a municipality's Stormwater Pollution Prevention Plan necessitates the cooperation of the heads of the departments of public works, engineering, legal affairs and finance, working together with the elected officials. These officials are still ascertaining the meaning of the rules as well as practical implications associated with implementing them.
3. Speakers commented that before the stormwater rules are completely implemented, the methods by which the activities of local Public Works Departments are financed will need to change.

4. The rules recognize the desirability of regional stormwater management and place many responsibilities with local municipalities, whose authority is constrained by political boundary lines that often have little resemblance to watershed boundary lines. There is both the desire and a need for a regional governmental entity to have authority to address stormwater management issues on the watershed, and sub-watershed level. In many instances this could be the county, but there is a lack of specific direction regarding the role of the counties, other than being part of the review process. Of course, there are places where the appropriate regional stormwater management entity would need to transcend county boundary lines, as wherever a river or stream separates one county from another.
5. There seemed to be consensus that elected officials, on both the municipal and county level, are not yet geared up for the municipal stormwater general permits. They hope that the grants will cover all their expenses. It appeared that they do not yet realize the full cost of long term implementation. The cost of creating a plan for a municipality is minor when compared to the costs of mobilization for maintenance and enforcement in the years ahead. Very few municipalities appear prepared to deal with the costs associated with the increased workload expected for the departments of public works. The local public works department heads are being confronted with a 2.5% cap on operating budget expenses, mandated by the former governor, just as the general permit conditions requiring additional work take effect.
6. The planning requirements call for a very high level of scientific and engineering expertise. Still unanswered for many is the question of how local governments are going to pay to obtain the services of the specialized experts that it appears they will need.
7. Watershed groups and other non-profit environmental organizations have been advocating the types of planning called for in these rules for a long time. They would like to be able to assist their local municipalities with implementation. However, most such groups are small, and do not have large staffs. Therefore, given their limited resources, it will be a tremendous challenge for these groups to participate in the implementation process.
8. The community of environmental and engineering consultants is still developing its understanding and expertise about what DEP will permit and what types of BMPs will work best in certain situations. A new field of specialization is developing: stormwater management engineers.
9. The political costs of these rules will vary with municipality. One type of legal challenge is likely to come from the owners of existing undeveloped property within Special Water Resource Protection Areas, who see the government as peremptorily taking away the use and value of the 300 ft. wide stream corridor buffers.
10. As elected officials seek to find the funds needed to implement the new requirements, they are going to have to make the case to the owners of existing developed property that the new requirements are necessary and the new fees (or taxes) do not duplicate services covered by existing property taxes or fees.

11. There seems to be a need for alternative funding sources, not just for completing the Stormwater Management Plan, but for implementing it once it has been approved. One potential source of dedicated funding would be the concept of a “Stormwater Utility,” with the ability to assess fees or taxes on all property owners and the mandate to manage stormwater. The importance of considering stormwater management as a utility function for local governments stems in part from the recognition, for the first time, that the state’s water supply is dependent upon the management of its stormwater runoff. Invoking comparisons with the popularity of the Green Acres/Open Space Taxes, several speakers suggested that, if the taxpayers were convinced that this was a way for them to enhance their quality of life, and a relatively small, dedicated tax would be wisely spent to protect water supplies, then they might vote to impose such a tax on themselves. One speaker suggested that it be called a “Clean Water Tax.” Implementation of this concept would require new statutory authority.
12. There is still a great need to educate the various constituencies affected by the new rules. Much of the Department’s educational efforts regarding the new rules have been focused on the development community, the use of BMPs and the role of the engineers in creating approvable site development plans. While there have been some programs oriented toward local officials, much more is needed. Because these rules impact a variety of types of local officials, and there are many hundreds of local governmental bodies, it is recommended that the Department develop educational programs tailored to the needs of the various types of officials.
13. The requirements of a regional stormwater management plan appear so cumbersome that many local governments will avoid participating in the process. Because the creation of a regional plan is optional, municipalities and counties need to be given some incentives to encourage them to go through the process.
14. The speakers agreed that additional efforts are needed to educate the general population about the importance of protecting and improving the water resources of the state.