



February 2, 2015

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RE: Comment on Draft Technical Guidance 385-0820-001

Dear Mr. Furlan:

Thank you for the opportunity to comment on Draft Technical Guidance 385-0820-001, *Designation Criteria for Regulated Small Municipal Separate Storm Sewer Systems*. I am submitting these comments on behalf of the Delaware Riverkeeper and the Delaware Riverkeeper Network (DRN), a private, non-profit organization with over 14,000 members throughout the Delaware River Watershed. DRN champions the rights of the River to be free-flowing, clean, healthy and filled with an abundant diversity of life.

Please find below DRN's comments on Draft Technical Guidance 385-0820-001 (DTG 385-0820-001).

The need for this technical guidance

Under U.S. environmental Protection Agency (EPA) regulations¹, Pennsylvania is required to develop criteria to designate and regulate small Municipal Separate Storm Sewer Systems (MS4s) in the Commonwealth. Currently, small MS4s are designated as regulated in Pennsylvania primarily on the basis of whether or not they are located within an urbanized area (UA) as determined by census data.² The Pennsylvania Department of Environmental Protection (PADEP), as the NPDES permitting

¹ 40 CFR 123.35

² Pennsylvania Department of Environmental Protection. 2012. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (MS4s) General Permit (PAG-13). Retrieved from <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-95060/3800-PM-BPNPSM0100.pdf>.

authority, is also required to develop criteria to determine if a small MS4 is adversely affecting, or has the potential to adversely affect, water quality. *DTG 385-0820-001* presents PA DEP's criteria for designating small MS4s as regulated.

By preventing adverse impacts to, and degradation of, water quality, development of these criteria is in compliance with the antidegradation policy of the Clean Water Act, to protect Pennsylvania's exceptional value (EV) and high quality (HQ) waters. DRN supports efforts that advance protection of Pennsylvania's cleanest streams. However, DRN questions whether the adoption of *DTG 385-0820-001* will sufficiently protect EV and HQ streams. We also question whether this guidance sufficiently fulfills regulatory requirements³ as it does not provide objective measures that facilitate evaluation of whether a stormwater discharge does result in, or has the potential to result in, impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

Designation Criteria

DTG 385-0820-001 presents five criteria for designation of small MS4s—Automatic designation by location in an urban area (based on census data); Designation by interconnection to a regulated MS4; Designation by serving a jurisdiction with a population of at least 10,000 and a population density of at least 1,000 people/square mile; Designation by petition; and Designation by PADEP, which provides for regulating as small MS4 military bases, large hospital or prison complexes, large airports, and highways and thoroughfares in urban areas—all of which are mandated by EPA regulations.^{4,5}

In developing a process and criteria to designate small MS4s as regulated, PADEP must evaluate whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses like EV and HQ.⁶ DRN believes that a "Designation by location in an EV or HQ watershed" requirement is necessary to safeguard these protected uses.

PADEP currently requires an Individual NPDES MS4 Permit for regulated MS4s with discharges to EV or HQ watersheds. However, this is insufficient to protect EV and HQ watershed from degradation as a municipality must already be regulated as a small MS4 under the five criteria proposed in *DTG 385-0820-001* before these protected designations are considered in permitting. Thus, EV and HQ waterways receiving runoff from small MS4s serving a population of less than 10,000 are not currently regulated, nor are they being proposed to be regulated, as small MS4s.

The need for this designation criterion can be illustrated by looking at French Creek, which has headwaters in both Berks and Chester Counties, but the basin lies mainly in Chester County. The designated uses for French Creek and tributaries above the T522 bridge (Kennedy Covered Bridge) is primarily EV with some tributaries designated HQ.⁷ One borough and three townships that lie in the headwaters of French Creek in Chester County (Elverson Borough and West Nantmeal, East Nantmeal and Warwick Townships) are not regulated small MS4s. The South Branch French creek rises in Elverson Borough and West Nantmeal; it divides East Nantmeal and Warwick. The EV designated South Branch French is also listed as impaired for 13.16 miles for pathogens.⁸ Listed as impaired in

³ 40 CFR 123.35(b)(1)(i)

⁴ 40 CFR 123.35

⁵ 40 CFR § 122.26(b)(16)(iii)

⁶ 40 CFR 123.35(b)(1)(i)_

⁷ § 93.9f. Drainage List F

⁸ Pennsylvania Department of Environmental Protection. 2014. 2014 Pennsylvania Integrated Water Quality Monitoring and Assessment Report - Streams, Category 5 Waterbodies, Pollutants Requiring a TMDL. Retrieved Page 2 of 4

2010, the TMDL date is 2023. The capacity to regulate all municipalities in the French Creek watershed as small MS4s would secure comprehensive action to address the impairment of the South Branch French. Even in advance of an approved TMDL, Elverson Borough, West Nantmeal, East Nantmeal and Warwick Townships would be required to:

- a. identify outfalls that discharge to impaired waters;
- b. identify additional or modified [Best Management Practices (BMPs)] in the [Stormwater Management Program (SWMP)] to ensure that new discharges do not cause or contribute to the impairment; and
- c. implement such BMPs and report on the status of each.⁹

That watersheds frequently cross MS4 boundaries is further demonstration of the need for a designation criterion that allows for regulation of small MS4s on a watershed basis. Designating small MS4s as regulated on a watershed basis is among the considerations put forward to NPDES permitting authority by the EPA in the Phase II Final Rule.¹⁰ With the benefits of collaboration on a watershed basis, DRN commends PADEP for its program that allows regulated small MS4s to share responsibilities for meeting minimum control measures through a Multi-Municipal Joint Application.

As previously noted, PADEP proposes, under *DTG 385-0820-001*, to consider EV and HQ designations in the small MS4 permitting only after those municipalities have been designated as regulated. It is only after designation as regulated that PADEP proposes to apply the guidance provided by federal regulations (e.g., Discharge to sensitive waters) to evaluate the potential for stormwater discharges to result in, impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. Again, this represents the minimum application of federal regulations. DRN encourages PADEP to do more.

Rather than limiting application of the designation criteria provided by the EPA in the Phase II Final Rule to small MS4s located outside of a UA serving a jurisdiction with a population of at least 10,000 and a population density of at least 1,000 people/square mile, DRN encourages PADEP to use the EPA's recommended criteria to develop an objective system for identifying small MS4s for regulation based upon the potential for their stormwater discharges to result in water quality impacts.

At a minimum, PADEP must provide greater detail as to how it will apply the designation criteria provided by the EPA. *DTG 385-0820-001* provides little insight into what methods will be used or what metrics PADEP will consider to determine if the discharge from an MS4 threatens water quality. The guidance states only that:

DEP will determine if the discharge from the MS4: will exceed water quality standards, impairs designated uses, or has significant biological and ecological impacts.

from
<http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/2014%20Integrated%20List/2014%20Streams%20Category%205.pdf>.

⁹ Pennsylvania Department of Environmental Protection. 2012. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (MS4s) General Permit (PAG-13). Retrieved from <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-95060/3800-PM-BPNPSM0100.pdf>.

¹⁰ U.S. Environmental Protection Agency. 2000 (revised 2012). Stormwater Phase II Final Rule: Who's Covered? Designation and Waivers of Regulated Small MS4s Retrieved from <http://water.epa.gov/polwaste/npdes/stormwater/upload/fact2-1.pdf>.

DRN recommends developing criteria that can be scored objectively along with a clear description of the process for application of those criteria. We also request the criteria and process be made available for public comment. We encourage PADEP to consider a scoring system like that developed by North Dakota.¹¹ This scoring system considers population, sensitivity of receiving waters, proximity to a UA, and effectiveness of water quality protection. DRN suggest that the use of such a scoring system would present a better understanding of how small MS4 discharges will be evaluated.

North Dakota's scoring system presents a model that may serve as a basis for development of a scoring system for use in Pennsylvania. However, DRN would recommend additional factors be considered including those listed under the Additional Designation Criteria for Discharges to sensitive waters in *DTG 385-0820-001*.

In conclusion, DRN strongly urges DEP to revise *DTG 385-0820-001* to include "Designation by location in an EV or HQ watershed" among the conditions for designating small MS4s as regulated. By including this condition, PADEP would be acting to prevent degradation of EV and HQ protected uses and would be following EPA's recommendation for consideration of discharges to sensitive waterways in the crafting of the criteria.

Thank you for the opportunity to comment on this important guidance.

Sincerely,



Maya K. van Rossum,
the Delaware Riverkeeper

¹¹ North Dakota Department of Health. 2002, NDPDES Storm Water Permitting Policy: Designation Criteria for Small MS4s Retrieved from http://www.ndhealth.gov/wq/Storm/MS4/NDR04-MS4_Designation_Criteria.pdf.