

## County-wide Act 167 Stormwater Management Plan for Chester County Implementation **Questions** and PADEP **Answers**

The following questions were submitted by CCWRA to PADEP on August 22, 2013. Responses were provided verbally by PADEP staff at the August 28, 2013 Chester County Act 167 Implementation Workshop. The following written responses to those questions were prepared by CCWRA and PADEP and approved by PADEP for distribution. **There are clarifications and additional information herein that were not discussed at the workshop.**

1. Can DEP provide any flexibility for the 1/2/14 due date for municipalities that are responsibly moving forward with their adoption process, but truly need additional time to correctly manage all the necessary revisions/advertisements/adoption to their stormwater, and related revisions for cross-linkages to SALDOs and zoning ordinances?

**ANSWER:** *The dates are set by the Act 167 statute (Section 11(b)) that requires adoption within six months and cannot be changed by PADEP. Also those municipalities that are MS4 permittees and are using this Act 167 Model Ordinance to meet their MS4 ordinance requirements are subject to the MS4-related timeframe for adoption.*

*PADEP has not aggressively enforced the Act 167 deadline in the past. If PADEP does plan to take enforcement action, a Notice of Violation (NOV) will be sent, which allows 60 days to comply with the requirement. If that deadline is not met, then after 180 days from the receipt of the NOV, the Department is required by statute to request that the state Treasurer withhold from the municipality payment of all funds from the Commonwealth General Fund. Therefore, in total, there is a period of at least 180 days before mandated enforcement actions are enacted ([See Section 12 of the PA Act 167 - PA Stormwater Management Act](#)).*

2. What do municipalities need to submit to DEP regarding notification/confirmation of adoption of 167 ordinance/standards?
  - a. Who at DEP should these be sent to?
  - b. Is the "Statement of Certification" form included in our 167 Plan Appendix H (see attached) okay to use?
  - c. Should MS4 permittees also send a copy of their notification correspondence to Jenifer Fields?

**ANSWER:** *Notification of adoption of the 167 ordinance/standards should occur as follows –*

- 1) *Address cover letter to:*

*Domenic Rocco, Regional Manager (cc: Ron Furlan, Division Manager [use the address given in response to question #4] and Desiree Henning-Dudley, Section Chief [use same address as for Domenic Rocco])*

*DEP Southeast Regional Office  
Waterways and Wetlands Program*

*2 East Main Street*

*Norristown, PA 19401-4915*

- 2) *Insert "RE: Notification of adoption of Act 167 (Chester County) ordinance"*
- 3) *MS4 Permittees – Include Municipality's MS4 Permit # in "RE:" line*

- 4) *Include the location of where the ordinance can be viewed by PADEP (weblink, etc.). Only if there is NO on-line access to the ordinance should a hard copy of the adopted ordinance be included in the submittal.*
  - 5) *Fill out and sign the Certificate of Ordinance Adoption (Appendix H, County-wide Act 167 Stormwater Management Plan for Chester County, PA) and enclose with the cover letter.*
  - 6) *(Not required, but CCWRA requests that CCWRA also be cc'd on this submittal.)*
3. Are there any additional instructions MS4 permittees need to follow since this ordinance is also their MS4 ordinance?

**ANSWER:** *No. Desiree Henning-Dudley will ensure that copies of the submittal are provided to the MS4 NPDES permits and operations staff of the regional Clean Water Program (Jenifer Fields, Regional Manager).*

4. After DEP's Act 167 Program funding was eliminated, DEP 167 staff continued to instruct the County and municipalities to continue to document and submit reimbursement requests to DEP, for eligible costs, so that those reimbursements were on record if/when funding became available for reimbursement.
- a. Should the County/municipalities continue to record costs associated with ordinance adoption/implementation for potential reimbursement?
  - b. Should they submit reimbursement requests to DEP? If so, to whose attention?

**ANSWER:** *Yes, although there is no funding currently available to PADEP to provide reimbursements, reimbursement requests should be submitted. There is currently a backlog of approximately \$950,000 of requests, however future requests will be included in the "queue" when/if funding becomes available. These requests also serve to provide the "periodic reporting" of municipal activities to PADEP. The most current forms and instructions to be used can be found via a link from [CCWRA's website](#)\*. We recommend that a brief narrative be attached to the reimbursement form describing the efforts undertaken by the county and municipalities to comply with the purposes (Section 3) of the Act.*

*(\*go to webpage and scroll down to "Implementation Resources" section)*

*PADEP has a duty to:*

*"Require the submission of records and periodic reports by county and municipal agencies as necessary to carry out the purposes of this act." ([Act 167 – PA Stormwater Management Act, Section \(14\)\(a\)\(9\)](#))*

*Please send your reimbursement request for eligible costs to the attention of:*

*Ronald C. Furlan, Division Manager  
Division of Planning and Permitting  
Bureau of Point and Non-Point Source Management  
PADEP - Rachel Carson State Office Building  
PO Box 8774  
Harrisburg, PA 17105-8774*

5. How (e.g., what process) would DEP prefer that applicants/municipalities with proposed land disturbance/development applications that include “alternative” designs coordinate those application reviews with DEP prior to municipal approval?
  - a. This refers to Section 111.C, pg.26 of the Model Ordinance (which was a provision that DEP required to be included in the model ordinance)

**ANSWER:** *Any project that proposes “ alternative designs” that must be coordinated with DEP should be discussed during a pre-application meeting for the NPDES permit with the Chester County Conservation District, PADEP, the applicant, the municipal engineer, and (if possible) the earth mover. Such pre-application meetings are already required for many circumstances. Below is information to help explain the intent of Alternate Design Standards and the type of things that applicants and municipalities should be prepared to discuss during pre-application meetings and address upon permit submission.*

*“Alternative design” standards are referenced in the NPDES Construction Permit Application (page 3) and in 102.8(g)(2)(iv) – related to PCSM Plan Stormwater Analysis - where it states that “Approaches other than that required under paragraph (2) may be proposed by the applicant when the applicant demonstrates to the Department that the alternative will either be more protective than required under paragraph (2) or will maintain and protect existing water quality and existing and designated uses by maintaining the site hydrology, water quality, and erosive impacts of the conditions prior to initiation of any earth disturbance activities”.*

*Alternate design standards should also be consistent with the PA Comprehensive Stormwater Management Policy which states that “stormwater management approaches” will meet the Department’s Antidegradation (Ch. 93.4a) requirements “by reducing pollutant loads to streams, recharging aquifers, protecting stream base flows, preventing stream bank erosion and streambed scour, and protecting the environmental integrity of receiving waters.”*

*Any “alternate design standard” needs to account for the conditions of the site and the receiving stream; and achieve a delicate balance of volume control, rate control and water quality treatment with the ultimate goal of replicating “the natural hydrology on site before development to the greatest extent possible” . These standards also need to integrate state-of-the-art science and sound engineering practice into stormwater management designs that comprehensively considers issues with engineering, ecology, pedology and hydrogeology.*

*Projects within special protection watersheds demand a higher level of protection and must meet the Antidegradation Analysis described in the NPDES Permit Application either through meeting the No Discharge Alternative or ABACT.*

*It should be noted, that Chapter 102 includes provisions under Section 102.42 and 102.43 which Municipalities must comply with. These provisions have been put in place so to improve upon coordination/communication and to prevent the premature issuance of local building permits/approvals. Municipalities are to provide adequacy letters to any permit applicants or responsible parties seeking to obtain approval for earth disturbance activities in accordance with their approved Act 167 Stormwater Management Plan and the respective ordinance language as adopted.*

Permit applicants are also required to notify municipalities of all applications and utilize the processes established under Act 14 (Municipal Notice) and for the implementation of Acts 67, 68 and 127 of 2000 regarding consistency with local land use plans and comprehensive planning. These policies can be found at [www.depweb.state.pa.us](http://www.depweb.state.pa.us); keyword: Land Use.

6. Municipalities have asked for guidance regarding how far “downgradient” should the provision be enforced that requires written permission from (or in certain circumstances written notification to) down-gradient landowners for a change in flow pattern (i.e. Section 301.G plus 2 options in “Notes to Editor” on page 39-40 of the Model Ordinance). This provision (301.G) was written to generally “mimic” the requirement by DEP in the NPDES construction permit. Thus, the municipal range of enforcement under the Act 167 ordinance could also “mimic” DEP’s range of enforcement under the NPDES permit.
  - a. Can DEP provide information describing “how far down-gradient” DEP requires this NPDES permit requirement to be applied by a NPDES applicant?

**ANSWER:** *To the point of confluence with a surface water of Pennsylvania - as stated in the following PADEP Factsheet (3150-FS-DEP4124 Rev. 10/2012):*  
*“Off-Site Discharges of Stormwater to Areas that Are Not Surface Waters”*  
<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-91223/3150-FS-DEP4124.pdf>

7. Any other comments/information/instructions DEP would like to provide?

**ANSWER:** *As a result of the 2010 U.S. Census data, in the next year or two PADEP will notify each municipality who will have expanded urbanized areas or will be required as a new permitted entity to obtain a MS4 NPDES stormwater permit. These municipalities will then have 180 days to submit their application for a permit or permit modification. In addition, please be aware that census population data and EPA designation are not the only way an entity can be designated to obtain a MS4 NPDES stormwater permit. The EPA regulations allow third parties to petition the Department as the permitting authority to designate entities as needing a MS4 NPDES stormwater permit regardless of population.*