

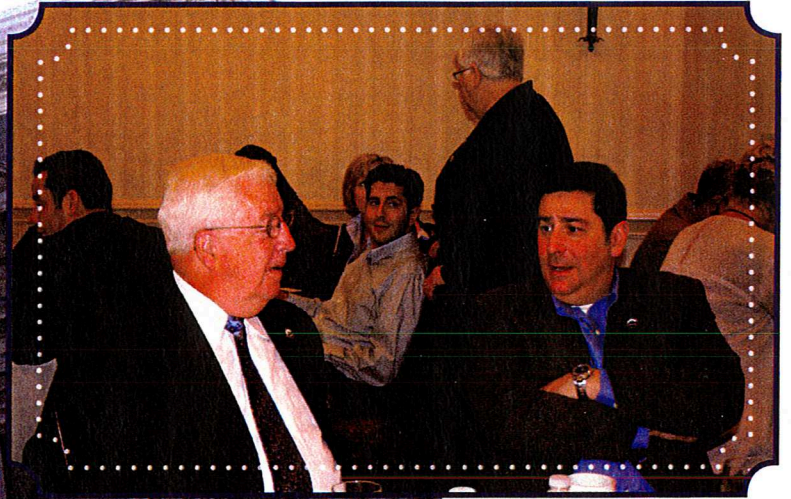
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## PLCM Members Engage In Strategic Planning Process

The mission of the Pennsylvania League of Cities and Municipalities is to strengthen, empower and advocate for effective local government.



# Information Highlights

## Municipal Stormwater – *Don't Get Caught with your BMP's Down*

by Paul Bruder



In March 2010, EPA issued administrative orders and requests for information to several dozen municipalities located in Southcentral Pennsylvania, inquiring into compliance with stormwater management requirements of each municipality as it related to each municipality's Municipal Separate Storm Sewer System (MS4) permit.

Later that year, EPA performed detailed and comprehensive inspections at six of the municipalities, although the criteria used by EPA to determine which municipalities would be inspected is unknown. These two-day inspections involved a review of all records, several hours in the field observing municipal housekeeping operations, viewing catch basins, detention facilities and construction sites, and interviewing municipal employees and officials.

Each of the six thereafter received an Administrative Order, requiring that each make changes to their MS4 programs to come into compliance with various alleged violations, and threatening lawsuits to collect administrative penalties for these alleged violations, unless the municipalities agreed to a somewhat reduced penalty rather than fight a battle in federal court.

Not surprisingly, some of the municipalities felt somewhat hamstrung by these orders, believing that their stormwater management programs were compliant with their permits, and certainly not so non-compliant as to warrant substantial penalty payments. Even DEP got into the act, asking that EPA withdraw the orders as they were quite possibly procedurally and substantively invalid. EPA declined and proceeded with the enforcement actions.

These actions by EPA are a continuing effort to reduce pollution in stormwater that flows to the Chesapeake Bay. The war

against nitrogen, phosphorous, sediment and other pollution that flows down the Susquehanna and into the Bay has been waged against sewage treatment plants, farms, and stormwater, and the most convenient stormwater targets are MS4 communities, which have distinct permits through which DEP and EPA can take enforcement action.

Right or wrong, EPA has tipped its hand and, in the view of many, has made examples of these six southcentral municipalities and sent a strong message to others: "You dodged a bullet this time, so it might be best to look at your own programs and clean them up to avoid future actions of a similar nature." Many in the environmental profession expect that EPA will take similar actions in other regions in the Chesapeake Bay watershed, and eventually the Delaware Bay and Ohio River watersheds.

DEP recently issued its revised MS4 permit, known as PAG-13, a move that it hopes will improve local control and flexibility in dealing with stormwater runoff. PAG-13 will be renewed, effective March 2013, with revisions that should allow local governments to more effectively manage stormwater runoff. Regulated municipalities should now have greater flexibility to develop and implement their own Chesapeake Bay plans, which can now account for local conditions and allow for local decision-making. DEP Secretary Krancer said that "municipalities will also be able to rely on the state's existing robust post-construction stormwater control requirements to address their construction and post-construction related control measures."

Although EPA withdrew its previous objections to PAG-13, that doesn't mean EPA is any less interested in compliance with the new permit. In fact it is likely that,

along with the new permit and the supposed flexibility it provides, EPA will be as interested as ever in how these communities are complying with the new permit as pressure to clean up the Chesapeake Bay intensifies. As the Chesapeake Bay cleanup program moves forward, it is widely anticipated that EPA will use the same approach with respect to other receiving water bodies as well.

Of the municipalities that received the 2010 EPA orders, in most cases additional enforcement action was avoided because the municipality was able to satisfy EPA that it was in compliance with its MS4 permit. In those cases where EPA continued its enforcement pursuit, the affected municipality was able to come into compliance and satisfy EPA that the MS4 program would be run more tightly going forward. The major lesson to be learned is that it is better (and cheaper) to get your program into strict permit compliance rather than risk being on the receiving end of an EPA inspection and order, which could lead to even more costly measures being implemented – at increased costs – and possible penalties, as well. Your municipal solicitor and engineer, and environmental counsel as needed, can help municipalities achieve this.



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