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Mr. Sean Furjanic
Environmental Program Manager
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DEP Bureau of Clean Water
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RE: Comments on the Pennsylvania Department of Transportation (PAI139601) and Pennsylvania Turnpike Commission (PAI139602) Draft MS4 Permits

Dear Mr. Furjanic,

Please accept the following comments from American Rivers and our undersigned partners on the Municipal Separate Storm Sewer System (MS4) Individual Permits for the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Turnpike Commission (PTC), numbered PAI139601 and PAI139602, respectively. We appreciate the opportunity to engage in this public comment process.

Our organizations recognize the importance of Pennsylvania's rivers, lakes, and streams to public health and to our economy, now more than ever. Our members, drawn from all across the Commonwealth, are anglers and paddlers, birders and others interested in the protection and restoration of clean water for Pennsylvania's people, its land, and its wildlife.

We recognize that stormwater is a leading cause of impairment in Pennsylvania's waterways, and that stormwater from roads is directly linked to degraded physical, chemical, and biological conditions. The permits referenced above, in particular the PennDOT permit, regulate a very large area, and thus a substantial amount of stormwater pollution. We are keenly interested in the success of these permits in reducing the impacts of stormwater pollution.

The 2018-2023 cycle of the MS4 General Permit included for the first time a Pollution Reduction requirement, an element geared towards the restoration of impaired waters that allows Pennsylvania to begin to fulfill its Clean Water Act goals of upholding and restoring the designated uses of the waters of the Commonwealth. Local governments have been working diligently to comply with these sometimes-challenging requirements, and many have already made significant progress towards their 2023 goals. However, the Pollution Reduction element of the MS4 program cannot be successful without robust participation and leadership by PennDOT and PTC as well. We are concerned that the draft permits not only exempt PennDOT from some of the constraints that municipalities have been held to, but also shortcut the public participation process and establish a precedent that overburdens Pennsylvania Department of Environmental Protection (DEP) staff who manage the program.

Our comments on the draft permits are as follows and are grouped into six major categories. Because the permit text for PennDOT and PTC is similar, all comments below apply to both permits except where otherwise noted.

Public Participation Process

- The public comment opportunity should include links to all compliance materials related to any EPA enforcement actions directed toward DEP's administration of the NPDES program. These documents are important for the public to understand the effectiveness of the proposed permit conditions.
- Links should be provided to all documents incorporated by reference in the draft permit, for example, Publication 752, the Strategic Environmental Management Program Manual. We are not able to comment fully without reviewing all referenced materials.
- The language of the draft PennDOT and PTC permits would allow the permittees to submit Pollution Reduction Plans (PRPs) up to a year after the MS4 permit has been issued. This not only undermines the public participation process (as discussed further below), but also limits DEP's ability to ensure standards for the PRP. The PRPs should be submitted and approved with the rest of the permit application (refer to Applicant's Checklist for small individual permits, [3800-PM-BCW0200c](#)). For both transportation permits, but for PennDOT's permit in particular due to its scale and scope, it is crucial that the public have an opportunity to review and comment on the proposed PRP before the permit is approved. These are large-scale programs that impact the shared water resources of the Commonwealth.
- Allowing PennDOT and PTC to submit their PRPs after the approval of their individual permits also runs afoul of public participation requirements. DEP has found that public participation requirements applicable to the General Permit for Discharges of Stormwater from MS4s (PAG-13) mean that municipalities must prepare PRPs in advance of coverage under the General Permit and must make those PRPs available for public review and comment. The PennDOT and PTC draft permits would hold these statewide actors to a lesser standard than that required of municipalities. Moreover, and as discussed in the terms of DEP's settlement in *PennFuture v. DEP and Upper Gwynedd Township*, EHB-2-13-105-L, non-municipal small MS4s required to obtain individual permits will be required to submit PRPs if they discharge in the Chesapeake Bay watershed or to control nutrients and/or sediment in stormwater discharges to impaired waters without a TMDL, or impaired waters with a TMDL but without a WLA. See, e.g., MS4 Requirements Table Instructions, Revised June 6, 2016 (available at https://files.dep.state.pa.us/Water/BNPNSM/StormwaterManagement/MunicipalStormwater/PRP_TMDL_Plans/Municipal%20MS4%20Requirements%20Table%20Instructions.pdf). Other non-municipal small MS4s which obtain individual permits are required to meet these requirements and required to submit a PRP at the time of their permit application (see, e.g., Penn State University Main Campus MS4 permit #PAI134807). The statewide permittees here, which anticipate discharges in the Chesapeake Bay watershed and to numerous impaired waters, should be required to do so as well.

Joint Projects with Municipalities

- The draft permit seeks to incentivize joint PennDOT and municipal projects, which could potentially create economies of scale for both parties. However, it does not clearly outline a process for approval of these joint projects, or, critically, assign ultimate responsibility for operation and maintenance. For any joint projects with a municipality, both parties should submit a Memorandum of Understanding (MOU) outlining which party is claiming credit for each project, which MS4 Planning Areas are included, and

who is responsible for maintenance. The MOU should be submitted with the annual report during that same year the projects are constructed.

- If the permittee seeks to transfer maintenance responsibility to a municipality, the permittee should provide payment for the maintenance services that the municipality will ultimately be responsible to provide.
- For PRP projects implemented by PennDOT or PTC jointly with a municipality, there should be more clarity around how the specific areas of management responsibility are designated:
 - Within the Urbanized Area, it should be clearly stated which areas are the responsibility of permittee versus the municipality.
 - It should be made clear that “full PRP credit” refers only to those areas for which the permittee is responsible, and that double-counting is not allowed.
- Many of the above-mentioned policies to promote joint municipal projects have the potential to significantly increase the workload of DEP staff responsible for reviewing joint PRPs. Consistent with this increase in level of effort, DEP must be provided with the additional resources to effectively staff and manage such a program.

Pollution Reduction Targets

- All of Pennsylvania’s major river basins offer great value to the people of the Commonwealth, and all have been impaired by stormwater pollution. Although the Chesapeake Bay has become a national priority, clean water is important state-wide, and therefore pollution reduction targets should be consistent across basins rather than halved in areas outside the Chesapeake region. Sediment in particular is strongly associated with the Urbanized Areas in the Delaware and Ohio basins, which are subject to significant stormwater pollution and environmental injustices. At a minimum, reduction targets should be no less than 10% for sediment, 5% for Total Phosphorus, and 3% for Total Nitrogen in both the Delaware and Ohio basins, as well as the Chesapeake basin.
- For the PTC permit, pollution reduction targets would use “existing” pollution loads modeled for 2014. Some effort must be made to incorporate development since 2014 into the “existing” calculation.

Pollution Reduction Project Implementation

- Allowing trading of PRP requirements across major basins is highly inequitable and will likely lead to less stormwater management in urban, built-out areas where the cost of reducing pollution is often the greatest. This is an environmental justice issue in that it will disproportionately impact urban communities, many of which are already overburdened with pollution associated with heavy industry and aging infrastructure. The major-basin approach to PRP development offers sufficient flexibility for implementing projects. Trading across basins should not be permitted.
- For similar reasons, there should be clear limits placed on the extent to which the PRP can be implemented outside of the Urbanized Area. Heavy-traffic roads in areas of dense development are the source of significant pollution beyond the nutrients and sediment addressed by this permit (which are often treated as “surrogates” for other types of urban stormwater pollution). By allowing PRPs to be implemented outside the Urbanized Area, the permit allows urban stormwater pollution to go unmanaged, and also reduces the amount of non-regulated urban pollution—like metals and petroleum products—that will be treated. Pennsylvania’s urban communities suffer from pollution just as much as its non-urban communities, and all deserve access to clean water.

- Reduction targets should be addressed using green infrastructure wherever feasible, with a minimum of 20% percent of total reductions per PRP achieved through the use of green infrastructure practices that reduce stormwater volume by infiltration and/or evapotranspiration. Although this is not currently consistent with the MS4 General Permit, we believe the General Permit should be upgraded at the next opportunity, and that these individual permits should lead the way.

Minimum Control Measure 6: Good Housekeeping

- The permit should include a requirement for discharge characterization modeling, in order to understand the effectiveness of the NPDES permit process. This is a standard component of similar permits in other states (for example, refer to the Maryland State Highway Administration MS4 permit). Baseline discharges should be established for the following pollutants, at minimum: sediment, phosphorus, nitrogen, chlorides, metals, and pathogens. This would then be used with annual monitoring data to evaluate the effectiveness of both ongoing good housekeeping efforts as well as restoration efforts associated with the PRP.
- Once established, monitoring information should then be used to establish future pollution reduction targets with the goal of maintaining and restoring the designated uses of Pennsylvania’s waterways.
- Requirements for salt storage are unclear and difficult to regulate. Permit terms should not be implemented “when determined by the permittee to be feasible” (section iii(b)) but rather, should be driven by a discharge monitoring program that tracks and reports on chlorides during wet and dry weather, in cold and warm months.
- The application of chlorides and chemicals, including pesticides, fertilizers, road salt, and firefighting foam, should be expressly addressed via this permit. It is difficult to comment on this topic without also reviewing the Strategic Environmental Management Program Manual, which is included only by reference and without a link.
- At minimum, the permittee should be responsible for developing and implementing a salt reduction plan, which should be linked to training and ideally certification standards for salt applicators.

Comments on Monitoring, Recording, and Record Keeping

- The permit (as well as DEP’s Annual Report Template #3800-FM-BCW0491) should make clear that the permittee is required to inspect and certify proper maintenance of post-construction and PRP BMPs.

In addition to these comments, we request that a virtual public hearing be held for more robust public discourse on these important permits.

The MS4 program, and particularly the PRP element, are crucial to Pennsylvania’s success in maintaining and restoring clean water for the people who need it to live and thrive. PennDOT and PTC together manage a vast network of roads which are the source of a great deal of stormwater pollution. The General Permit model has already established an approach to restoring waterways that is being implemented by municipalities across the Commonwealth. PennDOT and PTC, as government agencies with centralized authority, must lead the way rather than lag behind municipal efforts to clean up our waterways. Anything less is unfair, inequitable, and will only serve to undermine the success of the MS4 program.

Thank you again for the opportunity to comment on these drafts. We appreciate your consideration.

Sincerely,



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