

**Pa Senate Environmental Committee Public Hearing on MS4 Requirements  
September 11, 2019, Testimony – Ronald C. Furlan PE PP**

Good afternoon honorable legislators and citizens. My name is Ronald C. Furlan; I am a Pennsylvania registered Professional Engineer and a New Jersey registered Professional Engineer and Planner.

I would like to convey today a success story and some suggestions about how storm water can be managed successfully and cost-efficiently. I will offer some suggested available avenues to provide needed funding; without creating new laws, without necessarily raising taxes, and lastly, I will provide a brief history of the Pa Storm Water Management Act.

I was formerly a Pa Department of Environmental Protection (DEP) Program Manager (2007-2016) for the Bureau of Clean Water, located at their Headquarters in the Rachel Carson State Office Building in Harrisburg. My staff and I at Pa DEP were involved in, and often the lead of, various programs and initiatives; but most applicable to this hearing today were our experiences with the Commonwealth's Storm Water and Wastewater Programs, especially the planning, permitting (Water Quality and National Pollutant Discharge Elimination System (NPDES)) and implementation of them. We used various Commonwealth and Federal laws and regulations in our implementation of these programs. Most particularly, we implemented the Storm Water program using the Federal Clean Water Act (CWA), the Pa Clean Streams Law (CSL) and the Pa Storm Water Management Act of 1978 (SWMA), also known as Act 167. These laws and accompanying regulations apply to the issues at hand here today.

I am currently the Vice Chairman of the Derry Township Municipal Authority Board, in Dauphin County. In 2017, our Authority transparently through a stakeholder process established a tiered storm water fee, based on impervious area. This fee applies to everyone, no exceptions. We have instituted a credit system, in which we offer a monthly credit (up to 45%) to affected parcel owners toward their mandatory fee for voluntary measures they implement to address storm water generated on their property, if the voluntary measures detain or retain runoff to a watershed. Our program has been in place for two years and community participation has been very good. We do have enforcement power and can and have required people to pay their fee plus fines. Thankfully, our Township residents, businesses and institutions mostly understand the need for storm water management and that we are all responsible to address it, so our need for enforcement has not been the common path.

**Issue and Suggested Solutions**

The cost of storm water management plan development and implementation was and still is an issue commonly claimed by entities required to comply, so, let's think about how we may possibly provide funds. We do not need to create any new laws: the current SWMA and regulations are sufficient, and grant and loan money is allowed currently to be offered for storm water project construction by the Pa Infrastructure Investment Authority (PennVest) and the Department of Community Economic Development (DCED) Commonwealth Financing Authority's (CFA) "H2O Program". Some revenues exist, but they need to be augmented, if it is expected to assist all communities in meeting their storm water management obligations.

Certainly, municipalities and authorities can do their part by enacting a storm water fee to cover a lot of the day to day cost, but funding from the Commonwealth is also needed if projects are to be planned, developed and constructed in a more efficient and timely manner.

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The Commonwealth of Pennsylvania currently collects approximately 300 +/- million dollars a year through the former Johnstown Flood tax which is applied to bottles of liquor and wine. This tax, originally at 10%, was created to assist in the cleanup and rebuilding activities made necessary by the Johnstown Floods. It was supposed to expire once the rebuilding efforts concerning those floods were completed; however, it was not allowed to expire as originally planned. Instead, the tax was modified; it is now called the Liquor Tax. It was increased to 18% circa 1951. The tax is built into the wholesale price of a bottle of liquor; the only tax you see listed on your purchase receipt is the 6 % sales tax. The generated revenue is placed into the General Fund.

I believe it is reasonable to divert some (perhaps \$100 million) of the Johnstown Flood tax money annually to fund not only the planning activities under the SWMA, but also the construction activities. Diverting some of the funds to the “Growing Greener” grant program, PennVest and CFA would enable these programs to provide more and larger grants and loans to municipalities.

If it is not desirable to the General Assembly and administration folks to divert some of the currently generated Liquor Tax revenue, then maybe an increase in the tax could be imposed. The new revenue generated would be used exclusively as stormwater program funds. Wouldn't it be nice to actually use some of the revenue generated by this tax, which was originally created because of storm water and flooding, on actual stormwater and flooding needs?

If the General Assembly and administration folks are averse to using that much money from the Liquor Tax (again, originally titled the Johnstown Flood tax), then maybe they can divert a smaller portion of the generated revenue and supplement it by diverting some of the existing revenue generated by the 1% Pennsylvania Real Estate Transfer Tax. This money is created by real estate transactions, a large amount of the revenue created by this tax is associated with new land development which can be a large source of increased storm water runoff. Note - the Pa Department of Revenue's 2018-2019 annual report shows that the 1% Real Estate Transfer Tax generated approximately \$500 million.

If the General Assembly and administration folks do not wish to divert any of the existing tax revenue, then they should consider increasing the Real Estate Transfer Tax by .25%, with all of the additional revenue generated directed for use by DEP, Growing Greener, PennVest and CFA for storm water management needs. A .25% increase in the tax could produce approximately \$125 million a year toward funding storm water management programs that will help prevent flooding, landslides and many other storm water related problems.

**Background**

I would like to take a moment to offer some history concerning storm water management in Pennsylvania. In my work with DTMA and the DEP, I have often heard when meeting with the regulated community, legislators, government officials and impacted citizens, that the storm water requirements and fees are an unfunded mandate caused by the Chesapeake Bay Total Maximum Daily Load (TMDL) requirement, or caused by the federal NPDES Municipal Separate Storm Sewer System (MS4) program. These programs are required by the Federal CWA. While it is partially true that the Federal programs are somewhat responsible for recent pushes to address storm water; Pennsylvanians statewide should know that storm water management requirements have been in place in Pennsylvania much longer under the Pennsylvania CSL and SWMA. The Federal push to manage stormwater under the NPDES

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program mostly started in the late 1990s. The Chesapeake Bay program started as a voluntary effort between the affected states in the early 1980s. The Pennsylvania CSL, and particularly the SWMA of 1978, easily predated the Federal efforts by at least 20+ years. The SWMA of 1978 was created and adopted to address storm water management and the flooding that took place during Hurricane Agnes in 1972. When the SWMA was created, the General Assembly and administration folks, at the time, recognized that planning and management of storm water systems, particularly maintenance of existing systems, was severely lacking in the Commonwealth. The SWMA of 1978 is an all-encompassing, succinct document concerning the development of countywide storm water management plans that require municipal cooperation and implementation. The SWMA, along with its implementing and associated regulations, apply statewide and are stronger concerning stormwater management in Pennsylvania than the federal CWA and MS4 NPDES regulations.

The cost of the development of the storm water management plans under the SWMA was to be reimbursed by the Pa DEP at 75% from a General Assembly and administration approved yearly appropriation, and the annual cost of enforcement by the municipalities was to be similarly reimbursed. Despite this legislative promise of reimbursement, many counties and municipalities chose to ignore, or feigned adherence to, the law; many felt, and still do, that the SWMA requirements were too intrusive in their effect on local land management and cost too much to implement and enforce. Many counties tried to comply with the law but ran into opposition from participating municipalities, who either did not fully participate in storm water management plan development or failed to adopt the necessary municipal ordinances to implement the DEP-approved county storm water management plan, thus thwarting successful implementation. Counties do not have the power to enforce the SWMA, so it was left to Pa DER - now DEP - to enforce the law. The SWMA contains strong language for DEP enforcement; however, as the DEP rank and file staff started to enforce, they found themselves being formally and informally challenged in their enforcement efforts. The General Assembly and the administration folks, starting around the 2009-2010 budget cycle, facing another budget impasse, looked to divert existing program funding rather than increase taxes. They decided to drastically reduce the amount of money to be appropriated to fund many programs, including the implementation of the SWMA. This led to severe cutbacks in the reimbursements to municipalities. This budget line item dollar value was eventually zeroed in following budget years, and all reimbursement funding for the SWMA was eliminated. The SWMA management budget as administered by DEP was starved of funding. During this same time frame, the staffing within DEP for implementing and enforcing the SWMA was decimated by the funding cuts. Most remaining staff and obligations for the SWMA program were combined with other existing DEP Bureau of Clean Water program responsibilities. Specific DEP implementation and enforcement activities of the SWMA requirements now compete with all other Bureau of Clean Water responsibilities and basically get addressed only as SWMA-specific problems arise, or when possible, in combination with other similar DEP activities in affected municipalities.

Even without appropriations to fund reimbursements to municipalities, the SWMA requirements and implementation are still required to be met. The law specifically requires that, regardless of funding, counties and municipalities must comply with the law to develop, implement and enforce storm water management plans. Everyone is still responsible! And any help that could be provided to assist compliance would be welcome.

Thank you for your consideration.