

Chairman Metcalfe and members of the House Environmental Resources and Energy Committee:

Good morning. My name is John “Jay” Wilkes, Jr, and I am the chairman of the board of supervisors for Jackson Township, Luzerne County, as well as the Secretary-Treasurer for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today.

About Jackson Township

Jackson Township is a residential, non-urban community of about 5,900 population. Approximately 2,000 of our residents are in state prison. Much of our residential area is former farms and we continue to have two active farms. Jackson Township has a full-time police department, full-time paramedic services, volunteer firefighters, and expanding recreation facilities. Our township’s annual budget is just under \$2 million.

About MS4s

Under U.S. Environmental Protection Agency regulations, Municipal Separate Storm Sewer System (*MS4*) permittees are responsible applying for reducing the quantity and improving the quality of stormwater discharge. For municipalities like ours that are subject to these provisions, it is the most expensive unfunded mandate that we have ever faced and is expected to cost billions statewide. As townships cover 95 percent of Pennsylvania’s land area, this is a widespread mandate that is burdensome for all of the covered communities.

Simply applying for an MS4 permit is expensive, as professional services are needed. Between engineering, surveys, and attorney’s fees, the cost is approximately \$50,000 for our township. Our township needed to map our catch basins, every single pipe, which no township has the resources to tackle. Even with that, we were only able to obtain a provisional current permit. Jackson Township has opted to work regionally on our next permit because of these costs, which we simply can’t absorb on our own.

Most small rural municipalities aren’t currently required to get a permit. Those of us who are considered an MS4 community are faced with significant costs of compliance and the EPA could eventually expand coverage to even more municipalities, which has been done in the past.

MS4 permits are not an easy budget item because of factoring in professional services from engineers and attorneys because we don’t know what our costs will be as we work through the permit process. We can’t estimate the cost of compliance because we don’t know what is going to be required of us, as the requirements seem to keep changing and there is a lot that is unknown.

Regional efforts and working with DEP/EPA

As I mentioned, Jackson Township decided it was in our best interest to work with a regional program to apply for our next permit. We are working with Wyoming Valley,

which is a 32-municipality regional effort. We are doing this to share the costs of applying for a permit, as well as the costs of compliance.

One of our biggest challenges is trying to get clear answers from the state Department of Environmental Protection. It often seems as if DEP doesn't have the answers and needs clarification from the EPA or they don't have the resources to adequately administer the program. For example, we had an issue with a discharge that we thought was important and reported it, but DEP never sent anyone out to investigate.

Costs of compliance

Some of our specific responsibilities under the permit are street sweeping and putting in pipes and catch basins and maintaining them. Another reason for working regionally is to share the costs of the equipment needed, including a street sweeper and vacuum truck that would cost \$700,000, which our township could not afford on its own.

In the past, we used to clean our vehicles and equipment at the township building using a part-time employee. Since we now need to catch all of the runoff from cleaning vehicles, we made the decision to use a car wash, which is \$2,000 per year and is difficult to do with some of our larger equipment. And our residents should be doing the same thing to, but how do you tell a resident with several acres that they need to use a car wash?

Keep in mind that these costs aren't just one-time costs for these projects, but that there is a significant ongoing operating cost to maintain our facilities, including regularly cleaning our pipes and catch basins. This means permanent additional labor costs to maintain our facilities and it takes time to do this properly. For example, we can only clean about three catch basins a day and we have hundreds in Jackson Township.

If we don't maintain our facilities correctly and the EPA audits us, we could be fined. Even if we perform the proper maintenance but our records aren't good enough, we could be fined.

In 2014, the EPA fined the Borough of Kingston around \$50,000, which they were able to reduce to \$12,000 with negotiations. However, it cost additional legal fees, as well as an estimated \$30,000 to \$50,000 in engineering fees to comply with the audit. In Kingston's case, the EPA found non-compliance with its documentation and public outreach, including a website link that didn't work. No municipality can afford these types of fines.

Paying for the mandate

I do want to acknowledge that while the federal government has done little to help us with this mandate, the state has provided funding mechanisms so that we have options other than requiring our property taxpayers to pay more. Townships of the second class have the option to levy dedicated fees to pay for stormwater facilities and their maintenance through a stormwater authority or directly by the township, which PSATS had requested on behalf of its members. This allows the cost to be spread over everyone in the community, not just property taxpayers.

As part of our regional effort, Jackson Township went with a stormwater authority, which recently levied fees in our area. This has not been the easiest undertaking and part of the challenge is trying to determine fees when you don't know how much the short or long-term costs of compliance. But we have to pay for these facilities somehow or face EPA fines.

There are some unintended consequences. For example, our fire department is seeing a decrease in donations that appears to partly due to the stormwater fees. And because the fees are based on impervious surfaces, all property owners are billed, including the township and the fire company.

Accomplishing the goal

Clean water is the goal of this unfunded federal mandate, specifically improving the Chesapeake Bay. I want clean drinking water for my family and my residents, but is that what we are doing? The challenge is, how clean will the water be and what will it cost us to accomplish this goal?

We can't stop or slow the rain. Major storms can cause "100-year events" that are more than our systems are designed to handle. A rain garden is going to flood if it is built to absorb half an inch an hour, but it rains nearly three inches an hour.

Even if Jackson Township does everything it is required to do under our MS4 permit, if damaging rains and flood occur, it could be for nothing. When our next 5-year permit cycle comes around, what will we be asked to do to decrease runoff?

Solutions

While, as we've discussed, the MS4 mandate is for a beneficial purpose – to reduce stormwater runoff and flooding – but it can be difficult to justify the expense. Instead, more cost-effective approaches should be authorized to maximize the reduction in pollutants and sediments in the state's waterways that doesn't bankrupt communities or shut down economic growth. A common-sense approach by regulators at the state and federal level is needed.

The simplest solution is the most difficult to achieve, and that is for the federal government to role back these regulations and develop proven, cost-effective solutions.

HB 781

House Bill 781 (*PN 853*), sponsored by Rep. Boback, would allow Act 13 of 2012 funds that are distributed to each county annually and earmarked for environmental initiatives to be used for stormwater management. It should be noted that funds that are distributed directly to those municipalities and counties impacted by natural gas drilling may currently be used for stormwater management.

PSATS supports HB 781 as a reasonable expansion of the use of these funds, which will help in our challenge of MS4 compliance. However, it will not solve all of the funding issues as noted above.

Thank you for the opportunity to appear before you today and I will now attempt to answer any questions that you may have.