

Navigating the Changing Regulatory (and Sector) Landscape



Pennsylvania Stormwater Summit 2017

November 13, 2017

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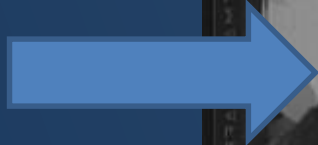


Overview

- Big Picture
- A Report Card for Stormwater?
- PA Regulatory/Sector Consideration
 - MS4 Landscape, Funding/Financing
- Nat'l Regulatory/Sector Considerations
 - WOTUS, Phase II Remand, P3s and Integrated Planning in Stormwater?, Needs in Sector
- NGO Updates (WEF, NMSA)
- Conclusions

Big Picture: Life at the Kids Table...

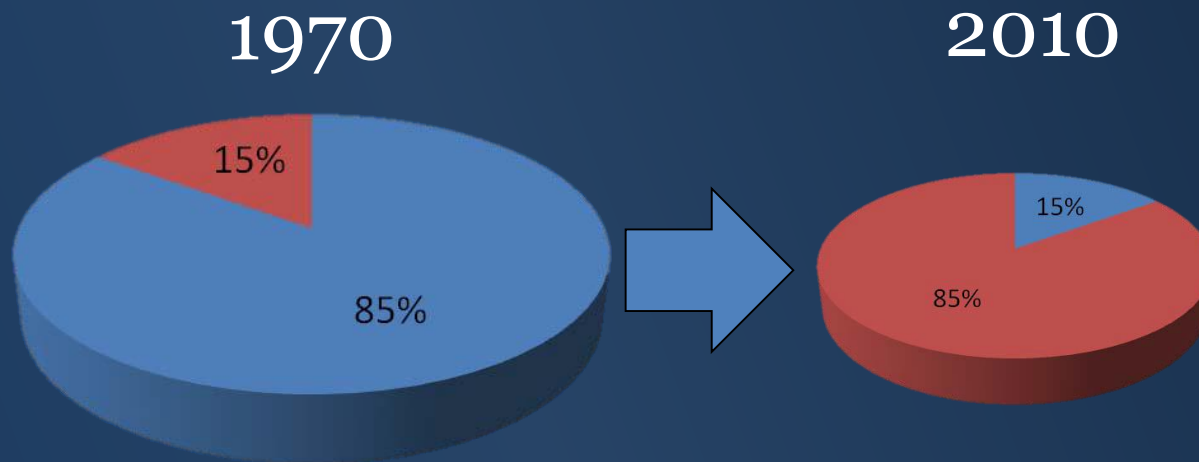
Everyone
else...



Stormwater



Big Picture: *Rise of Nonpoint Pollution*



Point Source vs. Nonpoint Source
Water Quality Impairments

Source: William Ruckelshaus, *A New Shade of Green*, The Wall Street Journal, April 17, 2010

A Stormwater Report Card?

What's the Grade? You Decide!

- CURRENT Capacity – Water quality continues to degrade – capacity is inadequate....
 - **A – F?**
- CURRENT Condition – Existing stormwater infrastructure condition continues to degrade...
 - **A – F?**

What's the Grade? You Decide!

- CURRENT Funding – Stormwater is chronically and significantly underfunded
 - **A – F?**
- CURRENT Future Need – Total costs are unknown – perhaps \$100 billion for MS4 over next 20 years – most likely much more based upon anecdotal information
 - **A – F?**

What's the Grade? You Decide!

- CURRENT O&M – Maintenance has been neglected and policies regarding BMPs on private parcels creates challenges in O&M responsibility
 - **A – F?**
- CURRENT Public Safety – Flooding impacts to property and public safety has risen in many regions around the country
 - **A – F?**

What's the Grade? You Decide!

- CURRENT Resilience – Current/traditional SWM approach is static, which limits resilience capacity – green infrastructure has the ability to change this paradigm completely
 - **A – F?**
- CURRENT Innovation – Stormwater sector is evolving rapidly on many fronts in terms of innovation in technology and project delivery
 - **A – F?**

What's the Grade? You Decide!



1. Take out your smartphone
2. Text the phrase **STORMNERD** to **22333**
3. **STOP**

A Stormwater Report Card?

ASCE Report Card Grades:

A. Exceptional

B. Good/Adequate

C. Mediocre/Need Attention

D. Poor/At-Risk

F. Failing/Unfit for Purpose



How to Vote

1. Using your smartphone, input grade
 - i. A, B, C, D, or F
2. Hit send – then wait for next question...
3. Simply input grade for subsequent questions





grade would you give for the CURRENT CAPACITY of
stormwater infrastructure in the U.S.?



A -

Exceptional

B - Good



C - Mediocre

D - Poor

F - Fail

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Grade would you give for the CURRENT CONDITION of stormwater infrastructure in the U.S.?



A -
Exceptional **A**

B - Good **B**



C - Mediocre **C**

D - Poor **D**

F - Fail **F**

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Grade would you give for the CURRENT FUNDING for
stormwater infrastructure in the U.S.?



A -

Exceptional

B - Good



C - Mediocre

D - Poor

F - Fail

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What grade would you give for the FUTURE NEEDS stormwater infrastructure in the U.S.?



A -

Exceptional

B - Good



C - Mediocre

D - Poor

F - Fail

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What grade would you give for the CURRENT LEVEL of
MAINTENANCE in the stormwater infrastructure in the city?

A -
Exceptional **A**

B - Good **B**


C - Mediocre **C**

D - Poor **D**


F - Fail **F**

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Grade would you give for the CURRENT CAPACITY of
PUBLIC SAFETY through stormwater infrastructure in
the U.S.?



A - Exceptional

B - Good


C - Mediocre


D - Poor

F - Fail


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What grade would you give for the CURRENT RESILIENCE provided through stormwater infrastructure in the city?



A -

Exceptional

B - Good



C - Mediocre

D - Poor

F - Fail

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What grade would you give for the CURRENT LEVEL of
PERFORMANCE used in stormwater infrastructure in the city?

A -
Exceptional

B - Good

C - Mediocre

D - Poor

F - Fail

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Pennsylvania: *MS4 Program*

- “The Heat is On” →
- Time to boogie
- Communities working together
 - Benefits
 - Cost reduction through efficiency, more opportunities, etc.
 - Challenges
 - Cost allocation, project selection/determination, showing local value, local TMDL boundaries, etc.
 - Examples
 - York County
 - Luzerne County (Wyoming Valley Sanitary Authority)
 - Saw Mill Watershed



Pennsylvania: *Public Funding*

- DCNR

- Riparian Forest Buffer Program Funding
- River Conservation Grants
- Land Acquisition and Conservation Funding
- Community Recreation and Conservation Planning Funding
- Park Rehabilitation and Development Funding
- State and Regional Partnerships Funding



- PA Conservation Reserve Enhancement Program (CREP)

- Avail to ag communities within Chesapeake Bay Watershed
- Focus is to lease land in/near riparian areas for 10-15 years for land conservancy
- Cost share to cover 50-100% of cost of buffer installment and maintenance



- NRCS Environmental Quality Incentives Program (EQIP)

- Provides technical and financial assistance to ag producer land to implement conservation practices on ag land and non-industrial private forest land

- Chesapeake Bay Program

- Small Watershed Grants
- Innovative Nutrient and Sediment Grants



**Stormwater
Institute**

Pennsylvania:

Funding/Financing

- SW Authority Creation
 - Provides ability to plan/invest in long-term fashion
 - Allows for financing options that didn't previously exist (muni RO bonds, etc.)
- PENNVEST
 - Low-interest loans and/or grants
 - **Stormwater is eligible!!**
 - Less than 5% of funds have gone towards urban runoff across the country – and the same is true in Region 3
- Private Financing
 - Lots of shiny objects here – beware of these shiny objects!
 - “Pay-For-Success” is an example
 - Complicated financial arrangement
 - High-interest equity investment – is that needed? Lots of public financing options available
 - How is “success” defined?
 - May be appropriate in specific, limited settings



National: *MS4 Phase II Remand*



- 2003 ruling (affirmed in 2014) stated that public comment/review process for permits is too limiting in general permit process
- Three options:
 1. Write all permit conditions at state level (“traditional”) and receive public input then
 2. Write some conditions at state, and some at local level (“procedural”) with a requirement for some public input at local level
 3. Hybrid of Options 1 and 2 (“states choice”) – **chosen option**
- Other considerations
 - All permits must have terms that are “clear, specific, and measurable” (narrative, numeric, or other)
 - Some speculation that chosen option looks too much like status quo, so appeal by enviro groups may occur

National:



Waters of the US (WOTUS)

- Focused on definition of WOTUS
- Pertains to the “significant nexus” question
- Several U.S. Supreme Court rulings on this – confusion
- 2015 Clean Water Rule intended to clarify – now stayed
- Current administration going through “two-step” process
 - First, repeal the current rule – this is almost finished
 - Second, develop a new rule – listening session ongoing thru 11/218
- Stormwater interests focus on exemption of MS4 systems
- WEF and other groups submitted comments for 2015 rule
- Same groups working on MS4 exemption language for current rulemaking

National: *Public-Private Partnerships*



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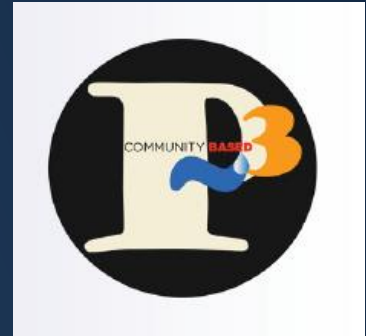
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\$9.87

National: *Public-Private Partnerships*

- Advantages

- Reduced project delivery costs
- Increased pace of project implementation
- Platform for expanded infrastructure investment
- Potential for enhanced public/private financing



- Is it Allowed in PA?

- Yes – see Public-Private Partnership Act of 2012
- Yes – includes counties and municipal authorities
- Yes – some frameworks not tied to statutes/legislation

- Community-Based Public-Private Partnerships (CBP3)

- Developed in Mid-Atlantic led by EPA Region 3
- Prince George's County, MD
- City of Chester, PA (Chester Stormwater Authority)



National: *Integrated Planning (IP)*

- Advantages

- Flexibility to balance priorities for cost efficiencies
- Environmental and public health benefits
- Financial capability and affordability



- House and Senate bills supporting IP

- **Encouragement for use of green infrastructure in IP efforts**
- Flexibility on affordability metrics

National: *Integrated Planning (IP)*

2017 Univ. of Cincinnati Study

- Barriers to integrated planning
 - Lack of regulatory flexibility
 - Concerns of additional obligations
 - Uncertainty of outcomes and risks
- Over 85% of respondents stated regulators were:
 - Unwilling to balance CWA requirements with others
 - Insistence on spending even if cost/benefits aren't positive
 - Lack of consideration of impacts on households/businesses
- Universe of IP efforts
 - Nationally – 18 completed, 12 in progress
 - Region 3 – 0 completed, 4 in progress
- Concluding thoughts
 - Need more communication on IP and benefits
 - Need for changed regulatory culture



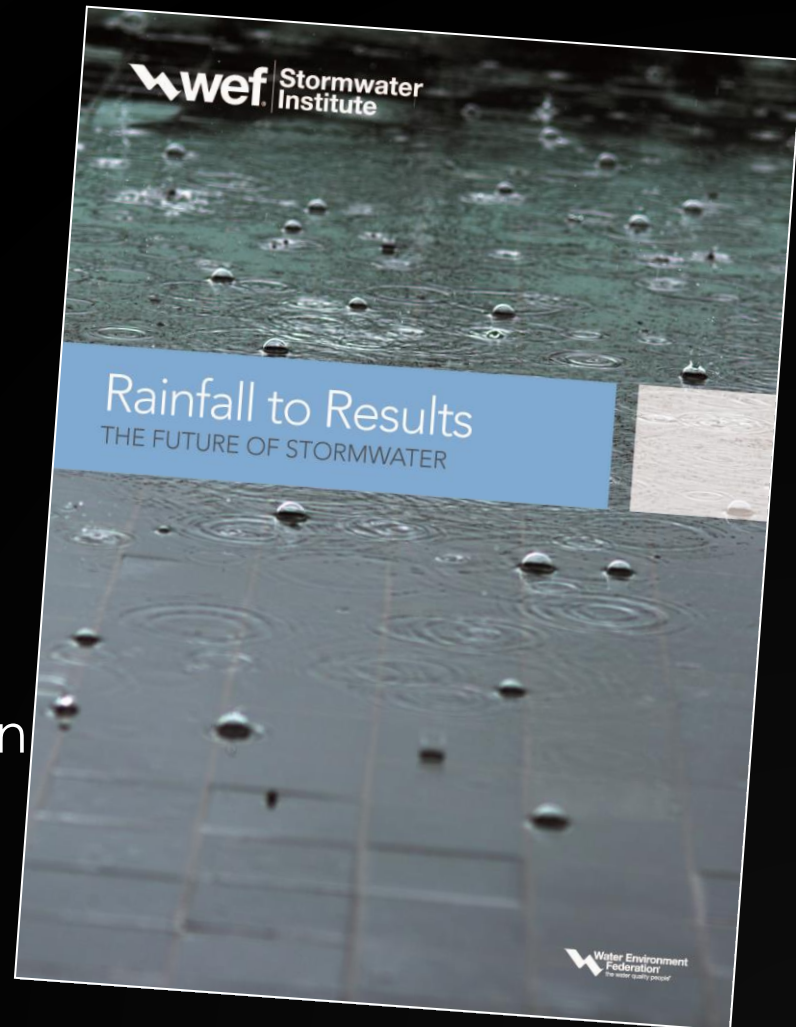
National: *Clean Watershed Needs Survey*



- Done every four years by EPA
- No requirement to include municipal stormwater
- In latest effort (2012), only 20% of MS4s included
 - Some states not included at all (e.g. PA)
- WEF currently engaged in adding language in CWA to require data collection of municipal stormwater needs



- Center of excellence and innovation housed within WEF
- Central hub on stormwater issues
- Provides a platform to develop best practices and share better approaches to stormwater management
- Leverages and complements ongoing and proposed WEF stormwater programs
- Provides new options for collaboration and funding for key initiatives
- <http://wefstormwaterinstitute.org/>



WEF:

Stormwater Institute (SWI)

- National Green Infrastructure Certification Program (NGICP)
- Stormwater Testing and Evaluation for Products and Practices (STEPP)
- MS4 Survey
- Stormwater Messaging
- Stormwater Economic Instruments Roadmap
- Contact Rebecca Arvin-Colon (rarvin-colon@wef.org)



National Municipal Stormwater Alliance (NMSA) - Overview

An alliance of state and regional groups comprised of MS4 permittees that is solely focused on MS4 issues



NMSA:

Motivation for Formation

- To represent MS4 permittees at the national level by providing a **unified voice**
- To lead changes in regulation both **proactively** and reactively
- To **connect and unite** MS4 programs
- To promote **stormwater as a resource**
- To improve the **public image of stormwater**
- To create opportunities for **multi-benefit and multi-use stormwater projects**



NMSA: *Follow Up Info*



- Contact Scott Taylor (Chair)
(STAYLOR@mbakerintl.com)
- <http://nationalstormwateralliance.org/>
- <http://nationalstormwateralliance.org/reportcard>



NATIONAL STORMWATER REPORT CARD



Add your voice at
nationalstormwateralliance.org/ReportCard

The American Society of Civil Engineers gave the water sector a D+ in its most recent Infrastructure Report Card. This grade is alarming for those both within and outside the water sector. Yet, the only growing source of water pollution – urban stormwater runoff – is not included in this metric.

To fill this gap, the National Municipal Stormwater Alliance is undertaking an effort to give stormwater its first nationwide grade. This effort is meant to support and complement the ASCE Infrastructure Report Card, increasing coverage of the water sector.

National Stormwater Report Card



Give the U.S. stormwater sector its first nationwide grade. Add your voice at nationalstormwateralliance.org/ReportCard

Assessing stormwater infrastructure today will give a clearer view of the sector's progress in the future. Stormwater and the challenges it poses impact many industries and professionals, so we are looking for input from those both within and outside of the sector.

Graders will assess the sector's current capacity, condition, funding level, operation and maintenance, public safety, resilience, and innovation with a simple grade of A through F. Graders will also assess the sector's potential grades if operating under StormSmart conditions where all available technologies and innovations are put into practice. StormSmart solutions include such technologies as real-time monitoring and controls for stormwater practices and high-flow media filters for bioretention facilities as well as innovative project delivery and funding and financing methods.



Conclusions



- Stormwater is moving to the “adult table”
- MS4s in PA are getting active and working together
- Funding/financing availability is an evolving issue (beware of shiny objects)
- Project delivery options are available
- Flexibility (integrated planning) options are evolving in a helpful way (with challenges)
- We need to get a better handle on actual needs in the sector
- WEF and NMSA are working together to support MS4 sector

QUESTIONS?

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