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December 16, 2005

Hon. Kathleen A. McGinty  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building, 16<sup>th</sup> Floor  
P.O. Box 2063  
Harrisburg PA 17105-2063

**Re: Pennsylvania Stormwater BMP Manual and Draft Model Ordinance**

Dear Secretary McGinty:

We write to you as members of the Pennsylvania Campaign for Clean Water regarding important and urgent issues surrounding the Pennsylvania Stormwater Best Management Practices (BMP) Manual and a draft model stormwater ordinance under development by the Department. As you know, the Campaign is a coalition of over 130 Pennsylvania organizations dedicated to the protection and restoration of the Commonwealth's water resources.

For over two years, the Department has labored tirelessly on Pennsylvania's new Stormwater BMP Manual. When the Manual went out for public review and comment at six regional focus group sessions held earlier this year, the Campaign for Clean Water and many of its member groups supported and endorsed the Manual and its standards. The version of the Manual presented then was reviewed and discussed at much length during these focus groups, with broad support for its concepts expressed during the meetings and in written comments.

We are quite concerned about two matters: (i) a recent revision to the Manual that was proposed by the Department at the December 6, 2005 Stormwater BMP Manual Oversight Committee meeting; and (ii) the Department's recent recommendation to issue, concurrent with the Manual, a new model stormwater ordinance that is much different from and weaker than the Manual.

Regarding the BMP Manual revision, we are concerned about the revision proposed for one of the volume control standards, Control Guidance 2 (CG-2). CG-2, as revised, only requires volume control of stormwater runoff *from impervious surfaces*. In this respect, it fails to require capture and removal of runoff from other disturbed areas on a development site that, though not impervious, generate significant amounts of polluted runoff (such as lawns). This is not only contrary to sound science, but to the Department's own Comprehensive Stormwater Management Policy and the federal Clean Water Act, both of which require volume control and control of stormwater pollutants to the maximum extent possible.

At the December 6<sup>th</sup> meeting, Department staff explained that the change to CG-2 was made in order to achieve consistency with standards set forth in the model ordinance, referenced above, also under development by the Department. The model ordinance is much weaker than the BMP Manual in a number of significant respects, including:

- It fails to require infiltration of any of the runoff but instead simply encourages it.
- It fails to require specific water quality standards.
- It fails to encourage and require use of minimum disturbance development practices and protection of natural areas.
- It continues to rely on the use of detention basins as a primary stormwater management mechanism.
- It fails to reflect Control Guidance 1 (GG-1) included in the BMP Manual.

Most importantly, the model ordinance fails to incorporate by reference the BMP Manual, reducing the likelihood that the Manual's concepts and guidelines will ever be implemented by developers. Indeed, as currently written, the ordinance is inconsistent with the approach toward stormwater management contemplated by the BMP Manual and the Department's Comprehensive Stormwater Management Policy.

Of greatest concern with respect to the ordinance is the Department's failure to carry out its stated commitment to the public to ensure an effective model ordinance that embraces and reflects the multi-stakeholder, multi-year process of the Oversight Committee. The Department repeatedly committed to our organizations and to others in the environmental community that it would develop an effective BMP Manual and then create a model ordinance that reflects and carries forth the findings contained in the BMP Manual. Because the Department has moved forward to draft a model ordinance and use that ordinance to propose the weakening of an important substantive standard in the Manual, we are troubled that the commitments made will not be honored.

During the December 6<sup>th</sup> meeting, Oversight Committee members raised concerns about the proposed change to CG-2, particularly its focus on runoff from impervious surfaces, to the exclusion of runoff from disturbed pervious surfaces. These concerns were echoed by several members of the public in attendance, including members of the Campaign.

Concerns were also raised about the model ordinance itself, concerns that went beyond the volume control provisions that resulted in the proposed change to CG-2. The model ordinance was not made available to Committee members prior to the meeting. Indeed, it was only upon request by one of the Committee members that the Department made copies of the ordinance and distributed them to all in attendance for review.

At the December 6<sup>th</sup> meeting, Department representatives stated that it was the Department's goal to release the Manual in final draft form for public comment prior to the end of this month. We understand and share the Department's desire to finalize and begin implementing this important guidance document that has been over two years in the making.

However, given the last minute change to a substantive and critical provision of the Manual, we believe that the Department should take the necessary time to ensure that the CG-2 volume control standard is one that truly meets the objectives of the Manual. The comments raised regarding the failure of revised

CG-2 to capture runoff from disturbed, pervious areas were acknowledged as valid by several Department staff members, Committee members, and members of the public who attended the December 6<sup>th</sup> meeting. However, in order to determine conclusively the proper CG-2 standard, engineering calculations and analysis must be undertaken, and those numbers must be presented for consideration. That was not done at the December 6<sup>th</sup> meeting by Department staff who presented the change. Several Committee members expressed a desire to have the proper analysis conducted and presented to the Department and the Committee before finalizing CG-2 and the remainder of the draft Manual for public comment.

At the December 6<sup>th</sup> meeting, Department representatives also indicated that the Department was considering putting out both the Manual and the model ordinance in final draft form for public comment at the same time. That, we believe, would be unwise at this juncture. We do believe that a strong model ordinance that is consistent with the Manual needs to be developed, because it is the legal tool for implementing any good stormwater management policy at the municipal level. However, such a model ordinance needs to be carefully crafted to reflect the sound principles of stormwater management found within the Manual. It needs to incorporate all of the key standards and procedures outlined in the Manual, and reflect overall consistency with the Manual and its goals. The draft model ordinance shared with the attendees at the December 6<sup>th</sup> meeting does not do that.

Given the complicated scenario that has developed around the Manual at the eleventh hour, we suggest the following. Allow Department staff and Oversight Committee members to further analyze CG-2 and determine appropriate language that achieves a workable volume control standard that captures and removes runoff from *both* impervious and pervious disturbed areas from a site, a concept that is fundamental to the Department's stormwater management goals and is supportive of minimum disturbance development practices. Once that is accomplished, finalize the draft Manual and publish it for a 60-day public comment period. We anticipate that, even with allowing for this further analysis and review, release of the Manual for public comment could still occur as early as January 2006, only one month later than the Department's current goal.

As the public comment period on the Manual progresses, the Department should work with the Oversight Committee to develop a model ordinance that fully incorporates the Manual and allows for meaningful and consistent stormwater management at the municipal level. Once the BMP Manual is finalized and all public comments are addressed and/or incorporated as appropriate, final efforts can be made to ensure consistency between the model ordinance and the final BMP Manual, after which time the model ordinance can be released for public comment.

In the end, if such a timetable is followed, the Commonwealth will have in place two important technical guidance documents that will work in concert to ensure that stormwater is managed in a comprehensive and protective manner, thus achieving the Department's goals set forth in the Comprehensive Stormwater Management Policy and the requirements of the Clean Water Act and the Clean Streams Law.

Proceeding otherwise and releasing two documents that, in fact, are conflicting rather than consistent, will create confusion among the public and municipal officials relying on the Department for official guidance on how to protect their communities and comply with legal obligations under both state law (Act 167) and federal law (NPDES Phase II).

In closing, we urge you to direct staff to implement this suggested timetable, so that enough time is provided to thoroughly consider and evaluate all of the valid concerns raised at the December 6<sup>th</sup> Oversight Committee meeting and to ensure creation and release of a strong and complementary model ordinance. Delay in finalizing these documents is a small price to pay for ensuring that the proper tools are in place to address the significant stormwater problems that presently damage Pennsylvania properties and communities and pollute our rivers and streams.

Thank you for your time and consideration of this critical matter.

Sincerely,

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