

NAFSMA Comments on Stormwater ICR and the Future of the Stormwater Program

NAFSMA 2010 Annual Meeting

San Diego, CA

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Presentation

- The Original Notice
- NAFSMA's Response
- The Second Request
- Future of the Stormwater Program

The Original Notice

- Federal Register on October 30, 2009
- Requested response to draft questionnaires to
 - MS4s
 - States and US Territories
 - Industry (developers, contractors)
- Comments due December 29, 2009

What EPA wanted to know

- Alternate ways to gather data from MS4s rather than a questionnaire?
- Are there other appropriate respondents?
- Alternate ways to gather data on design and cost impacts?
- Are there alternate ways to distribute the questionnaires?

Anticipated Burden

- EPA anticipated
 - 53 hours per questionnaire
 - 2060 respondents
 - Approximate cost of \$4 million

NAFSMA's response

- NAFSMA's response was led by
 - Doug Harrison,
 - Scott Tucker, and
 - Ben Urbonas
- Held several Committee and Membership Calls on the subject
- Submitted comments on December 23, 2009

Comment Focus Areas

1. ICR Process
2. Burden of Responding to the ICR
3. EPA's Announced Goals /Purposes for the ICR Process
4. National Research Council (NRC)/ICR Linkage Being Promoted by EPA
5. Specific Questionnaires and Questions

ICR Process

- We don't believe questionnaires are the right way to assess...
 - Current practices
 - Effectiveness and feasibility of technologies
 - Potential pollutant reductions and costs
- A more appropriate process would be to pursue a national summit or strategic initiative of engineers, scientists, regulators, MS4 administrators and stormwater practitioners

ICR Process (cont'd)

- There are alternate sources of data including...
 - The many annual reports submitted by MS4s as a condition of their permits
 - Universities
 - Professional organizations and associations
 - Watershed authorities
 - Monitoring partnerships

ICR Process (cont'd)

- Limited sampling of selected responders will shortchange the results
- Many MS4 permit programs involve co-permittees who may hold varied responsibilities within a permit
- The selection of responders should include a broad and representative array of entities
- The process of identifying the respondents should be made available for public comment before distribution

ICR Process (cont'd)

- This questionnaire process does not meet the requirements of Section 122.37 program evaluation process mandated by the Phase II regulations
- EPA believes it does
- Using this process as a substantial part of the rules changing process in place now, to be completed by December 2012, is wrong

Burden of responding

- The burden estimated by EPA for MS4s is understated.
- NAFSMA's estimate of burden is approximately 3 1/2 - 4 times EPA's estimate.
 - Number of hours for the task
 - Levels of review for submittal
 - Hourly rates
- The burden of perjury is extreme. Given imperfect records, human error and lack of clarity of questions, we would prefer to not have to worry about fines and imprisonment or enforcement action by EPA.

EPA's goals and purpose

- Overarching objective is to “...evaluate current stormwater management practices...current state and local programs, and any EPA regulations to control these discharges...”
- We believe the ICR is wholly inadequate for this purpose.
 - Way too much information
 - Way too technical
 - Even the NRC Report didn't have the right amount and type of information needed for this purpose

EPA's goals and purpose (cont'd)

- The ICR focuses on “on-site retention” and does not adequately address any other stormwater quantity or quality control practices.
- Misses assessment of ...
 - Effectiveness
 - Feasibility
 - Pollutant reductions, and
 - Costs... related to various control technologies and BMPs.

EPA's goals and purposes (cont'd)

- Assessing financial implications of current and future regulations will require a much more complex and sophisticated economic analysis than the questionnaire.

Linkage of NRC Report and ICR

- The ICR dismissed key findings of the NRC Report in favor of a limited focus on parcel-by-parcel land use controls.
- The Report stressed that effectiveness of the current stormwater program is hampered by...
 - A statute focusing on specific pollutants
 - Science of stormwater is not sufficiently advanced to determine causality between sources, resulting stressors, and their physical, chemical and biological responses.

Linkage of NRC Report and ICR

- There is still this gap of needing to advance the science and reconcile it with what appears to be an ill-fitting statute.
- The NRC Report should be used as a springboard to a more fully evolved assessment of stormwater quality science and engineering that also considers input from stakeholders not represented in the report.

Specific Questionnaires and Questions

- NAFSMA doesn't want EPA to dismiss too quickly what we've said to this point.
- Also provided about 9 pages of comments on the questionnaires and questions.

The Second Notice

- Federal Register on May 10, 2010
- NAFSMA responded on June 9, 2010
- MS4 questionnaire longer, burden estimate was reduced – this will be a big issue
- Is this still the main tool for meeting Section 122.37 requirements for an “enhanced research effort”? – it seems that it is
- Concerns with definitions
- Still lots of confusing questions and how you would answer depending on your jurisdiction/program

The Questionnaires are out

- EPA sent out questionnaires on or about August 16, 2010
 - MS4s
 - 608 regulated MS4s
 - 84 regulated DOT MS4s
 - 932 non-regulated MS4s
 - All NPDES Permitting Authorities – State agencies
 - Owner/Developer
 - 2985 facilities
 - On or about September 7, 2010

Stakeholder Input

- Federal Register Notice seeking stakeholder input on December 29, 2009
- NAFSMA provided comments on February 25, 2010
- EPA held six listening sessions across the country between January and March 2010, including a virtual session on February 3, 2010
- NAFSMA attended three listening sessions and documented our comments at the DC session in writing.

Stakeholder Input (cont'd)

- Expand the area subject to federal stormwater regulations
- Establish specific requirements to control stormwater discharges from new development and redevelopment
- Develop a single set of consistent stormwater requirements for all MS4s
- Require MS4s to address stormwater discharges in areas of existing development through retrofitting the sewer system or drainage area with improved stormwater control measures
- Explore specific stormwater provisions to protect sensitive areas

The future of the Stormwater Program

- Draft rules by September 2011
- New rules by November 2012
 - New permits and permit renewals
 - Mimic pre-developed hydrology
 - Green Infrastructure

Some coaching for our members

- NAFSMA offer...
 - Conference (maybe only time for one at the most)
 - Documented tips on filling out questionnaire
 - Help in answering the questionnaire (Help Desk/hot-line)
- Quick tips...
 - Don't create information – give what you have available
 - Don't guess – tell only what you know
 - Don't assume what something means if it's confusing
 - Don't let the questions lead you in a certain direction
 - Keep good records of what you've answered and why