

September 11, 2019

Honorable Gene Yaw, Chair
Senate Environmental Resources and
Energy Committee
Room: 362 Main Capitol
Senate Box 203023
Harrisburg, PA 17120-3023

Honorable John Yudichak, Democratic Chair
Senate Environmental Resources and
Energy Committee
Room: 458 Main Capitol
Senate Box 203014
Harrisburg, PA 17120-3014

Re: Environmental Resources and Energy Committee hearing of September 11 to consider Municipal Separate Sewer System (MS4) requirements – written comments offered by Pennsylvania Farm Bureau

Dear Chairman Yaw and Chairman Yudichak:

Pennsylvania Farm Bureau appreciates the opportunity to provide comments, relative to today's committee hearing to consider the effects of compliance with federal and corresponding state mandates for municipal stormwater management and permitting upon Commonwealth agencies and resources.

We expect that you will hear from witnesses today similar testimony to that presented at the joint hearing of the House Local Government and Environmental Resources and Energy Committee in June. Testimony at that hearing clearly illustrated the serious cost increases imposed on numerous municipalities because of federal and state mandates for stormwater management and the severe financial strain those increases are placing on local governmental budgets.

We understand the dilemma these municipalities are facing in complying with stormwater mandates, especially without any meaningful source of federal or state financial assistance to help pay for their increased costs. However, the approach taken by numerous municipalities to recoup costs through stormwater management fees on properties has placed unreasonable and disproportionate cost burdens on farmers, and has failed to properly consider and credit the positive impact that farm land plays in stormwater management. We will be offering your consideration legislative solutions that would provide a fairer and more reasonable assessment rate structure for farmers and would give recognition to the positive role that open space plays in stormwater management.

While classified as “urban” under regulation, many of the municipalities subject to federal and state stormwater mandates are still rural in make up and local governmental function and operation, with very modest fiscal budgets and limited opportunity to augment their current sources of revenue. Few can financially afford the serious cost increases needed to comply with these mandates.

It is certainly no secret that the financial impact of federal and state stormwater mandates will be felt most strongly in communities within Pennsylvania’s Chesapeake Bay watershed. Federal regulation of the Bay watershed and requirements for nutrient and sediment pollution reduction imposed on the Commonwealth and other Bay watershed states under targeted federal Total Maximum Daily Load (TMDL) goals have been the driving force behind the recent augmentation of stormwater mandates.

In the wake of the imminent financial challenges faced by “MS4” municipalities in absence of available federal or state assistance, the General Assembly engaged in a seemingly reasonable legislative response. Several bills were introduced during the 2015-2016 term to provide municipalities the opportunity to pursue “self-help” measures to finance these increased costs. Proposed legislation was introduced to grant municipalities authority to impose stormwater management fees on owners of property, to the extent needed by the municipality to recoup its costs. And in 2016, General Assembly enacted Act 62, which amended the Second Class Township Code granting such authority.

While well-intentioned, Act 62 of 2016 essentially provided no specific guidance to municipalities on how assessment rates would be determined or allotted among property owners. Nor did Act 62 provide any limitation in municipalities’ exercise of authority in determining assessment rates among owners.

The absence of governing parameters provided in Act 62 and current statutes in determining the rates of stormwater management fees have caused farm families in numerous municipalities to incur unreasonable and disproportionate costs in stormwater management fees. Municipalities and municipal authorities approving stormwater management fees have essentially established rates of assessment based squarely on the amount of impervious surface area on a property. While stormwater management fee ordinances approved by municipalities and municipal authorities may give superficial recognition and “credit,” little if any meaningful consideration has been provided in the rates of assessment imposed to factors that help control stormwater runoff, such amount of open space area on a property or conservation measures taken by property owner to control stormwater runoff. Many farmers have already incurred significant costs in

development and construction of infrastructure on their farms, such as diversion ditches and swales, to control stormwater runoff and minimize soil loss on cropland. These farmers are now burdened with hundreds of dollars – and in some municipalities thousands of dollars – in additional costs because of stormwater management fee rates imposed by municipalities.

Farmers in the Chesapeake Bay watershed are especially hurt by stormwater management fees being assessed so far. They will be expected bear even more costs in performance of conservation measures as part of Pennsylvania’s overall effort to comply with federal TMDL requirements in the Bay watershed. Through proliferation of stormwater fees of the type imposed so far, they will also have to bear the high costs of fee assessments.

And when compared with fees that have been typically assessed on residential property owners and relative proportion of impervious area typically found on residential properties, rates of assessments imposed by municipalities on farm properties have been especially unfair and unreasonable. Farm properties subject to stormwater assessment fees commonly have a much lower percentage of their total land area that is impervious than residential property tracts. Yet assessment rates imposed on residential property owners under municipalities’ total impervious area basis have typically been \$100 or less, compared to the hundreds or thousands of dollars imposed on owners of farm property.

Municipalities’ assessments of high rates of stormwater management fees on farms could not come at a worse time economically for Pennsylvania farmers. Net farm income nationally for 2018 is estimated to be the third lowest in the past decade – lower than net farm income generated in the economically disastrous years of 2009 and 2016, and nearly 50 percent below 2013 income highs.¹ Pennsylvania dairy farmers have been especially hard hit for the past several years. MSC Business Services (an affiliate of Pennsylvania Farm Bureau that provides accounting business analysis services to farmers) noted that dairy farmers on average have lost money on every gallon of milk they produced the past **three** consecutive years. From 2016 through 2018, Pennsylvania dairy farmers averaged losses of \$1.68, \$0.04 and \$2.17 per hundredweight respectively on milk they produced.²

¹ See, *American Farm Bureau Market Intel*, “Updated Outlook for the U.S. Farm Economy,” <https://www.fb.org/market-intel/updated-outlook-for-the-u.s.-farm-economy> .

² Testimony of Michael Volinskie, Manager of MSC Business Services, offered at Pennsylvania Milk Marketing Board producer over-order premium hearing of September 4, 2019.

We realize that there will be considerable pain in efforts by municipalities to financially manage the increased costs they are being forced to bear because of federal and state stormwater mandates. And we are not seeking measures to totally absolve farmers from any financial responsibility in managing the increased costs. But we believe that the financial pain to be borne from stormwater mandates should be more reasonably and fairly spread among contributors to stormwater runoff than what municipalities have largely done so far. We believe that the current trend of municipalities and municipal authorities to impose rates of stormwater management fees essentially on the amount of a property's total impervious surface is detrimental to agriculture, and fails to take into account the role that agriculture lands have in controlling stormwater.

Pennsylvania Farm Bureau is seeking legislative amendments to Act 62 of 2016 and other statutes to establish reasonable parameters on stormwater manage fee rates that municipalities and municipal authorities may impose on agricultural property. The legislative amendments would include two major components. First, there would be a maximum rate that local government agencies may impose on farm properties whose portion of impervious area is at or below a percentage of the total land area. Second, the legislation would require meaningful recognition and deductions from aggregate stormwater assessment fee rates for costs incurred by farmers in implementing conservation practices and constructing or installing infrastructural components on the farm for stormwater control.

We believe this approach creates a system that is fairer for agriculture property owners. It does not exempt them from fees. Instead, it creates a system that acknowledges farmers often control large tracts of property that have positive impacts on stormwater management.

We hope this committee and the Senate collectively appreciates the seriousness of financial burden to farmers that has occurred under the current trend of assessment of stormwater management fees. Equally, we are asking for members of the General Assembly to strongly support our proposed legislative solution to place reasonable limitations on fees that may be assessed, when introduced in the General Assembly.

We would be happy to answer any question that you or other committee members may have upon your review of our comments. Please do not hesitate to contact me if you do have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Youker", written in a cursive style.

Darrin Youker
Director, State Government Affairs

cc: Committee Memberommittee Members