

**MSDGC's April 11, 2014
Comments on Proposed Storm
Water Separation Policy**

To: Mr. Dave Meyer, Hamilton County Director of Utility Oversight
From: James A. Parrott, MSD Executive Director *JAP*
Date: April 11, 2014
Subject: Draft Hamilton County Storm Water Separation Policy
C: Christian Sigman, County Administrator, Jeff Aluotto, Assistant County Administrator,
Scott Stiles, Interim City Manager, Terry Nestor, City Solicitor, John Curp, Utility General
Council, MaryLynn Lodor, MSD Deputy Director, Leisha Pica, MSD Enterprise Manager

This memo is provided in response to the proposed resolution to amend the Metropolitan Sewer District of Greater Cincinnati (MSD) Rules and Regulations at Article XXIV, "ADMINISTRATIVE RULES" by adding Section 2407, "Hamilton County Storm Water Separation Policy". Please be advised separate comments will be provided from multiple legal and agency perspectives from the City of Cincinnati and as such MSD cannot endorse the draft policy for the following reasons.

1. The draft policy encroaches on the authority of Regulatory Agencies.
2. The draft policy unnecessarily increases the capital cost of Consent Decree projects.
3. The draft policy is not based upon industry and regulatory standards.
4. The draft policy is not practical or technically sound.

A more detailed explanation of these objections is presented in this correspondence.

Objection 1: Policy Encroaches on Authority

Hamilton County continues to propose that MSD perform actions to maximize improvement of in-stream water quality and ultimately achieve attainment of water quality standards. This overarching goal is not consistent with the mandates of the Consent Decrees entered into by the County and the City of Cincinnati. Additionally, many of the actions noted in the policy are not an appropriate use of MSD ratepayer dollars in that they are not directly related to sewer overflows or wastewater infrastructure improvements. MSD asks if the draft policy is consistent with Hamilton County's Storm Water District's existing rules and regulations. Recently MSD has been provided with Hamilton County's draft storm water design manual, of which storm water management criteria is discussed to a much lesser extent than this draft policy

- Neither the County nor MSD have the authority to establish an in-stream target concentration for each pollutant of concern. The County does not have the authority to "designate appropriate levels for pollutants of concern". Creating target concentrations introduces a future liability to the District with respect to water quality compliance. Compliance with water quality standards should remain in accordance with standards and criteria published under the authority of the Ohio EPA.

- The draft policy is unclear with respect to delineating the precise authority and plans for ownership of new and existing storm sewers and related assets. It is not appropriate for MSD to “recommend future ownership of new and existing storm water pipes”.
- As a sewer utility, MSD does not have the authority determine necessary stream protection measures or means to manage overland flooding. The County may not have the authority to approve “increased stream flooding or hydromodification” on a case-by-case basis. These decisions are under the authority of the US Army Corps of Engineers (USACE) or FEMA. MSD currently utilizes the USACE stream protection criteria into project designs and works with Ohio EPA for obtaining necessary permits related to compliance with the Clean Water Act.
- It is not a good use of MSD ratepayer dollars to create, update, and maintain in-stream flow and water quality models for water bodies located throughout the District. This function is under the authority of USACE and Ohio EPA. However, MSD has taken proactive measures to identify and assess water bodies for the causes and sources of non-attainment. These evaluations will be used to develop solutions related to MSD’s sewer improvements.

MSD designs storm sewers in accordance specific industry standard design storm events. The draft policy would require MSD to evaluate and mitigate any level of overland flooding in the vicinity of storm sewers. This is not a reasonable approach supported by existing Regulatory requirements for storm sewers. Generally speaking additional storm sewer capacity will not increase the risk of more flooding than exists under current sewer capacity conditions.

Objection 2: Policy Unnecessarily Increases Capital Costs

MSD continues to be diligent in controlling costs for all projects including those for Wet Weather and Asset Management. The draft policy will unnecessarily increase capital cost for all separation projects, including those identified and agreed upon by the Defendants in Phase 1 of the Consent Decree

- Policy requires MSD to address potential future regulations, which do not exist and are not under discussion by Federal or State regulatory agencies. The results of such a hypothetical exercise would be highly uncertain and likely to require additional unnecessary capital cost to anticipate potentialities that may occur 25 years from present, if ever.
- The draft policy requires MSD to perform extensive water quality sampling and analyses throughout the District. At the separation project level, this policy will warrant multiple meters throughout each tributary drainage area. Sampling water bodies is an inherently expensive endeavor and is particularly challenging when trying to assess wet weather conditions. The delays included in the draft policy could increase the risk with the Defendants missing Consent Decree milestones for sewer separation projects.

- MSD would be required to use the results of the water quality analyses to develop, calibrate, validate, and maintain in-stream flow and water quality models throughout the District. Additionally, MSD is required to conduct these model evaluations with and without background sources. Furthermore MSD does not have the authority to control land uses or the pollutants that runoff from associated land uses and therefore should not be the primary source of pollution control. A more practical solution may be to address pollution at the source through land use controls and public education.
- Project costs will be artificially inflated to account for "future obligations MSD will have for renovation, upgrade, replacement, and operation and maintenance" of potential future project components resulting from "future regulations". Since such future requirements do not exist (and are not under discussion by Federal or State Regulatory Agencies), MSD will be forced to assign an arbitrary contingency to each separation project.
- Additional planning costs will be required to comply with the draft policy including costs for the following exercises: 1) evaluation of multiple scenarios for use of existing pipes (storm or sanitary) requiring modeling and risk assessments; 2) extensive water quality modeling evaluations; 3) modeling for overland flooding resulting from storms other than the design storm events; 4) evaluation of more pollutants of concern in addition to those required by Ohio EPA; 5) development of multiple life-cycle cost evaluations over 25-year and 40-year scenarios; 6) pilot testing and demonstration testing of representative stormwater best management practices (BMPs); 7) development and re-development (due to interpretive nature of the definitions in the proposed policy) of the minimum cost, best value cost, and maximum cost for projects due to water quality considerations; and 8) the costs associated with delaying projects

Objection 3: Policy is Not Based on Regulatory Standards

Hamilton County's draft policy requires MSD to develop industry standards that do not currently exist and are not under development by Regulatory Agencies. Exhibit A of the proposed policy states "The regulation of storm water quantity and quality is increasing". This statement is not consistent with statements made by Ohio EPA or USEPA regarding storm water regulations. MSD remains proactive with considering water quality benefits from its separation projects. However, it is not appropriate for the District to develop standards related to water quality compliance of water bodies throughout the District.

- The draft policy requires MSD to develop a "water quality model" based on industry standards. Applicable industry standards are not referenced because none exist. The utility industry is presently working to create draft standards and MSD is an active participant in this effort. USEPA has not issued guidance documents related to water quality modeling.

- Multiple references are made throughout the policy to “reasonable level”, “excessive”, and “acceptable” criteria. However, these vague references cannot be cited to an industry or Regulatory standard.

Objection 4: Policy is Not Practical or Technically Sound

The draft policy is based upon the assumption that every separation project is the same and hence, the same approach can be implemented when evaluating the feasibility of separating storm water from the combined sewer system. This is not practical or reasonable. MSD is concerned the policy appears to assume the lowest cost solution will result in the best water quality. This is often not the case in that a balance of benefit and cost justifies the recommended project criteria. Most of the time - the lower capital cost will provide a lower benefit. Achieving higher levels of control for sewer overflows inherently requires higher levels of capital investment. This matter lies at the heart of the Consent Decree affordability consideration.

The following list of topics is a sampling of technical issues MSD offers regarding the proposed policy.

- The policy misinterprets the primary driver for stormwater control devices. Such equipment is used to manage stormwater runoff on site to pre-construction conditions and does not typically intend to holistically address compliance of in-stream water quality standards.
- The policy does not recognize attainment of water quality standards is not always achievable or viable by the sewer utility due to non-sewer sources of pollution. There is a huge difference between not causing or contributing to water impairments and attaining water quality standards. Ratepayers should not have to take on the role of insurer of in-stream water quality from all pollution.
- The policy generically refers to a “water quality model”. There are multiple forms of water quality models that differ in scope and purpose including pollutant fate and transport models, biological and ecological models, urban storm water runoff models, etc. Lack of specification precludes implementation.
- The policy assumes a pilot demonstration can be performed for each project representing Typical Year conditions. Such a requirement would defer separation for years in some cases, until the model results match data from a demonstration – which may never happen. Similarly the policy assumes storm sewer discharge sampling is viable for all projects. Areas lacking any storm water related infrastructure will not be viable sampling candidates.
- The policy refers to typical project technical decisions as “BOCC policy” decisions.

- The policy introduces a level of uncertainty to all separation projects that preclude MSD from benchmarking performance.

MSD requests a meeting to discuss the specifics of the draft policy with the County team. At this point, the policy warrants reconsideration of the ultimate goals of the draft policy with an analysis of the cost and regulatory impacts on all jurisdictions throughout Hamilton County.