

Sierra Club comments on new rules and regulations, Section 207 Storm Water Separation Policy July 9, 2014

Sierra Club supports adoption of the new storm water regulations proposed by the County. While the main cause of local water quality violations comes from untreated sewage, untreated storm water is the biggest threat to urban rivers and streams. The water quality of storm water discharges needs to be addressed. We applaud the commission for taking up this issue.

While the city and MSDGC have objected at length to the proposed rules, their objections focus on avoiding actions that will prevent or help prevent water quality violations caused by MSDGC projects.

Most disconcerting, MSDGC states "Hamilton County continues to propose that MSDGC 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 Decree....".

MSDGC is completely wrong in stating this.

The Clean Water Act (CWA) mandates compliance with water quality standards and the Consent Decree requires compliance with the CWA and 1994 USEPA CSO Policy.¹ MSDGC's focus seems to be limited to simply meeting volumetric goals. That only works if the volumetric goals also meet water quality standards.

The consent decree expects MSDGC to use industry standards, water quality modeling, sound engineering, data analysis, monitoring, post construction monitoring to insure water quality standards are met. These are terms that MSDGC is objecting to.

However, USEPA confirmed the need to meet water quality standards in their response to comments to the LMCPRⁱⁱ. USEPA stated, "*It is important that structural and nonstructural BMPs will be implemented to manage the separated stormwater, to ensure that as CSO issues are being addressed that a different water quality concern is not being created.*" The County stormwater regulations seek to do exactly this. USEPA also states the provisions of the consent decree "will ensure that achievement of compliance with all applicable water-quality requirements" and the decree cannot be terminated until Defendants have achieved and maintained compliance with all consent decree requirements" including the paragraph requiring compliance with water quality standards.

The MSDGC also objects to the cost of compliance. However the county rules take costs into consideration including potential future costs, and considers them in the decision flow chart.

These rules bring both clarity and a proactive approach to solving water pollution problems in the community. Abundant water has long been an asset to this community and helped drive historic industrial development of this region. Many cities in the US are struggling with drought and higher water costs. This issue is becoming more acute globally. Clean water is essential to our future here in Hamilton County.

ⁱ The Consent Decree states the following:

"IV. OBJECTIVES

It is the express purpose of the Parties entering into this Partial Consent Decree to further the objectives set forth in Section 101 of the Act, 33 U.S.C. § 1251, and to resolve the claims of the Plaintiffs for injunctive relief and civil penalties for the violations alleged in Plaintiffs' Joint Amended Complaint in the manner set forth in Section XXVI. In light of these objectives, Defendants agree, inter alia: to use sound engineering practices, consistent with industry standards, to perform investigations, evaluations and analyses and to design and construct any remedial measures required by this Decree; to use sound management, operational, and maintenance practices, consistent with industry standards, to implement all the requirements of this Consent Decree; and to achieve expeditious implementation of the provisions of this Decree with the goals of eliminating all Sanitary Sewer Overflows and Unpermitted Overflows and coming into and remaining in full compliance with the requirements of the Clean Water Act, U.S. EPA's 1994 Combined Sewer Overflow (CSO) Policy, Chapter 6111 of the Ohio Revised Code and the rules promulgated thereunder, the Compact and the pollution control standards promulgated thereunder, and Defendants' Current Permits."

and the 1994 CSO Policy (referenced in the Consent Decree) states:

"The main purposes of the CSO Control Policy are to elaborate on the Environmental Protection Agency's (EPA's) National CSO Control Strategy published on September 8, 1989, at 54 FR 37370, and to expedite compliance with the requirements of the Clean Water Act (CWA)." ...

"This Policy provides guidance to permittees with CSOs, NPDES authorities and State water quality standards authorities on coordinating the planning, selection, and implementation of CSO controls that meet the requirements of the CWA and allow for public involvement during the decision-making process." ...

"...the Policy lays out two alternative approaches--the "demonstration" and the "presumption" approaches--that provide communities with targets for CSO controls that achieve compliance with the Act, particularly protection of water quality and designated uses." ...

"The presumptive approach (which MSD has been using) allows for a program which "would be presumed to provide an adequate level of control to meet the water quality-based requirements of the CWA, provided the permitting authority determines that such presumption is reasonable in light of the data and analysis conducted in the characterization, monitoring, and modeling of the system and the consideration of sensitive areas described above. These criteria are provided because data and modeling of wet weather events often do not give a clear picture of the level of CSO controls necessary to protect WQS."

ⁱⁱ USEPA Lower Mill Creek Partial Remedy response to comments, 2013