

## **RESPONSE TO MSDGC COMMENTS DATED 7/21/14**

This is to acknowledge receipt of your third set of comments dated July 21, 2014 regarding the pending change to MSDGC Rules and Regulations establishing a storm water separation policy. The County's responses to your prior two sets of comments are posted on the County's web site associated with this rule-making, and your concerns in the latest comments have been largely addressed in those responses and are not repeated here. Copies of the comments and responses are attached.

The County does not share your pessimism about the Policy's implementation and disagrees with your "post-hoc" impact on already approved projects, such as the LMCPR. Your concerns about a new treatment plant at Carthage or discussions about the "default tunnel" appear to be misplaced and exaggerated and indicate an apparent misunderstanding of the Policy. The Policy will ensure good utility management and environmental protection in the short term and long term. The Policy does not dictate any final decision for a facility or project. It merely requires certain water quantity and water quality analyses be performed as part of the planning of a storm water separation project so that all of the impacts of the project are assessed, including impacts from re-directing the flow. The analyses will help determine what BMPs will be needed to control storm water to the maximum extent practical and whether additional BMPs would be reasonable to further improve water quality and control water quantity as part of the separation solution.

It appears that there is one underlying issue contained in all three sets of your comments: MSDGC has a significant amount of confusion regarding MS4 permits. This confusion is further substantiated by the fact that the MSDGC consultant and project manager for the Revised Original Lower Mill Creek Preliminary Remedy's Valley Conveyance System (VCS) recently contacted Ohio EPA to determine if they need a new MS4 permit for the VCS. The fact that MSDGC did not first contact the County Sewer District on this issue is also notable. The existing MS4 NPDES General Permit, in which the City is an already a co-permittee, provides that storm water discharges that would cause or contribute to in-stream exceedances of water quality standards are not authorized under the MS4 General Permit. Ohio EPA may require additional actions or an application for an individual NPDES permit or alternative general permit if the MS4 is determined to cause an in-stream exceedance of water quality standards. This existing permit condition cannot be ignored.

### **MS4 Permit Discussion**

The discharge of storm water is regulated under federal and state law. As USEPA's top water official said last week, it is critical that localities start planning now how they will handle polluted storm water. Speaking at a Bloomberg BNA webinar, Nancy Stoner, EPA's Acting Assistant Administrator for Water, indicated that storm water continues to be a major source of impairment in the nation's waters. She encouraged communities to think about, and act now, to address storm water impacts (water quality degradation, erosion, etc.). She referenced this in the context of discussing local policies that can be modified to address storm water before it is discharged. (BNA Bloomberg Environment Reporter, July 18, 2014).

Ms. Stoner's points support the County's proposed storm water separation policy. The County has recognized that evaluating storm water separation impacts before separation is planned, designed and constructed is the prudent, long-term approach to protect our local water quality and the financial integrity of MSDGC. Moreover, the Hamilton County Storm Water District has posted and linked substantial information about storm water pollution and the importance of evaluating storm water discharges in terms of quality and quantity, *before* construction starts.

The County has determined that MSDGC cannot continue to ignore storm water separation impacts during the planning and design process. Your comments suggest that MSDGC should continue to place "blindness" on itself with regard to these issues. The prudent course of action is to plan and design storm water separation projects with the present and future in mind. This is exactly what USEPA is telling communities such as ours to do.

The proposed Policy requires consideration of certain analyses, but leaves the ultimately policy decision regarding how much to spend now to address future requirements up to the elected policy-makers who own MSDGC – the Board of County Commissioners. The path of ignorance, on the other hand, effectively gambles that each storm water separation project will not degrade water quality or lose the opportunity to address future requirements reasonably and affordably now, rather than fix the problem later, at significantly increased cost. Again, this is the very point made last week by our Nation's top water quality official. We must think ahead.

#### **Additional costs**

You have asserted that the costs of implementing the proposed MSDGC storm water separation policy will be catastrophic. The County disagrees. We acknowledge that there will be some additional time spent to not ignore the consequences of discharging polluted storm water. There will be some additional consultant costs, assuming MSDGC continues its heavy reliance on consultants for this and many other kinds of work. This cost is consistent with the kind of advance planning that is performed on construction projects to determine whether they conform to various codes and other policies. In this case, it will mean compliance with the Clean Water Act, the Consent Decree and the existing (and future) MS4 permit(s). The level of work is reasonable and MSDGC management should be able to control costs on this consulting work, if not performed in-house.

Furthermore, as mentioned, the costs for ultimate compliance will be significantly less than the cost for compliance "after the fact". The allegations that projects such as the Muddy Creek Alternative, SSO 700 and the Lick Run project will become unaffordable, is patently untrue and misguided. All of these projects could and should go forward, with the appropriate consideration and implementation of appropriate storm water controls.

Regarding a meeting with either USEPA or OEPA, to inform them of the proposed storm water policy, it will better serve the MSDGC if the County introduces the policy. This will allow for the regulators to ask questions and have their questions answered.