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IN THIS ISSUE

INTRODUCTION TO STORMWATER
WELL CONSTRUCTION & DECOMMISSIONING STANDARDS
FACULTATIVE LAGOONS

PRESSURE MOUNTS TO ADDRESSING AGRICULTURAL RUNOFF

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Pennsylvania's efforts to improve water quality in the Chesapeake Bay famously required sewer ratepayers to fund about \$2 billion in treatment plant upgrades over the last decade. During the same time, the Pennsylvania Department of Environmental Protection addressed non-point source agricultural issues with largely voluntary measures. DEP's profound lack of success with its gentle, voluntary approach to agricultural nutrient reductions is now getting attention, and not the sort that DEP wants.

On May 4, 2015, The U.S. Environmental Protection Agency issued a letter to DEP providing specific recommendations for agricultural activities for Pennsylvania to include in its work plans. EPA's recommendations are direct and include urging Pennsylvania to directly fund efforts to increase compliance with the existing Manure Management Program and to increase inspections to

runoff. According to EPA, Pennsylvania will need to implement over 22,000 acres of additional forest and grass buffers to meet its current milestone. In 2014, Pennsylvania implemented only 3,000 acres. EPA, with restrained understatement, wrote that it is "unclear what programs, policies, and initiatives are in place to achieve the 2015 and future targets for forest and grass buffers."

While not exactly offering praise, EPA at least noted dryly that Pennsylvania's wastewater treatment plants are "on track." They should be, for \$2 billion. But EPA continues overtly to threaten the compliant wastewater sector for Pennsylvania's overall failings. "If load reductions remain off track, EPA may consider seeking additional pollutant reductions from the wastewater sector," wrote EPA.

Although EPA may or may not be successful in drawing Pennsylvania's wastewater treatment plants into a fight over farm runoff, Maryland is not holding back. On April 21, 2015, Maryland's House of Delegates issued a letter to EPA voicing frustration and concern that "EPA is not taking its responsibilities seriously when it comes to enforcement of the Clean Water Act in Pennsylvania." Maryland wrote, "We feel compelled to convey our grave concern and frustration that Pennsylvania did not meet its 2013 milestone targets for nutrients and sediment in agriculture." Highlighting its mandatory compliance requirements for Nutrient Management Plans, Maryland contrasted its approach with Pennsylvania's voluntary, and unsuccessful, efforts. Maryland laments that "Pennsylvania continues to lag behind, making little effort to limit agricultural runoff into the Bay."

EPA's reaction to Maryland's April 21 letter appears to have been its May 4 letter to Pennsylvania. Whatever EPA's battle with Pennsylvania over farm runoff, the wastewater sector remains at serious risk of unjust enforcement efforts. The wastewater sector may be understandably reluctant to enter the farm fray, but sewer ratepayers will be very likely to feel some fraternity with their outspoken neighbors in Maryland. DEP has the power to mandate farms' compliance with manure and runoff rules, but appears unwilling to wield it. Maryland's mandatory approach to farm runoff does not appear to have resulting in political upheaval or economic chaos.

Having "kicked the can" on agricultural runoff nearly as far as possible, DEP's recent and intense interest in urban and suburban stormwater appears to be another effort to decrease non-point source nutrients without more direct action on agriculture. It will not be enough, no matter how successful or aggressive. Having made the promises, Pennsylvania is going to have to address farm runoff soon.



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cover 1,000 smaller farming operations each year. EPA also tells Pennsylvania it should take appropriate and timely enforcement actions against farms that are out of compliance. EPA thinks Keystone State farmers also should be required to self-report their compliance to DEP.

EPA's letter notes that Pennsylvania is not on pace to meet its 2017 or 2025 goals for nitrogen, and that Pennsylvania must reduce 23 million pounds of nitrogen to meet 2017 goals. EPA asserts that since 2009, estimated nitrogen loads from agriculture and urban/suburban runoff have actually increased. Where DEP mandated nutrient decreases, as in the case of wastewater treatment plants, nutrient levels decreased. It should be no surprise that Pennsylvania's invitation to voluntarily decrease agricultural runoff yielded a net increase in nutrient deposition.

On June 10, 2015, EPA issued another interim evaluation of Pennsylvania's Bay-related milestones, and promptly recommended "backstop actions" for Pennsylvania's failing attempts to curb farm



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