

LANCASTER COUNTY Act 167 Frequently Asked Questions (FAQs)

DISCLAIMER: The questions and answers outlined in this document are intended to help municipalities comply with Act 167 and other state and federal regulatory requirements. Nothing in this document shall affect these regulatory requirements. The County reserves the discretion to vary from this supplemental information as circumstances warrant.

Q1: If my municipality is not an MS4, must we still adopt a new stormwater ordinance?

A1: Act 167 Section 11(b) states that “Within six months of adoption and approval of the watershed storm water plan, each municipality shall adopt or amend, and shall implement such ordinances and regulations, including zoning, subdivision and development, building code, and erosion and sedimentation ordinances, as are necessary to regulate development within the municipality in a manner consistent with the applicable watershed storm water plan and the provisions of this act.” Adopting a Stormwater Management Ordinance is one way that the municipality can meet this obligation.

Q2: The county’s previous Act 167 Model Ordinances didn’t require stormwater management on agricultural lands. Will agricultural lands be subject to stormwater management under the new plan/model ordinance?

A2: This requirement is not new. All previously adopted and approved Model Ordinances state that “agricultural activities” when conducted in accordance with a conservation plan or ag E&S plan are exempt from complying with the requirements of the Ordinance (Section 401.C). However, the definition of “agricultural activity” specifically states that “construction of new buildings or impervious areas is not considered an agricultural activity.” Section 401.A states that “any regulated activity that meets the exemption criteria in Ordinance Appendix A is exempt from the Storm Water Management Site Plan *preparation* provisions of this Ordinance.” It goes on to say that the **exemption shall not relieve the applicant from providing adequate storm water management to meet the purposes of the ordinance.** And, Section 607.1 of the County SLDO states that stormwater management only provides an exception for “farm-related businesses conducted within existing agricultural buildings.” Stormwater runoff must be managed to prevent pollution in accordance with the Clean Water Act and Pennsylvania Clean Streams Law.

Q3: The county's previous Act 167 Model Ordinance didn't require stormwater management for small projects. Why is the county now requiring stormwater management for small projects?

A3: The requirement to manage stormwater for small projects is not new. In accordance with the Clean Water Act and Pennsylvania Clean Streams Law, all stormwater runoff must be managed to prevent pollution. Model Stormwater Management Ordinances were included in each of the County's previously adopted and approved Act 167 Plans, the first having been adopted and subsequently approved by Pa DEP in 1996. Exemptions are addressed in Article IV. While exemptions from **Site Plan preparation** provisions are allowed if the regulated activity meets specific exemption criteria, Section 401.A specifically state that "**Exemption shall not relieve the applicant from providing adequate storm water management to meet the purpose of this Ordinance.**" See Q2.

Q4: Can we change the Exemptions provisions?

A4: Yes. Pa Act 167 requires anyone creating new impervious surface to manage stormwater. Thus, municipalities cannot exempt creators of any new impervious surface from stormwater management. However, municipalities can exempt creators of new impervious surface from the SWM Site Plan preparation and submission requirements of the Ordinance. Municipalities should consult with DEP as necessary on the issue of exemptions.

Q5: Will the County's Model Stormwater Ordinance meet the requirements of PAG-13 for stormwater discharges from small municipal separate storm sewer systems (MS4s)?

A5: Preparing an ordinance that meets MS4 permit obligations is not the responsibility of the county. However, the following Minimum Control Measures (MCMs) requirements are met through the Model:

- MCM #3 – Illicit Discharge Detection and Elimination
 - BMP #5 is addressed in Article VIII of the County Model SW Ordinance
- MCM #5 – Post-Construction Stormwater Management (PCSM) in New and Redevelopment Activities
 - BMP#4 is addressed through the County Model SW Ordinance in general.
Sanctions and penalties are specifically addressed in Article IX. MS4 permittees

will need to review the Model to make sure that it meets the requirements of PAG-13 (if that is the permit they are applying for).

- BMP#5 is addressed by the County Model in that is consistent with and promotes the use of Low Impact Development (LID) practices, also known as non-structural BMPs. Municipalities should review other ordinances to identify sections that conflict with LID practices for repeal. The Model SW Ordinance does not address the inventory requirements. Municipalities may find that requiring a digital submission of an As-Built Plan will help in developing and maintaining an inventory of BMPs.

It is in the non-MS4 communities' best interest to implement all provisions of the Model Ordinance, however, MS4 specific provisions may be removed.

Q6: Does the County's Model Stormwater Ordinance comply with the DEP's MS4 Stormwater Management Ordinance Checklist?

A6: In general, yes. The Checklist served as a guide for the county in developing the Model. The Pa DEP has reviewed the draft MO and did not make any comments regarding lack of consistency with the MS4 requirements. Therefore, the MO is believed to be consistent with the MS4 checklist.

Q7: Why were design criteria removed from the Model Ordinance?

A7: Design criteria were removed from the model ordinance in order to facilitate more innovative stormwater management designs. Throughout the development of the County IWRP, we heard that ordinances that contain specific design criteria often restrict designers to a discreet set of BMPs unless the applicant elects to apply for waivers. We believe that by relying on performance standards and the Pa DEP BMP manual, designers will realize more flexibility in meeting performance standards and will therefore be able to employ a broader range of BMPs without the additional time and expense associated with seeking approval for modifications. A secondary consideration was PA DEP's preference that specific design criteria not be included in model ordinances.

Q8: When will the Model Ordinance be finalized (adopted and approved)?

A8: We expect the Model Ordinance, which is a tool within Blueprints, the water resources element of the County Comprehensive Plan, to be adopted on September 19, 2012 following a public hearing held by the County Board of Commissioners (9:15 a.m., 150 North Queen Street, Lancaster, PA). Upon adoption, Blueprints will be forwarded to Pa DEP for approval.

Q9: Will the Pa DEP allow MS4 permittees additional time to meet the ordinance requirements of the MS4 permit if the County's Model Ordinance is not approved in a timely manner?

A9: It is acceptable to Pa DEP that Lancaster County's NPDES MS4 municipal permittees can "check" box F.2 on their PAG-13 NOI Application (or Individual Permit application), in Section I – Stormwater Management Ordinance, and add a comment to indicate that they will adopt the Lancaster Co. Countywide Act 167 Model Ordinance, or an ordinance that provides equivalent standards, within six (6) months of the date of Pa DEP final approval of Blueprints: An Integrated Water Resources Plan for Lancaster County (Act 247 and 167), which serves as Lancaster County's Countywide Act 167 Plan. If this approach is taken, then neither MS4 ordinance checklist is required. Correspondence between LCPC and the Pa DEP on this matter is available from the LCPC upon request.

Q10: Our municipality adopted a stormwater ordinance in 2006, following adoption and approval of the Conestoga River Watershed Act 167 Storm Water Management Plan (2005). Do we need to adopt a new ordinance following adoption of the IWRP/Countywide Act 167?

A10: Maybe. Blueprints: An Integrated Water Resources Plan for Lancaster County (Act 247 and 167), which upon adoption and approval by PA DEP will serve as the countywide Act 167 plan, replaces all previously adopted and approved Act 167 plans. Therefore, you must review your current ordinance to affirm that it regulates development within the municipality in a manner consistent with Blueprints. If it doesn't, you must amend your ordinance accordingly. If it is, your governing body should affirm by resolution or motion that you have reviewed the ordinance and determined that it is consistent. This is a self-certifying process.

DEP does not need/want copies of your new ordinances. An e-mail, post card or letter stating the following is adequate according to DEP:

On date , municipality name enacted ordinance ordinance number to implement Lancaster County's Act 167 stormwater management plan and meet the requirements of Act 167.

Q11: Who approves the municipality's SWM Ordinance and determines consistency with the County's Act 167 Plan.

A11: The municipality and its advisors, e.g. engineers, solicitors, etc. are responsible for determining consistency. See Q10 too.

Q12: Will release rate maps from previously adopted/approved Act 167 Plans be included in the new County Act 167 Plan.

Q12: The previously adopted release rates are incorporated by reference.

Q13: What are the standards the municipality should use for determining consistency?

A13: To be considered consistent with Blueprints, the municipality's ordinances and regulations, should regulate development within the municipality in a manner that is consistent with the goal of Blueprints which is to protect, conserve and restore surface and groundwater resources for human and non-human use. The regulations should be consistent with the following purposes as outlined in the Model Ordinance:

- Meet legal water quality requirements under state law, including regulations at 25 Pa. Code Chapter 93 to protect, maintain, reclaim, and restore the existing and designated uses of the waters of this Commonwealth.
- Preserve the natural drainage systems as much as practicable.
- Manage stormwater runoff close to the source.
- Provide procedures and performance standards for stormwater planning and management.
- Maintain groundwater recharge to prevent degradation of surface and groundwater quality and to otherwise protect water resources.
- Prevent scour and erosion of stream banks and streambeds.
- Provide proper Operation and Maintenance of all Stormwater Management Best

Management Practices (SWM BMPs) that are implemented within the Municipality.

- Provide standards to meet NPDES permit requirements.
- Promote stormwater runoff prevention through the use of nonstructural Best Management Practices (BMPs).
- Provide a regulatory environment that supports the proportion, density and intensity of development called for in the comprehensive plan; allow for creative methods of improving water quality and managing stormwater runoff; and promote a regional approach to water resource management. .
- Help preserve and protect exceptional natural resources, and conserve and restore natural resource systems.
- Promote stormwater management practices that emphasize infiltration, evaporation, and transpiration.

Following adoption and approval by Pa DEP, LCPC will provide additional guidance to municipalities regarding provisions that must be included in the municipal ordinance.

Q14: Does the Model Ordinance address waivers?

A14: Yes. See section 905 and 301.D.

Q15: By including Act 247 (the Pennsylvania Municipalities Planning Code) under Statutory Authority (Section 104), municipalities will incur additional expense to advertise. Is it necessary to include Act 247 under Statutory Authority?

A15: The Pa DEP Model Ordinance includes both Act 167 and 247 under Statutory Authority. The County does not see any reason not to include Act 247 since it specifically empowers the municipality to regulate land use activities that affect runoff. Municipalities may revise this section at the advice of their legal counsel.

Q16: Are areas with karst conditions exempt from meeting infiltration requirements?

A16: There is no outright exemption for areas with karst conditions. The Model Ordinance contains language to assist applicants and municipalities with meeting state requirements in areas with karst conditions. This is important in terms of recharging our groundwater aquifers and ensuring that we maintain a sustainable supply of water to meet future needs.

Q17: How will sites with 100% impervious coverage be able to meet the state requirements for volume reduction? What if infiltration isn't feasible?

A17: Pa DEP allows for reuse, evaporation, transpiration in addition to infiltration to meet the volume reduction requirements.

Q18: How can municipalities help homeowners meet stormwater requirements associated with small projects?

A18: Municipalities should review processing procedures and adapt to their needs.

Municipalities may want to consider a regional approach to stormwater management which would not only accommodate new impervious area but could help address existing problems.