



## Update on the Lawsuit

2008 permit: within 60 days of the 08' permit being issued, there were over 70 challenges filed against it. Before it can go to a court of Law it must go through the State Executive Branch. The case was assigned an Administrative Law Judge (ALJ), who holds a court-like proceeding called a Contested Case Hearing (CCH). Contesting parties were requested to select a representative plaintive and refine the issues to be contested. The CCH was halted by order of Circuit Court until the resolution of a related lawsuit (Adair vs. Board of Education).

Meanwhile since the ALJ cannot deal with Constitutional issues nor invalidate Rules, the City of Riverview filed a Class Action Complaint in May of 09' alleging violations of existing State law including Headley. The Court ruled to certify the case as a Class Action. Eight Communities joined suit and all other Phase II permittees were members of the "Class" unless they opted out. Letters were sent to all Phase II permittees in Feb 2010.

July 2010, the Adair vs. Board of Education lawsuit was resolved. This suit directly addressed the Headley Amendment. The Court's ruling supports the communities claims in regards to the CCH and the Class Action Lawsuit.

The MDNRE withdrew (not revoked) their 2008 permit in an attempt to dismiss the CCH. The ALJ has ordered a formal motion and briefs from both parties. Currently both cases are still pending.

All Phase II Communities received a letter from the MDNRE in December 2010, notifying them that the 2008 permit has been withdrawn. How does this impact Phase II permittees?

What we know; The MDEQ (Switched back from the MDNRE) had a meeting on December 20, 2010 to discuss the following items:

- The 2008 permit has been withdrawn.
- Permittees that did not contest the 2008 permit will revert to the 2003 permit.
  - Due dates have reverted to 2003 permit.
- The 2008 SWPPI that was submitted is valid.
  - Permittees can request in writing to modify their 2008 SWPPI if there is something in it that they feel will be difficult for them to complete.
- MDEQ is targeting 1 to 1.5 yrs before a new permit will be issued.
  - They are assembling a state-wide advisory committee. (volunteers are welcome)
  - That is if the new EPA rules are not due to be issued at the same time.
- They are considering all options.
  - Including just having a jurisdictional permit that expires and renewed on a five-year rotating basis.
- The MDEQ will continue with community/permittee audits as planned.

Subsequently Sue Kubic from the Drain Office had spoken to Stephanie Kammer from the MDEQ. As of January 11<sup>th</sup> Stephanie sent the Following e-mail:

*Well, after meeting last week internally, I think it would be best for us to hold off discussing this issue for the time being. DEQ will be sending out a letter to all MS4 permittees detailing compliance issues and how to proceed under the 2003 permit. We expect that letter to go out by the end of the month. After you receive that letter, we can set up a time to discuss any additional or specific questions you may have moving forward with implementation under the old permit.*

Regardless of what the state decides there are some upcoming requirements that have to be submitted:

- First Progress Report (previously annual report) June 1, 2011
- Storm Sewer System Map. June 1, 2011
- Storm Sewer Ordinance

## A Look Back....

A lot of work was done in 2010. Here is a synopsis of some of that work.

**A Good Housekeeping Training** was developed for employees and contractors of Phase II communities. The workshop was held 3-times last year (April 8<sup>th</sup>, May 6<sup>th</sup> and November 4<sup>th</sup>). The last training was recorded so we can develop a training video.

Under the 2008 permit the State required communities / agencies that have facilities (maintenance yards, fueling tanks, onsite fleet maintenance, etc.) to have a Storm Water Pollution Prevention Plan (SWPPP) and a State licensed storm water operator. At the April 8<sup>th</sup> training we also hosted the MDEQ industrial training for those communities that wanted to have employee(s) trained as storm water operator(s).

The **Best Management Practices Subcommittee** finished the Storm Water Ordinance and BMP manual. Both documents were sent to Stephanie Kammer for review. The Drain Office staff and volunteer members of the BMP committee went to Lansing to meet with MDEQ staff to resolve the remaining issues. Currently we do not have anything from MDEQ in writing that the Ordinance and Manual are acceptable. Due to requirements in the 2008 permit being withdrawn we are currently waiting for the February letter from the State to see if or how it will affect the ordinance requirements. No matter what the State determines our SWPPI(s) require a Storm Water Ordinance.

The **Monitoring and Mapping Subcommittee** is overseeing the development of the annual / progress reports and the dry weather testing for the Illicit Discharge Elimination Program (IDEP)

The **Public Education Subcommittee** set the budget and approved the various education efforts that went on throughout the year. Some of which are:

- Over 8000 students received watershed education through an interactive model called an enviroscape.
- Hundreds of Students participated in Project GREEN through 44 teachers that take students out to local watercourses where they do chemical testing on the Flint and Shiawassee River Tributaries. Not only do they learn about water but they come together at a Symposium in May to present and discuss their results.
- Almost 1000 residents got some watershed education at the Our Water information table at the County Fair.
- There were 4 Creek walks and 6 canoe events on the Flint River or it's tributaries this year. Getting people on or in the water and caring about it. I have heard many people tell me that they did not realize that the Flint River was this nice. Also within the last year because of increased demand there are now 2 canoe liveries on the Flint River, up from 0.
- Developed a Septic System Booklet for new homeowners.

### Alphabet Soup... What do those letters Mean?

**SWPPP: Storm Water Pollution Prevention Plan:** A plan outlining what kind of facilities you have, what materials, chemicals, processes you have on site. How they are protected from contaminating surface water and how would your facility respond if the surface water is contaminated.

**SWPPI: Storm Water Pollution Prevention Initiative.** This is the enforceable document that each permittee prepares that outlines how they are going to comply with the NPDES Phase II Permit.

**COC: Certificate of Coverage.** Letter from State allowing the permittee to discharge storm water from the outfalls they own and maintain. This letter has due dates for permit requirements.

**NPDES: National Pollution Discharge Elimination System.** Federal mandate requiring Governmental Agencies to acquire a permit to discharge storm water. Currently only communities / agencies with a minimum population or population density are required to have a permit.