

**RESOLUTION R-2020-40
LUZERNE COUNTY COUNCIL**

Resolution of Luzerne County Council regarding the MS4 Storm Water Program Storm Water Fee, urging the President of the United States, U S Federal EPA , PA State EPA, Wyoming Valley Sewer Authority and Dallas Area Municipal Authority to halt the MS4 Program and Storm Water Fee Collection.

MS4 (Municipal Separate Storm Sewer System) Program RESOLUTION

WHEREAS, the MS4 (Municipal Separate Storm Sewer System) Program has been imposed upon the People of Luzerne County, Pennsylvania, by the EPA (Environmental Protection Agency), a federal agency, through the DEP (Department of Environmental Protection), an agency of the Commonwealth of Pennsylvania; and

WHEREAS, many of the updates to the MS4 Program were proposed in the draft renewal of the General Permit in accordance with the Stipulation of Settlement reached between DEP and Penn Future in Penn Future vs PADEP and Upper Gwynedd Township, EHB (Environmental Hearing Board) Docket No. 2013 – 105 – L; and

WHEREAS, this MS4 Program has been made more stringent and made compulsory to the People of Luzerne County purportedly to clean up the Chesapeake Bay, a body of water totally outside the Commonwealth of Pennsylvania and which body of water receives pollutants from the State of Maryland and the Commonwealth of Virginia, both of which make up its shores; and

WHEREAS, besides the Susquehanna River, there are 150 major rivers and streams that give flow into the Chesapeake Bay, from New York, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and Washington D.C., and of which are the following rivers: Susquehanna, Patapsco, Patuxent, Potomac, Rappahannock, York, James, Chester, Choptank, Nanticoke, and Pocomoke, and the Chesapeake Delaware Canal at the Northeastern end of the Chesapeake Bay; and

WHEREAS, there are major military installations around the Chesapeake and along its watershed, including the Aberdeen Proving Ground and its Edgewood Arsenal, both superfund Sites, which contribute pollution to the Chesapeake including phosphorous and nitrogen, and toxic substances; and

WHEREAS, DEP cannot give data as to pollutants coming into the Susquehanna from New York, nor as to how much Maryland and Virginia pollute the Chesapeake Bay, nor can it give levels of pollutants in different portions of tributaries flowing into the Susquehanna, nor the amounts and levels flowing out of the Commonwealth; and

WHEREAS, the DEP has asked communities within Luzerne County and the County itself for a Pollutant Reduction Plan (PRP) and/or a Total Maximum Daily Load (TMDL) Plan and the adoption of an updated MS4 Ordinance, and other requirements, to legally discharge storm water into the waters of the Commonwealth; and

WHEREAS, the TMDL Plan is based on computer models which may or may not have any correspondence to conditions in Luzerne County and requires reductions in “pollutant loads” (e.g., 10% in sediment, 5% total phosphorous) entering the waterways over 5 years, and which gives no baseline concentrations or target concentrations to aim for, or to be used in formulating a PRP; and

WHEREAS, if the County or its communities fail to get a National Pollution Elimination System Permit (NPDES) that requires the MS4 Program, they could be in violation of Federal Clean Water Act and the Pennsylvania Clean Streams Act and be subject to civil penalties of up to \$10,000 per day and Misdemeanor penalties of up to \$25,000 per day for each violation of the Clean Streams Act; and

WHEREAS, the County and its communities would assume the costs of implementing permit requirements including survey work, map preparation, engineering design, public bidding, purchase of land and equipment, and construction and these are anticipated to be substantial; and

WHEREAS, the funding opportunities available for the development of the Plan are extremely limited and very competitive; and

WHEREAS, this unfunded mandate, MS4, the “Rain Tax,” is a substantial burden on the People of Luzerne County and it violates The Unfunded Mandates Reform Act of 1995; and

WHEREAS, Luzerne County Government received a Storm Water Fee invoice in April of 2019, from the Wyoming Valley Sewer Authority, for \$192,000.00 which will result in a possible tax increase to the residents of Luzerne County; and

WHEREAS, unfunded mandates are cost shifting from the Federal and the State governments to local and county governments which force them to raise taxes and make cuts in essential services and which “threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe secure community;” and

NOW THEREFORE, in consideration of the above, **HEREBY BE IT RESOLVED:**

Luzerne County Council does hereby oppose the MS4 (Municipal Separate Storm Sewer System) Program and voices its strong support of our Federal and State Legislators to remove this financial burden on the residents of Luzerne County.

1. Luzerne County Council shall draft a letter to President Donald J. Trump and in it ask him to, by executive order, put a halt to the MS4 program on the basis that 1)it is an unfunded mandate in violation of the Unfunded Mandate Reform Act of 1995; 2) it unscientifically and unfairly burdens the People of Luzerne County; 3) it overlooks major sources of real pollution elsewhere (old munitions, leaking large city sewer systems, urban sprawl in Maryland and Northern Virginia);4) it violates the first rule of environmental cleanup – sample the site and see what is there; 5) it uses politicized science, litigation and lobbying to impose unattainable and unrealistic goals on communities; 6) it shifts costs from the biggest beneficiaries of the Chesapeake Bay, Maryland and Virginia, to Pennsylvania;

7) it puts communities at risk from litigation from well financed NGO's (Non-Governmental Organizations; 8) places an unfair financial burden on the residents of Luzerne County by requiring them to pay a Storm Water Fee to Wyoming Valley Sewer Authority and Dallas Area Municipal Authority, which is also charging the Luzerne County Government, Local Governments and School Districts the Storm Water Fee, therefore causing triple and quadruple taxation for the same Storm Water Fee.

2. The Luzerne County Office of Law is hereby authorized to seek an injunction in federal court to halt the MS4 Program, as it is a violation of the Unfunded Mandate Reform Act of 1995. and places an undue financial burden on the residents of Luzerne County.
3. A copy of this resolution shall be sent to The United States Environmental Protection Agency, Pennsylvania Department of Environmental Protection, Wyoming Valley Sewer Authority and Dallas Area Municipal Authority.

ADOPTED at a meeting of the Luzerne County Council held on February 11, 2020.

ROLL CALL VOTE (11-0)

YES: Griffith, Haas, Houck, McDermott, McGinley, Perry, Radle, Saidman, Schnee, SJ Urban and Vough

Attest: _____

Sharon Lawrence, Clerk of Council

LUZERNE COUNTY COUNCIL

By: Tim McGinley
Tim McGinley, Chair

LUZERNE COUNTY MANAGER

By: David Pedri
C. David Pedri, Esq., County Manager