

Michigan Water Environment Association  
Position Paper  
Storm Water Utilities

**Summary:** The Michigan Water Environment Association (MWEA) calls for action to either amend the state constitution to provide for certain utility fees, or to pass legislation to specifically allow collection of user fees to fund essential municipal services, including those related to storm water management.

**Problem:**

The federal Clean Water Act regulates the quality of our nation's surface waters. The initial focus of the Act was the regulation of point source pollution from industrial and municipal wastewater treatment systems. This led to the construction of billions of dollars worth of improvements to wastewater treatment plants largely through a grant program and low interest loans. Subsequent legislation addressed the need to control pollution generated by storm water runoff. The legislation was followed by USEPA regulations incorporated into the existing federal permitting program, the National Pollutant Discharge Elimination System (NPDES).

The NPDES municipal storm water regulation was implemented in two phases. In 1990 the USEPA developed the Phase I regulations for communities with populations of 100,000 or more. In 1999, the Phase II regulations addressing storm water from smaller communities were promulgated.

Over 300 Michigan communities are subject to the Storm Water Regulations. The regulated community includes townships; villages; cities; county, state and federal agencies; school districts; colleges; and universities. These regulations require that six minimum measures be implemented to reduce pollution discharges from municipal separate storm sewers. These measures include:

- Public Education,
- Public Involvement,
- Illicit Discharge Elimination,
- Construction Site Storm Water Run-off Control,
- Post-Construction Storm Water Management, and
- Pollution Prevention and Good Housekeeping for Municipal Operations.

Permits require that plans be developed and submitted for state approval. The minimum measures identified in the plans must be implemented on a watershed or jurisdictional basis.

Unlike previous NPDES programs, no state or federal funding has been provided to public agencies to meet the requirements of complying with these storm water regulations. Currently, municipalities must use general funds to budget for these plans and programs. However, in this time of increasing demand for community services,

combined with reductions in revenue, this is not an attractive option. Communities need a means or mechanism to assess the cost of the storm water management program in a legal and effective manner.

**Solution:**

Storm water utilities are the logical funding solution.

Storm water utilities are an effective means to fund storm water programs. They are no different in concept from water or sewer utilities that fund water and sewer expenses through water and sewer rates. Simply put, storm water utilities are intended to recover the cost of storm water expenses from the benefited population on a fair and equitable basis.

Over 400 storm water utilities have been implemented across the nation. The first one, in Boulder, Colorado, was established in 1973.

As early as 1981, the American Public Works Association declared:

*The user charge and the utility concept are the most dependable and equitable approaches available to local governments for financing storm water management.*

The first storm water utility in Michigan was established over 20 years ago in Ann Arbor. Several more were established up until the December, 1998 Michigan Supreme Court decision in the case of Bolt v. City of Lansing (Bolt).

As a result of Bolt, the City of Lansing rescinded its storm water utility. The steady increase in the number of Michigan storm water utilities in the 1980s and 90s came to a halt after the Bolt Opinion came down in December, 1998. No Michigan community has proceeded to adopt a new storm water utility after Bolt was decided.

Nationally, the USEPA is strongly focused on providing training to help communities establish storm water utilities to meet their permit requirements. No similar assistance is available from the USEPA for Michigan, as long as storm water utilities are not being adopted here.

**MWEA's Position**

Because of Bolt, Michigan communities considering implementing storm water utilities have taken a “wait and see” approach. They are waiting to see if another community steps forward to implement a storm water utility and see if it is challenged. Absent that, they are waiting for the state to pass a law that specially authorizes communities to establish storm water utilities and that provides guidance regarding the process to follow. Whatever the mechanism, Michigan communities need a “bright line” that defines how to establish a valid storm water utility.

MWEA supports the position given in the Southeast Michigan Council of Governments' February 2005 paper on this subject: *State and Local Government Financing of Essential Services with User Fees*. This position calls for action to either amend the state constitution to provide for certain utility fees, or to pass legislation to specifically allow collection of user fees to fund essential municipal services, including those related to storm water management such as:

- The mandated storm water minimum measures,
- Drainage system construction,
- Storm water treatment,
- Program administration,
- Engineering.

In support of SEMCOG's call to action, MWEA has taken an active role to assure the legislative changes needed to enhance local funding options. Through cooperation with or support to other professional organizations, MWEA will seek legislative changes for the benefit of Michigan's municipalities, and ultimately its water resources.

NOTE: ALL REFERENCES TO THE LAW OR LEGAL OPINIONS ARE BASED ON MWEA'S OBSERVATIONS. MWEA RECOMMENDS THAT LEGAL OPINIONS BE SOUGHT TO CONFIRM ANY LEGAL ISSUES MENTIONED HEREIN.

Unanimously adopted by the Michigan Water Environment Association Board of Directors on November 17, 2005.