COON CREEK WATERSHED DISTRICT
Request for Board Action

MEETING DATE: March 14, 2016
AGENDA NUMBER: 17
ITEM: Federal MS4 Rule Making

AGENDA: Discussion

REQUEST
Discuss and comment.

BACKGROUND
The EPA has issued a new draft federal rule. This is referred to as the MS4 Phase II Remand Rulemaking. The new rule will affect how MS4 Phase II general permits are written in 43 states, directly affecting more than 6,300 MS4 Phase II permittees. Formal comments on this new draft rule are due by March 21, 2016.

This new draft rule is challenging to understand. It is even tougher to anticipate the implications of the proposed changes and develop formal comments on the draft rule documents.

The Environmental Protection Agency (EPA) is proposing changes to the regulations governing small municipal separate storm sewer system (MS4) permits to respond to a remand from the United States Court of Appeals for the Ninth Circuit in Environmental Defense Center, et al. v. EPA, 344 F.3d 832 (9th Cir. 2003). In that decision, the court determined that the regulations for providing coverage under small MS4 general permits did not provide for adequate public notice and opportunity to request a hearing. Additionally, the court found that EPA failed to require permitting authority review of the best management practices (BMPs) to be used at a particular MS4 to ensure that the small MS4 permittee reduces pollutants in the discharge from their systems to the ‘‘maximum extent practicable’’ (MEP), the standard established by the Clean Water Act for such permits. EPA’s proposal would revise the small MS4 regulations to ensure that the permitting authority determines the adequacy of BMPs and other requirements and provides public notice and the opportunity to request a public hearing on the requirements for each MS4.

ISSUES/CONCERNS
Much More Prescriptive on MS4 (District) Actions

Many More Accountabilities to EPA

Some Examples
Specific requirements/standards on the quantity & quality of water discharged from the MS4 (122.34)

Minimum control measures. The permit must include requirements that ensure the permittee implements, or continues to implement, the minimum control measures in subparagraphs (1) through (6) of this paragraph during the permit term. The permit must also require a written storm water management program document or documents that, at a minimum, describes how the permittee intends to comply with the permit’s requirements for each minimum control measure.

(1) Public education and outreach on storm water impacts permit require the permittee to tailor the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities

Public involvement/participation. (i) The permit must require implementation of You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/ participation program that complies with State, Tribal, and local public notice requirements.

(iii) The permit must require the permittee to You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to the small MS4

(4) Construction site storm water runoff control. (i) The permit must require the permittee to You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre.

OPTIONS

RECOMMENDATION