

EPA TMDL Program Not Working In Small and Rural Communities Like Marcellus, New York

The small Village of Marcellus, New York is having a very difficult experience in complying with their U.S. Environmental Protection Agency (EPA) wastewater permit that is required by the Lake Onondaga Total Maximum Daily Load (TMDL). Preliminary engineering reviews indicate that the Village will be required to pay over \$5,500,000 to comply with their new EPA permit. The only identified sources of funding for the Village are the 1,300 homes served by the wastewater system (i.e. the ratepayers) that are already financially burdened and indebted by previous infrastructure enhancements.

In addition to this unaffordable mandate, it appears that Marcellus was not provided available authority under the federal TMDL program (under the Federal Clean Water Act) to ensure TMDL implementation occurs in the most cost effective (and environmentally protective) manner that limits financial hardship on consumers, especially on low income and disadvantaged consumers.

The three areas of authority/assistance that have not been made available to Marcellus are: federal funding; watershed trading; and due process reviews of TMDL content.

Funding: A significant amount of federal funding has been dedicated to assisting communities to comply with the Lake Onondaga TMDL. All of the funding went to Syracuse, however, to build wastewater infrastructure and implement programs. Why was Marcellus not provided a proportionate share of the federal grants, especially when



Village of Marcellus, Olde Home Days parade, 2013

the cost per consumer will be greater in Marcellus and whether Marcellus has the ability to pay with its low median household income? Additionally, the Congress has provided states with approximately \$560 million for fiscal year 2012 and 2013 in grants for communities to build wastewater infrastructure and no grants have been made available to Marcellus.

Watershed Trading: EPA has encouraged the use of load “trading” to make TMDL less costly and more environmentally protective. Trading can allow for a sewer system to pay for reduced loading from a non-regulated source. The trade often results in greater load reduction into the water body at a fraction of the cost. For example, other states have proposed allowing communities to purchase (trade) loading reduction from agricultural sources that typically contribute a far greater share of the loading to the

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water body at a ratio of 1:2. The cost is still greatly reduced. No such opportunity was provided to Marcellus.

Due Process Reviews: Marcellus has identified a number of problems with the initial TMDL proposed to conduct empirical monitoring to improve the reliability of the TMDL, and provided new improved data to modify the TMDL, etc. None of these improvements or modifications to the TMDL, however, have been accepted. EPA has stated, “States may revise a TMDL to account for new information or circumstances that may come to light the implementation of the TMDL.” It appears the only option for a small community to seek adequate due process in these disputes is federal litigation, which is a remote possibility for most all of the approximate 16,000 small communities with regulated wastewater systems. Recently, EPA agreed to allow for review of the TMDL for the Illinois River (August 24, 2012) to peer review of the agency's TMDL. Marcellus has not been provided with any similar type of review, which would be very helpful in understanding the basis of the current TMDL or identify opportunities to improve it.

There are a number of small and rural communities in New York with a similar situation as Marcellus (many with greater compliance cost projections) that are all mandated to comply with the Chesapeake Bay TMDL. These include but are not limited to the following communities: Elmira, Corning, Hornell, Addison, Alfred, Canisteo, Elmira Heights, Hamilton, Horseheads, Millport, Van Etten, Wellsburg, Ashland, Baldwin, Big Flats, Bath, Avoca, Bradford Catlin, Caton, Catharine, Cayuta, Cohocton,

Erwin, Erin, Hornellsville, Lindley, Howard, Campbell, Cameron, Canisteo, Chemung, Chenango, Hector, Hornby, Hartsville, Jasper, Orange, Owego, Prattsburg, Rathbone, Southport, Thurston, Troupsburg, Tuscarora, Tyrone, Wheeler, Woodhull, and Veteran.

It appears the onerous complexities and challenges for small and rural communities to comply with the federal TMDL program are systemic in the federal law. The law and the TMDL program allow for funding and implementation flexibility to be available for small and disadvantaged communities. There is no certainty, however, that they will be available, nor is there any practical recourse or enforcement abeyance for small communities that are denied access to funding or implementation flexibility. The unfortunate result of the current state of implementation for the federal TMDL program is that it is often mandating compliance requirements that are not the most economical nor the most environmentally progressive available under the law. While this may not be the intent of the law as currently administered, the law is being applied without clear and usable authority for communities to find the best solutions.

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Photos of 2013 training sessions . . .



A total of 205 people attended seven training sessions on generators and power quality sponsored by KRWA in 2013. This photo was taken at Parsons on 2/7/13.

City of Walton Mayor John Reed, Clerk Stephanie Ashby, City of Hutchinson Engineer Jeff Peterson and City of Turon Clerk April Giles visit with Instructor Carl Brown about how to set good rates.



QuickBooks Instructor Karen Skillman and Osage RWD 5 Janet Trollope discuss QuickBooks methods.

