

LEGAL ISSUES FOR STORMWATER UTILITIES

Presented at ACWA Stormwater Summit

May 10, 2017

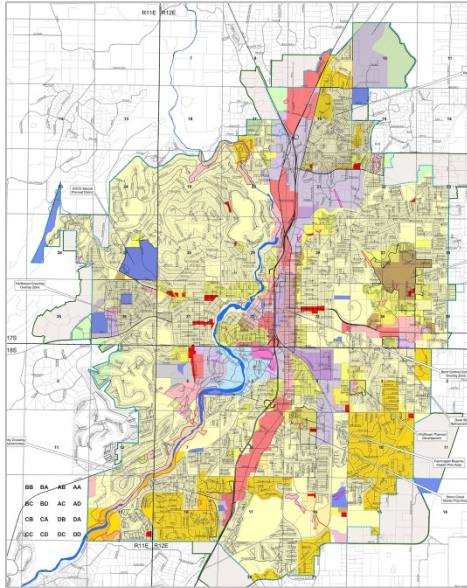
By Jerry Linder
General Counsel for Clean Water Services



QUIZ

BEND - Population 87,104

MILLERSBURG - Population 1,474



What do these two Cities have in common?



Things to Worry About (Summary of Presentation)

- MS4 Phase II General Permit Development Overview
- EPA MS4 General Permit Remand Rule
- EPA Guidance on TMDL's and Stormwater—
Numeric Limit Concerns
- Reasonable Potential, Copper, Mercury
- Collected Stormwater-Related Cases from
around the United States



MS4 Phase II

- Overview of Process
- DEQ's response to concerns—the “Tiered Approach”
- Next Steps



EPA MS4 Remand Rule

- Context
- Concerns



EPA Guidance

- A path to numeric limits for Stormwater?
- Reasonable Potential, Copper, Mercury



Current and Recent Stormwater - Related Cases

- Stormwater Fees v. Tax
- Water Quality/Numeric Limits/MEP
- “Flow” TMDL
- Water Quality Trading
- Permit as a Shield?



Conclusion

- It is going to be harder and more expensive to operate and manage a Stormwater Utility

