

## NATIONAL STORMWATER CENTER OFFERS COMPLIANCE ASSISTANCE

### Stormwater News

**Scott Pruitt won Senate confirmation to head the Environmental Protection Agency.** The vote was 52-46. Two Democrats voted to confirm Pruitt: Sen. Heidi Heitkamp of North Dakota and Sen. Joe Manchin of West Virginia. Just one Republican voted against Pruitt: Sen. Susan Collins of Maine. Two senators did not vote: Democratic Sen. Joe Donnelly of Indiana and Republican Sen. John McCain of Arizona.

**President Donald Trump signed into law a bill eliminating stream protections from mining waste coal.** The rule required coal mining companies to follow strict guidelines at surface mining operations placing special emphasis on protecting waterways. The Democratic Senator from West Virginia, Joe Manchin voted with the Republicans to kill the stream buffer rule.

**New EPA  
is Missing**



**Seal: The Bloom**

### Self-Audit Checklist Available

With the probability that the U.S. EPA enforcement will be dismantled, it is time for citizens to step-in and assure NPDES permit compliance

The National Stormwater Center now offers compliance assistance under Conservation, Preservation, Environmental, Incorporated (CPE) a non-profit 501(3)(c) foundation.

CPE offers free tools for NPDES permit compliance. Anyone can download the appropriate self-audit checklist through a new website at [www.NPDEScompliance.org](http://www.NPDEScompliance.org). These checklists should be used by permittee and citizen groups, to evaluate the level of permit compliance .

CPE is teaming up with Waterkeepers all over the country to become Certified Stormwater Inspectors and then provide Certified Stormwater Volunteer (CSV) classes to the general public. Waterkeepers will teach their volunteers about NPDES permit requirements and citizen authority to assist their municipality with permit compliance.

These citizen volunteers broaden the goal of the National Stormwater Center to achieve NPDES permit compliance across the United States.

Want to get involved in our Certified Stormwater Volunteer program? Contact Laurie Murphy, at [lmurphy.npdescompliance@gmail.com](mailto:lmurphy.npdescompliance@gmail.com) or call her at (772) 708-9300. Laurie is the Compliance Program Director.

NOW is the time for you to donate support for this effort. Go to [www.npdescompliance.org](http://www.npdescompliance.org) to learn about stormwater permit compliance and how you can donate to this effort. Without your financial donation, permit compliance and clean water are at risk.

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## Certified Stormwater Volunteers (CSV)

# Waterkeepers Inspectors to Train Volunteers

The National Stormwater Center is reaching out to residents of municipalities that have NPDES stormwater permits. Leaders in the Waterkeeper Alliance organization are taking the *Certified Stormwater Inspectors (CSI)*<sup>TM</sup> course so they can train citizens to help local governments comply with NPDES.

The Waterkeeper Alliance has 300 waterkeepers in 34 countries, with 165 protecting U.S. Waters. The Alliance is a nonprofit organization, lead by Robert Kennedy, Jr., that is solely focused on making public waters swimmable, drinkable and fishable.

Waterkeeper Alliance is the umbrella organization for Basinkeeper, Baykeeper, Bayoukeeper, Canalkeeper, Channelkeeper, Coastkeeper, Creekkeeper, Deltakeeper, Gulfkeeper, Inletkeeper, Lakekeeper, Riverkeeper, Shorekeeper, Soundkeeper, and Waterkeeper.

The *National Stormwater Center*<sup>TM</sup> would like for Waterkeeper leaders to train local residents, working with municipalities, to do three things:

- (1) report illicit discharges to drainage systems,
- (2) submit specific comments on draft stormwater permits to be issued to local governments,
- (3) request a public hearing on proposed permits.

Residents, after training, will be certified by the National Stormwater Center as *Certified Stormwater Volunteer (CSV)* and may join the nonprofit organization to support permit compliance activities.

NPDES Stormwater Permits issued to local governments require they write and enforce an ordinance to prohibit illicit discharges to draining systems (including roads with ditches and streets).

An illicit discharge is defined as “any discharge that is not entirely stormwater.” Discharges that are not “entirely stormwater” would include litter, dirt, grass, oil, and waste. The source may be from dumpsters, landscaping, construction activity, parking lots, pressure washing and illegal dumping.

Citizens will be trained and certified to observe and report illicit discharges to their local government.

### **Permit Requirements is a Public Process**

When expiring small municipal permits are reissued, the new rule requires that all permit requirements must be “*clear, specific, and measurable.*” Also, new EPA regulations require an opportunity for public comments on small municipal permits and an opportunity to request a public hearing.

Waterkeepers are invited to request a full scholarship to attend any of the CSI classes that are scheduled across the Nation. See the list on the back page of this Quarterly or visit NPDES.com for the complete list. Applicants should call the office at (772) 288-6852 or send an email to [info@NPDES.com](mailto:info@NPDES.com) to request an application.

**Report illicit Discharges**

## Navy Scraping Ship Hull Into Public Waters

The Navy is scraping the hull of the aircraft carrier *Independence* into the Sinclair Inlet at Bremerton, Washington.

The Suquamish Tribe, the Washington Environmental Council and Puget Soundkeeper issued a notice of intent to sue the Navy over the alleged Clean Water Act violations.

The scraping releases toxic levels of copper-based paint into the inlet. "Copper is one of the most toxic heavy metals to fish and particularly to salmon," said Chris Wilke, Soundkeeper's Executive Director. "It's so serious that our state has moved to phase out its use in all boat paint."

The inlet is on the Clean Water Act's list of impaired waters. Considered one of the state's most polluted areas, the base was designated a federal Superfund cleanup site in 1994. Marine sediment samples taken near the base contain elevated levels of copper, mercury and other heavy metals.

Hull cleanings are typically conducted in a drydock facility with pollution prevention and waste disposal capabilities.

The Navy is removing a 3-inch layer of barnacles and other marine growth from the carrier's hull to comply with rules limiting the spread of invasive species. "As part of this process, a team of highly skilled divers are gently scrubbing marine growth on the hull of the ship in order to prevent the possible transfer of invasive species," Navy spokeswoman Colleen O'Rourke said. "The objective of the cleaning is only to disturb the reproductive capability of the marine life on the hull, not to remove the biological material or paint."

The tribe and environmental groups allege the Navy is cleaning without Clean Water Act NPDES permits, a violation of the law. Navy officials say they can claim exemptions to many state and federal pollution rules.

The Navy is preparing to tow the 1,070-foot-long carrier from Bremerton to Texas, where it will be dismantled sometime this year.

*Taken from Kitsap Sun, Bremerton, Wash. | Jan 26, 2017 | by Tristan Baurick*

## Stormwater News

*(Continued From Page 1)*

**Congressman Bob Gibbs introduced a bill to eliminate the NPDES permit requirement for use of pesticides that have already been approved by the EPA in the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA).** The NPDES permit regulates point sources discharges pollutants on or near public waters.

**NPDES permittees will be reporting electronically by this time next year.** The regulation requires facilities that discharge pollutants to file DMRs and NOIs electronically beginning next December.

**A Fruitland, Missouri meat-processing plant faces a \$70,000 penalty if it does not correct problems related to wastewater management.** They must create and implement a plan to remove existing wastewater and overhaul its system.

A lawsuit filed by Missouri Attorney General alleged Fruitland allowed untreated wastewater from animal waste and byproducts treatment to illegally flow into Cane Creek in Cape Girardeau County, violating Missouri's Clean Water Act.

According to court documents, on three occasions beginning in January 2014, the company allowed waste to escape its wastewater treatment system and in March 2015 intentionally pumped waste into a tributary leading to Cane Creek.

The result, the documents stated, was "dark brown or red, foamy stream water with an offensive odor" and water pollution that on one occasion killed 900 fish.

The company's existing wastewater-treatment system includes three lagoons and three soil-absorption beds designed to prevent overflow into nearby surface and subsurface groundwater.

**The U.S. EPA reached an agreement with Canyon Plastics Inc., resolving allegations of stormwater permit non-compliance.** The company also agreed to a \$19,000 penalty and the installation of \$292,000 worth of recycling equipment.

The permittee produces and apparently discharged small plastic pellets that are used widely in manufacturing and are a major part of the growing plastic debris problem in the nation's inland and coastal waters.

**MOST MUNICIPALITIES CAN EXPECT NEW PERMITS WITH NUMBERS**

Small municipalities may be shocked by the new EPA rules. The 6,695 regulated small governments will find their next NPDES stormwater permit will involve the public requesting permit conditions that have clear, specific and measurable compliance requirements. The new stormwater permit will not just re-issue.

The current general stormwater permits were found by the US Court of Appeals to violate the Clean Water Act for two reasons: (1) permit conditions were written by the permittee, not the permit authority and (2) the permit authority failed to encourage public participation in the development of permit conditions.

EPA regulations, effective on January 9th of this year, will require EPA and state permit authorities to decide what permit conditions meet the statutory requirement to ensure that the small MS4 permittee reduces pollutants in the discharge from their systems to the maximum extent practicable (MEP).

The new rule will, in all cases, provide the opportunity for the public to comment on permit requirements. Equally important, the new rule requires all permit conditions be clear, specific and measurable so that anyone can understand the level of permit compliance.

**Compliance Report**

The court of appeals clearly required assurance that the stormwater general permit achieve compliance with the standard to reduce pollutants in the discharge from their systems to the

maximum extent practicable (MEP). The court stated that “every NOI issued under a general permit is to be reviewed, there is no way to ensure that such compliance has been achieved.”

To comply with the court order, the new rule requires permittee submit an annual report that shows the permittee evaluated their compliance with the permit to include the status of permit conditions that are clear, specific and measurable. 40CFR122.34(d) reads “The permit must require the permittee to evaluate compliance with the terms and conditions of the permit, including the effectiveness of the components of its stormwater management program, and the status of achieving the measurable requirements in the permit.

Because there is no compliance status between being compliant and being non-compliant, 100% compliance is expected. This will be difficult, but it is required by the Clean Water Act. EPA and state permit authorities will expect 100% compliance and so will local residents.

**Clear, Specific and Measurable**

The new rule at 40CFR122.34(a) reads: “Terms and conditions that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms.” These could be narrative, numeric, implementation of specific tasks, best management practices (BMPs), design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and the frequency of actions. *(continued on next page)*

# Municipal Permits With Measurable Controls (Continued)

EPA Headquarters is updating its compendium of MS4 Permitting Approaches to provide examples of permitting language that EPA regards as acceptable. The compendium will also identify conditions that are not clear, specific and measurable.

## **EPA Goes First**

EPA will likely issue the first permit under this rule. EPA is the permit issuing authority in 4 states, Washington DC, the territories and many Indian tribes. EPA Region 1 has proposed permit for NH and MA so they will not be issued under this rule. However, EPA Region 1 will determine MEP and the permit conditions are likely to be clear, specific and measurable.

EPA Region 10 will propose a permit for Idaho by summer and they will be issued under the remand rule. Will both of the EPA offices agree on MEP or will the EPA have multiple MEPs? Is there one EPA or 10 EPAs?

## **States**

With the expected reduction in the EPA organization, NPDES leadership will be left to the states. The Association of Clean Water Administrators (ACWA) is the logical place for that leadership.

With NPDES administration run by the EPA in only three states (New Hampshire, Massachusetts and New Mexico), the ACWA will either run with the NPDES program or let it die a slow death.

The ACWA has no authority over state programs but as an organization it can provide leadership. Those states that comply with the Clean Water Act will have citizen support, those that elect not to comply can expect citizen litigation.

This organization supported the new remand rule.

Therefore, they have a responsibility to make it work. That's what they get paid to do.

States have hundreds of regulated small municipal government stormwater permits to process. They will need to have additional staff to process, to consider each public comment and to decide on permit conditions that are clear, specific and measurable.

Municipalities can expect a considerable delay during the time the general permit is proposed to the time it is issued.

## **Evaluation**

After the small municipal stormwater permit is issued and the annual report is due, the MS4 must evaluate and report their annual compliance. The status of achieving the measurable requirements in the permit must be reported.

## **Report**

The report must include:

- (i) The status of compliance with permit terms and conditions;
- (ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
- (iii) A summary of the stormwater activities the permittee proposes to undertake to comply with the permit during the next reporting cycle;
- (iv) Any changes made during the reporting period to the permittee's stormwater management program; and
- (v) Notice if the permittee is relying on another governmental entity to satisfy some of the permit obligations, consistent with 122.35(a).

The new rule can be found at Federal Register Volume 81, Issue 237 (December 9, 2016).



**A Violation of Narrative Standards can Void the Permit Shield**

**NPDES PERMIT SHIELD CAN BE BROKEN**

NPDES permittees have always enjoyed a shield from legal liability for discharging any pollutants as long as they are in compliance with their permit. Applicants for an NPDES permit identify any pollutant they might discharge so that they have a legal shield from enforcement. The reason being the permitting authority could elect to regulate any pollutants in the discharge.

But now, NPDES permittees are at risk because of a recent decision of the Fourth Circuit Court of Appeals. A citizen's suit alleging that a coal company had violated its NPDES permit convinced both the district judge and the appellate court that a violation of a narrative permit condition eliminates shield defense. The company, Fola Coal Company, argued that its compliance with the NPDES permit numerical effluent limitation would shield the company from liability. They were wrong.

The permit required discharges were to be of "such quality so as not to cause violation of applicable water quality standards." The District Court found that Fola's discharge "caused or materially contributed to the impairment of Stillhouse Branch by increasing the conductivity of the stream." Fola argued on appeal that the narrative requirement did not apply to Fola so long as Fola was in compliance with the specific numeric effluent limits contained in its NPDES permit.

The Fourth Circuit disagreed and agreed with the District Court and then denied the permit shield.

However, in a prior opinion, *Piney Run Preservation Association v. County Commissioners of Carroll County, Maryland*, 268 F.3d 255 (4th Cir. 2001), the Fourth Circuit held that the permit shield protects NPDES permit holders from liability for discharging a pollutant not expressly allowed by the permit—even though the discharges caused WQS violations—so long as the permit holder disclosed the pollutant to the permitting agency and otherwise complied with the terms of its NPDES permit.

We have conflicting opinions from the same court, but most likely with different judges. While this conflict exists, a permittee that violates either a narrative or numeric permit condition may not enjoy the right to a shield from enforcement discharging any pollutant the is not addressed in the permit. Many stormwater permits have the narrative water quality effluent limitation



# Proposed Benchmarks For District of Columbia's MS4 Permit

The U.S. EPA published a Notice of Intent to Reissue the District of Columbia's municipal separate storm sewer system (MS4) permit. The District has a solid foundation of green infrastructure, an innovative Stormwater Retention Credit (SRC) system and some of the most effective on-site stormwater retention regulations in the country.

EPA's proposed MS4 permit would require the District to do the following:

- perform a cost-benefit analysis of increasing the on-site stormwater retention standard from 1.2 inches to 2 inches
  - manage 1,038 acres on which stormwater control measures are implemented and ensure that 350,000 square feet of green roofs are installed by 2021
  - evaluate options to increase the District's Stormwater Fee to fund projects to improve water quality
- optimize stormwater management procedures at small projects over the next two years in order to eliminate the stormwater management exemption for small projects

The proposed permit would set new discharge limits. It would require the District to remove 103,188 pounds of trash from the Anacostia River Basin annually. By 2021, the permit would require the District to manage 1,038 acres, a 250 percent increase from the 2011 permit. Of these 1,038 acres, at least 46 must consist of retrofitted Public Right-of-Way (PROW) areas, a 33 percent increase from the 2011 permit.

The permit may include the following new requirements for implementing stormwater control measures:

- **Increase Green Roof Construction:** The District shall ensure that at least 350,000 square feet of new green roofs are installed by 2021.
  - **Increase Tree Canopy:** The District shall achieve a net annual tree planting rate of 8,000 plantings in pursuit of an urban tree canopy coverage rate of 40 percent by 2032.
  - **Implement Stormwater Pollution Prevention Plans (SWPPPs) at District Facilities:** The District shall ensure that SWPPPs are implemented at all of its facilities and properties where industrial activities occur.
  - **Implement Storm Drain Outfall Operation and Maintenance:** The District must annually repair 10 percent of damaged storm drain outfalls or substitute outfall repairs with more beneficial stream restoration projects.
- Implement Street Sweeping Program:** The District shall street sweep 44,000 miles of road annually.

## Compliance by 2154

The District's TMDL Implementation Plan, released in August 2016, does not anticipate achieving full compliance with all wasteload allocations (WLAs) until 2154. Accordingly, EPA proposes to insert the following requirements into the District's MS4 permit in an effort to bring about swifter improvements in water quality:

- **Create Schedule for Updating TMDLs**
- **Evaluate Stormwater Fee Options**
- **Analyze Increase to On-Site Stormwater Retention Standard**
- **Study Sources of E. coli in MS4**
- **Minimize Legacy Pollutants**
- **Eliminate Stormwater Exemptions for Small Projects**
- **Optimize Stormwater Design for PROWs**
- **Evaluate Pollutant Reductions From Catch Basin Cleaning**
- **Incorporate Water Quality Elements Into Snow Response Plan**
- **Incorporate Flood and Climate Management Assessments Into Stormwater Management**



**Instructor for the  
National Stormwater Center**



- ⇒ Marcia served on the Water Bureau for almost 15 years. In this capacity, she managed programs in water pollution, drinking water, watershed management, groundwater protection and water infrastructure loans.
- ⇒ Marcia Willhite served as Chief of the Bureau of Water at Illinois EPA for almost 15 years.
- ⇒ Marcia worked with other states and U.S. EPA on various water program policy and implementation issues, serving as national president of the Association of Clean Water Administrators in 2006-07.
- ⇒ Marcia resides in beautiful Door County, Wisconsin and continues to work on water quality protection.

**2017-2018 Training Schedule**

**Certified Stormwater Inspector**

Feb 27-28	Fresno, CA
Mar 6-7	Houston, TX
Mar 9-10	Baton Rouge, LA
Mar 13-14	San Jose, CA
Mar 15-16	Oakland, CA
Mar 20-21	Indianapolis, IN
Mar 20-21	Seattle, WA
Mar 23-24	Springfield, IL
Mar 23-24	Portland, OR
Mar 27-28	Charlotte, NC
Mar 29-30	Raleigh, NC
Mar 29-30	Nashville, TN
Apr 3-4	Denver, CO
Apr 4-5	San Juan, PR
Apr 6-7	Milwaukee, WI
Apr 10-11	Little Rock, AR
Apr 11-12	Stuart, FL
Apr 13-14	New Orleans, LA
Apr 24-25	Pittsburgh, PA

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- ◆ Certified Stormwater Director (CSD)
- ◆ Certified Stormwater Inspector (CSI)
- ◆ Certified Stormwater Volunteer (CSV)
- ◆ Analytical Sampling Assistance
- ◆ Compliance Evaluations
- ◆ Online Training for Industry

**Call us for information at 888-397-9414**

- ◆ Online Training for MS4s



*Our Nation's waters are a valuable resource that ought to be protected from illegal pollution. We support compliance with the Federal Clean Water Act by providing training and services to government and business.*

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