

NPDES PERMITS WILL SURVIVE EPA BUDGET CUTS, ENFORCEMENT NOT

Stormwater Permit News

New political appointments at EPA were announced by the White House and EPA made a few promotions.

The two EPA appointments are David Ross to be the Assistant Administrator for the Office of Water, and Matthew Leopold to be General Counsel.

EPA Administrator Scott Pruitt is quoted in the Milwaukee Journal Sentinel saying about Ross: "David is especially qualified to head EPA's Office of Water and to carry out the Trump Administration's mission of returning power back to the states and advancing regulatory certainty." Leopold is listed as an expert by the Federalist Society and has advised states opposing the Clean Power Plan.

The Senate Environment and Public Works Committee has approved Susan Bodine to lead the enforcement office. Her appointment is being held-up by Senators over policy issues.

EPA promoted Deborah Nagle from Director of the Water Permits Division to Acting Director of the Office of Science and Technology (OST). Jeff Lape, will continue as the OST Deputy Director. Marcus Zobrist will serve as the Acting Director of the Water Permits Division.

Three Regional Administrators were appointed, Pete Lopez will lead the team at Region 2, Cathy Stepp, Region 7 and Trey Glenn, will lead Region 4.

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Trump Promised 31% EPA Cut

The Trump proposed EPA budget leaves the NPDES permit program intact. The Agency has authorized 46 states to run NPDES permitting and compliance so there is not a big budget item. Also, permit fees cover most of the cost. However, the EPA budget does cut compliance and enforcement.

The Trump budget proposal said: *"EPA will continue to implement and support the core water quality programs that control point source discharges through permitting and pretreatment programs. The National Pollutant Discharge Elimination System (NPDES) program, . . . works with states . . . to better support comprehensive protection of water quality on a watershed basis. The EPA will work with states on Total Maximum Daily Loads (TMDLs).*

The EPA proposed budget cuts surface water management 12% and enforcement by 17%. More important is the policy to restrict EPA personnel from conducting compliance enforcement in authorized (referred to as delegated) states.

Enforcement will be limited to the most egregious cases. Environmental Justice program will be reduced from \$7 million to zero. The National Environmental Policy Act (NEPA) will be "streamlined for all infrastructure projects in accordance with the President's Executive Order.

The following geographic programs will no longer have EPA funding: Chesapeake Bay, San Francisco Bay, Puget Sound, Long Island Sound, Gulf of Mexico, South Florida, Lake Champlain.

Congress will soon consider the 2018 budget.

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New Requirements for Small Municipalities

Future stormwater permits for small municipalities will be written based on a new regulation. EPA Region 1 is the first to issue a general permit under the new rules. The Massachusetts stormwater general permit can be found at <https://www.epa.gov/npdes-permits/massachusetts-small-ms4-general-permit>

This article identifies some of the new permit conditions.

The new permit is the result of litigation that requires the permitting authority to issue permits to small MS4s with requirements that are clear, specific, and measurable. To understand the EPA response to the courts order, visit:

<https://www.federalregister.gov/documents/2016/01/06/2015-33174/national-pollutant-discharge-elimination-system-npdes-municipal-separate-storm-sewer-system-general>

The new regulation (40cfr 122.34) was necessary when the Ninth Circuit Court of Appeals directed EPA to issue permits based on the standard to control discharges to the maximum extent practical and to provide for public participation. EPA's new rule requires all small municipal stormwater permits have conditions that can be measured and the permittee must evaluate and report annual compliance with those conditions.

The Massachusetts stormwater permit was issued on April 4, 2017. Soon after issuance, President Trump took office and the implementation was delayed until July 1, 2018.

Each measurable goal must include milestones and timeframes for its implementation and have a quantity or quality associated with its endpoint. Each goal must have an associated measure that can be assessed.

1. Public Notice of the opportunity for comment on the contents of the submitted NOI will be a minimum of 30 calendar days. It can be extended or require submission of an application for an individual or alternative NPDES permit. The permittee must make the SWMP available to the public with a post to the Stormwater Management Plan (SWMP) online web site.

2. The Minimum Control Measures (MCM) are not changed from the previous permit, however

the SWMP must describe practices to achieve compliance with the Minimum Control Measures with measurable goals for each BMP. Each measurable goal must include milestones and timeframes for its implementation and have a quantity or quality associated with its endpoint. Each goal shall have a measure of assessment associated with it;

3. The permittee must list (for all receiving waterbody segments) their classification under the applicable state water quality standards, any impairment and associated pollutant of concern, applicable TMDLs and WLAs, and number of outfalls from the MS4 that discharge to each waterbody.

4. Within four years the MS4 must report assessing current street design and parking lot guidelines and other local requirements within the municipality that affect the creation of impervious cover requirements within the municipality that affect the creation of impervious cover.

5. The educational program shall include education and outreach efforts for the following four audiences: (1) residents, (2) businesses, institutions (churches, hospitals), and commercial facilities, (3) developers (construction), and (4) industrial facilities, unless one of these audiences is not present in the MS4 community.

6. The permittee must annually provide the public an opportunity to participate in the review and implementation of the SWMP.

7. Upon detection of an illicit discharge, the permittee shall locate, identify and eliminate the illicit discharge as expeditiously as possible. The permittee shall immediately commence actions necessary for elimination. The permittee shall diligently pursue elimination of all illicit discharges. In the interim, the permittee shall take all reasonable and prudent measures to minimize the discharge of pollutants to and from its MS4.

The period between identification and elimination of an illicit discharge is not a grace period. Discharges from an MS4 that are mixed with an illicit discharge are not authorized by this Permit and remain unlawful until eliminated.



EPA ADMINISTRATOR CONSIDERED CLOSING EPA OFFICES

Politico, a political journalism company, reported earlier this year that the White House was looking at shutting down two of the EPA's 10 regional offices in its budget request. A Chicago Sun Times columnist reported that the Chicago EPA office, where 1,000 people work, could be on the chopping block. Though the agency quickly denied the rumors, there were protests from Democratic and Republican politicians.

In early May, Democratic senators who sit on the oversight committee for the EPA wrote to Pruitt, "Whether reviewing discharge permits for compliance with Federal pollution standards and state water quality standards, or inspecting facilities to see if they are operating in compliance with their permits, we count on regional staff to provide guidance to state pollution control staff, the public and regulated entities."

By June, the idea appeared to be off the table. That month, Pruitt told members of the House Appropriations Committee that he did not intend to close regional offices. He dismissed the reports that he was considering closing the Chicago office as "pure legend," saying, "It is not something that is under discussion presently."

One of the things Pruitt reportedly talked about in his meetings with farmers in late July was closing the EPA's 10 regional offices and reassigning staff to work in state capitals. According to an affiliate of the Oklahoma Farm Bureau that helped organize the event and was tweeting about his remarks that day, Pruitt floated the idea to an audience of farmers assembled in Guymon, OK.

The EPA employs roughly 15,000 people, many of whom work across the country in regional offices, carrying out day-to-day environmental oversight and delivering grants to fund state environmental programs.

Taken from a Mother Jones Article

Stormwater Permit News

(Continued From Page 1)

The Environmental Protection Agency issued a stormwater runoff permit for construction activities in February 2017 that applies to four states, Washington DC and US territories where EPA is the permitting authority. While the permit is not national in scope it serves as a model for permit issue by states.

The National Association of Home Builders filed a Petition for Review of the 2017 CGP in the U.S. Court of Appeals for the District of Columbia Circuit. The Chesapeake Bay Foundation and Potomac Riverkeeper, Inc., also filed their Petition for Review, presumably to block the homebuilders.

The home builders specifically objected to language that it believes implies EPA has the legal authority to hold CGP permit holders liable for another builder's or developer's failure to comply with the permit.

Tetra Tech, Inc. (NASDAQ: TTEK) announced today that it has been awarded a five-year, \$113 million contract to provide technical support services for the U.S. Environmental Protection Agency (EPA) Office of Water. Under this multiple-award contract, Tetra Tech will support the EPA Office of Water's Assessment and Watershed Protection Division in its efforts to assess and monitor water quality conditions, develop comprehensive tools to promote watershed protection, study point and nonpoint source pollution.

Almost 300,000 West Virginia residents were affected in 2014 when a tank at Freedom Industries had leaked 4-methylcyclohexanemethanol (MCHM) into the Elk River, a tributary of the Kanawha River. Six of Freedom's top officials plead guilty to criminal Clean Water Act violations related to the chemical spill.

Residents and businesses that were affected by the water crisis will now be able to file claims to receive their payout from the settlement of more than \$150 million and develop strategies for ecosystem restoration.

Under the settlement, residential households will be able to file a claim and obtain \$550 for the first resident and \$180 for each additional resident. For specific losses, claims can be filed if the class member has proof of the loss. Women who were pregnant at the time of the chemical spill into the Elk River can receive additional payments, as well as class members who had medical expenses. Businesses can also obtain a flat payment based on their size, or they can submit a claim for specific losses.



Download a Free Self-Audit Checklist

Having then created a checklist, specific to the permit, the user makes compliance judgement based on zero for no compliance and 5 for complete compliance. Then re-weight the scoring values. Some permit requirements are more important than other permit requirements. Using good judgement, replace the maximum number of 5 with the number 10 for the most important requirements. Then re-evaluate.

We will make a on-site visit to assist the permittee generally for a fixed amount of \$5,000. The end result is a permittee that is fully prepared for an enforceable government audit. See page 7 for the number of Phase 1 and 2 municipal permittees that could easily use our checklist to know their areas of compliance strengths and areas of weak compliance. As a not-for-profit, the Center prefers to receive volunteer donations rather than fees for service. Please contact Amy Dean at 410-800-4780 or info@NPDEScompliance.org

EPA Fines Very Small Village in New York

Voorheesville is a small village in Albany, New York that had an EPA audit of their stormwater permit. The village has population of 2,789.

The spokesman for the village said “It had to do with administrative aspects of stormwater management. The EPA did an audit and identified issues.” He gave two examples of violations: 1. not all the village storm drains were stenciled to warn against dumping waste in them, and 2. an annual required report by the building inspector was prepared but not presented publicly at a meeting.

The local newspaper, Enterprise, obtained a copy of the EPA audit report which was conducted in June 2015 and lists 24 violations.

The EPA spokeswoman for EPA Region 2, which covers New York and New Jersey, said in emailed responses to Enterprise questions that Voorheesville missed the deadlines required by its DEC permit, resulting in an EPA Administrative Order, to which Voorheesville complied.

Asked how the amount of the fine is determined, she said, “There is a penalty policy that takes the type and duration of the violation, along with other factors, into account.” She also said, “We do take compliance into account.” The money goes to the United States Treasury, she said.

“We believe that penalties can serve as a deterrence,” she said. Generally, she said, the penalty is negotiated and a settlement is reached, as it was with Voorheesville. If a settlement cannot be reached, the matter goes to a hearing.

Violations

— The village was required to develop and fully implement a stormwater management program, known as a SWMP. While Voorheesville did provide the EPA with a SWMP, it did not include 19 needed elements, for requirements like involving and educating the public; or having an inventory of active construction sites and the plans to manage stormwater there; or techniques to reduce the use of fertilizers, pesticides, and herbicides;

— Voorheesville was “not fully implementing its SWMP,” for example, not training workers annually on spill containment;

— The village was “unable to provide a signed certification statement, contract or agreement that provided adequate assurance that third parties will comply with permit requirements”;

— Voorheesville had not identified pollutants of concern, known as POCs; waterbodies of concern; geographic areas of concern; and target audiences, nor had it educated the public about these;

— Voorheesville had identified a potential illicit connection discharging soapy water but could not provide documentation or a description of follow-up actions;

— Voorheesville had not kept up with requirements for mapping outfalls. An outfall is the discharge point of a waste stream into a body of water;

— Village representatives were unable to document certification that a required ordinance had been adopted prohibiting illicit discharges. Further, the village had not developed procedures for identifying, locating, and eliminating illicit discharges;

— The village did not have written procedures for receipt and follow-up on complaints by the public regarding construction-site stormwater runoff;

— Voorheesville did not have written procedures for construction-site inspections beyond an undated checkmark nor did it have written records that construction site operators received erosion and sediment control training;

— Voorheesville had no documentation of an ordinance requiring post-construction runoff controls from new development and redevelopment projects nor did it have a post-construction program by trained staff to perform inspections; and

— Voorheesville had not completed and documented the required self-assessment of its stormwater management program, to determine the sources of pollutants, which is required at least once every three years.



Enforcement in a Very Large City in California

Developers in the city of San Diego are facing tougher government enforcement at construction sites that have the potential to pollute rivers and streams — including fines and even stop-work orders.

That's the result of a settlement San Diego officials entered into with state water quality regulators that will require the city to pay \$3.2 million and improve control of construction activities. The agreement was reached after the San Diego Regional Water Quality Control Board brought a civil liability complaint against the city for alleged violations of its stormwater permit last year.

Some contractors, for years, performed little to no erosion control at job sites even when city inspectors identified problems, according to a multi-year investigation by the board. Without proper precautions, sediment laced with chemicals and metals at such locations can wash into storm drains during downpours, clogging and polluting waterways.

Starting in 2010, investigators with the water board found numerous construction sites with unstable earthen embankments and little erosion control.

While city inspectors had sometimes cited developers for the violations, enforcement efforts were limited to the notices.

The issues persisted through 2014 despite repeated notifications by the water board to the city. That year, the board did an audit of the city departments that do construction stormwater inspections.

Investigators found that developers were not subject to escalating fines by the city, and said the municipal enforcement division was understaffed, with some employees unaware of the basic stormwater requirements for construction sites.

As part of the settlement agreement, city officials said that as of last fall they have rolled out a new enforcement protocol that includes fines and the ability to stop construction if a developer is repeatedly out of compliance. The city also said that contractors that repeatedly violate stormwater regulations will be barred from bidding on city contracts.



National Map of Regulated MS4s



— Map from the United States Environmental Protection Agency

All across the country, municipal separate storm sewer systems, known as MS4s, are required to protect bodies of water from pollution. The federal Environmental Protection Agency implemented the MS4s in two phases: The 1990 Phase I required medium and large cities and certain counties to get federal permits for stormwater discharges; there are about 855 Phase I MS4s covered by 250 permits. The 1999 Phase II required small MS4s — like the one in Voorheesville — in urbanized areas to get permits; most of the 6,695 Phase II MS4s are covered by state permits. Regulated MS4 areas cover 4 percent of the land in the United State and serve more than 80 percent of the population, according to the EPA.



**Amy Dean,
Compliance Coordinator:**



- ⇒ Amy has a BS from James Madison University and started with the National Stormwater Center in 2010 helping to organize and run the Certified Stormwater Inspector program
- ⇒ In September of 2017 after a one year absence Amy rejoined the organization and now helps coordinate our compliance projects
- ⇒ Amy will oversee our Certified Stormwater Volunteer program as well as our Self-Audit Checklist compliance efforts
- ⇒ To learn more about our compliance programs please email or call Amy at info@NPDEScompliance.org or 410-800-4780

**2017-2018 Training Schedule
Certified Stormwater Inspector**

Oct 2-3	Charleston, WV
Oct 4-5	Online
Oct 12-13	Oklahoma City, OK
Oct 16-17	Albuquerque, NM
Oct 16-17	Pensacola, FL
Oct 19-20	Portland, OR
Oct 23-24	Harrisburg, PA
Oct 23-24	Atlanta, GA
Oct 25-26	Green Bay, WI
Oct 26-27	Allentown, PA
<u>Oct 26-27</u>	<u>Charleston, SC</u>
Nov 1-2	Milwaukee, WI
Nov 2-3	St. Paul, MN
Nov 6-7	Boise, ID
Nov 6-7	Chicago, IL
Nov 13-14	Philadelphia, PA
Nov 13-14	Fort Lauderdale, FL
Nov 15-16	Orlando, FL
Nov 28-10	Online
Nov 30-1	Miami, FL
<u>Nov 30-1</u>	<u>Augusta, GA</u>

Please refer to www.npdes.com for upcoming trainings.

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Call us for information:

888-397-9414

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Email: info@npdes.com



**National Stormwater Center
107 F East Broadway Street
Bel Air, MD 21014**

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