

## WILL PRESIDENT TRUMP CLOSE THE EPA ?

### Stormwater News

**EPA published a final regulation to require state NPDES permit authorities to determine if permits issued to small municipal separate storm sewer systems (sMS4) have controls to reduce the discharge of pollutants to the maximum extent practicable.** The rule also requires future permits to sMS4 have condition that are “*clear, specific, and measurable.*” See pages 5-7.

**EPA entered into a settlement agreement with environmental groups to propose a revised system of benchmark monitoring and corrective action requirements to replace those of the current 2015 Multi-Sector General Permit for Stormwater Associated with Industrial Activities (“MSGP”).**

EPA will have the National Resource Council (NRC) do a study to evaluate current benchmark monitoring by considering: (a) monitoring by additional sectors not currently subject to such monitoring; (b) monitoring for additional industrial activity-related pollutants; (c) adjusting the benchmark thresholds; (d) adjusting the frequency of monitoring; and (e) any new methodologies or technologies that make industrial stormwater discharge monitoring more effective, less burdensome, and/or less costly.

**Liberty Marina, in Danvers, MA, was sued by the Conservation Law Foundation (CLF) for not having a current stormwater permit.** Under the settlement, CLF was awarded \$20,000 in legal fees, according to court documents. The marina agreed to pay Salem Sound Coastwatch \$15,000, in three annual payments of \$5,000, to help the group protect and restore the rivers.

The marina was given 90 days to get a federally required stormwater permit and “stop the discharge of pollutants” into the river. It must also conduct four pollution tests a year.

*See more news on page 3*

### EXPECT NPDES CHANGE

Donald Trump is on the record to cut 70 to 80 percent of regulations. Expect that to happen.

Several previous republican EPA Administrators, William Ruckelshaus and William Reilly said that Trump has shown “a profound ignorance of science and of the public health issues embodied in our environmental laws.” Christine Todd Whitman, the former republican governor of New Jersey and EPA Administrator under president Bush, endorsed Hillary Clinton

To what extent will President Trump “cross the aisle” to work with democrats. An early test will be a vote on a proposed bill to change National Pollutant Discharge Elimination System (NPDES) rules.

Republican Rep. Sam Graves of Missouri introduced a bill that would increase the length of the NPDES permit cycle from five to 20 years. The proposed legislation would give municipalities more time to finance required environmental improvements.

The congress in 1972, set the 5-year re-issuance requirement to provide a method to increase permit requirement if necessary over a period of time. A 20-year permit should include full compliance with state water quality standards with annual progress reports.

If President Trump decides to keep the Environmental Protection Agency, expect little or no enforcement of NPDES permits. Most states will not feel federal pressure to enforce permits. Do expect citizen law suits

### INSIDE THIS ISSUE

Page 2 - Waterkeepers Invited to CSI

Page 3 - Next Generation Compliance

Page 4 - New Rule for Small Municipal Permits

Page 6 - New Role for Public Comments on Permits

Page 7 - EPA Audit of Tennessee DEC

## **Attend Any of the 100 Training Classes in the U.S.**

### **Waterkeepers Invited to be Certified Stormwater Inspectors (CSI)**

The National Storm Center is inviting Waterkeeper Alliance leaders to become *Certified Stormwater Inspectors (CSI)*™. Waterkeepers are invited to request a full scholarship to attend any of the 100 CSI classes in 2017 that are scheduled across the Nation. See the list on the back page of this Quarterly or visit [NPDES.com](http://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.

The Waterkeeper Alliance has 300 waterkeepers in 34 countries, with 200 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.

CSI instructors, John Whitescarver and Fred Heitman, are planning to speak at the Waterkeeper Alliance annual meeting in Park City, Utah next June. The *National Stormwater Center*™ would like for waterkeeper leaders to train local residents, working with municipalities, to do three things: (1) report illicit discharges to municipal drainage systems and (2) submit specific comments on draft stormwater permits to be issued to local governments and (3) request a public hearing on those proposed permits.

Permits issued to local governments require they

write and enforce an ordinance to prohibit illicit discharges to draining systems. Illicit discharge is defined as any discharge that is not entirely stormwater. That includes, but not limited to, litter, dirt, grass, oil, and waste.

Citizens volunteering to report illicit discharges can be certified by the National Stormwater Center as a *Volunteer Illicit Discharge Reporter*.

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. See page 6 for more details.

Most projects of the waterkeepers are related to one of the two goals of the clean Water Act — “the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.”

Most projects of the National Stormwater Center relate to the other goal of the Act — the discharge of pollutants into the navigable waters be eliminated.

The Waterkeeper organization may find it useful to encourage citizens to participate in the NPDES stormwater program.



## NPDES Compendium of Next Generation Compliance

In a recent EPA publication titled Next Generation Compliance, EPA lays out a strategy to increase compliance with environmental regulations by using advances in pollutant monitoring and information technology.

Next Generation Compliance principles have been used to build compliance drivers into rules, permits, and enforcement settlements, resulting in better environmental performance, while also enabling regulators to more easily monitor and ensure compliance. These principles are demonstrated by tools such as:

1. public accountability through increased transparency of compliance data,
2. electronic reporting,
3. advanced pollutant monitoring for point source discharges,
4. ambient monitoring in water bodies, both upstream and downstream from dischargers, and
5. third-party verification of compliance with environmental requirements.

The value of this document is found in the examples of NPDES permits and related activities in the various states that are presented. For Example:

Tennessee's Storm Water MSGP for Industrial Activities developed outlines of permit requirements by sector (e.g., timber products facilities, landfill and land application sites) that provide plain English summaries of various permit requirements.

For transparency, the report states that Logan International Airport NPDES permit requires the Massachusetts Port Authority to make results of water quality sampling at airport outfalls available on the Massport website.

City of Seattle NPDES permit requires the city to monitor all permitted outfalls with operating automatic flow monitoring equipment for discharge location, discharge duration, discharge volume, and weather-related information.

The 33 page document is found at <https://www.epa.gov/sites/production/files/2015-06/documents/npdesnextgencompliancecompendium.pdf> ♣

## Stormwater News

*(Continued From Page 1)*

**In Stonington, Maine, Billings Diesel and Marine Services, Inc. settled an EPA enforcement order for discharging wastewater without authorization.** According to the EPA's allegations, the company dumped wastewater from boat-washing operations into a major shipping channel. Such discharges can contain, among other things, sediments (such as rock, sand, and dirt), metals and associated industrial waste, all of which can affect water quality and harm the marine environment.

The boat yard must pay a \$41,000 fine and take additional action to protect water quality. EPA said that Billings Diesel and Marine Services has taken steps to address the noncompliance, and in-line with "Next Gen" principles, [see article this page] send videos of its new bottom wash capture process so as to confirm its efficiency at capturing the discharge.

**In New York, a Queens-based company that cleans sewer lines, illegally dumped wastewater into manholes** at Fort Wadsworth, John F. Kennedy International Airport, and a city housing authority development in Brooklyn, as well as in the Gowanus Canal, said authorities.

Officials said the Queens-based company held permits to dispose of liquid waste it had removed from blocked sewer lines at designated wastewater treatment facilities. The judge, who took the guilty plea, sentenced A&L to two years' probation and \$900,000 in criminal penalties consisting of a \$375,000 fine, a forfeiture of \$350,000 and a \$175,000 community service payment to the National Fish and Wildlife Foundation.

**The Associated press reported that EPA officials made a compliance visit to the Wisconsin Department of Natural Resources headquarters in October.** Midwest Environmental Advocates and 16 individuals petitioned the U.S. Environmental Protection Agency to review water regulations in the state to ensure the DNR is complying with the Clean Water Act.

The EPA in 2011 cited 75 deficiencies in how DNR handles water regulation. According to the Wisconsin State Journal reports (<http://bit.ly/2dElhgh>) four EPA regulators spend four days at DNR headquarters in Madison looking at files. Such audits are normal when the public offers a reason for a review.

While not likely, EPA could conduct a public hearing to consider removing NPDES authority from the state. Public hearing do happen but no state will lose NPDES authority.

**On September 8, the EPA published Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements.**

This new guidance applies only to stormwater discharges including violations of EPA or State NPDES permits and unauthorized discharges associated with industrial activity and is meant to assist EPA staff in calculating nationally consistent minimum penalties. ♣

## **Small Municipal Permitting Is Changing**

In 2003 the Ninth Circuit Court of Appeals told EPA that all of the stormwater permits for small municipal separate storm sewer system (sMS4) were issued under rules that violated the Clean Water Act. Now, thirteen years later, EPA Headquarters promulgated a rule to respond to the order of the Court.

A sMS4 general permit normally applies to communities with a population less than 250,000. It also applies to non-traditional governments.

### **The Problem**

According to the court, permits issued allowed the polluter to decide their own permit conditions. Most small municipal separate storm sewer permits (sMS4) allowed the permittee to decide what they wanted to do to meet the Clean Water Act requirement to “require controls to reduce the discharge of pollutants to the maximum extent practicable.” The court remanded the EPA process for issuing sMS4 permits. These sMS4 are also referred to as Phase II General Permits.

The Court wrote: “the operator of a small MS4 needs to do nothing more than decide for itself what reduction in discharges would be the maximum practical reduction. No one will review that operator's decision to make sure that it was reasonable, or even in good faith . . . We therefore must reject this aspect of the Phase II Rule as contrary to the clear intent of Congress.”

The Court added, “However, stormwater management programs that are designed by regulated parties must, in every instance, be subject to **meaningful review** by an appropriate regulating entity to ensure that each such program reduces the discharge of pollutants to the maximum extent practicable. We therefore remand this aspect of the Rule.”

### **The EPA Fix**

The final rule was made available on November 17, 2016 and will be published in the Federal Register. It is available now at <https://www.epa.gov/npdes/npdes-stormwater-final-ms4-general-permit-remand-rule>

So if the sMS4 cannot write their own permit, then who can? The new rule requires state NPDES permitting authorities to determine permit conditions that meets the Clean Water Act (CWA) standard.

The normal process is for EPA to write permit conditions based on the intent of Congress. Instead, the Agency has refused to define a national MEP by stating EPA “has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting.

EPA will set the standards for permits in NH, MA, NM, ID, Washington DC, US territories and some Federal and Indian lands.

Therefore, each of the 46 state permitting authorities, each of the Indian tribe regulators plus EPA will decide the definition of MEP. The MEP defines the permit condition to control stormwater.

This EPA rule violates the intent of Congress to have a National permit system to prevent some states to become “havens for polluters,”

The man that drafted the NPDES program in 1972 was Leon Billings, an aid to Maine Senator Edmond Musky. Leon died at age 78 on the day this rule was published.

*continued on the next page*

## New sMS4 Rule **What NPDES Permitting Authorities Must Do**

The new rule requires the NPDES permitting authorities to decide what type of permit will be issued. It must be either a Comprehensive General Permit or a Two-Step Permit. Also, NPDES permitting authority must conduct a meaningful review of each sMS4 to ensure that the program reduces the discharge of pollutants to the maximum extent practicable.

NPDES Permitting Authorities opting to issue Comprehensive General Permits must establish the full set of requirements that are deemed necessary to meet the sMS4 permit standard of MEP and requirements to evaluate and report on compliance with the permit. The Comprehensive General Permit is no different than other general permits in that all applicable effluent limitations and other conditions are included within the permit itself, and the NOI. The process is subject to public notice for public comments, and the opportunity to request a public hearing.

NPDES Permitting Authorities opting to issue the Two-Step permit will have a more complex permit process. The first step of this is to issue the “base general permit.” The need for the second step arises because the base general permit does not include all of the terms and conditions necessary to meet the sMS4 permit standard, and therefore has left the development of the additional requirements to a second process.

Step 2 requires the permitting authority to propose additional permit requirements that, together with the base general permit requirements, meet the sMS4 permit standard for that sMS4. Public notice for public comments, and the opportunity to request a public hearing is required for each step.

Finally, EPA expects that NPDES permitting authorities comply with this rule when the next permit is being issued following the expiration of the current permit, with some exceptions.

### **Permit conditions must be “clear, specific, and measurable”**

Regardless of what states do, the new rule does one important thing. The rule specifies that permit requirements be expressed in “clear, specific, and measurable” terms.

EPA is updating the *Compendium of MS4 Permitting Approaches* to assist permitting authorities in establishing permit conditions that are “clear, specific, and measurable” as required by the regulation at § 122.34(a). The compendium consists of a collection of excerpts from sMS4 general permits that provide examples of “clear, specific, and measurable” language.

EPA is dividing the compendium into three parts:

- *Compendium of MS4 Permitting Approaches – Part 1: Six Minimum Measure Provisions*
- *Compendium of MS4 Permitting Approaches – Part 2: Post-Construction Standards*
- *Compendium of MS4 Permitting Approaches – Part 3: Water Quality-Related Requirements (Soon to be available)*

EPA is also preparing to release a fourth compendium, which will highlight examples from non-traditional MS4 permits. This document will also be released soon.

*continued on the next page*

## New sMS4 Rule **What the Public Should Do**

The Ninth Circuit Court also wrote: “We also conclude that the Phase II General Permit option violates the Clean Water Act because it does not contain express requirements for public participation in the NPDES permitting process. We remand these aspects of the Phase II Rule.”

The new regulation states: *Terms and conditions that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms. Such terms and conditions may include narrative, numeric, or other types of requirements (e.g., implementation of specific tasks or best management practices (BMPs), BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions).*

When the public is given an opportunity to comment on a specific permit, they should question if the language is *clear, specific, and measurable*. Words such as “if feasible,” “if practicable,” and “as necessary” or “as appropriate” violate the rule unless the words are defined. Permit provisions that preface the requirement with non-mandatory words, such as “should” or “the permittee is encouraged to ...” also violate the rule.

Clear and specific are not difficult to understand, but the term “measurable” is. *Measurable* means that the permit requirement has been articulated in such a way that compliance with it can be assessed in a straightforward manner.

EPA has a 55-page guidance document on measurable goals. Visit: [https://www.epa.gov/sites/production/files/2015-11/documents/measurablegoals\\_0.pdf](https://www.epa.gov/sites/production/files/2015-11/documents/measurablegoals_0.pdf)

- An example of the measurable goal for public participation: The City will annually hold a coordination meeting involving co-permittees, regulatory agencies, and interested stakeholders to discuss progress of the storm water management program and the next year’s activities.
- An example of illicit discharge/illegal dumping hotline measurable Goal: A hotline for citizens to report illegal dumping and suspicious discharges will be established in the first year. The hotline will be advertised by placement of one ad in the local newspaper every 6 months and an insert in each homeowner’s and business’s water utility bills every year
- An example of a requirement to: Reduce directly connected impervious surfaces in new developments and redevelopment projects by requiring that grassed swales or filter strips be installed along roadsides in lieu of curbs and gutters the measurable goal: Directly connected impervious road surfaces in new developments and redevelopment areas will be reduced by 30 percent (relative to the traditional scenario in which curbs and gutters are used) over the course of the first permit term.

### Conclusion

Public comments should not just object to something. To be effective, public comments should offer alternative or additional conditions and language for inclusion in the permit.

NPDES Permitting authorities are required to respond to significant comments received in response to the public notice for the Comprehensive General Permit and the base general permit of a Two-Step General Permit. Additionally, permitting authorities must respond to the comments on the second step public notice under a Two-Step General Permit. ♣

# EPA Audit of the Tennessee NPDES Water Permit Compliance Falls Short of Expectations

According to the principal newspaper of Nashville, EPA auditors found the Tennessee Department of Environment and Conservation (TDEC) neglected to penalize permit holders despite months of documented pollution, failed to assess appropriate fines and didn't report sewage overflows from major facilities, among other findings small and large.

Mike Reicher, writing for the Tennessean Newspaper, reported that most of the high-priority deficiencies fell under the Clean Water Act. In half of the enforcement orders that the EPA sampled "TDEC did not consistently address violations in an appropriate manner." Most of the enforcement orders also fell short of correcting the pollution problem, EPA found. Orders are supposed to force permit holders to stop pollution, according to a specific plan, or face fines.

Reicher based his report on an EPA document release in October called: STATE REVIEW FRAMEWORK, TENNESSEE found at <http://www.documentcloud.org/documents/3173730-TN-Final-SRF-Report-9-29-16.html> The EPA report covers an audit of 2014 activities related to three federal environmental laws.

According to the EPA audit, inspection report findings and cover letters were unclear about the compliance determinations made during the inspection. Data indicated that 35% of the inspection report findings and cover letters were ambiguous about the compliance determination made at each facility. While the inspection reports reviewed would detail deficiencies, it did not explicitly state that the findings were violations.

The TDEC responded that "In many of the files reviewed, the inspection report is also the NOV. While not all NOVs contain a heading stating that the inspection is a NOV, the report does contain language identifying that a violation has occurred and needs to be corrected. Going forward, the State will issue guidance to field staff clarifying when to identify letters as NOVs. Previous discussions with EPA in 2011 indicated that it would not be a problem if the title NOV was not used in all circumstances, as long as the violation was identified in the body of the letter. The State will send updated guidance documents to EPA as they are developed.

Scott Banbury, conservation program coordinator of the Tennessee chapter of the Sierra Club said. "They [TDEC] have adopted this philosophy that working with the company and voluntary compliance is better. TDEC is relying on carrots but no sticks."

According to Reicher, TDEC issued a statement saying they appreciate the EPA's oversight, but they don't always agree on all of its findings. TDEC's enforcement efforts continue to make positive, profound and lasting impacts on clean water and clean air in Tennessee." ♠



**Instructor for the  
National Stormwater Center**



- ⇒ Fred conducted training for EPA and State NPDES managers under a three-year contract, which was managed by John Whitescarver.
- ⇒ He was previously the Director of Water Enforcement for the State of Oklahoma and currently lives in Tennessee.

Comments expressed in The Stormwater Quarterly are the strictly the opinion of the editor, John Whitescarver. Email for more information: [info@npdes.com](mailto:info@npdes.com)

**2016-2017 Training Schedule  
Certified Stormwater Inspector**

Dec 5-6	Little Rock, AR
Dec 6-7	Hawaii
Dec 8-9	Albuquerque, NM
Dec 12-13	Savannah, GA
Dec 15-16	Annapolis, MD
Jan 19-20	Orlando, FL
Jan 23-24	Dallas, TX
Jan 23-24	San Diego, CA
Jan 25-26	LAX, CA
Jan 25-26	City of Kyle, TX
Jan 30-31	Columbia, SC
Feb 2-3	Atlanta, GA
Feb 6-7	Detroit, MI
Feb 6-7	Kansas City, KS
Feb 9-10	Columbus, OH
Feb 9-10	St. Louis, MO
Feb 16-17	Omaha, NE
Feb 21-22	Phoenix, AZ
Feb 23-24	Albuquerque, NM
Feb 27-28	Fresno, CA
Mar 6-7	Houston, TX
Mar 6-7	Seattle, WA

Be sure to see our website for our full training and events schedule at [www.NPDES.com](http://www.NPDES.com)

**Fair Use Notice**

The *Stormwater Quarterly* contains copyrighted material which may not always be specifically authorized by the copyright owner. "Fair Use" of copyrighted material is provided for in Section 107 of the U.S. Copyright Law. We distribute some material, without profit, to those who express a prior interest in receiving information for research and educational purposes. The information in the publication is for informational purposes only.

**National Stormwater Center Also Offers:**

- ◆ Certified Inspector Training Courses
- ◆ SWPPP Templates
- ◆ Analytical Sampling Assistance
- ◆ Compliance Tracking
- ◆ Online Training for Industry
- ◆ Online Training for MS4s

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



***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.***

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