

NEW REGULATIONS COMING BUT, NO SURPRISES EXPECTED

Stormwater News

EPA has posted the proposed 2013 Multi-Sector General Permit (MSGP) on its website at www.epa.gov/npdes/stormwater/msgp. EPA will be accepting public comment on the proposed permit for 60 days since its publication in the *Federal Register* on 9/27. The proposed 2013 MSGP, once finalized, will replace the 2008 MSGP, which expired on September 29, 2013.

Under existing regulations, wipes contaminated with hazardous substances must be disposed of as hazardous wastes. An exclusion is set to become effective on January 31, 2014. EPA predicts that it will affect more than 90,000 facilities.

The rule modifies the definition of solid waste to conditionally exclude reusable solvent-contaminated wipes that are properly cleaned and reused. The rule also modifies the definition of hazardous waste to conditionally exclude disposable solvent-contaminated wipes that are properly disposed.

The final rule is in the Federal Register at <https://www.federalregister.gov/articles/2013/07/31/2013-18285/conditional-exclusions-from-solid-waste-and-hazardous-waste-for-solvent-contaminated-wipes>

The exemption requires wipes must be accumulated, stored and transported in non-leaking, closed containers that can contain free liquids. Containers must be labeled and may accumulate wipes up to 180 days. (Continued on Page 3)

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Minor Changes Expected

The Environmental Protection Agency (EPA) has proposed a new stormwater industrial permit, called the Multi-Sector General Permit (MSGP). Nothing radically different is noted, but there are many minor changes. Sampling requirements should have been changed, but they were not.

The court ordered requirement for EPA to consider issuing National nutrient standards for all waters will be considered and then it is expected to be rejected. However, there is pressure to control nitrogen and phosphorus polluted discharges to the Mississippi River.

EPA's proposal to define navigable waters will result in a year of whining, but with little substantive negotiation. So, it will remain unclear.

The long awaited EPA proposed regulation for post development will promote a goal of achieving pre development hydrology, but the absence of enforceable rules will make it ineffective.

Infiltration into the ground has already become the technology of choice. Some states will promote roof gardens. Porous pavement has become increasingly popular. But, it cannot maintain the design hydrology without continuous maintenance. *

Will EPA Tell the Court “It’s Too Expensive for EPA to Comply with the Law”

Court Orders EPA: Justify “No Nutrient Standards”

A Federal Judge has given the Environmental Protection Agency (EPA) six months to determine whether it will set Clean Water Act standards for nitrogen and phosphorous in all U.S. waterways – or explain why they are not needed.

Nutrients damage 100-thousand miles of rivers and streams, nearly 2.5-million acres of lakes, reservoirs and ponds and more than 800-square miles of bays and estuaries.

U.S. District Judge Jay Zainey ruled that the EPA must issue a formal finding of whether federal rules are necessary. But the judge also said the agency is not limited to making that judgment solely on environmental reasons. The court gave EPA 180 days to issue a “necessity” ruling on whether more stringent regulations are required.

When environmental groups petitioned EPA to set national standards in 2008, EPA denied the petition but failed to explain why EPA is not violating the Clean Water Act for failing to set national standards.

The environmental groups responded to EPA by filing a law suit in 2011. The plaintiffs are Gulf Restoration Network and the Natural Resources Defense Council (NRDC); represented by attorneys with the Tulane Environmental Law Clinic and the NRDC.

The petition focused on reductions in phosphorus and nitrogen entering the river from Midwest farms and other sources. They also asked EPA to establish “total daily maximum loads,” specific numerical amounts of the two pollutants that would be allowed in individual segments of the river and its tributaries.

The environmental groups argue that individual states along the river, who are given the first responsibility to regulate water

pollutants under the Clean Water Act, have done little to stop the pollutants.

The low oxygen conditions result when freshwater, rich with nutrients, cause blooms of tiny single-cell algae, which eventually die, sink and decompose, using up oxygen.

The agency also said that the process of setting federal limits on nutrients for even just the 10 states along the shores of the main channel in the Mississippi River basin would result in a drain on EPA’s ability to operate. Even if federal rules were set, EPA said, the burden of enforcing them nationwide would be insurmountable.

Environmental groups filed suit in 2011 charging that the law required EPA to reduce pollutants in the river, and that the agency’s response to their petition violated the Federal Administrative Procedures Act because it didn’t explain why the EPA’s refusal to issue the regulations was not “necessary” to meet the requirements of the Clean Water Act.

A number of states along the river joined the suit, opposing the environmental groups, as did a variety of organizations representing agricultural interests, including the National Farm Bureau Federation.

In his ruling, Zainey agreed that the EPA violated the Federal Administrative Procedures Act by refusing to explain why revised or new water quality standards to regulate the two pollutants are not “necessary” under the Clean Water Act.

But Zainey also ruled that the language of the act does not prohibit the EPA from using non-scientific reasons, such as those it used in its petition denial, in making that determination.*

Summary of the Proposed MSGP

The 2013 MSGP provisions are largely similar to the 2008 MSGP; however, some changes have been made to improve permit clarity, to address errors, and to make the permit more streamlined.

The following is a summary of the more significant proposed changes:

- Additional specificity for several of the technology-based effluent limits (i.e., the control measures) for clarity.
- A requirement that facilities discharging to a small number of federal Superfund sites notify their Regional EPA office prior to filing their Notice of Intent (NOI).
- Streamlining of Stormwater Pollution Prevention Plan (SWPPP) documentation (i.e., facilities do not have to expound on their compliance with certain effluent limits).
- Public accessibility to SWPPP information, either by posting on the Internet or by incorporating salient information into the NOI.
- Electronic submission for the NOI, Notice of Termination (NOT), annual report, and monitoring (waivers may be granted).
- Requirement for pavement wash water discharges to be treated by control measures.
- Reduced requirements for inspections (i.e., facilities no longer have to conduct a separate comprehensive site inspection).
- Specific deadlines for taking corrective actions.
- Inclusion of saltwater benchmark values for metals.
- Inclusion of the Airport Deicing Effluent Limitation Guideline.

There are many other changes that may be important to permittees. *

Stormwater News

(Continued From Page 1)

The farm lobby failed to derail the cleanup of the Chesapeake Bay. U.S. District Court Judge Sylvia H. Rambo wrote that “the ecological and economic importance of the Chesapeake Bay is well documented.” The suit was filed by the American Farm Bureau Federation and joined by the Fertilizer Institute, National Pork Producers Council and National Chicken Council.

States are required to find ways to stop agricultural runoff from cattle feed operations, chicken houses and other farms. That resulted in plans for fences to prevent cattle from wading into streams, sheds to store animal waste and other conservation upgrades that many farmers said they could not afford.

The Farm Bureau said the bay’s cleanup is the sole responsibility of states and the EPA lacked authority to establish a “pollution diet” costing taxpayers and farmers billions by its full implementation in 2025. But, the court said, that the EPA and the states “have not only the authority, but the responsibility” to set pollution limits based on science.

As EPA prepares a standard protecting waterways against pollution from coal plants, a Kentucky judge sent the discharge permit back to the Kentucky Division of Water, with instructions to rewrite a permit that limits the discharge of mercury, arsenic and other pollutants.

Franklin Circuit Judge Phillip Shepherd sided with the Sierra Club, Kentucky Waterways Alliance against a discharge permit to be issued to Louisville Gas and Electric (LG&E) to put scrubber wastewater from its coal-fired power plant in Trimble County into the Ohio River.

The EPA proposed regulation requires NPDES permittees to submit monitoring data and reports electronically that will be compiled into a nationwide database. Reports include DMRs, Notices of Intent to discharge in compliance with a general permit, general permit waivers, certifications, and notices of termination of coverage and program reports.

All would be submitted electronically to EPA through the National Environmental Information Exchange Network, or to the authorized state, tribe or territory NPDES program. EPA's only requirement is that all systems must be compliant with the EPA's Cross-Media Electronic Reporting Regulations (CROMERR). *

All NPDES Reports Are Public Information, Aren't They?

Proposed EPA Rules and Late EPA Rules

The EPA proposed a rule that would require all NPDES permit holders to report to the EPA using an electronic data reporting system. They would no longer report to a state agency.

Reports include all of those required to be submitted by the permit including inspections, pollutant monitoring results, and enforcement history. All reports would be accessible to the public through EPA's website.

Comments on the proposed rule will be accepted through December 12, 2013

Cynthia Giles, assistant administrator for EPA's Office of Enforcement and Compliance Assurance said. "The e-reporting rule will also allow states and other regulatory authorities to focus limited resources on the most serious water quality problems, which will lead to increased compliance, improved water quality, and a level playing field for the regulated community."

Currently, facilities subject to reporting requirements submit data in paper form to states where the information must be manually entered into data systems. Through the e-reporting rule, these facilities will electronically report their data directly to the appropriate regulatory authority.

EPA expects that the e-reporting rule will lead to more comprehensive and complete data on pollution sources, quicker availability of the data for use, and increased accessibility and transparency of the data to the public.

Most facilities subject to reporting requirements will be required to start submitting data electronically one year following the effective date of the final rule. Facilities with limited access to the Internet

will have the option of one additional year to come into compliance with the new rule. EPA will work closely with states to provide support to develop or enhance state electronic reporting capabilities.

The proposed rule in the Federal Register: <https://www.federalregister.gov/articles/2013/07/30/2013-17551/npdes-electronic-reporting-rule>

Post Construction Rule

EPA has missed a court ordered requirement to propose post construction performance standards by June 10 and to finalize the rule by Dec. 10, 2014.

The original deadline in *Fowler et al., v. EPA et al.* provided for reopening the litigation if EPA missed the deadline, however, the Chesapeake Bay Foundation (CBF) and EPA have failed to reach an agreement on a new deadline.

There are reports that the rule, when proposed, will not contain monitoring requirements or limits for individual pollutants and will instead suggest using technology standards to control stormwater flow. If so, it may be difficult to enforce the rule.

The rule is expected to expand the MS4 enforcement beyond the urbanized area to the full jurisdiction of the municipal government. This will expand the number of regulated new construction sources.

EPA intends to propose more stringent standards for stormwater at newly developed sites versus relatively lower standards at redeveloped sites to create an incentive for businesses to invest in redevelopment projects in cities. *

What Wetlands and Ditches Require Permits?

Clean Water Act Jurisdictional Waters to Be Resolved

EPA wants to clarify what waters are regulated by the Clean Water Act. The Supreme Court has heard two cases and their decisions have helped EPA draft a guidance document. Now EPA wants to make that guidance a regulation.

The farm lobby and others think the guidance is too broad, meaning EPA is attempting to regulate more water than intended by the 1972 Congress. The waters under dispute are wetlands and ditches.

The Clean Water Act has many references to the term *navigable waters*. The three most important usages are in Section 311 (oil spills into navigable waters), Section 402 (point source discharges into navigable waters) and Section 404 (dredge and fill activities in navigable waters).

The term comes from the Rivers and Harbors Act of 1899 authorizing Section 13 permits for discharges of refuse into navigable waters. This authority has been transferred to the EPA for permits under Sections 402 and 404.

The legal definition of navigable waters is found in law, not a regulation. The Federal Pollution Control Act in Section 502(7): (1) all navigable waters as defined in judicial decisions in the Clean Water Act, and tributaries of such waters as; (2) interstate waters; (3) intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and (4) intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

Note that Congress included the word tributaries.

EPA explains the definition in a regulation found in 40CFR 126. It is the EPA regulation

that is in dispute and now EPA wants to amend the definition to better clarify the jurisdiction of the Act.

EPA and the Corps of Engineers sent the draft proposal on Sept. 17 to the White House Office of Management and Budget to coordinate a review of the proposal by various other federal agencies. EPA and the Corps did not release the text of their joint proposal.

The agency also released a draft report from its Science Advisory Board that concludes that streams, including small or intermittent ones, and wetlands have important effects on downstream waters. EPA is seeking public comments on that study.

Nick Goldstein, American Road & Transportation Builders Association vice president for environmental and regulatory affairs, notes that EPA and the Corps had drafted regulatory “guidance” on Clean Water Act definitions, which had been under review by other agencies. That guidance will be withdrawn from interagency review, according to EPA.

Goldstein says, “We have to give a little credit where credit is due—the rulemaking process is a better alternative to guidance, which is what they were trying to do.” He adds, “This is such a big issue, it’s not meant for guidance, because you are redefining the scope of the Clean Water Act.”

Goldstein says transportation construction officials are especially concerned about whether roadside ditches that fill with water will be considered federally regulated waters. He says industry’s questions include: “When is a ditch a water of the United States? When is it not? Do you need a permit to clean the ditch?” *

Discharges Without an Permit, Failure to Sample and Revise Plan

EPA Targets Threats to Puget Sound Water Quality

As part of ongoing federal and state efforts to restore Puget Sound, the EPA took enforcement actions against four Seattle-area companies for discharging industrial stormwater in violation of the Clean Water Act.

“By focusing our efforts on industrial stormwater compliance, EPA and the Washington Department of Ecology (Ecology) are tackling one of the top environmental threats to Puget Sound,” said Ed Kowalski, director of EPA’s enforcement program in Seattle.

“These focused actions help bring us closer to restoring the health of Puget Sound.” Runoff from industrial sites, if not properly controlled and treated, can transport toxic chemicals, heavy metals, excess sediment, and nutrients, directly into Puget Sound and waterways.

These pollutants harm the Puget Sound ecosystem and marine life. EPA and Ecology help ensure compliance and enforce clean water rules at permitted and unpermitted industrial stormwater sources to reduce these pollutants in Puget Sound.

Ash Grove Cement Company, a Seattle cement manufacturer, discharged industrial stormwater to the Duwamish East Waterway via Seattle storm drains, without a permit from 1992 to 2010. Pollutants in the company’s stormwater included toxic metals copper and zinc. To settle these violations, the company obtained an individual stormwater permit and agreed to pay a penalty of \$600,000: **Complaint and Settlement**

Waste Management of Washington Inc., a Seattle truck-to-rail transfer facility, discharged industrial stormwater via storm sewers to the Duwamish River in violation of the Washington industrial stormwater general permit on multiple days in 2009 to 2011. The company discharged truck wash water to a nearby storm drain and failed to monitor pollutants in its stormwater discharges, including petroleum and the toxic metal zinc. EPA and Ecology inspectors jointly investigated this facility for compliance with the industrial stormwater permit. To settle these violations, the company agreed to pay a penalty of \$33,750: **Settlement**

Gary Merlino Construction Company, a Seattle construction storage yard and maintenance facility, discharged industrial stormwater to the Duwamish River in violation of the Washington industrial stormwater general permit from 2010 to 2012. The company failed to revise its pollution prevention plan and update its best management practices to reduce high zinc and turbidity levels in its stormwater, and failed to cover two facility dumpsters. To settle these violations, the company agreed to pay a penalty of \$36,000: **Settlement**

Special Interest Auto Works Inc., of Kentucky, an auto wrecking and recycling facility, discharged industrial stormwater to the Green River, without a permit from 2008 to 2012. Pollutants in the facility’s stormwater included high levels of petroleum and toxic metals zinc, copper, and lead. When the company declined to settle the case, EPA issued a unilateral complaint seeking a penalty up to \$177,500: **Complaint**

Illegal Dumping - A Criminal Activity

Here are three recent convictions of persons who knowingly and illegally dumped waste into storm drains. These are clear and understandable criminal activities. When, anyone could ask, does illicit discharge become illegal dumping?

1. Jonathan Deck of Norwood, N.J., was sentenced on August 29 to 15 months in prison and to pay \$495,000 in restitution for conspiring and illegal dumping of thousands of tons of asbestos-contaminated construction debris near the Mohawk River in New York.

Deck and others dumped pulverized construction and demolition debris that was processed at New Jersey solid waste management facilities and then transported to open property in Frankfort, N.Y. Much of the material that was dumped was placed around waters of the United States and some of the material was found to be contaminated with asbestos. The conspirators then concealed the illegal dumping and recruited others to join in the illegal dumping by fabricating a New York State Department of Environmental Conservation (DEC) permit and forged the name of a DEC official on the fraudulent permit.

2. Three former Robbinsville, NC maintenance workers face federal charges they violated the Clean Water Act by dumping 4,000 gallons of toxic sludge from the town's water treatment plant into a ditch. A grand jury indicted Bobby Joe Silvers, John Coleman Carver III and Joseph Kyle Orr on charges of illegally discharging pollutants.

Orr pleaded guilty Thursday during a hearing in U.S. District Court in Asheville. Silvers and Carver have pleaded not guilty. All three defendants remained free on \$25,000 unsecured bonds.

Sludge from Robbinsville's water treatment facility is stored in a lagoon until it can be hauled off for proper disposal at the town's sewage treatment plant. The material is generated by using aluminum sulfate in the treatment process and is commonly called alum sludge, according to the indictment. Judge Dennis Howell told Orr he faces a maximum sentence of a year in prison. Sentencing was set for the Dec. 2 term of court. The N.C. Department of Environment and Natural Resources investigated and fined the town \$2,000, plus \$537 in enforcement costs.

3. A Youngstown, OH company employee, Michael Guesman, admitted to dumping tens of thousands of gallons of fracking waste on at least 24 occasions into a tributary of the Mahoning River. He faces a sentence of about a year in federal prison, although his time could be reduced by the amount of assistance he provides to prosecutors, and his acceptance of responsibility for his crime. Guesman, of Cortland, said he acted on the orders of his boss at Hardrock Excavating, owner Benedict Lupo, when he ran a hose from the 20,000-gallon storage tanks to a nearby storm water drain and opened the release valve.

A gusher of waste liquid left over from hydraulic fracturing operations -- commonly known as "fracking" -- poured into the drain, sending saltwater brine and a slurry of toxic oil-based drilling mud, containing benzene, toluene and other hazardous pollutants, flowing into the Mahoning,

An anonymous tipster alerted authorities from the Ohio Department of Natural Resources that the improper dumping of fracking waste was occurring, and state agents observed the crime as it was being committed, according to court documents. *

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Served on team that organized US EPA and wrote Clean Water Act rules
National Expert in Municipal Permitting Policy;
Awarded EPA Bronze Medal 1970-1979
Appointed to EPA Advisory Committee on Compliance Assistance
Appointed by Small Business Administration to EPA committee for streamlining Phase II stormwater rules.
Instructor for Florida DEP Erosion & Sedimentation Control Inspector Course
Qualified Environmental Professional by Institute of Professional Environmental Practice

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Dec 16-19 - Certified Stormwater Inspector
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Jan 9 - Pollution Prevention
Feb 20 - Industrial Inspections
Mar 20 - Illicit Discharge Detection

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- Certified Stormwater Inspector**
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Nov 18-19 MS4 - Charlotte, NC
Nov 19-20 Construction - San Juan, PR
Nov 21-22 MS4 - Huntsville, AL
Dec 3-4 MS4 - Orlando, FL
Dec 10-11 MS4 - Memphis, TN
Jan 13-14 MS4 - Huntington Beach, CA
Jan 16-17 MS4 - LAX Area, CA
Jan 22-23 MS4 - Nashville, TN
Jan 27-28 Industrial - Atlanta, GA
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