

AGGRESSIVE CONSTRUCTION PERMITS MORE MUNICIPAL COMPLIANCE

Stormwater News

Oil Pollution Prevention regulations require facilities that meet certain criteria to have a Spill Prevention Control and Countermeasures (SPCC) plan in place by Nov. 10, 2011. The SPCC plan applies to facilities with these criteria:

- Store, transfer, use, or consume oil or oil products, such as diesel fuel, gasoline, lube oil, hydraulic oil, adjuvant oil, crop oil, vegetable oil or animal fat; and
- Stores more than 1,320 U.S. gallons in above ground containers or more than 42,000 U.S. gallons in completely buried containers; and
- Could reasonably be expected to discharge oil to waters of the United States or adjoining shorelines, such as interstate waters, intrastate lakes, rivers or streams. See <http://www.epa.gov/emergencies/docs/oil/spcc/spccfarms.pdf>.

EPA is launching a new strategy to promote the use of green infrastructure by cities and towns. EPA will work with partners including local governments, watershed groups, tribes and others in 10 cities that have utilized green infrastructure and have plans for additional projects.

EPA will encourage and support expanded use of green infrastructure in these cities and highlight them as models for other municipalities around the country. The 10 cities are: Austin, Texas; Boston, Mass.; Cleveland, Ohio; Denver, Colo.; Jacksonville, Fla.; Kansas City, Mo.; Los Angeles, Calif.; Puyallup, Wash.; Syracuse, N.Y.; and Washington, DC and neighboring Anacostia Watershed communities.

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MS4s Must Enforce Construction Activity

The direction of the NPDES Stormwater Permit program is abundantly clear. But, it's not industrial stormwater permitting.

Construction permits will not only become more stringent, but more difficult to manage. Then the EPA plan is to require municipal governments to get construction activity in compliance.

It's no longer good enough for the construction superintendent to keep sediment on the construction site. In addition to the frequent inspections, earth record keeping on grading and training, sampling will now be required on large sites and at all points of discharge.

Who has the responsibility for inspecting construction activity for compliance? Although EPA and the state enforce NPDES construction permits, pressure will be on the MS4 permittee.

First the MS4 must inspect construction within their jurisdiction. At some point, MS4 inspection must enforce the state-issued permit.

Finally, the MS4 is responsible for preventing pollution from entering their system and all discharges from their system to public waters. *

Municipalities Are Responsible for All Pollutants Discharged

See: <http://www.ca9.uscourts.gov/datastore/opinions/2011/03/10/10-56017.pdf>

A Federal Appellate court has readdressed the issue of municipal accountability for pollutant discharges that fail to protect public health and the environment.

The 9th Circuit Court of Appeals in an earlier decision, agreed with the Natural Resources Defense Council (NRDC) and the Baykeeper that Los Angeles County has been illegally discharging polluted water into the Los Angeles and San Gabriel Rivers since 2003.

The decision stems from a 2008 lawsuit filed by NRDC and Santa Monica Baykeeper. In a March 10 ruling in NRDC, et al. v. County of Los Angeles, the U.S. Court of Appeals ruled that the county's flood control district is responsible for excess stormwater discharges into two rivers containing pollutants at levels above permit limits.

The judges made it clear that MS4s violate the Clean Water Act if they allow untreated and heavily-polluted stormwater to flow unabated into public waters.

All MS4 permits require the permittee to reduce pollution in stormwater to the *maximum extent practicable (MEP)*. Every MS4 permittee is vested with the “necessary legal authority” to prohibit discharges to the MS4, and is directed to develop urban runoff ordinances for its jurisdiction.

Los Angeles County contended that its infrastructure alone does not generate or discharge pollutants. Their system only conveys the collective discharges of the numerous “up-sewer” municipalities and dischargers.

However, the Court said that the Clean Water Act does not distinguish between those who add and those who convey what is added by others—the Act is indifferent to the originator

of water pollution. The Act bans “the discharge of any pollutant by any person” regardless of whether that ‘person’ was the root cause or merely *the current superintendent of the discharge.*”

The judges cited the Supreme Court decision in *Miccossukee Tribe* that “the definition of ‘discharge of a pollutant’ *includes* point sources that do not themselves generate pollutants.

Congress was aware of the difficulties in regulating discharges from municipal separate storm sewers solely through traditional end-of-pipe treatment and intended for EPA and NPDES States to develop permit requirements that were much broader in nature than requirements which are traditionally found in NPDES permits for industrial process discharges or sanitary treatment works.

The legislative history indicates municipal storm sewer system “permits will not necessarily be like industrial discharge permits.” Often, an end-of-the-pipe treatment technology is not appropriate for this type of discharge. *

Notice, Current EPA Construction Permit

EPA is modifying the 2008 (NPDES) general permits for stormwater discharges associated with construction activity in order to extend the expiration date until January 31, 2012.

This proposed modification will extend the three-year permit so that it expires on January 31, 2012 instead of June 30, 2011. Prior to this proposed extension, EPA modified the 2008 Construction General Permit (CGP) in January 2010 to extend the permit by one year, thus making it a three-year permit. By Federal law, no NPDES permit may be issued for a period that exceeds five years. *

Status of the Turbidity National Standard

The National Construction Standard was finalized without a numeric limitation on the discharge of turbidity from active construction sites (see 40 CFR 450.22).

EPA discovered that the data used to calculate the numeric limit for turbidity was misinterpreted, and that it was necessary to recalculate the numeric limit.

On September 20, 2010, the Court stated that "EPA may make any changes to the limit it deems appropriate, as authorized by law.

EPA issued the final rule on January 4, 2011, resulting in an indefinite postponement of the implementation of the 280 Nephelometric Turbidity Unit (NTU) limit.

The Agency is currently preparing to issue a rule proposing the recalculated limit and a one-year extension to the first phase-in date for complying with the numeric limit.

EPA will also "solicit site specific information regarding the applicability of a numeric limit" to cold weather sites and to small sites that are part of a larger plan of development subject to the numeric limit.

EPA plans to finalize the recalculated numeric limit and the one-year extension of the first phase-in date prior to the final issuance of the new Construction General Permit (CGP), scheduled for January 31, 2012.

EPA's proposed permit includes a place to add the final numeric limit, which will be replaced by the recalculated numeric limit in the final permit if it is promulgated prior to permit issuance.

However, EPA is considering an industry request to extend the Construction Permit issuance date beyond January 2012. *

Stormwater News

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The EPA reportedly said that "the homebuilders stormwater issues are no longer one of the EPA's national enforcement initiatives. However, EPA will continue to take enforcement actions against home builders, as appropriate."

From 2008 to 2010, EPA conducted a nationwide initiative against the construction industry for failing to practice sediment controls as required by law. During the course of the initiative, the EPA filed suit in 35 states on a total of 2,200 construction sites.

The focus was on commercial big-box construction and national residential homebuilders, settlements were reached earlier with Target and Walmart then homebuilders: Hovnanian Enterprises, Inc., Centex Homes, KB Homes, Richmond American Homes, Pulte Homes and Beazer Homes.

The Ninth Circuit reaffirmed their previous decision, that stormwater management systems associated with forest roads are point sources under the Clean Water Act and are subject to stormwater regulations.

The Court said, "stormwater runoff from logging roads that is collected by and then discharged from a system of ditches, culverts, and channels is a point source discharge for which an NPDES permit is required.

The Court emphasized that whether stormwater runoff is a point source depends on whether it runs off naturally (nonpoint source) or is collected, channeled, and discharged (point source).

A former manager of a Coca-Cola subsidiary plant in American Can is scheduled to be sentenced June 21 in federal court in San Francisco.

He faces up to three years in prison and a \$250,000 fine for ordering employees to dilute samples of AmCan Beverages Inc.'s discharge with tap water before they were tested, according to the U.S. Attorney Office in San Francisco.

Dhiren Patel, age 43, was the environmental affairs, safety and security manager at AmCan Beverages between 2004 and 2007. He forwarded the altered results to American Canyon City officials to show compliance with the plant's discharge permit, prosecutors said. *

EPA Proposed Construction General Permit

Future Construction Permits Much More Restrictive

On April 25, 2011, EPA published in the Federal Register the proposed Construction General Permit (CGP). EPA currently intends to issue the final construction general permit by January 31, 2012.

It is a significant change for the existing permit. It is organized differently. Expect it to be entirely paperless, including the electronic notice of intent and reporting process.

Many of the new permit requirements implement the new National New Source Performance Standards for the construction and development industry that became effective on February 1, 2010. These requirements include a group of erosion and sediment controls and pollution prevention measures that apply to all permitted construction sites.

The permit will be effective in areas where EPA is the permitting authority, including four states (Idaho, Massachusetts, New Hampshire and New Mexico); Washington, D.C.; most territories; and most Indian country lands.

Words Are Important

There are many different words and phrases that must be understood. Here are some examples:

“C-Factor” means the ‘cover management factor’ from the Revised Universal Soil Loss Equation (RUSLE), which is used to determine the relative effectiveness of soil and vegetative management systems in preventing soil loss.

“Minimize” means to reduce and/or eliminate to the extent achievable using stormwater controls (including best management practices) that are technologically available and economically practicable and achievable

in light of best industry practices.

“New Source” means for the purpose of this permit, a construction project that commenced construction activities after February 1, 2010, and that requires NPDES permit coverage for its construction discharges under Part 1.2.

“Sheet Flow” means slow-velocity runoff that flows or is directed to flow across an overland area where there are no defined channels and the water spreads out over a large area at a uniform depth.

“Steep Slopes” means any slopes occurring on the construction site that are 15 percent or greater in grade.

Training

The content and extent of training must be tailored to match the stormwater team member’s duties and responsibilities related to this permit’s requirements. At a minimum, training must enable the applicable stormwater team member to understand:

- The location of all stormwater controls on the site required by this permit and how they are to be maintained;
- The proper procedures to follow with respect to the permit’s pollution prevention requirements;
- When and how to conduct inspections, record applicable findings, take corrective actions and where appropriate, report violations; and
- When and how to take effluent samples, record the results, and submit reports.

Inspections

At a minimum, you must conduct a site inspection once every 14 calendar days and within 24 hours of the end of a storm event of 0.25 inches or greater and within 24 hours of a discharge generated by snowmelt.

(continued on next page)

EPA Proposed Construction Permit (continued from the previous page)

Turbidity Sampling

The numeric turbidity limit applies to:

20-acre land disturbances: When construction activities commence between August 1, 2011 and before February 2, 2014, and will disturb 20 or more acres of land at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale.

10-acre land disturbances: When construction activities commence on or after February 2, 2014, and will disturb 10 or more acres of land at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale.

The numerical standard is not in the permit, but there is a placeholder in the permit for the final, recalculated numeric turbidity limit.

Sampling is required at all discharge points for any storm event or snowmelt condition that results in a discharge of stormwater from the site.

Erosion and Sediment Control

You are required to minimize the discharge of pollutants from your site. To meet this requirement you must comply with the permit requirements. The following are some of the requirements.

Prohibited Discharges

Wastewater from washout of concrete;

- Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
- Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- Soaps or solvents used in vehicle and

- equipment washing;
- Toxic or hazardous substances from a spill or other release; and
- Waste, garbage, floatable debris, construction debris, and sanitary waste.

Construction and Domestic Waste

- On a daily basis, clean up and dispose of waste in designated waste containers
- Clean up immediately if containers overflow;
- Do not hose down spilled waste; and
- Do not dispose of hazardous or toxic materials in areas designated for construction and domestic wastes.

Sediment or Nutrient-Impaired Waters

Construction activities that disturb 10 or more acres of land at any one time requires water quality benchmark monitoring for the sediment and/or nutrient parameter(s) for which the receiving water is impaired.

Conduct site inspections once every 7 calendar days and within 24 hours of a storm event of 0.25 inches or greater or within 24 hours of a discharge caused by snowmelt.

Conduct a daily visual examination of certain portions of your site. During your daily visual examination, you must check all stormwater controls including the presence of deposited sediment.

Terminating Permit Coverage

- Met requirements for final stabilization
- Disposed of all construction materials
- Removed all stormwater controls
- Removed all potential pollutants
- Identify ongoing maintenance person.

Alaska

On May 19, 2011, Alaska became the first state to finalize a construction permit that included the EPA national effluent guidelines and standards. For questions, please call or email William Ashton at 907-269-6283, William.ashton@alaska.gov *

Significant Enforcement Actions

Texas

A **Texas chicken farmer** will pay \$1.9 million penalty plus \$3.5 million on remedial measures. The egg production facilities generate various wastes, including wet or dry manure from chicken houses, wastewater from the egg-washing process, and compost from chicken carcasses.

The complaint alleges that Mahard Egg Farm, Inc. over-applied waste to its fields. The soils at its facilities are saturated with nutrients and, during and after rainfall, these nutrients are discharged into area streams and waterways.

Indiana

Three Executives of an oil reclamation company in Indianapolis were sentenced for felony violations of the Clean Water Act. Ecological Systems, Inc. (ESI) intentionally discharged untreated wastewater and stormwater from its facility directly into the Indianapolis sewer system.

All three were sentenced to years of probation, months of home detention, relatively small fines and community service.

Together, they decided to directly discharge untreated oily wastewater into the Indianapolis sewer system by pumping wastewater through hoses that bypassed ESI's treatment processes.

The discharge continued for approximately eight hours and resulted in a discharge of approximately 300,000 gallons of untreated wastewater.

South Carolina

A **Batesburg-Leesville, SC construction company owner pled guilty** to a violation of the U.S. Clean Water Act that involved 4 million gallons of industrial waste water.

John Ashley Mabus, 44, of Mabus Brothers Construction Co., Inc., allowed contamination of a creek while his company worked in North Augusta.

The crew was digging a ditch for a sewer line when water from a heavy-metal-contaminated lagoon started coming into the ditch.

Mabus told his workers to pump the water from the lagoon into Little Horse Creek. Over a three-day period, 4 million gallons of contaminated water and sludge was pumped into the Savannah River tributary.

Mabus faces a \$25,000-per-day fine for the three days and/or a one-year prison sentence.

Virginia

A Virginia company and its president have pleaded guilty to violating the Clean Water Act for discharging 500,000 gallons of polluted water into the Elizabeth River.

Marine Environmental Services, Inc. (MES) and Jerry Askew of Portsmouth pleaded guilty to knowingly discharging pollutants. Askew's company had been cleaning a decommissioned tanker in 2005 that had 2.1 million gallons of water polluted by oil, grease and bacteria when the water was discharged.

MES faces a maximum penalty of five years of probation and a \$500,000 fine. Askew faces a maximum penalty of one year in prison and a fine of \$100,000.

Both will be sentenced on August 24, 2011. As part of its plea, MES has agreed to invest \$50,000 in community service projects that benefit the Elizabeth River watershed. *

State Issues

Illinois

The EPA issued a nine-page order requiring the State to clean up the Chicago River. The City must make the river, which runs through its downtown, clean enough for swimming rather than a dumping-ground for sewage and pollutants.

Almost a year ago, the EPA sent a letter to the state suggesting that the water quality in the river be upgraded, and pointing out that the federal Clean Water Act requires waterways to be clean enough for "recreation in and on the water." Then the Mayor of Chicago, Richard Daley told federal officials to "go swim in the Potomac."

The federal agency got a much warmer reception this year from the new Mayor, Rahm Emanuel.

The strongly-worded letter from the U.S. EPA to Illinois officials outlines how the EPA would impose tougher water quality standards if state officials fail to take action. The order also applies to two connected waterways, the Cal-Sag Channel and Little Calumet River.

Louisiana

The U.S. EPA awarded \$2,262,000 to Louisiana. The money will be used to prevent non-point source stormwater runoff from polluting public waters. Nonpoint source water pollution happens when contaminants are carried into rivers, lakes, wetlands, coastal waters where there is no conveyance like a ditch, pipe, or pump.

By law, EPA grants are not available for point source (a confined discrete conveyance) pollution.

Pennsylvania

The most endangered river in the US is the

Susquehanna River according to American Rivers. The Sierra Club and American River blame the pollution on natural gas extraction, which puts clean drinking water at risk they say.

The Susquehanna is a drinking water supply for more than 6 million people, it's one of the longest rivers in the U.S. and it provides over half the fresh water to the Chesapeake Bay, American Rivers spokeswoman Jessie Thomas-Blate said.

In 2005 the Susquehanna was considered most endangered due to threats from sewage discharge. Last year the Upper Delaware River topped the list of the "most endangered" designation.

Florida

EPA has become the target of lawsuits in Florida. EPA published rules which set quantitative nutrient limits on the entire state's lakes, rivers, streams, and springs.

Suing EPA over the new numeric standards are: the State of Florida, the Florida Agricultural Commissioner, the Florida League of Cities, the Florida Stormwater Association, and numerous municipal and county groups, as well as members of the fertilizer and mining industries.

The complaint is that EPA is imposing a federal mandate and intruding into state regulatory affairs. They also question the scientific basis of the EPA numbers and argue that implementing numeric nutrient limits for the entire state will inflict high costs on businesses, citizens, and the public sector.

EPA estimates the new standards will cost between \$135.5 and \$206.1 million, or three to five dollars a month for the average Florida household. A study commissioned by the Florida Stormwater Association puts costs in the billions. *

John Whitescarver
Executive Director
National Stormwater Center



Qualified Environmental Professional by the Institute of Professional Environmental Practice

» Team to Organize US EPA & Write Clean Water Act Rules; National Expert, Municipal Permitting Policy; Awarded EPA Bronze Medal by US EPA, 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

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Certified Stormwater Inspector
Certified Construction Inspector

	<u>CSI</u>	<u>CCI</u>
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New Orleans	June 28-29	June 29-30
Houston TX	July 12-13	July 13-14
Baltimore MD	July 19-20	July 20-21
Portland OR	July 26-27	July 27-28
Norfolk VA	Aug 16-17	Aug 17-18

On-Line Annual Employee Training

- Sector Q&R - Water Transportation June 17
- Sector S - Air Transportation June 17
- Sector T - Treatment Works July 8
- Sector U - Food and Kindred July 8
- Sector V - Textile and Apparel July 22
- Sector W - Furniture July 22
- Sector X - Printing & Publishing Aug 5
- Sector Y - Rubber Aug 5
- Sector Z - Leather Aug 19
- Sector AA - Fabricated Metal Aug 19
- Sector AB - Transportation Equip Sep 9
- Sector AC - Electronics Sep 9
- Sector A - Timber Sep 23
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The public waters of the US are a valuable resource that needs to be protected from illegal pollution. We support compliance with the Federal Clean Water Act by providing training and support services to government, business and individuals.



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