

DEMOCRATS TO REVERSE ENVIRONMENTAL LOSSES

Stormwater News

EPA halts new mountaintop mining permits for science review. The order does not apply to existing mines, but to pending applications. EPA has always had the authority to review and veto permits issued by the Corps of Engineers, but it rarely did so during the Bush administration. Referring to two permit proposals, EPA Administrator Jackson said the projects “would likely cause water quality problems in streams below the mines, would cause significant degradation to streams buried by mining activities, and that proposed steps to offset these impacts are inadequate.”

Toxics Release Inventory (TRI) reporting requirements changed on March 11, 2009. The 2009 Omnibus Appropriations Act, returned TRI reporting requirements back to the rules in effect prior to December 22, 2006. These changes affect TRI reports due July 1, 2009.

Vermont loses the six-year fight to control water pollution using watershed limits rather than issuing stormwater permits. A Court has given the Vermont Agency of Natural Resources 90 days to come into compliance.

The agency has been arguing that it had the discretion not to take the regulatory actions required by the Clean Water Act. The judge’s order stated: “Whatever discretion (the agency) might have in this matter, it does not include the ability to decide to do nothing to meet its responsibility to implement the federal Clean Water Act’s stormwater requirements.”

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Environmentalists Regain Control in Congress, EPA , White House

You could see it coming in 2008! The Democratic controlled Congress berated the EPA Administrator on a series of decisions. Administrator Steven Johnson, working for President Bush, fought with Congress over EPA guidance on the jurisdiction of the Clean Water Act, cuts in enforcement and California’s authority to set gas mileage standards.

Congress now has a friendly White House and a new environmental team. Therefore, expect an increase in funding for environmental projects and significant amendments to the Clean Water Act.

EPA will propose new NPDES permits for vessels and the use of pesticides on or near water bodies. National discharge standards for construction activity will be final by December 2008.

The Stimulus Bill will increase stormwater permitting and clean water projects over the next three years. As a result, there will be more pollution and more stormwater inspections.

Enforcement will return to EPA. States will either use some of the stimulus money for inspectors or face scrutiny from EPA and citizen environmental groups. *

Elections Have Consequences!

Al Gore's Environmental Team is Back

Environmental groups are thrilled that the Obama environmental team comes with experience from the Clinton/Gore Administration.

Carol Browner, EPA's Administrator during the Clinton Administration is back as the White House energy and environmental "Czar." She was brought to EPA by Vice President Al Gore.

Nancy Sutley, head of the White House Council on Environmental Quality (CEQ). She was a special assistant to Carol Browner. The CEQ oversees federal agency implementation of the environmental impact assessment process. President Bush appointed an industry lobbyist.

Lisa Jackson the new EPA Administrator, served under Carol Browner in the agency's headquarters during the Clinton/Gore Administration before moving to the New Jersey Department of Environmental Protection, first as an officer and then, in 2006, as its head.

During her confirmation hearing, she highlighted several priorities that will receive her personal attention. She listed (1) Reducing Greenhouse Gases, (2) Improving Air Quality, (3) Managing Chemical Risks, (4) Cleaning up Hazardous Waste Sites, and (5) Protecting America's Waters.

After confirmation, Administrator Jackson wrote a memo to her staff explaining that *Protecting America's Waters* means to intensify restoration of the quality of the nation's streams, rivers, lakes, bays, oceans and aquifers. She said that she will "make robust use of our authority to restore threatened treasures such as the Great Lakes and the Chesapeake Bay, to address our neglected urban rivers, strengthen drinking-

water safety programs, and to reduce pollution from non-point and industrial dischargers."

The nominee for EPA Deputy Administrator is **Jonathan Cannon**, a law school director who was the EPA General Counsel and Assistant Administrator for Administration and Resources Management under Carol Browner.

Cannon's potential role in the EPA would make him responsible for running the agency and for implementing the processes necessary for the agency's head administrator to follow the president's environmental agenda.

EPA will have support from **Jim Oberstar** (D-MN), in the Congress. He is chairman of the Transportation & Infrastructure Committee. He attacked the previous EPA administration and introduced the Clean Water Restoration Act to clarify the jurisdiction of the U.S. government over waters located in the country, largely for the purpose of dealing with water pollution.

Congressman Oberstar is the chief author of the Water Quality Investment Act (H.R. 1262) that passed the U.S. House of Representatives on March 12, 2009. In addition to the Stimulus Bill, the \$14 billion will build new wastewater treatment plants, clean up pollution hot spots on the Great Lakes and create 480,000 new jobs.

Senator Barbara Boxer (D-CA), Chairman of the Senate Committee on Environment is a strong supporter of environmental regulations.

Editor Comment: The revised agenda for clean water has begun. Expect Clean Water Act amendments to provide EPA more money and to strengthen EPA's jurisdiction and control. Yes, elections do have consequences. *

EPA Will Modify NPDES Vessel Permit

The NPDES permit for discharges from vessels was effective in February for 69,000 ships. News reports say the new EPA Administrator stated that the permit does not begin to address the problems and will be improved.

The discharge applies only vessels of 79 feet and greater in length or weighing 300 tons.

The permit regulates 28 separate discharges from ships including ballast water discharges, deck washdown and runoff, bilge water, gray water, seawater cooling overboard discharge, controllable pitch propeller hydraulic fluid, and hull husbandry.

Many of the invasive species such as zebra mussels that have damaged aquatic ecosystems were picked up in foreign ports and ferried across the ocean inside ballast water, which keeps vessels stable in rough seas.

Environmental groups have sued EPA contending the permit's requirements were too weak. Ballast tank flushing is required for ships entering the Great Lakes, but environmental groups contend that it is ineffective and does not protect the nation's waters.

Environmental attorneys say the Clean Water Act requires more than just flushing ballast tanks at sea and that ballast treatment technology is available and should be required.

The vessel permit applies to discharges to the outer limit of the three mile territorial sea. In addition to permit effluent limitations, state water quality standards apply within these waters.

EPA assumes that discharges that comply with state water quality standards will not cause unreasonable degradation of the marine environment. *

Stormwater News

(Continued From Page 1)

The rule that had prohibited surface coal mining activities within 100 feet of flowing streams has been repealed. The rule had been in place since 1983.

Environmental groups have filed a legal challenge over a "midnight" rule change by the Office of Surface Mining (OSM) on December 12, 2008. The suit attempts to overturn the repeal of the stream buffer zone rule.

The revised stream buffer rule is found in the Federal Register: December 12, 2008 (Volume 73, Number 240). Generally it requires that disturbance of perennial and intermittent streams and their buffer zones be avoided unless it is not reasonably possible to do so.

The EPA announced that it will set "water quality standards for nutrients" for all Florida surface waters. The standards will apply to nitrogen and phosphorus. Only 25 states have adopted numeric standards for nutrients. The remaining 25 states have yet to develop numeric nutrient pollution standards.

On July 29, 2008, Miami U.S. District Judge Alan Gold found that the federal agency had shirked its duty to enforce basic water quality standards and, in so doing, "violated its fundamental commitment and promise to protect the Everglades" and "acted arbitrarily and capriciously."

In July 2008, five environmental groups filed a lawsuit to compel the EPA and the state of Florida to set numeric limits on the excess nutrients.

Industrial tenants at the Port of Stockton were ordered to comply with stormwater permit rules or face fines of up to \$32,500 per day according to a January letter to Port of Stockton. The EPA letter did not lay blame on the Port and said the Port staff was cooperative, knowledgeable and dedicated.

The Port of Stockton joins the EPA Region 9 audits of ports including City of Los Angeles' and City of Long Beach's municipal storm water programs.

See audit reports and orders to port tenants in non-compliance with California's Industrial General Permit at <http://www.epa.gov/region09/water/ports/> *

Construction Jobs Demand Stormwater Controls and NPDES Inspectors **Obama Stimulus Plan & Water Quality Investment Act will Create Jobs and Provide Cleaner Water**

The American Recovery and Reinvestment Act (Stimulus Plan) is intended to create or save 3 to 4 million jobs and to jumpstart the economy with \$787.2 billion in economic recovery tax cuts and targeted priority investments.

The category of interest to jobs and stormwater inspectors is: *Modernizing Roads, Bridges, Transit and Waterways*. This will fund only shovel ready construction projects and environmental protection projects.

Construction

- \$27.5 billion for highway construction;
- \$16.5 billion to modernize public infrastructure with investments that lead to long term energy cost savings;
- \$18.8 billion for clean water, flood control, and environmental restoration investments;
- \$17.7 billion for transit and rail to reduce traffic congestion and gas consumption.

Clean Water

- Clean Water State Revolving Fund: \$4 billion for loans to help communities upgrade wastewater treatment systems.
- Drinking Water State Revolving Fund: \$2 billion for loans for drinking water Infrastructure.
- Rural Water and Waste Disposal: \$1.38 billion to help communities fund drinking water and wastewater treatment systems.

Water Resources

- Corps of Engineers: \$4.6 billion for environmental restoration, flood protection, hydro power, and navigation infrastructure.
- Bureau of Reclamation: \$1 billion to provide clean, reliable drinking water to rural areas and to ensure adequate water supply to western localities impacted by drought.
- Natural Resources Conservation Service: \$340 million for the watershed improvement

programs to design and build flood protection and water quality projects, repair aging dams, and purchase and restore conservation easements in river flood zones.

- International Boundary and Water Commission: \$220 million to repair flood control systems along the international segment of the Rio Grande damaged by Hurricane Katrina and other serious storms.

Environmental Cleanup

- Superfund Cleanup: \$600 million to clean up hazardous and toxic waste sites
- Leaking Underground Storage Tanks: \$200 million for enforcement and cleanup of petroleum leaks from underground storage tanks at approximately 1,600 additional sites.
- Nuclear Waste Cleanup: \$6 billion for cleanup at sites contaminated by past nuclear activities.
- NOAA Operations, Research and Facilities: \$230 million for ready-to-go habitat restoration, research and maintenance activities.
- Brownfields: \$100 million for competitive grants for evaluation and cleanup of former industrial and commercial sites, turning them into productive community use.

Water Quality Investment Act (H.R. 1262)

This bill recently approved by the House will result in EPA grants to states and non-profit organizations of \$17.7 billion over the next 10 years to support water quality projects. A companion bill is in the Senate.

The bill also authorizes grants for sewer overflow control. Sewer overflows can lead to untreated wastewater flowing into rivers, streets, and basements, affecting public health and the environment. *

New Civil Violators

A concrete plant in Rhode Island will pay a fine of \$55,000 and spend an estimated \$178,000 to complete three “Supplemental Environmental Projects” to resolve violations of the Clean Water Act.

The Consolidated Concrete Corporation violated the Clean Water Act (CWA) by discharging waste water from its concrete manufacturing facility without authorization, and by discharging stormwater associated with industrial activity, without having applied for a Rhode Island stormwater permit.

As a result of Consolidated Concrete’s violations, waste water and stormwater containing pollutants from the facility were being discharged into a nearby stream, particularly during wet-weather events.

The company also failed to prepare and implement a Spill Prevention, Control, and Countermeasure (SPCC) plan as required by the Oil Pollution Prevention regulations under the CWA.

The first two SEPs involve construction and implementation of a closed loop recycling system so that captured waste waters can be re-used in its concrete manufacturing operations.

In addition to saving water, the company will periodically empty out the solids from the containment basins and re-use them in its manufacturing process greatly reducing the amount of cement dust or sediment exposed to the environment.

The third SEP involves the installation of two Stormwater Quality Control Units to improve the quality of stormwater runoff from the Facility. *

Airport Loses Citizen Suit Alabama Agency Criticized

A citizen organization in Birmingham, Alabama has settled a lawsuit with Birmingham Airport Authority and Dunn Construction Company but has bitter words for the Alabama Department of Environmental Management (ADEM).

The settlement of \$150,000 will pay litigation expenses and a Village Creek maintenance project. The airport was constructing a runway expansion that released mud into the creek.

Nelson Brooke, executive director of Black Warrior Riverkeepers said. “One of the biggest hindrances for legal accountability was intervention by the ADEM. They should enforce permit stipulations.”

“In this particular case, ADEM tried to take the case away from us, as they have often done in the past,” Brooke said. “What they’ll do is come in after we’ve initiated an action against a polluter and file their own action, and then they’ll go to court with the polluter and say ‘Hey, we’ve got this thing under control. There’s no need for this citizen suit.’ We had to sit around and wait on ADEM’s action to end.”

Provisions in the Clean Water Act require citizens to file an intent to sue 60 days prior, and inform both the permit authority and the alleged polluters. In this case the pollution continued after the 60 day period. The riverkeepers continued to document discharges into Village Creek.

“Our state agency is in the business of permitting pollution. They’ll rubber stamp the permit, and they will require a particular operation to do the bare minimum of what is required,” Brooke said. *

Mountain Top Mining Gets Circuit Court OK

The 4th U.S. Circuit Court of Appeals ruled in favor of coal mining permits that extract coal by removing mountain tops.

The court also overturned a related ruling that using ponds to remove sediment from streams at mountaintop mines violates the Clean Water Act.

Strip mining exposes thin, shallow coal seams. Rocks, dirt and other debris typically are dumped into valleys containing intermittent streams.

Mountaintop mines employ over 13,000 people in West Virginia, Virginia, Kentucky and Tennessee. Some say it will allow up to 90 more mountaintop mines to operate. The National Mining Association hopes the decision will remove the uncertainty regarding the issuance of surface mine permits. But it may not.

The ruling vacates the lower court's order rescinding four permits issued to Massey Energy Co., along with an injunction barring Massey from using the permits and the decision involving the settling ponds.

The court decision considered the rule change to receive a "dredge and fill" permit issued under Section 404 of the Clean Water Act. In 2002, the Bush Administration allowed the discharge of fill to include rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in waters of the U.S.

However, the rule change did not allow the discharge of trash or garbage, such as debris, junk cars, used tires, discarded kitchen appliances, and similar materials.

Will Congress Reverse?

Congress may reverse the decision with a new bill introduced in the House just after the court decision. Reps. Frank Pallone, D-N.J., Dave Reichert, R-Wash., and John Yarmuth, D-Ky., introduced the legislation with support from 114 other members of Congress.

The bill, HR 1310, would amend the Clean Water Act and reinstate a prohibition that prevents mining companies and other industries from dumping rock and dirt into stream beds. The bill would overturn a Bush administration rule making that changed the definition of "fill" to legalize mountaintop removal valley fills.

Fill would not include any pollutant discharged into the water primarily to dispose of waste.

Unrelated Settlements

One of the largest coal mining companies in the United States has agreed to pay a \$6.5 million civil penalty to settle violations of the Clean Water Act, federal and West Virginia agencies have announced. The consent decree signed by Patriot Coal includes the third largest penalty ever paid in a federal Clean Water Act case for discharge permit violations.

The complaint alleged that Patriot Coal violated its Clean Water Act permits more than 1,400 times - representing over 22,000 days of violations between January 2003 and December 2007 at its mining complexes in West Virginia.

During this time, Patriot and its subsidiaries allegedly discharged excess amounts of metals, sediment, and other pollutants into dozens of rivers and streams in West Virginia.

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Check to See If Your Name Is on this List!

Case Histories of New Stormwater Criminals

Case 1

In Salt Lake City, Randall R. Cook, former manager of the Logan City Landfill, pled guilty in federal court to a misdemeanor count of negligently discharging a pollutant into water which ultimately entered into Cutler Reservoir. Sentencing is set for April 15, 2009.

Cook admitted that in May 2005, while he was the landfill manager, he became aware that because of a heavy rainfall at the landfill, a pollutant created by water percolating through the garbage had accumulated in a ditch running alongside a road at the landfill.

In an effort to clear the ditch, Cook said he pumped contaminated water through a culvert across the road where the polluted water flowed into a drain and ultimately into Cutler Reservoir which is considered "waters of the United States."

Cook faces up to a year in federal prison and a fine of \$100,000 for the conviction. According to EPA investigators involved in the case, water that comes into contact with waste in a landfill can contain many pollutants that can be toxic to aquatic life.

Case 2

An oil production company headquartered in Houston, Texas, was sentenced in federal court to two years probation for violating the Clean Water Act by causing a negligent spill in Louisiana of processed brine water into waters of the United States.

Texas Petroleum Investment Company was ordered to pay \$425,000 to the US Fish & Wildlife Service, \$25,000 to the Louisiana State Police Right to Know Fund, \$25,000 to Southern Environmental Enforcement Network Enforcement Training Fund, and they were fined \$50,000.

The Company operated a water storage tank

where processed water was stored prior to being sent to the injection wells. The water storage tank's alarm sounded because the water level was high in the storage tank. The employees became aware that a salt water injection well was not working and the pumps could not keep up.

Consequently, oil and water began to spill over the top of the tank. The employees used a bypass valve to release processed brine water over the side of the barge into the water until the pumps could catch up.

EPA Most Wanted List

EPA now has its own version of the FBI most-wanted list of 23 fugitives. It has mug shots and descriptions of the charges on its Web site at <http://www.epa.gov/fugitives>

The Web site also lists captured fugitives. Among them David Allen Phillips, who escaped prison in 2005 after being convicted of Clean Water Act crimes in Montana. He fled to Mexico, but was turned over by Mexican authorities last March and now awaits further sentencing.

Phillips' conviction resulted from a home site development. Phillips' subdivision development caused significant impacts to a wetland areas and a body of water in the U.S. known as Fred Burr Creek in Phillipsburg, Montana.

David Ortiz fled after appealing his conviction for Clean Water Act crimes in 2004. He was captured last March in Colorado and is currently in prison.

Ortiz was the plant manager for Chemical Specialties, a company that distills and recycles propylene glycol, an aircraft de-icing chemical. He was guilty of illegally discharging de-icing chemicals into the Colorado River. *

**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

2009 Schedules

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Apr 13,14 - Little Rock, AR	Jun 17,18 Burbank, CA
Apr 15,16 - Dallas, TX	Jun 20,21 - Houston, TX**
Apr 21,22 - Norfolk, VA	Jun 29,30 - Denver, CO
May 4,5 - Baton Rouge, LA*	Jul 13,14 -San Antonio, TX
May 11, 12 - San Jose, CA	Jul 21,22 - Phila., PA
May 13,14 - Concord, CA	Aug 10,11 - Oakland, CA
May 19,20 - Lubbock, TX	Aug 12,13 - Sacramento, CA
May 27,28 - Lowell, MA	Aug 17,18 - Hot Springs, AR
Jun 1,2 - Albuquerque, NM	Aug 25,26 - Anchorage, AK
Jun 15,16 - Long Beach, CA	Sep 9,10 - Las Vegas, NV

Advanced

Certified Stormwater Inspector

(Prior certification required)

Apr 2 - Naples, FL	Jul 28 - Ft Lauderdale, FL
Apr 17 - Dallas, TX	Aug 14 - Sacramento, CA
May 7 - Stuart, FL	Aug 20 - Orlando, FL
May 15 - Concord, CA	Sep 9 - Pensacola, FL
Jun 10 - Jacksonville, FL	Oct 6 - Daytona, FL
Jun 19 - Ontario, CA*	Nov 10 - Melbourne, FL
Jul 16 - San Antonio, TX	Nov 13 - Houston, TX
Jul 23 - Phila, PA	Dec 8 - Miami, FL
	Dec 11 - Dallas, TX

* - Added to Schedule

** - 11th Annual EPA Region 6 Operators Conference

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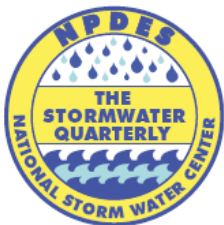
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