

## TOUGH PERMITS ARE INEFFECTIVE WITHOUT THREAT OF ENFORCEMENT

### *Stormwater News*

**EPA has proposed rulemaking that would require electronic reporting by NPDES permittees.** Data received from NPDES authorized States must be in a format compatible with the new EPA Integrated Compliance Information System (ICIS).

**In a letter to the EPA Administrator, Bob Gibbs, Chairman of the U.S. House Committee on Transportation and Infrastructure challenged the EPA authority regulate stormwater runoff from developed and redeveloped sites.** He cites the settlement agreement with the Chesapeake Bay Foundation in May 2010.

EPA has referred to that settlement as a basis for its establishment of a Federal Total Maximum Daily Load (TMDL) for the entire 64,000 square-mile Chesapeake Bay watershed. He claims the EPA usurped state authority to implement TMDLs in that watershed.

**California will soon release a new draft of the industrial permit.** There will be at least a 60 day comment period, with informal staff workshops and a formal public hearing.

**EPA will continue to push the states to replace their narrative nutrient criteria with numeric nutrient criteria in order to advance EPA's goal of including the widespread use of effluent limitations for nutrients in state-issued NPDES permits.**

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### **Using the Threat of Enforcement to Achieve Compliance**

Why should businesses and residents, who generate pollutants on their property, harm the public by allowing their contaminated runoff to pollute public waters? The harm is the cost for cleanup and treatment paid by the residents in fees and taxes.

Many people would not dump their pollutants onto others because it would be the wrong thing to do. Others would dump pollutants if they knew that they would not be caught.

Generally, the worst permit violators are industrial dumpers, developers and non-compliant municipalities. Although farming runoff is exempt from permitting, it is not exempt from TMDL compliance.

The Chesapeake Bay is on a path for cleanup because of threats by EPA to impose sanctions on wastewater treatment plants, stormwater permittees and concentrated animal-feeding operations if the load reductions are not achieved. Additionally, EPA may condition or redirect grant funds needed by the State to implement voluntary cost-share programs.

States in the Chesapeake Bay Watershed have found innovative ways to achieve pollutant reductions as demonstrated in their Watershed Implementation Plans. ✱

## **The Success of Los Angeles Area TMDLs** **NPDES Permittees Fear TMDLs, If Enforced, They Do Work**

Total Maximum Daily Load (TMDL) is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards.

In a legal settlement between EPA and California environmental groups, 47 TMDLs have been established for 175 water bodies in the Los Angeles area. Pollutant controls are effective in the removal of bacteria, metals, pesticides, PCBs and trash.

The Agency and the Los Angeles Regional Water Quality Control Board announced, in late March, the pollution reduction plans designed to restore 175 water bodies in Los Angeles and Ventura Counties.

EPA established TMDLs to address pollutants and impairments for the following water bodies:

**Long Beach City beaches and Los Angeles River estuary for bacteria:** Once implemented, the average number of days during the swimming season exceeding bacteria standards will be reduced from 34 days to 0.

**Santa Monica Bay waters for DDTs and PCBs:** Once implemented, DDT and PCB levels in the Bay will be reduced up to 50% and 75%, respectively.

**Ballona Creek wetlands for sediment and exotic vegetation:** Once implemented, 600 acres of habitat adjacent to Marina del Rey will support the hundreds of migratory birds species and the dozens of native birds that use these wetlands.

**Nine of Los Angeles area urban lakes for toxics, trash, nitrogen and phosphorus pollution.**

**Los Angeles and Long Beach Harbors for**

**toxic pollutants:** will reduce toxic levels of metals and organic pollutants to protect sensitive habitat, fishing, recreation, and navigation in the harbors.

**Machado Lake for toxic pollutants:** will remediate contaminated water and sediments in the lake so that fish are safe to eat.

**Los Angeles River for bacteria:** will protect the health of swimmers, waders, and boaters in the river and at downstream beaches in the City of Long Beach.

**Santa Monica Bay for trash:** will prohibit trash and plastic pellets (“nurdles”) from entering the bay to protect beachgoers and marine life.

### **Current Success of TMDLs**

These type of plans have led to the installation of trash capture devices by 42 cities resulting in a 65% reduction in total tons of trash entering the Los Angeles River.

The landmark Santa Monica Bay Beaches Bacteria TMDL has, since its adoption, reduced exceedances of bacteria standards at local beaches by half for the benefit of the 55 million people who visit Santa Monica Bay Beaches annually.

For more information on all of these California pollution plans visit: <http://www.epa.gov/region9/water/tmdl/final.html>

For more information on all of the TMDLs in the Los Angeles Region, visit: [http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/tmdl/](http://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/) \*

## Supreme Court Slaps EPA for Compliance Orders Over Due Process

The justices rejected the EPA's position that non-compliance of an EPA Compliance Order is subject to administration fines before a court can review the case.

In this Idaho case, landowners were issued a Compliance Order by EPA that said wetlands on their residential lot were improperly filled with rocks and dirt, the Supreme Court decided that the land owner has the right to judicial appeal of the Compliance Order before any penalty can occur.

Therefore, the land owners can go to court to challenge the EPA decision that the land is a wetland.

The Court concluded that since the EPA's decision was final and the landowner faced potential large fines, they had no other adequate remedy but to bring a civil lawsuit under the Administrative Procedures Act to challenge the EPA's order.

The justices unanimously ruled the landowners can appeal a Compliance Order since the land owners have no other adequate remedy in a court. The decision was limited to the landowners right to appeal a Compliance Order before penalties occur.

Compliance orders will remain an effective means of securing prompt *voluntary compliance* in most cases where there is no substantial basis to question their validity. Most people in similar situations just comply with the Agency Orders.

The case is found at: <http://www.leagle.com/xmlResult.aspx?page=1&xmlDoc=In%20SCO%2020120321E15.xml&docbase=CSLWAR3-2007-CURR&SizeDisp=7> \*

Stormwater News

(Continued From Page 1)

**The Ohio River again leads the nation in the amount of toxic chemicals dumped into it by industries, according to a new report by a Washington, D.C.-based environmental group.** The 32 million pounds of discharge into the Ohio is about 1 million pounds more than the last time the group analyzed public data on factory discharges into the nation's waterways three years ago.

The State of Indiana led the nation in total amount of toxic discharges to waterways, with more than 27 million pounds, the report found. Indiana was followed by Virginia, Nebraska, Texas and Louisiana.

The study was based on discharges into the nations waterways that industry reported for 2010 to the U.S. Environmental Protection Agency under the EPA's Toxics Release Inventory. See <http://www.environmentamerica.org/reports/ame/wastimg-our-waterways-2012>

**Integrated Municipal Stormwater and Wastewater Plan.** EPA understands municipalities can better achieve water quality goals by allowing municipalities to integrate their wastewater and stormwater plans. Local governments may find cost effective green infrastructure and request modifications to existing Clean Water Act obligations.

**EPA will work with \$102 million less in 2013.** The Obama Administration is proposing a FY 2013 budget of \$8.344 billion for EPA. This is \$105 million below the EPA's enacted level for FY 2012.

But, spending decisions are made by Congress, which could make additional cuts. However, Congress may not pass any spending bills before the 2013 fiscal year starts Oct. 1, 2012.

Eliminating the following programs will save \$50 million:

- Clean Automotive Technology Program;
- Beaches Protection categorical grants;
- Environmental Education;
- State Indoor Radon Grants;
- Fibers program; and
- Support to other federal agencies within Superfund

The EPA's proposed budget includes nearly \$27 million in grants for water pollution control under the Clean Water Act Section 106 grants, and about \$29 million for the Tribal General Assistance Program. The budget calls for \$15 million to be added to the \$58 million budget for the EPA's Chesapeake Bay Program. \*

# Significant Changes in the New EPA Construction Permit

The most significant change in the EPA Construction Permit is a list of things that must be “minimized.”

1. minimize the amount of soil exposed
2. minimize erosion at outlets
3. minimize downstream channel and streambank erosion
4. minimize the generation of dust
5. minimize the disturbance of “steep slopes”
6. minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters during discharge conditions
7. minimize Sediment Track-Out.
8. minimize Soil Compaction.
9. minimize discharge risk from stored chemicals.
10. minimize the exposure to stormwater of any of the products, materials, or wastes
11. minimize discharges of fertilizers containing nitrogen or phosphorus.

“Minimize” is defined in the permit as “to reduce and/or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices.”

Permittees must **minimize the exposure** of construction products, materials, and wastes by:

1. providing cover (e.g., plastic sheeting or temporary roofs) to prevent these products from coming into contact with rainwater
2. separate hazardous or toxic waste from construction and domestic waste;
  - a. Containers stored outside use secondary containment
  - b. Store waste in labeled and sealed containers
3. construction and domestic waste - clean up and dispose of waste in designated waste containers. Clean up immediately if containers overflow.

## Other Significant Requirements

Where sediment accumulation adjacent to the inlet protection measure - remove the deposited sediment by the end of the same work day.

Where track-out occurs - remove the deposited sediment by the end of the same work day.

Where control measures need repair - initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day.

Unless infeasible, contain and secure dirt piles to protect from wind.

Maintain a 50-foot undisturbed natural buffer from surface waters, if infeasible, implement erosion and sediment controls that achieve the equivalent sediment load reduction.

Initiate soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site.

“Immediately” means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.

## Prohibited Discharges

1. Wastewater from washout of concrete;
2. Wastewater from washout of construction materials used in vehicle & equipment operation & maintenance;
3. Soaps, solvents, detergents used in vehicle and equipment washing; and
4. Toxic or hazardous substances from a spill or other release.

The EPA has provided a template for writing the Stormwater Pollution Prevention Plan (SWPPP) however, the template asks for information not required in the permit. \*

## EPA Oversight Necessary When States and Cities Reject Clean Water Rules **Tennessee Eliminates Environment Compliance**

The firing of key employees at the Tennessee Department of Environment and Conservation (TDEC) is the result of the construction industry influence in the office of the Governor Haslam.

The Haslam Administration fired two highly respected top officials for the purpose of decreased environmental oversight of polluters.

The Governor and TDEC Commissioner Bob Martineau eliminated approximately 150 positions most of which are currently vacant. Some senior managers have either been released or have retired in anticipation of being released.

Commissioner Martineau stated that eliminating these senior director positions will create a more direct line of communication up and down the chain of command. Meaning - less enforcement will lead to more consistent compliance with environmental regulations.

TDEC now has one water resources division to replace the three separate divisions which previously regulated water quality – Water Pollution Control, Groundwater Protection and Water Supply.

In addition, the State will consolidate all environmental investigation and remediation responsibilities into one division.

The Commissioner has created a dedicated Office of External Affairs to increase transparency of the department's actions and to improve TDEC's communication with stakeholders (developers) and local governments.

The department will allow more permit applications to be completed online because the staff is gone. Expect automated permit approvals. Environmental permitting and compliance will not be a problem in Tennessee. Environmental enforcement is

gone. EPA must take immediate action and take control of all NPDES permitting and compliance.

The opinions expressed in this article are solely those of the editor of the Stormwater Quarterly.

### **Mobile, Alabama**

Three Mile Creek and Dog River in Mobile, Alabama are filled with trash every time it rains. A recent boat trip down the river was designed to discuss how to turn the garbage-filled waterway into a public park complete with a boardwalk and bike paths.

On the boat was Nancy Stoner, EPA Administrator for Water with Keith Johnston, who leads the Southern Environmental Law Center's Alabama office, Roberta Swann of the Mobile Bay National Estuary Program and City Councilman Fred Richardson, who has long championed rescuing Three Mile Creek.

Mobile's city officials have refused to commit to removing the garbage that collects in the litter traps.

“People abandon waterways because of garbage,” Stoner said and “Urban areas, you have a lot of people, you have a lot of garbage. You get a big rainfall and it carries it right off the street and into the water.”

“Mobile has this beautiful waterway right in our backyard, but people can't get to it. It's been neglected, partly because people don't realize it is there,” said Casi Callaway of the Mobile Baykeeper group.

“Think of how great it would be if people could use the creek. It's right downtown. It could be a jewel.” \*

# States Issues: EPA Region 3

Cleaning up the Chesapeake Bay requires Maryland, Delaware, the District of Columbia, West Virginia, Pennsylvania and Virginia implement Watershed Improvement Plans (WIP) to achieve the assigned Total Maximum Daily Load (TMDL). Final Phase 11 WIPs for TMDL goals in 2017 and compliance by 2025 are viewed at: <http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/RestorationUnderway.html?tab2=2&tab1=4>

## **Maryland**

The State will upgrade the state's 67 largest sewage treatment plants and tighten regulations on farmers fertilizing their fields. Expect Maryland to propose new farm nutrient rules by May and to issue stormwater permits by July.

## **Virginia**

EPA's assessment of the Virginia plan is that it lacks important details and did not address EPA comments on stormwater. EPA was critical of the state for not submitting formulas that show which practices the state will utilize to meet the mandated reductions in nitrogen, phosphorous and sediment polluting bay tributaries.

## **Delaware**

Population growth along the Route 13 corridor and intensive agriculture threatens the health of the Nanticoke, and the same issues affect the other Eastern Shore rivers.

## **West Virginia**

The State WIP calls on farmers to increase cover-crop plantings nearly 70 percent and dramatically expand stream restoration efforts to include 8,400 acres by 2025.

Alana Hartman, Potomac Basin coordinator for the State Environmental Agency, said that signals a shift and warns farmers that these operations could be subjected to state or federal permitting to protect water quality.

Other goals in the plan include:

- ◆ Putting 90,000 acres in eight counties into nutrient management plans
- ◆ Fencing off 5,200 acres by 2025 to reduce animals' access to streams
- ◆ Retiring 5,018 acres from agricultural use
- ◆ Expanding forest buffer areas by 1,570 acres.

## **District of Columbia**

The MS4 permit issued to the District requires the city to add a minimum of 350,000 square feet of green roofs on city properties, plant at least 4,150 trees yearly, and assure that new properties of 5,000 square feet soak up more than an inch of rainwater over a 24-hour rainfall to keep it from flowing into sewers and into rivers, streams and ultimately the Chesapeake Bay.

## **Pennsylvania**

U.S. Sen. Pat Toomey is urging the federal EPA to forgive the City of York a pending \$22,740 fine and the \$21,600 fine on the City of Lebanon for failing to comply with their stormwater permits.

EPA officials found that York was issuing building permits without first ensuring that construction sites would operate with appropriate stormwater controls and not keeping maintenance records of its sewer facilities.

The City of Lebanon was fined for a delay in complying with stormwater management regulations.

Pennsylvania contains two major Bay watersheds, the Potomac and the Susquehanna. Together, they total 40% of the entire Bay's watershed. \*

## National Stormwater Center Editorial

# THE FUTURE OF THE EPA STORMWATER PROGRAM

The EPA stormwater permit program started on October 18, 1991. Twenty some years later, it has matured to the point that it is institutionalized and therefore in danger of doing nothing to improve water quality. What must be done?

Industrial stormwater permittees are generally in permit compliance. Continued compliance is dependent on employee training to recognize pollution prevention to minimize exposure of pollutants to precipitation events. The National Stormwater Center offers BMP training on 29 different sectors using webinar technology and guidance materials.

Construction permittees remain a problem. Most training programs are inadequate in that they only teach erosion and sediment controls. Missing is a full and complete understanding of the construction permit requirements, planning, weather forecasting, inspection techniques, and reporting. Education has not solved the compliance problem, but the threat of enforcement will.

Municipal permittees know what to do, many lack the money or desire to comply with their MS4 Permit. The Center offers MS4 training in the Minimum Controls Measures (MCM).

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### **The problem requires two solutions, one for money the other is a desire to comply**

EPA is offering a option to integrate their wastewater and stormwater plans. Where an MS4 permittee can prioritize their water quality requirements and delay other more costly compliance requirements.

The desire to comply with the Clean Water Act requirement is not difficult to resolve. State and EPA can conduct compliance audits and issue enforcement orders with penalties. Where that is not effective, citizen suits usually are.

invited to discussed these issues with the senior water staff at EPA Headquarters.

Participating in the discussion on February 3 were Nancy Stoner, Acting Administrator Office of Water, James Hanlon, Director, Office of Wastewater Management, Jeffrey Lape, Acting Director, Office of Science and Technology along with others.

The Center expressed the view that three goals are necessary for success: (1) Public involvement, (2) MS4s must assume full responsibility for their stormwater runoff, and (3) Simplify compliance through local policy.

After reviewing the content of the training offered by the Center, EPA suggested we have a training module on the “community benefits of stormwater management.” That has now been integrated into the Center’s Certified Stormwater Inspector (CSI) course.

Public Involvement means forming a partnership with residents to report illicit discharges and dirt in the street, inspect stormwater management ponds, to sample runoff, and if necessary, file citizen suits against Clean Water Act violators.

For MS4s to take responsibility, they must manage all discharges to the MS4 and its water bodies. Authority to enforce may come from requiring compliance with Stormwater Pollution Prevention Plans (SWPPPs) or an ordinance to comply with all state and federal laws.

The simple solution to achieve compliance is to set water quality priorities and to allow inspectors to exercise enforcement desecration.

**Clean Water is a local issue, solved best by local governments and their residents. \***

The National Stormwater Center was recently

**John Whitescarver**  
**Executive Director**  
**National Stormwater Center**



» 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  
*Qualified Environmental Professional* by the Institute of Professional Environmental Practice

National Stormwater Center  
 817 Bridle Path  
 Bel Air, MD 21014

*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 support services to individuals in government and business.*

**2012 Training Schedule:**  
**Certified Stormwater Inspector**  
**Certified Construction Inspector**

	<u>CSI</u>	<u>CCI</u>
Fort Polk, LA	Apr 10-11	
Savannah, GA	Apr 24-25	
Charleston, SC	Apr 26-27	
Oakland, CA	May 22-23	
Culver City,	June 4-5	
Tacoma, WA	June 6-7	
VA Beach, VA	June 26-27	June 27-28

**On-Line Industrial Annual Employee Training**

Sectors Z & AA	April 6
Sectors A and B	May 4
Sectors C and D	June 1
Sectors E and F	June 1
Sectors G and H	June 22

**NEW: On-Line MS4 Employee Training**

Commercial Inspections	April 19
Industrial Inspectors	May 31
Post-Construction	June 14
Public Out-Reach	July 19

**NEW: Region 3 Compliance Conference**

May 8-10, 2012  
 Philadelphia, PA

Check our website for updates regarding training sessions and other offerings at [www.npdes.com](http://www.npdes.com) or call us at 888-397-9414.

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