

## PEOPLE ARE POLLUTERS, NOT THEIR BUSINESSES

### STORMWATER NEWS

**U.S. Senator Mike Johanns (R-Nebraska)** sent a letter to EPA administrator Lisa Jackson questioning the agency's motivation and legal authority for using aerial surveillance of Nebraska's livestock operations. In response, EPA claims it does, and cited that for nearly a decade it has used aerial over-flights to verify compliance in impaired watersheds.

**A new ordinance in Belmont, WA prohibits washing vehicles** in driveways or roadways if the water flows to storm drains. The code, based on the NPDES permit with the California Regional Water Control Board, prohibits residents from allowing any substances from their property to enter the storm drains. "Only rain to the drain," is the rule of thumb. Discount cards for local commercial car washes are available at the Public Works department. While warnings have been issued, the city has not yet fined any resident.

**EPA Region 3 is rejecting arguments by DC Water (District of Columbia Water & Sewer Authority)** that it acted outside its authority when it issued a municipal stormwater permit that included a novel numeric retention standard. The numeric standard would require facilities to retain 1.2 inches of rainwater during 24-hour storm events, and the permit also stipulated green infrastructure practices.

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### **Managers of Polluting Activities Must be Confronted by People Working to Prevent Pollution?**

EPA and state NPDES enforcement can be aimed at either the business activity causing the pollution or at the managers of the activity that allow polluted runoff.

It would be best to identify the person who allows or authorizes polluted runoff. Often enforcement is directed at the company, when it should be charged to the certifying official of the stormwater permit. Pollution control would then be more effective.

Then there are those people who work to prevent polluted runoff, beginning with people who develop and enforce the regulations. EPA, state and municipal stormwater inspectors are charged with enforcing the Clean Water Act.

Certifying officials, responsible for stormwater permit compliance, are the good guys for preventing pollution. Finally, there are citizen activists that see the failures and take action to hold people accountable.

Citizens can report violations and take legal action, against either polluters or against government agencies for failing to act.

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## Clean Water Heroes and Cowards

The people who are in charge of state NPDES programs have recently recognized two of their own for awards. During an awards ceremony in Utah, Nancy Stoner received the Environmental Partnership Award and Paul Davis received the Environmental Statement Award.

Walter Baker, President of the Association of Clean Water Administrators (ACWA) made Exceptional Service Awards to Dave Acres, from Colorado, Coleen Sullins of North Carolina and Alan Vicory the former executive director of the Ohio River Valley Wastewater Sanitation Commission (ORSANCO).

President's Service Awards went to Shellie Chard-McClary from Oklahoma and Mike Tate from Kansas. Young professional Awards went to Jenny Chambers of Montana and Jennifer Wigal of Oregon.

Nancy Stoner's award was for being proactive in seeking state input to EPA's policies and regulations. She is the current acting Administrator for Water at the Environmental Protection Agency, a graduate of the University of Virginia and she holds a law degree from Yale Law School.

Paul Davis received the Association's highest honor. He ran the Tennessee Division Water Pollution Control for 24 years, more than any other state water director. Paul is known for developing strong relationships between states.

The clean water cowards are not hard to identify. Several of the Washington, DC based trade associations simply oppose all EPA programs. Two examples are the Farm Bureau and the National Association of Home Builders.

Other trade associations worked with EPA in the mid-1990's providing stormwater sampling data and related management practices. As a result, EPA issued the stormwater Multi-Sector general permit (MSGP).

The United States House of Representatives is full of cowards, with many calling for gutting the Clean Water Act and opposing the Chesapeake Bay Cleanup.

Cowards like Andy Harris, a Maryland state law-maker has told his constituents that "The Clean Water Act only applies to navigable waters," when he should know the Act's jurisdiction extends to tributaries of the waters of the United States. Political cowards deliberately misinform the public.

Finally, the cowards in the construction industry like Ed Puchi, general counsel for M&M Construction. His organization, a California road building company, had 290 violations of the Clean Water Act. He singled out accusations of unauthorized disposal of wood scraps, sawdust and a single fast-food cup lid in Mendocino County's South Fork Eel River, a charge that carried a \$10,000 fine. He said, "For things like a Slurpee lid? It just doesn't make sense." Cowards make excuses.

Finally, Illinois heroes Governor Pat Quinn and Mayor Rahm Emanuel for funding the cleanup of the Chicago River. The money will be used to design and engineer technology upgrades to disinfect discharges into the river.

"Construction will be completed in 2015 and disinfection will be in service for the 2016 recreational season. And maybe we can take that swim," said David St. Pierre, executive director of the MWRD. \*

# SUPREME COURT WILL NOT DECIDE, AGAIN

The U.S. Supreme Court will make another stormwater permit decision late this year or early next year. Like their previous decision on what waters come under the jurisdiction of the Clean Water Act, they will again fail to contribute a helpful decision.

Some may say the Court will decide if MS4s are legally responsible for discharging polluted runoff that they did not create. But that has been decided. The Court will only decide if "navigable waters of the United States" include only "naturally occurring" bodies of water and secondly, is there a discharge when water flows from one portion of a river through municipal separate storm sewer system into a lower portion of the same river?

Most likely the Court will decide that man-made tributaries are jurisdictional waters and that the transfer of pollutants within the same waterbody requires a stormwater permit only if pollutants are added during the transfer.

What stands is the 9<sup>th</sup> Circuit Court decision that MS4s can limit and control pollutants entering their drainage system, and therefore are responsible for pollutants they allow to enter the MS4.

The Court is divided ideologically with four conservatives and four liberals. So expect a split decision with Justice Kennedy making the rational decision that is suggested above.

However, the Supreme Court is limited to interpreting the ACT. They have limited power to change the law. \*

## Stormwater News

(Continued From Page 1)

**Final Airport Deicing Effluent Guidelines rule** was published in the Federal Register (77 FR 29168). EPA Issued technology-based effluent limitations guidelines and new source performance standards which generally apply to wastewater associated with deicing.

Existing and new primary airports with 1,000 or more annual jet departures are to use non-urea-containing deicers or meet a numeric effluent limitation for ammonia. New airports with 10,000 annual departures in certain cold climate zones are required to collect 60% of deicing fluid after deicing. Airports that discharge the collected deicing fluid directly into the waters of the U.S. must also meet numeric discharge requirements for chemical oxygen demand. <http://water.epa.gov/scitech/wastetech/guide/airport/index.cfm>

**In a unanimous decision, the Kentucky Supreme Court** has upheld citizens' rights to be heard in clean water enforcement actions. "Federal law encourages the states to permit interested citizens to intervene and be heard in state court enforcement proceedings," Justice Lisabeth Hughes Abramson wrote on behalf of the seven justices. The opinion also cites, "Congress's express declaration that public participation in efforts to control water pollution is a priority of the Clean Water Act."

The Beshear administration had tried to exclude citizen groups even though they uncovered massive violations and filed a notice to sue. That administration had insisted it would be "an unwarranted burden" to allow interested citizen groups and individuals to object to a settlement between the Cabinet for Energy and Environment and two of the state's largest coal companies. Citizens had contended the \$660,000 in fines agreed to by the cabinet were inadequate for years of inaccurate water monitoring by Frasure Creek Mining and International Coal Group. Acknowledged in the settlement were 2,765 violations by 103 mines.

## **Environmental Organizations Take Action When Governments Don't**

### **Citizen Activism**

For decades Hollywood's portrayal of good vs. bad has been clear-cut on the silver screen: good guys wear white hats. Once in a while movies such as *The Oxbow Incident* and *Unforgiven* come along to challenge the belief that differences between "good" and "bad" are glaringly evident. The same is true with the politics of stormwater.

EPA and state regulatory authorities wear white hats. Ideally, they are environmentalists who enforce the Clean Water Act and protect the waters of the United States, and by so doing, protect aquatic life and recreational opportunities. The belief is that they work in conjunction, with common goals, fighting for truth, justice and the American Way.

Sometimes their hats are not so white.

The Natural Resources Defense Council (NRDC) together with nine other environmental organizations in more than five states has sued EPA, arguing that the agency has failed to meet its obligations to protect the Mississippi River Basin, which covers more than 40% of the lower 48 states. The Basin is one of the world's most productive agricultural regions, but fertilizers and human wastes have fed rapid algal and bacterial growth resulting in discolored scum which impairs recreation activities, fouls drinking water, creates public health risks, and limits oxygen causing aquatic life to flee or die.

EPA has agreed that nutrient pollution is posing "significant water quality problems" and that the Basin is "a high priority," but reasons that imposing federal controls would not be efficient or effective. Instead EPA plans to build on existing efforts and to work with states to strengthen the program. NRDC contends that this approach has failed, and that with few exceptions, states in the Mississippi Basin have not set numeric water quality

standards nor prepared TMDLs for nutrient-polluted waters within their jurisdictions. They further contend that a purely state-based approach cannot adequately protect interstate waters, the Gulf of Mexico, or interstate pollution.

Citizens for Pennsylvania's Future (PennFuture) filed a lawsuit against Pittsburgh Water & Sewer Authority (PWSA) and the city of Pittsburgh for their failure to enforce the city's stormwater management ordinance against the Buncher Company, a developer of a Strip District project.

PennFuture contends that "those responsible for enforcing the city's stormwater laws have failed in their responsibility to the public in favor of shortcuts that protect neither the environment nor public health and safety." They state that the city has a forward-looking stormwater management ordinance that should be showcased as part of this development, and that "it is a shame that the city seems to place more value on showcasing how fast it can get the development built than on taking its legal obligations seriously."

The California Sportfishing Protection Alliance (CSPA) and Petaluma River filed suit under the Clean Water Act's citizen suit provisions alleging that Shamrock Materials, Inc.'s site was a point source that discharged pollution or stormwater associated with industrial activity into the Petaluma River.

Shamrock Materials operates a facility to store sand and gravel that is transported via its diesel trucks to its concrete batch plants. CSPA contends that Shamrock Materials also performs maintenance activities on its vehicles, and that machinery and other equipment leak oil, grease and hydraulic fluids which are exposed to stormwater flow. \*

## Some Polluters Get Jail Time ..... Calling Water Pollution Criminals By Name

The former superintendent of the J.B. Gifford Wastewater Treatment Plant in Michigan City was sentenced to two years of probation after pleading guilty to the felony offenses of making false statements and tampering with a monitoring method under the Clean Water Act.

Daniel Olson, 62, of Merrillville, will serve one of those two years on home detention and must also make restitution of \$15,000, the U.S. Attorney's Office said. Olson admitted the following:

- Failing to make a required report of a sewage bypass into Trail Creek, a Lake Michigan tributary.
- Making false material representations by selectively reporting only those sample results showing compliance with Michigan City's permit, and failing knowingly to report those samples which showed non-compliance.
- Tampering with a monitoring method, by delaying the daily sampling for wastewater until the point in the treatment process when the treatment chemical (chlorine) was elevated and E. coli concentrations were low.

Mari Leigh Childs of Derma, Mississippi was sentenced to five years' probation for her part in lying about water quality work for several north Mississippi water systems. U.S. Chief District Judge also sentenced her to six months house arrest on an electronic monitor and restitution of \$34,900.

Childs, 38, admitted her guilt last December. She worked with S&L Aqua Operators and said she failed to maintain records, make reports, and maintain monitoring equipment and sample effluents as required by the Clean Water Act. She also admitted that she falsified lab reports and log books to cover

up her errors. Childs and her husband operated public treatment works and public water supplies for numerous local governments.

Her husband was cleared of any wrongdoing. Without her plea deal, she faced up to eight years in prison and a \$500,000 fine.

Federal prosecutors say Theofilo Dagsaan directed workers cleaning up a crew boat to discharge oily waste water into the Mississippi River in 2008.

He has pleaded guilty to one count of violating the Clean Water Act. Dagsaan faces up to one year in prison and a fine.

Dagsaan was responsible for managing the captains and crews of boats working from the Grandview Launch on the Mississippi, according to an unsigned factual basis provided by prosecutors.

The website of Harahan-based Belle Chasse Marine Transport Inc. says the company owns the launch, which is located in Vacherie in St. James Parish.

According to the factual basis, Dagsaan was responsible for directing ship maintenance and making sure a 1,000- gallon slop tank that stored oily wastewater from ships was regularly vacuumed out.

And, Dagsaan instructed crew members cleaning up the engine rooms of a small crew boat to discharge bilge and engine waste water into the Mississippi River. Prosecutors say the slop tank that would normally store the waste water was full. Dagsaan told the workers to pump the bilge down until they saw a sheen on the water and then stop immediately. \*

# State Actions

**Washington** – Cowlitz County joined thirteen cities in a coalition to challenge the state’s new proposed stormwater regulations. The coalition appeal says the rules “unreasonably restrict growth and economic development” and monitoring regulations impose an economic hardship on local governments. The regulations would become effective August 2013 and would need to be fully implemented by 2018.

**Pennsylvania** – In the latest series of funding grants from private groups, the city of Lancaster has been awarded a grant from the Chesapeake Bay Stewardship Fund to encourage stormwater runoff measures on private property. EPA has not yet approved the plan, but the city is planting trees, repaving alleyways and parking lots with pervious pavement, adding vegetative green roofs, rain gardens and other measures.

**Hawaii** – The state Department of Health, which issues NPDES permits, failed to meet a deadline preventing it from issuing stormwater permits after October 21. The health department has been holding public hearings to raise awareness and it set up a web portal to give contractors a way to apply for conditional permits. But according to Gary Gill, deputy director for the Department of Health, “We had a rules package that was approved in 2009, so that extends us to 2014. If contractors applied from 2009 on, they don’t need to re-apply. [But] if they applied back in 2007 or 2008, they need to re-apply.”

**Indiana** – The city of Valparaiso has broken ground for its second next generation detention basin. The basin will not only collect and store water temporarily after a major rain, it will also help clean the water before it is released into Salt Creek, which empties into Lake Michigan. Water from more than 500 acres of residential, industrial and commercial property will drain into the 2-acre basin. Between storms, the water will pass through the basin into a meandering waterway with native plants and prairie plantings to allow sediment to settle out before the water is released.

**Tennessee** – The city of Knoxville and Knox County have been selected to participate in a new pilot program aimed at eliminating state and local stormwater permitting and review duplication. Developers and contractors will have one less stormwater permit, saving them time and up to \$7,500 in state fees. The goal is to build efficiencies in how construction permits are issued while satisfying permit requirements at state and local levels. According to David Hagerman, Knoxville Stormwater Engineer, “It should also reduce confusion by having a single set of plans and a single inspector.”

**Ohio** – In the city of Wooster, chemical manufacturer ABS Materials has started designing rain gardens that use Osorb, a glass-like substance the company produces that breaks down fuel oils, solvents and other chemicals. Test results from the first garden the company built located at the College of Wooster show it produced “consistently excellent” results, reducing pollutants by more than 90%. The company built two of its rain gardens at its headquarters in Wooster. They look like normal ditches with plants native to Ohio, and are cheaper than traditional systems.

**Wisconsin** – Lake Michigan Carferry (LMC) owns and operates the S.S. Badger, the only coal-fired passenger vessel operating in the United States. The S.S. Badger ferries passengers, cars, RVs, motorcycles and commercial trucks between Manitowoc, WI and Luddington, MI saving an estimated 1 million gallons of fuel annually. It is currently authorized under EPA’s 2008 Vessel General Permit to discharge coal ash slurry until December 19, 2012. LMC has indicated that it is not economically feasible to retrofit its propulsion systems and is pursuing an individual NPDES application for the coal ash discharge. Due to significant public interest EPA has made documents pertinent to the permitting process available. <http://www.epa.gov/r5water/npdestek/badger/> \*

## **EPA Enforcement Chief Giles Requires Personal Compliance Accountability**

### **Construction Activity Still Non-Compliant**

Toll Brothers Inc., one of the nation's largest homebuilders, has agreed to pay a civil penalty of \$741,000 to resolve stormwater permit violations at its construction sites. This follows similar enforcement of Centex Homes, KB Homes, Richmond American Homes, and Pulte Homes.

Toll Brothers will also invest in a company-wide stormwater compliance program to improve employee training and increase management oversight.

EPA identified over 600 stormwater violations discovered through site inspections and Toll Brothers reports. Permit violations include the failure to stabilize disturbed soil and properly install and/or maintain stormwater controls such as silt fences, swales, sediment basins, sediment traps, storm drain inlet protection, and construction entrances and exits.

This settlement is the latest in a series of enforcement actions to address stormwater violations from residential construction sites around the country.

The compliance program includes:

- Designation of a national stormwater compliance manager
- Designation of site- and division-level compliance managers for each site
- Specific requirements for site-specific SWPPPs
- Document pre-construction inspections at every site prior to any activity
- Site inspections using EPA forms
- Division-level stormwater compliance manager conducting oversight compliance
- Maintain a database for tracking completion of all action items
- A stormwater training program for Toll Brothers employees, including annual refreshers
- Implement a stormwater orientation program for contractors
- Submit national compliance summary reports to EPA

The settlement covers 370 sites in 23 states including 40 sites located in the Chesapeake Bay Watershed. The number of sites in each of the states is:

Arizona: 15 sites  
California: 26 sites  
Colorado: 7 sites  
Connecticut: 13 sites  
Delaware: 9 sites  
Florida: 37 sites  
Georgia: 1 site  
Illinois: 9 sites  
Massachusetts: 10 sites  
Maryland: 22 sites  
Michigan: 13 sites  
Minnesota: 3 sites  
North Carolina: 11 sites  
New Jersey: 43 sites  
New York: 18 sites  
Nevada: 21 sites  
Ohio: 1 site  
Pennsylvania: 55 sites  
Rhode Island: 4 sites  
South Carolina: 2 sites  
Texas: 32 sites  
Virginia: 17 sites  
West Virginia: 1 site

"Keeping contaminated stormwater runoff out of the nation's waterways, like the Chesapeake Bay, is one of EPA's top priorities," said Cynthia Giles, assistant administrator for EPA's Office of Enforcement and Compliance and Assurance. "Today's settlement will improve oversight of stormwater runoff at construction sites across the country and protect America's waters."

"This settlement will help protect the nation's waters from the harmful pollutants contained in stormwater runoff from construction sites," said Ignacia S. Moreno, assistant attorney general for the Environment and Natural Resources Division of the Department of Justice.

These are two more people taking enforcement action to control the discharge of pollutants to the Nation's Waters.

\*

John Whitescarver  
Executive Director  
National Stormwater Center



Served at US EPA 1970-1979 as part of the team that developed Clean Water Act Rules; National Expert on Municipal Permitting Policy; Awarded EPA Bronze Medal.

Appointed to EPA Advisory Committee on Compliance Assistance, and by Small Business Administration to EPA committee for streamlining Phase II stormwater rules.

Instructor for FL-DEP Erosion & Sediment Control Inspector Course. John is a Qualified Environmental Professional designated by the Institute of Professional Environmental Practice.

**2012 Training Schedule:**  
**Certified Stormwater Inspector**  
Online Class: October 10-11  
Dallas: October 15-16  
OK City: October 18-19  
San Antonio: October 30-31  
San Juan: November 27-28  
New Castle: December 10-11  
Harrisburg: December 13-14

**Certified Construction Inspector**  
San Antonio: Oct 31-Nov 1  
San Juan: November 28-29  
Online: December 17-18

**2<sup>nd</sup> Annual Region 4 Stormwater Compliance Conference**  
November 12-15 – Panama City Beach

**On-Line MS4 Workshops**  
Construction Inspections Oct 25  
Commercial Inspections Nov 8  
Industrial Inspections Dec 20

See our website for 2013 schedule and for updates regarding training sessions and other offerings at [www.npdes.com](http://www.npdes.com).

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