THE STORMWATER QUARTERLY

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NEW RULES FOCUS ON MEASURING COMPLIANCE

Stormwater News

President Obama ordered all federal agencies to improve regulations. By May 18, 2011, every Federal agency will have to submit a preliminary plan, to periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving its regulatory objectives.

Environmental groups filed a legal complaint accusing Florida Governor Rick Scott of appointing agency leaders who are unqualified because of ties to the industries they would regulate. The Clean Water Act that bars appointment of a state decision-maker on pollution discharge permits who "has during the previous two years received a significant portion of his income directly or indirectly from permit holders or applicants for a permit." Herschel Vinyard served as director of operations for BAE Systems Southeast Shipyards, and Billy Buzzett was vice president of strategic planning for the St. Joe Company, a developer and large landowner.

The State of Florida filed a lawsuit against the EPA over the agency's intrusion into Florida's previously approved clean water program. The lawsuit alleges that the EPA's action is inconsistent with the intent of Congress when it based the Clean Water Act on the idea of cooperative federalism whereby the States would be responsible for the control of water quality with oversight by the EPA. (Continued on Page 3)

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Elections Have Consequences

The current managers of the Environmental Protection Agency are on a warpath. They don't know if they have two years or six years remaining, so they intend to finalize regulation before the end of President Obama's first term.

The major stormwater regulations to be finalized are (1) the construction effluent limitations with a national turbidity standard, (2) post construction regulations requiring hydrology measurements, (3) a new municipal general permit that expands the inspections and (4) a national NPDES database.

Republicans in the House of Representatives will cut enforcement money but that will be unable to prevent EPA from finalizing the stormwater rules. EPA rules can require states and municipalities to enforce or face EPA enforcement.

In two years the US Senate is likely to be controlled by Republicans. If so, creating new rules will be very difficult. If the Democrats lose the White House, you can expect a rollback of the regulations. ✻

Municipalities Enforcing Construction Effluent Guidelines

It is not the municipal inspector's job to enforce NPDES permits. That's the job of federal and state inspectors. The current municipal permit requires municipalities to develop, implement and enforce ordinances for illicit discharges, construction and post construction. Municipal inspectors can only enforce municipal law.

However, the problem with the current NPDES stormwater discharge program is the inability of state and federal inspectors to visit and inspect one half (½) million stormwater industrial and construction permittes. States only have resources to audit municipal stormwater permittees.

The EPA plan has always been to issue municipal stormwater permits requiring local governments to enforce NPDES stormwater permits in the same manner as municipalities now enforce the National NPDES Pretreatment Program.

Large municipalities will have a permit directive and small municipalities will have a directive in a new MS4 general permit.

EPA's new construction general permit includes word modifiers that make compliance and enforcement difficult. The first is the word *minimize*: soil erosion, erosion at outlets, downstream channel and streambank erosion, the amount of soil exposed during construction, disturbance of steep slopes, sediment discharges from the site and soil compaction.

Other word modifiers that make compliance and enforcement difficult are: *unless managed by appropriate controls*, and *unless infeasible*.

The national effluent limitations for construction activity raises several important issues:

1. The requirement to *minimize exposure* is not measurable and is unenforceable.

2. The requirement to *prohibit* discharges from construction waste is enforceable.

3. Immediate stabilization of inactive areas.

4. EPA proposed *turbidity* sampling.

As municipal inspectors are trained in the NPDES program, they will be prepared to make enforcement decisions that are protective of water quality and provide compliance assistance to permittees where permit violations are not harmful to the public waters.

The requirement to conduct NPDES inspections is now found in several large city Phase 1 Municipal permits.

A recent EPA briefing indicated that the next round of MS4 general permits will expand inspections beyond the urbanized area. The EPA spokesperson said the current permits are restricted to only 2% of the nations land.

Attend the 13th Annual EPA Region 6 MS4 Operators Conference San Antonio, Texas July 5-8, 2011 to understand more about the direction of the EPA stormwater permit program.

Papers will be delivered on the following subject areas:

Sustainable Development/Green Infrastructure

Watershed Management

TMDLs's

MS4 Permitting

Effluent Limit Guidelines

Storm Water ManagementBMP Technology

Public Education & Involvement

Enforcement and Legal Issues ✻

Save the San Francisco Bay

Enforcement action against seven municipalities in the East Bay Municipal Utility District (EBMUD) is over, now the work begins.

Regulators have ordered six East Bay cities and the sanitary district to replace aging, cracked pipes responsible for flushing 125 million gallons of raw and partially treated sewage into San Francisco Bay this winter.

The improvements, mandated in a legal settlement sparked by multiple violations of the federal Clean Water Act in recent years, could run as high as $45 million a year, translating into steep sewer rate increases for the 650,000 customers served by the seven agencies.

The cities of Oakland, Emeryville, Piedmont, Berkeley, Alameda, Albany and the Stege Sanitary District agreed to dig up and swap out hundreds of miles of rotting pipes - including some clay pipes around 100 years old - in order to stem the flood of storm water that overwhelms wastewater treatment plants on rainy days.

The agreement with the U.S. Environmental Protection Agency, Justice Department, California Water Boards and San Francisco Baykeeper is part of a broad effort to decrease the discharges of effluent into the bay, where it poses risks to human and wildlife health.

Under the order, the satellite communities must identify the leakiest and highest-volume pipes in their systems and begin work on replacing them with plastic, or PVC pipes, which are more resistant to cracks and seismic activity .

Other U.S. cities that have made similar improvements under enforcement orders include: Los Angeles, San Diego, Honolulu, Cincinnati, Washington D.C. ✻

Credit: The San Francisco Chronicle

Stormwater News

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control of nutrient loading from predominantly non-point sources involves traditional States' rights and responsibilities for water and land resource management which congress expressly intended to preserve in the Clean Water Act.

EPA is seeking public comment from boaters and other stakeholders to help develop proposed regulations to reduce water pollution and the spread of invasive species in the nation's rivers, lakes and other water bodies. As an alternative to permits required for commercial vessels, the act directs EPA to develop and promulgate management practices for recreational vessels.

http://water.epa.gov/lawsregs/lawsguidance/cwa/vessel/CBA/about.cfm

The American Farm Bureau Federation fears that if the U.S. Environmental Protection Agency is allowed to extend its authority beyond the boundaries of the Clean Water Act in regard to the Chesapeake Bay, it will continue its march across the country. So, the Farm Bureau filed a lawsuit to halt EPA's plans for total maximum daily load regulations for those industrial and agricultural operations surrounding the Chesapeake Bay.

EPA calls the TMDL a "pollution diet," but this diet may starve agriculture out of the entire 64,000 square-mile Chesapeake Bay watershed, according to a Farm Bureau spokesperson.

The Bureau is concerned that TMDLs will not end with the bay and that EPA has plans to take similar action in other watersheds across the nation, including the Mississippi River watershed.

The Chesapeake Bay lawsuit is but one front on which agriculture must fight regulation. The other front is focused on consumer education. ✻

Numbers are More Enforceable than BMPs

EPA Revised Policy Promotes Numeric Limitations over BMPs

The Agency has reversed its policy that encourages permits requiring best management practices (BMPs) in lieu of numerical effluent limitations (NELs). The new policy also requires municipal discharges to comply with water quality standards, using NELs where practical. EPA will regulate "flow" as a method for implementing total maximum daily loads (TMDLs).

Finally, the new policy allows TMDL's load allocations for discharges that are not currently required to have permits.

The policy is titled: *Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs* and is dated November 12, 2010.

Background

The policy announced in the 2002 memorandum recommended NPDES regulated municipal and small construction storm water discharges effluent limits should be expressed as BMPs rather than as numeric effluent limits.

Also, the policy titled: *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits* dated Aug. 26, 1996 anticipates that a suite of BMPs will be used in the initial rounds of permits and that these BMPs will be tailored in subsequent rounds.

The earlier policy clearly stated that Water Quality-Based Effluent Limitations (WQBELs) for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances.

However, EPA now states that those expectations have changed as the stormwater permit program has matured.

New Policy

Where the NPDES authority determines that discharges have the reasonable potential to cause or contribute to water quality standards excursions, permits should contain numeric effluent limitations where feasible to do so.

The Agency believes that numeric effluent limitations (NELs) "create objective and accountable means for controlling stormwater discharges."

Objective and Accountable Permits

The new policy memo asks permitting authorities (states) to consider including numeric "benchmarks" for BMPs for estimating BMP effectiveness in stormwater permits.

These "benchmarks" could be used as threshholds that would require the permittee to take additional action specified in the permit, such as evaluating the effectiveness of the BMPs, implementing or modifying BMPs. It's not clear if EPA is referring to sampling "benchmarks" in many sectors of industrial stormwater permits.

Where a TMDL has a schedule for an MS4 to implement the TMDL, the permitting authority should decide whether and how to establish enforceable interim requirements and interim dates in the permit.

MS4s must Comply with Water Quality Standards

Maximum Extent Practicable (MEP) is the stormwater permit standard for MS4s. But some MS4s believe MEP does not include a

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Proposed California Industrial Permit

The proposed industrial general permit plans to uses the EPA benchmarks listed in its Multi-Sector General Permit (MSGP) for stormwater, but hereinafter refers to them as Numerical action levels (NALs). The NALs allow a discharger to take corrective action when any of the three NAL exceedance triggers are met. Exceedances of the NALs or NAL triggers are not a violation of this General Permit. This General Permit requires dischargers that exceed the NALs through any one of three possible triggers to take the appropriate corrective actions.

If a discharger fails to take the appropriate corrective action, then the applicable NAL will become a Numeric Effluent Limitation that subjects the discharger to Mandatory Minimum Penalties (MMPs).

The proposed general permit specifies minimum BMPs that are applicable at all facilities and contains instructions for development of additional facility-specific BMPs. Below are several examples:

Good Housekeeping

Inspect weekly all outdoor areas associated with industrial activity, storm water discharge locations, drainage areas, conveyance systems, waste handling/disposal areas, and perimeter areas impacted by off-facility materials or storm water run-on to determine housekeeping needs.

Cover all stored industrial materials that can be readily mobilized by contact with storm water

Contain all stored non-solid industrial materials (such as liquids and powders) that can be transported or dispersed via wind dissipation or contact with storm water

Prevent disposal of any rinse/wash waters or industrial materials into the storm drain system

Preventative Maintenance

Inspect weekly each of the identified equipment and systems to detect leaks or identify conditions that may result in the development of leaks.

Cover waste disposal containers when not in use.

Erosion and Sediment Controls

Provide effective stabilization for inactive areas and all finished slopes, and utility project backfill prior to an anticipated storm event.

Maintain effective perimeter controls and stabilize all site entrances and exits to sufficiently control discharges of erodible materials from discharging or being tracked off the site.

Visual Inspections

Conduct a minimum of one visual inspection per quarter of all areas of industrial activity and associated potential pollutant sources.

Prepare a summary and status of the corrective actions and SWPPP revisions resulting from the quarterly inspections. This summary shall be reported in the Annual Report

Certify in the Annual Report that each quarterly visual inspection was completed

Training

All dischargers will be required to appoint two positions - the Qualified SWPPP Developer (QSD) and the Qualified SWPPP Practitioner (QSP) – both of whom must obtain appropriate training by taking a state exam to demonstrate competency. ✻

Critical Enforcement Actions

Beazer Homes, a National Home Builder

EPA enforcement has settled with another national residential homebuilder, Beazer Homes. In 2008, EPA took enforcement action against Centex Homes, Pulte, KB Homes and Richmond America. Beazer was charged with stormwater permit violations at construction sites in 21 states. Like the other four, Beazer will pay nearly $1 million dollars and implement a company-wide stormwater compliance program.

The alleged violations include failure to obtain permits until after construction began, or failing to obtain them at all. At sites with permits, violations included failure to prevent or minimize the discharge of pollutants such as silt and debris in stormwater runoff.

Here are some of the compliance conditions at 362 sites in twenty-one states:

- Designation of a company stormwater compliance manager who will oversee the compliance program nationwide
- Designation of trained and qualified site-level and division-level stormwater compliance managers who will be responsible for compliance at that site
- Specific requirements for site-specific stormwater Pollution Prevention Plans
- A requirement to conduct and document a pre-construction inspection and review at every site prior to commencing construction activity
- Requirements for routine site inspections including the use of standardized forms approved by EPA which require Beazer to document completion of all responsive actions taken to achieve or maintain compliance at a site
- A requirement that the division-level stormwater compliance manager conduct an oversight compliance inspection and review at every site within his/her division once every calendar quarter
- Implementation of a stormwater training program for Beazer employees that includes annual refresher training for stormwater compliance managers
- Implementation of a stormwater orientation program for contractors
- A requirement to submit national compliance summary reports to EPA; the national compliance summary reports are based on each division's summary of its quarterly oversight inspections and reviews

Jail Time for Dumping

A jury in Mobile, Alabama convicted William L. Wilmoth Sr.,to a month in jail. He was the general manager of a local Roto-Rooter franchise. Wilmoth and the president of DHS Inc. instructed employees on occasion to pump grease from restaurants and caterers into the city of Mobile's sewer system, rather than deliver it to special treatment plants. Grease builds up in the pipes, increasing the chances of sewage spills during heavy rainstorms.

The Judge fined the company $238,000 and the company's president, $150,000. Wilmoth is now unemployed having lost his $80,000-a-year job and must serve three years of probation, including 60 days of home confinement, after his 30-day jail sentence.

Pacific Gas & Electric Company

PG&E decided not to get stormwater permits for 31 service centers in Northern California that store vehicles, equipment, material and supplies.

PG&E argued that its primary business is providing electricity and natural gas, activities that are excluded from stormwater regulations defining "industrial activities."

In a citizen suit brought by an environmental group (Ecological Rights Foundation), the judge denied PG&E's claim that the yards are excluded for NPDES stormwater permitting. Judge Seeborg said nothing in the regulations "would exempt industrial activity at a particular site merely because it is owned and operated by an entity that is engaged in some larger business beyond industrial activity per se." However, the judge said he might reach a different conclusion at a later stage in the proceeding when faced with a more developed record.

Chattanooga, Tennessee

The city of Chattanooga was fined by the State (DEC) for water pollution violations and will spend $346,050 on supplemental environmental projects (SEP's) and will make a contribution of $50,000.00 to the Associated General Contractors of East TN. The construction trade association will develop software to help permittee monitor and manage stormwater on new construction sites that could help the city's stormwater program.

Effluent Limitation - Turbidity 280 NTU

A consent decree resolving a citizen suit by the watchdog Tennessee Clean Water Network against local developer imposed an average daily limit of 280 Nephelometric Turbidity Units (NTU) on runoff water from the 26 acre site.

Turbidity is a measure of the light penetration in water and is a key indicator of water quality. The cloudier the water, the higher the NTU number.

The developer will use third party sampling three times per month for the first six months. If at least 75% of the daily average turbidity results for a consecutive six month period are at or below 280 NTU, then the sampling requirement shall be reduced to once per month. The penalty depends on the exceedance and the frequency of the exceedance. ✻

Policy Promotes Numeric Limitations

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requirement to meet water quality standards. However, EPA's new memorandum encourages permitting authorities to reduce pollutants in MS4 discharges "as necessary for compliance with water quality standards."

Flow Regulated in Some Permits

EPA may regulate "flow" as a surrogate parameter achieve reductions in pollutant loadings. When it is difficult to identify a specific pollutant causing the impairment, using a surrogate parameter in developing wasteload allocations is appropriate. Moreover, flow is itself responsible for additional erosion and sedimentation that adversely impacts surface water quality.

Expanded NPDES for TMDLs

The Agency policy forecasts a situation where non regulated sources will become regulated under the NPDES. The end of the policy states: "In situations where a stormwater source addressed in a TMDL's load allocation is not currently regulated by an NPDES permit but may be required to obtain an NPDES permit in the future.

So if a TMDL's allocation is part of a load allocation for unregulated storm water sources, it may be appropriate for the NPDES permit authority to determine a waste!oad allocation and corresponding effluent limitation specific to the newly permitted stormwater source. ✻

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

2011 Training Schedule:

Certified Stormwater Inspector
Certified Construction Inspector

	CSI	CCI
Denver	Apr 5-6	Apr 6-7
New Orleans	Apr 25-26	Apr 26-27
Philly	May 10-11	May 11-12
Northern VA	May 17-18	May 18-19
Charleston WV	Jun 21-22	June 22-23
Baltimore MD	Jun 26-27	Jun 27-28

NEW! Certified SWPPP Developer
Thursday April 28, 2011 - Baton Rouge, LA

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Sector D - Asphalt April 1
Sector E - Glass April 15
Sector F - Metals April 15
Sector G - Metal Mining April 22
Sector H - Coal Mining April 22
Sector I - Oil & Gas May 6
Sector J - Mineral Mining May 6
Sector K - Hazardous Waste May 13
Sector L - Landfills May 13
Sector M - Salvage May 20
Sector N - Scrap Recycling May 20
Sector O - Electric June 3
Sector P - Land Transportation June 3

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