

CITIZENS FOR CLEAN DRAINS WILL PARTNER OR OPPOSE MS4

Stormwater News

Bob Perciasepe is currently both the EPA Acting Administrator and the Deputy Administrator. Appointed by President Obama in 2009 as the U.S. Environmental Protection Agency's Deputy Administrator, he served as the EPA Administrator under Clinton and later as the senior official responsible for air quality.

Prior to being named to his current position, he was chief operating officer at the National Audubon Society. He has also held top positions within state and municipal government, including as Secretary of the Environment for the State of Maryland and as a senior official for the City of Baltimore.

Perciasepe holds a Bachelor of Science degree in Natural Resources from Cornell University and Master's Degree in Planning and Public Administration from the Maxwell School of Syracuse University. He and his wife have two adult daughters.

EPA's will develop a new national post-construction stormwater rule. A draft of the new rule is expected in June 2013.

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Partner is Better

Local governments have two stormwater permit requirements requiring they work with their residents to minimize or eliminate the discharge of pollutants to drainage systems. Both are weak requirements, so it's no surprise that neither have worked very well.

The first is to give information to the public. The second is to implement a public involvement program. EPA guidance is to send residents a flyer and have public meetings. That's it!

Several communities have developed a good public participation program. Some use citizen advisory committees, others have volunteers to do field work.

Government staffers may be concerned that volunteers are more trouble than they are worth. And, there is a legitimate fear that environmental groups will sue the government for permit non-compliance.

The time has come for all municipal permittees to seriously implement a citizen action program. Volunteers can offer more eyes and do all the little things the staff would rather not do. They can implement required permit elements at little cost to the government. The permit requirements may be weak, but the Clean Water Act is not. See the Page 2 article. *

Get Citizen Support or Fight an Angry and Litigious Public in Court

Citizen Actions Under the Clean Water Act

Many think that citizen lawsuits against water polluters is the only role of the public. Congress gave the public a greater role to play. Section 101(e) of the Act authorizes public participation in the “development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program.”

The Law

In addition to Section 101 of the Act, the public can assist EPA and State permit writers to decide what will be in any permit issued under the National Pollutant Discharge Elimination System (NPDES) permit program. Also, Section 402 (a)(1) of the Act requires the opportunity for public comment and input on any proposed permit.

When it comes to permit enforcement, the Act clearly requires EPA and state government authorities to publicly notice (an opportunity for a public hearing) any proposed enforcement action and to receive comments prior to penalties being assessed. (Section 309(g)(4)).

Who is the public?

There are many categories of citizens interested in environmental issues from recycling to global warming.

The most visible national groups include: Earth Justice, Sierra Club, and the Environmental Defense Fund.

Two groups that are specifically active with stormwater permits are the Natural Resource Defense Council (NRDC) and the Chesapeake Bay Foundation. Both are actively litigating and governments must consider the cost of a legal defense.

More important to local governments are groups like home owner associations, local land trusts, keep our city beautiful organizations, civic clubs, and business groups. These are groups that need to understand and support local government laws and policies. Their support is critical when municipalities seek to increase utility fees.

Beyond groups, there are individuals who care deeply about clean water and are interested in being on the team taking action to prevent contamination of water bodies.

Finding Volunteers

One municipal stormwater permit requirement is to provide public information. Successful programs seek opportunities to speak to local groups by making sales presentations to seek public support.

These groups also can influence everyone in the community to understand the importance of keeping runoff free of contamination. This begins with understanding that storm drains are not sewers and should only receive clean water. Presentations should discuss drainage, and avoid confusing terms like municipal separate sewer systems (MS4s).

The local groups will generate individual volunteers to assist with permit compliance. This may begin with forming a balanced citizen advisory committee. Some communities advertise to select members.

It is necessary to train volunteers to report potential and actual contaminated runoff. This will strengthen the illicit detection and elimination permit requirement. Some communities have given their best volunteers a position of “intern to the staff” to resolve insurance issues and scheduling. *

Effluent Limitations Must Be Pollutants, Not Runoff Flow Rates

Another federal judge has clipped EPA's wings. He will not allow an NPDES permit to be issued to control stormwater flow rates. *"Stormwater runoff is not a pollutant, so EPA is not authorized to regulate it,"* said U.S. District Judge Liam O'Grady of the [Eastern District of Virginia in Virginia Department of Transportation v. EPA](#).

The permit was written to regulate stormwater runoff into Accotink Creek in Fairfax County, Virginia to reduce sediment pollution. The Act allows EPA to impose TMDLs – the total maximum daily load – of “pollutants.”

But instead of setting limits for the pollutant itself -- sediment -- EPA decided to set the TMDL for stormwater flow. EPA research showed that the pollutant load was a function of the amount and timing of stormwater into the creek.

The US EPA has a reputation for taking action which broadens their authority. Courts usually allow Agency discretion, but not if it is contrary to law. The Clean Water Act clearly allows EPA to issue NPDES permit with effluent limitation for pollutants. The Act also allows EPA to promulgate TMDLs for pollutant discharges.

EPA should not appeal, the Clean Water Act does not give the Agency authority to regulate non-pollutants.

But, EPA's construction standards (effluent guidelines) and permits require dischargers to control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges.

This could be a problem for the EPA. *

Stormwater News

(Continued From Page 1)

The California State Water Board adopted the Phase II Small MS4 Stormwater Permit on February 5, 2013. The Final draft of the [Industrial General Permit](#) will be released in March or April of 2013. Approximately 9,000 individual facilities are covered by the current industrial permit. No adoption meeting has been scheduled but the Board is likely to adopt it in June 2013. The [Construction General Permit](#) will be reopened to deal with the very limited subject of training requirements for California-licensed professionals regulated by the Department of Consumer Affairs.

Princess Cruise Lines has agreed to pay a \$20,000 fine for dumping water from on-board swimming pools into Glacier Bay National Park and Preserve in 2011. In a signed consent agreement and final court order, the EPA says Princess violated the Clean Water Act in May 2011 when more than 66,000 gallons of pool water was discharged into Glacier Bay.

The order says there was a software malfunction on the ship the Golden Princess, causing the pool dump valves to open. The malfunction allowed chlorinated water from six of the ship's pools and spas to drain into the national park and preserve.

The wastewater permit for large cruise ships prohibits the discharge of pool or spa water in national parks and refuges. The federal Clean Water Act allows the EPA to fine cruise companies for permit violations.

EPA Low Impact Development (LID) Fact Sheets

<http://water.epa.gov/polwaste/green/bbfs.cfm>

This seven-part series of fact sheets is primarily intended for state and local decision makers who are considering adoption of LID but who have concerns with LID.

Fact Sheet #1: Challenges the perception that LID isn't worthwhile and provides general background information that outlines hydrologic and economic benefits provided by LID.

Fact Sheet #2: Addresses LID's jumble of terms for managing the environmental impacts of growth that coexist today and describes & distinguishes these terms.

Fact Sheet #3: Challenges the perception that LID is too expensive.

Fact Sheet #4: Challenges the perception that LID is unattractive.

Fact Sheet #5: Challenges the perception that LID doesn't work.

Fact Sheet #6: Challenges the perception that LID is too hard or costly to maintain.

Fact Sheet #7: Highlights incentive strategies to catalyze LID. *

EPA Withdraws the Numeric Turbidity Limitation

Construction & Development Wins Turbidity Issue

The US EPA promulgated, then withdrew an effluent limitation of 280 nephelometric turbidity units (NTU) for large disturbed areas. The agency wanted to correct their error and proposes a turbidity limitation again. But, Not Now. Game Over! EPA Retreats!

No Turbidity Sampling

EPA reached a settlement with the Utility Water Act Group (UWAG) and the National Association of Home Builders (NAHB) resolving litigation over EPA's rule imposing numeric effluent limitations as well as narrative limitations.

EPA will propose revisions to the standards by April 15, 2013. In addition to withdrawing the numeric limits, some of the non-numeric standards will be revised. EPA will make the following changes.

EPA will define the word "infeasible." It will be defined as "not technologically possible, or not economically practicable and achievable in light of best industry practices." Revised narrative standards will be:

- ▶ Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
- ▶ Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize channel and streambank erosion in the immediate vicinity of discharge points;
- ▶ Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible; and minimize soil compaction. Minimizing soil compaction is

not required where the intended function of a specific area of the site dictates that it be compacted.

- ▶ Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.
- ▶ Soil Stabilization. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.
- ▶ In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site dictates that it remain disturbed.
- ▶ Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater.
- ▶ Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use). *

Illicit Dischargers in Ohio May Go to Jail

Citizen Reporting Nabs Dumper

In separate instances and locations, two Ohio men have been charged with Clean Water Act violations concerning brine water from fracking activities.

Robert D. Armstrong, of New Matamoras pled guilty to a violation by allowing oil and gas well wastewater to flow into a tributary of the Little Muskingum River. He also entered a guilty plea on behalf of his company, RCA Oil and Gas LLC, charged with the same offense. The pollution violation occurred in June 2010 at an RCA well north of New Matamoras.

Armstrong had built a reservoir with an earthen wall to hold water he intended to use in the fracking process. The reservoir contained approximately 2.2 million gallons of fresh water to which he had added thousands of gallons of brine (wastewater). Armstrong then used a backhoe to breach a wall of the reservoir, releasing the wastewater into Rockcamp Run.

At the time the reservoir contained about 800,000 gallons of wastewater, which when analyzed, showed significant concentrations of barium and sodium.

In Youngstown, Ben Lupo, 62, is accused of directing an employee to illegally discharge brine and oil-based drilling mud into a stormwater drain which flowed into an unnamed tributary of the Mahoning River, and ultimately into the river itself.

The Ohio Department of Natural Resources received an anonymous tip that stated on the night of January 31, 2013, someone would be illegally discharging wastewater from Hardrock Excavating LLC, owned by Lupo.

DNR Inspectors arrived and found a hose connected to a storage tank discharging

wastewater into a stormwater drain at the facility. Inspectors took a sample of the wastewater, noting it was black in color.

Lupo admitted he directed his employee to discharge the contents of the storage tank and admitted he directed the same activity a total of six times over the previous six months.

The statutory maximum for violating the Clean Water Act is three years in prison, a \$250,000 fine, and one year of supervised release.

Of the Youngstown case, United States Attorney for the Northern District of Ohio, Steven M. Dettelbach, said, "Those of us from Northeast Ohio know the legacy of dumping industrial waste into our waterways."

The U.S. Environmental Agency on Thursday fined an industrial recycling company in Franklin, MA for violating the federal Clean Water Act.

Strategic Materials Inc., based in Houston, Texas, has a glass recycling facility located at the edge of the wetlands abutting Mine Brook, a tributary of the Charles River. Agency officials allege the Kenwood Circle facility allowed polluted stormwater to flow into nearby waters.

The company has agreed to pay the EPA \$159,750 to resolve the violation.

Officials said Strategic Materials failed to obtain a permit to cover its stormwater discharges and never prepared a stormwater pollution plan.

And once it received the proper permit, the company violated the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, according to the Agency. *

A Typical Citizen Law Suit

An environmental group in South Carolina has filed a notice of intent to file a citizen suit against an electric generating plant.

The notice alleges unlawful discharges of pollutants and allowing arsenic and other contaminants to seep through groundwater into the river. Apparently pollution is seeping into groundwater from a pair of coal ash ponds. The unlined ponds are separated from a river by earthen berms. The berms are sometimes submerged when the river's water levels are high.

The Southern Environmental Law Center filed a notice with the Environmental Protection Agency alleging that Santee Cooper is violating the federal Clean Water Act by allowing pollution at its Grainger electric generating plant here to seep into the Waccamaw River.

The notice gives Santee Cooper 60 days to correct the alleged violations. If the utility doesn't comply, environmentalists intend to file a lawsuit in federal court seeking to force Santee Cooper to stop the pollution, according to Frank Holleman, a lawyer for the Southern Environmental Law Center.

Such a lawsuit would seek an injunction against Santee Cooper to stop the pollution as well as monetary fees, penalties and costs of litigation, according to the notice. A federal judge could impose penalties of up to \$37,500 per violation for each day the utility is not in compliance.

The Grainger plant has been idle since last spring. Santee Cooper's board voted in October to shut down the plant after considering the cost of complying with more stringent environmental requirements. *

Citizens For Clean Drains

The National Stormwater Center, a private foundation, has scheduled a series of citizen meetings around the Nation to assist local governments with stormwater permit compliance.

The Center will offer a series of free training programs that provide basic understanding of the governing laws, the permit process, what illicit discharges are and how to identify them, how to report potential pollutant problems, how to provide feedback and influence permits before they are adopted into law, and more.

At the end of each training module, attending citizens will receive identifying credentials from the Center as "Clean Drain Qualified."

The training modules include:

Basic Training (3 hours)

- ▶ Citizen Authority under the Clean Water Act
- ▶ Understanding the National Pollutant Discharge Elimination System permit program
- ▶ Permits issued to Industry, Construction and Local Governments
- ▶ Local Government Permit Requirements

Support of Local Government Activities (3 hours)

- ▶ Local Permit Requirements
- ▶ Identification of Potential and Actual Contaminations
- ▶ Reporting Spills, Discharges, and Illegal Dumping

Advanced Citizen Actions (3 hours)

- ▶ Influencing Federal and State Stormwater Runoff Permits
- ▶ Influencing Enforcement Actions
- ▶ Concerning Political Actions
- ▶ Concerning Citizen Lawsuits *

A 10 -Year Lag Time Between Restoration & Evidence of Success

Chesapeake Bay Is One-Third Healthy

The Chesapeake Bay Foundation (CBF), chartered in 1967, settled on Resource Protection and Environmental Education as its two primary programs in early 1970.

As it nears its 50th year of operation, the CBF's 2012 Annual Report indicates "encouraging signs of improvement," with 5 of 13 indicators improved, 7 staying the same, and only 1 declined, resulting in an improvement in the Bay over 10% in less than five years.

The Chesapeake Bay Foundation measures the Bay's gains and losses in 3 categories, Pollution, Habitats, and Fisheries, with each category broken into 4 indicators.

Nitrogen and phosphorous, two of the indicators in the Pollution category, received an overall score of F & D. Nitrogen received the F, showing no change from 2010. Phosphorous showed an uptick of 4 from 2010, resulting in the D grade.

The CBF notes, "... these loads are highly related to river flows and stormwater runoff..." Additionally, the CBF 2012 annual report indicates that "...two recent scientific studies suggest there is reason for optimism.

A U.S. Geological Survey trends downward the pollution in some of the Bay region's large rivers, and a joint study by Johns Hopkins University and the University of Maryland suggests nitrogen reductions have resulted in a Bay-wide downtrend in the size of dead zones, which are oxygen-starved areas where plants and water animals cannot live.

But, if there has been no change in nitrogen levels between 2010 and 2012, how can the Johns Hopkins/University of Maryland study suggest reductions in nitrogen? According to

a Johns Hopkins news release on November 3, 2011, "Timing is key."

It goes on to say that in the 1980s there was a concerted effort to cut nutrient pollution in the Bay, and those efforts resulted in nitrogen concentrations leveling off in deep channels of the Bay, and that they have been declining ever since

The U.S. Geological Survey study shows that one-third of monitoring sites have shown an improvement in sediment concentrations since 1985.

Within the same time period, two-thirds of these sites showed an improvement in nitrogen concentrations, and almost all showed an improvement in phosphorous concentrations.

The study goes on to note that in the past decade, the majority of sites have showed no significant improvement, yet this doesn't mean that pollution reduction efforts have been in vain. Rather, the study claims, this indicates a 10 year lag time can exist between restoration efforts and firm evidence of restoration success.

Experts agree that the Chesapeake Clean Water Blueprint is the Bay's best chance for restoration. The blueprint ensures everyone shares in responsibility for clean up; sets two-year, pollution-reduction milestones to keep progress on track; and imposes consequences for failure.

As notes the Chesapeake Bay Foundation's president, William C. Baker, "A Bay health index of 32 on a scale of 1 to 100 should be a sobering reminder that there is a great deal left to do." *

John Whitescarver
Executive Director
National Stormwater Center



Served on team that organized US EPA and wrote Clean Water Act rules; National Expert in Municipal Permitting Policy;

Awarded EPA Bronze Medal 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

2013 Training Schedule:

On-Line Municipal Employee Training

March 14 - Construction Inspections

April 11 - Pollution Prevention

May 16 - Industrial Inspections

June 13 - Commercial Inspections

July 18 - Post-Construction

2013 Certified Stormwater Inspector

ON-SITE Training Schedule

Mar 4-5 Atlanta, GA

Mar 18-19 San Jose, CA

Mar 21-22 Berkeley, CA

Apr 29-30 Myrtle Beach, SC

Apr 29-30 Chattanooga, TN

Special Events Schedule

2013 Stormwater Compliance Conferences

May 7-9, Region 3, Philadelphia, PA

Nov 5-7, Region 4, Hilton Head, SC

Citizen Clean Drain Program

May 22 - Bel Air MD

May 29 - Bel Air MD

Be sure to see our website for our full training and events schedule!

www.NPDES.com

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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 services to government and business.

