

NPDES ENFORCEMENT HIGH ON EPA PRIORITIES

Stormwater News

U.S. EPA Administrator Lisa Jackson on July 7 declared the entire concrete-lined Los Angeles River channel "traditional navigable waters." This designation is crucial to applying Clean Water Act protections throughout its 834-square-mile urban watershed.

The Wall Street Journal article on July 12 titled: *Where Does the Water Go? And subtitled : In most cities, it runs off into nearby lakes, rivers and streams. And that's a problem.* The article by Willa Plank makes the following statement - "Uneven enforcement of the federal Clean Water Act—which aims to make the nation's waters swimmable, drinkable and fishable—hasn't helped the situation." Read <http://online.wsj.com/article/SB10001424052748704895204575320990985616872.html>

Chesapeake Bay Foundation settled its litigation with EPA. The Agency will complete a new Bay cleanup plan by the end of this year and require states to write plans showing how they will meet new pollution reduction goals, which the EPA will enforce.

A lawsuit against the steel plant at Sparrows Point, Maryland was filed by the Chesapeake Bay Foundation seeking injunctions to halt what they claim is continuing pollution and require cleanup of all contamination by Severstal North America, and ArcelorMittal USA, for alleged violations of federal and state environmental laws.

(Continued on Page 3)

Does EPA Have the Ability to Make States Enforce NPDES ?

It is very clear that EPA Headquarters wants to use enforcement to cleanup the Nation's Waters. But it's not clear if anyone outside of Washington, DC has the same objective.

This issue of the *Quarterly* looks at four recent EPA Headquarters (HQ) documents that are intended to persuade EPA Regions and States to see it as Washington sees it.

- (1) A memo to EPA Regions and NPDES States titled *Interim Guidance to Strengthen Performance in the NPDES Program* was sent on June 22.
- (2) EPA held a public meeting on July 13 to discuss a plan for all NPDES reports be sent to EPA HQ electronically.
- (3) Earlier this year EPA issued a paper titled *National Enforcement Initiatives*.
- (4) On June 18, the Agency issued their *FY 2011-2015 Strategic Plan*, a blueprint of priorities for the next five years.

These initiatives have a common theme- it's time to make NPDES more effective and use enforcement to achieve clean water goals. Most state and local governments hesitate to use monetary penalties toward a business and states find it politically difficult to penalize cash-starved local governments. The first battle ground is likely to be in the Chesapeake Bay area. *

INSIDE THIS ISSUE

Page 2 - EPA to Strengthen NPDES

Page 3 - Required Electronic Reporting

Page 5 - National Enforcement Initiatives

Page 6 - EPA 5-Year Strategic Plan

Page 7 - States Activities

Headquarters Directs EPA Regions to “Jack-Up” State Enforcement

EPA to Strengthen NPDES

A directive has been issued from EPA HQ to make NPDES states improve permit quality and permit enforcement. The memorandum sent on June 22 directs EPA Regional managers to meet with state NPDES managers to (1) develop a work plan with each state by August 31, 2010 and (2) take specific EPA actions to “raise the bar for state performance.”

The following paraphrases the 7-page memorandum. The document is found at <http://www.epa.gov/compliance/resources/policies/civil/cwa/interim-guid-npdes-062210.pdf>

Develop a Joint Annual NPDES Work Plan

The primary purpose of this integrated planning is to make sure that permitting and enforcement are working together to achieve the water quality goals of the CWA, and to direct limited resources towards addressing the most pressing problems.

The work plan will:

- a. Incorporate the permitting and enforcement program elements,
- b. Discuss priorities for NPDES permitting and enforcement,
- c. Prioritize permits, inspections and enforcement actions,
- d. Address performance expectations,
- e. Identify how major stressors will be addressed by available resources and,
- f. Identify mechanisms to get work done.

The work plan should identify areas where state has not been responsive, but where EPA has a national interest, and where the sector or problem is complex. Where a state has a significant workload and cannot address high priority problems, EPA will respond with enforcement actions.

Take Actions to Raise the Bar for State Performance

Where states have demonstrated widespread and long-standing failures with permitting or enforcement programs, EPA Regional Managers should (1) object to permits or (2) take direct enforcement actions against the permittee.

The EPA Region should object to individual permits specifically as a means of calling attention to long standing programmatic issues. See “Central Tenets of the National Pollutant Discharge Elimination System (NPDES) Permitting Program” at <http://www.epa.gov/npdes/pubs/tenets.pdf>

The EPA Region should take enforcement actions with penalties, sufficient to:

- a. Achieve compliance;
- b. Deter others from violating the law; and
- c. Make it more expensive to violate the law than to comply.

The work plans (due by August 31) will be reviewed and discussed at the EPA Assistant Administrator and EPA Regional Administrator level in September 2010. This discussion will focus on the work plans, compliance monitoring strategies and work share agreements for FY2011.

The EPA Headquarters directive was sent by Cynthia Giles, Assistant Administrator of the Office of Enforcement and Compliance Assurance and by Peter Silva, Assistant Administrator of the Office of Water. Although the memorandum is titled *Interim Guidance to Strengthen Performance in the NPDES Program*, it is clearly a directive and will be implemented by regular reviews of performance (permits and enforcement).

(Continued on Page 5)

Required NPDES Electronic Reporting?

Expect EPA to require all NPDES reports, normally sent to the states, instead be sent directly to the EPA. That's the EPA plan to reduce cost and to identify environmental problems within available resources.

The new rule, scheduled to be proposed next April, is also expected to improve overall management and oversight of the NPDES program and improve compliance by individual facilities.

In a July 13 public meeting and webinar, EPA explained the rule would reduced costs of processing paper forms, improved quality and accuracy of the data available to regulatory agencies, expand the use of the data to identify, target, and address problems, provide quicker availability of the data for use, and increased accessibility of the data to the public.

This should allow states to shift resources from data management activities to those more targeted to protect the environment, according to the EPA spokesperson. In a similar webinar in 2008, EPA heard the states complain about the cost of data management and several state representatives ask EPA about any penalty for noncompliance with a regulation requiring additional state resources.

The public meeting discussing the issue with stakeholders on July 13 was announced in the Federal Register on July 1 at: <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b0fef5>

The proposal will seek public comments on the implementation schedule and the feasibility of requiring electronic reporting.*

Stormwater News

(Continued from Page 1)

A US House of Representatives committee approved an amendment to close a Clean Water Act loophole for the oil and gas industry. Representative Mike Arcuri (NY) offered an amendment to the Oil Spill Accountability and Environmental Protection Act of 2010, which was approved on July 1 by the House Transportation and Infrastructure Committee.

The amendment eliminates the ability of oil and gas operators to circumvent the Clean Water Act's stormwater permitting provisions during construction of oil and gas wells.

The US Senate negotiators reached a compromise over Chesapeake Bay legislation to win enough Republican support in the Environment and Public Works Committee to allow the bill to be sent to the Senate floor. The bill no longer codifies the TMDL requirement for the Bay.

Under the bill, the EPA can take over state regulatory programs if the states are not making adequate progress. A key requirement is that states develop enforceable watershed implementation plans (WIP) and that the plans be approved by the EPA and fully implemented by 2025. States still stand to lose all federal water funding if the EPA has to take over WIP implementation.

The bill faces widespread opposition from agriculture groups and western state senators who were concerned about the long arm of the EPA on farms, particularly where the regulation of runoff was concerned. But the amendment clarifies the EPA cannot regulate agricultural runoff. However, states can regulate that runoff.

The comment period for the draft Pesticides General Permit (PGP) ends on July 19 following the public hearing on June 22.

The draft permit covers four categories of pesticide use: mosquito and other flying insect pest control, aquatic weed and algae control, aquatic nuisance animal control, and forest canopy pest control. It does not cover terrestrial applications to control pests on agricultural crops or forest floors.

EPA has stated that it intends to issue the final Pesticides General Permit in December 2010. *

Three Out of Six are Stormwater Runoff Related

National Enforcement Initiatives

On February 22, 2010, EPA issued a paper named "*National Enforcement Initiatives*" for Fiscal Years 2011 - 2013. Six initiatives were identified for nationwide targeted inspections, compliance assistance, and enforcement actions.

Three of these initiatives relate directly to stormwater runoff:

- * Keeping raw sewage & contaminated stormwater out of our nation's waters
- * Preventing animal waste from contaminating surface & ground waters
- * Cutting Toxic Air Pollution that Affects Communities Health
- * Reducing Widespread Air Pollution from Coal-Fired Utility, Cement, Glass, and Acid Sectors
- * Reducing pollution from mineral processing operations
- * Assuring energy extraction sector compliance with environmental laws

The following paraphrases the EPA policy. See the policy on EPA website at <http://www.epa.gov/oecaerth/data/planning/initiatives/initiatives.html>

Enforcement of Municipal Discharges

The first EPA enforcement initiative is to reduce discharges of raw sewage and contaminated stormwater from municipal operations.

Raw, untreated sewage in older municipalities frequently overflows from sewers into waterways, or backs up into city streets or basements of homes.

Older urban areas in particular have aging sewer systems that are not designed to handle heavy rainfall and snowfall, in addition to growing urban populations and industrial discharges. As a result, sewage

contains pathogens that threaten public health, leading to beach closures and public advisories against fishing and swimming.

Municipal and construction site stormwater runoff carries sediment, metal, oil and grease, acid, chemicals, toxic materials and industrial waste into surface waters. Many cities use rivers as the source of their drinking water, and contaminants in the water increase the difficulty and expense of treating the water to make it potable.

According to EPA, many municipalities are not complying with permit requirements to treat sewage and to control contaminated stormwater discharges.

Therefore the first National Enforcement Initiative will focus on reducing discharges from combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), and municipal separate storm sewer systems (MS4s). Municipal government must commit to implement timely, affordable solutions to these problems, including increased use of green infrastructure.

Preventing Animal Waste from Contaminating Surface & Ground Waters

Concentrated Animal Feeding Operations (CAFOs) are agricultural operations where animals live in a confined environment. If not properly controlled, manure can overflow from lagoons or run off from the fields into nearby surface waters or seep into ground water, carrying disease-causing pathogens, nutrients, or other contaminants.

EPA's regulations require larger CAFOs to have permits (which impose control requirements) if the waste produced by

animals on the farm will run off into surface waters.

However, many CAFOs are not complying with these requirements. Therefore, EPA will strengthen its enforcement focus on these facilities. For FY2011-13, EPA will focus primarily on existing large and medium CAFOs identified as discharging without a permit.

Reducing Pollution from Mineral Processing Operations

Mining and mineral processing facilities generate more toxic and hazardous waste than any other industrial sector, based on EPA's Toxic Release Inventory. EPA has spent over \$2.4 billion to address the human health and environmental threats to communities, such as exposure to asbestos and lead poisoning in children, as a result of mining and mineral processing.

EPA has inspected 65 mining and mineral processing sites that pose significant risk to communities and found many to be in serious non-compliance with hazardous waste and other environmental laws.

Contamination of groundwater and potable water has occurred at many sites, sometimes requiring alternative drinking water supplies or removal of lead-contaminated soil from residential yards. In other cases, toxic spills into waterways from mining and mineral processing caused massive fish kills and impacted the livelihood of low income communities. Some workers at mining and mineral processing facilities have been exposed to spills and mismanagement of toxic and hazardous waste.

EPA will continue its enforcement initiative to bring these facilities into compliance with the law and protect the environment and nearby communities. *

Strengthen NPDES

(Continued from Page 2)

The EPA memorandum that transmits the guidance document explains that (1) creating the work plan, and (2) taking action through enforcement or permit objection are just the first two steps to be implemented, hence the title "Interim Guidance." As the new approaches are being explored additional changes may be required.

The memorandum also explains that recent analyses of data have shown that the way EPA and the states have been operating in the past has not led to the level of environmental or compliance improvements needed. Therefore, EPA's oversight of state programs is not what it should be to maximize the contribution of enforcement to improving water quality.

While the Agency has focused on larger discharges, the impact of a great number of smaller, more dispersed sources (such as stormwater) have created new challenges. Managing this diverse universe becomes more difficult in view of the current economic status of many of the states. *

Sanitary Sewer Overflows

EPA announced on June 1 a proposed strategy to reduce Sanitary Sewer Overflows (SSOs). The EPA would modify NPDES regulations by establishing standard permit conditions for publicly owned treatment works (POTW) permits.

Also, the Agency is considering changing the peak flow policy. EPA has completed four public meetings on the plan and is asking for input from the interested public before August 2, 2010. *

EPA Strategic Plan

The *EPA Strategic Plan for FY 2011–2015* is a blueprint for accomplishing Agency priorities for the next five years. The following are the issues, identified as goals.

- Goal 1: Climate Change & Air Quality
- Goal 2: Protecting America's Waters
- Goal 3: Cleaning Up Our Communities
- Goal 4: Chemical Safety & Pollution Prevention
- Goal 5: Enforcing Environmental Laws

Two of these goals have a major impact on stormwater permitting: Protecting America's Waters and Enforcing Environmental Laws.

The following paraphrases only Goal 2 and Goal 5. See the 55-page document at http://www.epa.gov/ocfo/plan/2011/draft_strategic_plan_june_16_2010.pdf

Protecting America's Waters

The EPA will robustly protect and restore threatened natural treasures such as the Great Lakes, the Chesapeake Bay and the Gulf of Mexico. EPA will (1) address neglected urban rivers; (2) ensure safe drinking water; and (3) reduce pollution from nonpoint and industrial dischargers. The Agency will initiate measures to address post-construction runoff, water-quality impairments from surface mining, and drinking-water contamination.

Over the next five years, EPA will continue efforts to restore waterbodies that do not meet water quality standards, preserve and protect high quality aquatic resources, and protect, restore, and improve wetland acreage and quality. EPA will also work more aggressively to reduce and control pollutants that are discharged from industrial, municipal, agricultural, and stormwater point sources, and vessels, as well as to implement programs to prevent and reduce pollution that washes off the

land during rain events. By promoting "green" infrastructure and sustainable landscape management, EPA will help restore natural hydrologic systems and reduce pollution from stormwater events.

EPA will take all necessary actions to support efforts to remove oil from and restore the Gulf of Mexico ecosystem.

Chesapeake Bay watershed States (including the District of Columbia) will develop and submit approvable Phase I watershed implementation plans by the end of CY 2010 and Phase II plans by the end of CY 2011 in support of EPA's final Chesapeake Bay Total Maximum Daily Load (TMDL).

By 2015, EPA expects attainment of water quality standards for all pollutants and impairments in more than 3,360 water bodies identified (in 2002) as not attaining standards. (The 2002 universe of water bodies identified by states and tribes as not meeting water quality standards was 39,798.)

Enforcing Environmental Laws

A major change in enforcement will be moving to an environmental problem-based (i.e., air, water) rather than a tool-based (i.e., assistance, incentives, monitoring, and enforcement) measurement system.

EPA is increasing enforcement actions where waters that do not meet water quality standards, getting raw sewage out of water, cutting pollution from animal waste, and reducing pollution from stormwater runoff.

Enforcement will help to clean up great waters like the Chesapeake Bay and will focus on revitalizing urban communities by protecting urban waters. By 2015 EPA will achieve an investment of \$17 billion in water pollution control equipment or practices as a result of enforcement actions. In FY 2005-2006, annual average was only \$3.3 billion. *

States Activities

Illinois

The US EPA is calling for the Chicago River from Lake Michigan to be swimmable. (The EPA wants to bring the Chicago River up to standards presented in the Clean Water Act, that bodies of water should be safe for fishing and swimming.)

Mayor Daley called the clean-up the EPA's "unfunded mandate." Making the Chicago River safe enough for swimming would waste taxpayer money and put children at risk of drowning, officials who oversee the waterway said.

Mississippi

The EPA recently settled a \$70,000 lawsuit with Pontotoc Union Lee Alliance (PULA) for stormwater-related violations of the Clean Water Act at two of its construction sites in Blue Springs, Mississippi.

Iowa

EPA has approved the Iowa Department of Natural Resources' designated use changes for 64 water bodies and disapproved changes for 93 water bodies. Designated uses describe the achievable recreational activities and aquatic life uses in Iowa's waters. EPA is finalizing action on the remaining 19 water bodies.

Massachusetts

A US District Court judge said he will personally drive by Massachusetts Department of Transportation worksites to make sure officials abide by a two-year-old order to control a soup of contaminants that can pour from highways into rivers and streams during storms.

"I know where the sites are, I'll drive around and check. I want to see the

equipment there. . . . I will ride herd on this now monthly to get compliance," said Judge William G. Young, according to a transcript from a status hearing earlier this week in Boston. "I hoped for, I expected compliance. There has not been compliance."

Georgia

Atlanta's Watershed Management Department wants to create a stormwater fee, hoping to raise nearly \$24 million a year to reduce flooding in Atlanta's streets, improve water quality in streams and rivers and to improve its infrastructure.

As part of an ordinance introduced to the City Council's Utilities committee, some homeowners would pay nearly \$120 a year. Others would pay \$64.80 a year.

Apartment building owners, religious institutions and businesses would pay 27 cents for each 100 square feet of impervious surfaces such as parking lots, that cannot be easily penetrated by water and often result in stormwater runoff. The Varsity Restaurant, which has about 180,000 square feet of such surface space, would pay \$5,830 a year, city officials estimate.

The new fees, if approved, would take effect in July 2011.

West Virginia

EPA Administrator Lisa P. Jackson said EPA is not seeking to halt mountaintop removal, but will "try to minimize, if not end, any environmental degradation to the water" caused by the practice. Jackson said "our role is limited to ensuring that these projects, if they're approved, do not have a detrimental impact on clean water. We'll continue to do that." *

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

Login to our website to see the latest listing of classes and services

www.npdes.com

Certified Stormwater Inspector courses
Certified Erosion Inspector courses
Certified Construction Inspector courses
Aug: Phoenix AZ, Smithfield VA, Lexington KY
Sept: Charleston WV, Houston TX
Oct: Baltimore MD, Melbourne FL
Nov: Hammond LA Atlanta GA, Miami FL
Dec: Miami FL (cont'd), Philadelphia PA

Certified Employee Training by Sector -
Every month we now offer 1-hour permit
required online Annual Employee
Training for those on the spill prevention
front line. Only \$20/employee!

Please continue to check our website for updates regarding training sessions and other offerings at www.npdes.com or call us at 888-288-6852.

We now have items for sale only to National Stormwater Center's Certified Stormwater Inspectors! www.npdes.com

Subscribe

The *Stormwater Quarterly* is published four times a year. Annual subscriptions are \$59.95.

Fair Use Notice

The *Stormwater Quarterly* contains copyrighted material which may not always be specifically authorized by the copyright owner. "Fair Use" of copyrighted material is provided for in Section 107 of the U.S. Copyright Law. We distribute some material, without profit, to those who express a prior interest in receiving information for research and educational purposes. The information in the publication is for informational purposes only.

National Stormwater Center Offers:

- ☞ Certified Training Courses:
 - ☐ Stormwater Inspector
 - ☐ Advanced Stormwater Inspector
 - ☐ Erosion Inspector
- ☞ SWPPP Templates
- ☞ Sampling Assistance
- ☞ Compliance Tracking
- ☞ Annual Employee Training...and more!

Contact Us - 1-888-288-6852



The Center for Environmental Compliance (CEC) d.b.a. The National Stormwater Center, provides compliance assistance in the form of certifications, employee training, sampling, permit tracking, SWPPP templates, technical and regulatory opinion to business and government agencies. CEC is a nonprofit, nonpartisan and charitable corporation.



Center for Environmental Compliance
National Stormwater Center
P.O. Box 686
Stuart, Florida 34995-0686